



**Comment on Proposed
Supplementary Registration
Proxy Service for gTLDs
Operated by XYZ.COM**

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

The Business Constituency ("BC") appreciates the opportunity to comment on the proposed launch of Supplementary Registration Proxy Service for Multiple gTLDs Operated by [XYZ.COM LLC](#), dated December 10, 2015¹.

The BC is submitting this comment on the understanding that the December 10 request is replacing in its entirety the previously submitted and withdrawn October 15, 2015 request by [XYZ.COM LLC](#) (XYZ) pertaining to compliance with the Chinese Ministry of Industry and Information Technology regulations for domain name registries².

Clarifications requested

Before the BC can support this RSEP, we ask that XYZ clarify the language in the RSEP concerning the secondary escrow of Registry data, the mirroring of Whois data, and the operation of DNS. These are noted as Items A, B and C, respectively below:

Item A: In 3 places in the RSEP there is language related to secondary escrow of Registry data:

Page 1:

"3. Supplemental Data escrow. In addition to the existing provision, Registry data pertaining to Chinese registrants would be uploaded to ZDNS, XYZ's technical partner in China. These data would be held in a secure manner compliant with ICANN specifications for data escrow and applicable national legislation. It is important to note that information about non-Chinese registrants would not be included in deposits uploaded to ZDNS."

Page 7:

"The vendor we use to operate the gateway in China is ZDNS Co., Ltd. ("ZDNS"). ZDNS will operate the gateway in China between Chinese registrars and our technical backend, CentralNic. Real name verification pursuant to Chinese law will be provided by KNET Co., Ltd.. Chinese law will also require us to use a redundant second data escrow provider in China, Beilong Zedata (Beijing) Data Technology Co., Ltd, that will be providing data escrow services for Chinese registrants in addition to our normal data escrow. Our normal data escrow will not be affected whatsoever."

¹ See <https://www.icann.org/public-comments/supplemental-registration-proxy-2015-12-10-en>

² Registry Request Service for A Chinese Gateway, 09-Oct-2015, at <https://www.icann.org/en/system/files/files/request-2014154-multiple-09oct15-en.pdf>

Page 8:

"2) For registrations coming from Chinese registrars, there will be a second data escrow in addition to the existing data escrow system provided by NCC Group. This second data escrow will be stored on servers in China. The existing data escrow service provided by NCC Group will be unaffected. Registrations coming from Chinese registrars will be escrowed in both data escrow systems. Registrations coming from non-Chinese registrars will be escrowed only in the current data escrow system provided by NCC Group. This is necessary to comply with Chinese law."

The BC believes the RESP must clarify whether the term "Chinese registrants" on Page 1 and Page 7 means any "registrations coming from Chinese registrars" as noted on Page 8. Does this mean, for example, that any person, whether of Chinese nationality or not, that registers a domain covered by this RSEP would have their Registry data stored in secondary escrow in China?

The BC believes that the term "Chinese registrant" should be narrowly construed to avoid extraterritorial application of Chinese law. For example, Chinese registrants should not include residents of Hong Kong, a special administrative region within the People's Republic of China, because we understand that residents of Hong Kong are not legally subject to the same information censorship regime as other Chinese citizens under the "one nation, two systems" doctrine applicable to Hong Kong.

More generally, conducting business on the Internet depends upon clarity regarding any applicable legal framework. So applying Chinese law outside of that country or in exempt jurisdictions within it could cause confusion for businesses using the top level domains that are the subject to this request.

Item B: In the same vein, the language below, which appears on page 8 of the RSEP, should be narrowly interpreted. The RSEP says:

"1) WHOIS data for registrations coming from Chinese registrars will be mirrored on servers in China. The storage of WHOIS data for registrations coming from registrars not in China will not be mirrored. This is necessary to comply with Chinese law."

While the BC does not object to the requirement that Chinese registrars comply with local law, ICANN should not grant the RSEP if it finds that XYZ's policies would have extraterritorial effect.

Item C: The BC believes the RSEP should better define and narrowly construe the term "Chinese internet users" as used in the Page 1 statement about DNS routing in China, so that it is more clear if this term means simply Internet users who at the time of the DNS request are physically inside the borders of China, or is somehow broader. The relevant text from the RSEP is:

"4. DNS. CentralNic will expand its Anycast DNS network into Mainland China (it already has nodes in Hong Kong) so that DNS queries from Chinese internet users are answered by DNS servers inside China. No filtering will be done on the Anycast servers, which will function identically to all other nodes in the network."

As noted, the BC would not support an RSEP request with a broader interpretation.

Concern about censorship of sensitive terms

The October 15 request to ICANN raised significant concerns regarding widespread censorship of "sensitive" terms at the second level, setting forth: "*XYZ will reserve names prohibited for registration by the Chinese government at the registry level internationally[.]*" We note favorably that the December 10 request has removed such language as well as all related language pertaining to the blocking or reservation of names at the second level. We also note that the present pending request appears to be limited to ICANN-accredited registrars based in China. As the BC understands and is supportive of the need for Internet businesses to comply with local laws, we do not object, per se, to XYZ's December 10 application.

Nonetheless, the BC takes this opportunity to emphasize that government-sponsored censorship of domain names for political purposes undermines a stable Internet ecosystem that promotes end-user confidence as a safe place to conduct business. It also limits the free flow of data and information, on which business users of the Internet rely in delivering services to end users.

As the ability to reserve names is already provided for in the ICANN Registry Agreement and does not require a formal RSEP request, we urge ICANN and the community to remain vigilant as to such practices, particularly when those practices potentially implicate the rights of individual and businesses outside of a particular government's jurisdiction.

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This comment was drafted by Andy Abrams, Aparna Sridhar, Tim Chen, and Phil Corwin. It was approved in accord with the BC Charter.