



Commission for
Communications Regulation

Consultation Paper

Regulation of **.ie**

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All responses to this consultation should be clearly marked:-
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Please note ComReg will publish all respondents submissions
with the Response to this Consultation, subject to the provisions
of ComReg’s guidelines on the treatment of confidential
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Contents

1	Glossary of Terms	3
2	Executive Summary	4
3	Regulatory and Legislative Background.....	6
3.1	IE DOMAIN REGISTRY LTD – A BRIEF HISTORY	6
3.2	REGISTERING DOMAIN NAMES – 3 KEY TERMS.....	7
4	ComReg’s current consultation	8
5	Consultation Items.....	9
5.1	SECURITY, SENSITIVE PROCESSES AND TECHNICAL OPERATIONS	9
5.2	CORPORATE GOVERNANCE.....	10
5.3	POLICY FORMATION, OUTREACH AND TRANSPARENCY	11
5.4	MANAGED REGISTRY MODEL	13
5.5	COMPETITION & PRICING.....	14
5.5.1	Competition	14
5.5.2	Pricing	16
5.6	HANDLING DISPUTES AND IMPROPER REGISTRATIONS	17
5.6.1	Disputes - “bad faith” registrations.....	17
5.6.2	Disputes - Rejected Registration Requests	18
5.7	ESCROW OF REGISTRY DATA.....	18
5.8	COMREG’S APPROACH TO REGULATION	19
5.9	OTHER ISSUES	20
6	Submitting Comments.....	21
7	Next Steps.....	22
	Appendix A - Legislation	23
	Appendix B – Consultation Questions.....	25

1 Glossary of Terms

ADRP	Alternate Dispute Resolution Process
ccTLD	Country Code Top-Level Domain
ComReg	Commission for Communications Regulation
DNS	Domain Name System
gTLD	Generic Top-Level Domain
IANA	Internet Assigned Numbers Authority
ICANN	Internet Corporation for Assigned Names and Numbers
IEDR	IE Domain Registry Ltd.
ISP	Internet Service Provider
TLD	Top-Level Domain
UCD	University College Dublin
UDRP	Uniform Domain Name Dispute Resolution Policy
WIPO	World Intellectual Property Organisation

2 Executive Summary

The Commission for Communications Regulation (ComReg) is responsible for introducing regulatory frameworks necessary to ensure that Irish consumers are provided with high quality, leading-edge communications and that effective competition exists in the marketplace. ComReg's responsibilities and efforts to date in this respect have been concerned with the public telecommunications network and the postal network in response to the relevant national and European legislation.

The Communications Regulation (Amendment) Act 2007 (the Act of 2007)¹ amended the Electronic Commerce Act 2000, transferring to ComReg powers to make regulations affecting the management and administration of that part of the global Domain Name System assigned to Ireland, the .ie country code Top Level Domain (ccTLD). Currently the .ie ccTLD is delegated by ICANN² and IANA³ to University College Dublin, for historical reasons that date back to the earliest days of the Internet, while the practical day-to-day administration of the domain is handled by an independent not-for-profit organisation, the IE Domain Registry Ltd. (IEDR). ComReg is considering what steps it now needs to take in furtherance of the Act of 2007 and this consultation with all interested parties presents ComReg's preliminary position and seeks the views of those parties to guide it going forward.

The challenge for ComReg is to develop a regulatory framework around the administration of .ie. ComReg considered that the most prudent approach to this task was to firstly carry out a review of the current situation and accordingly it commissioned an independent survey and report from external expert Consultants. ComReg has carefully considered the findings of this report as well as data from the incumbent registry and has used these to inform this consultation paper. As the Consultants' report contains a significant amount of commercial information and a great deal of sensitive data on technical and security arrangements, ComReg has decided it would not further serve the public interest to make it publicly available. The key policy issues raised by the report are nevertheless addressed in this consultation paper.

The next step is to now open this public consultation so that the ideas, concerns and comments of the wider Irish Internet Community can be considered as guidance to ComReg in arriving at its decisions on a suitable regulatory framework for .ie. In that respect, ComReg's primary objectives are the protection of .ie domain consumers and the protection and development of the .ie namespace as a valuable national resource. This consultative approach is consistent with ComReg's core values of impartiality and transparency.

The Internet world has emerged on a largely unregulated basis of consensus standards and openness and it is ComReg's aim to minimise ongoing regulatory intervention in this area once any identified issues are addressed and a suitable monitoring framework

¹ <http://www.oireachtas.ie/documents/bills28/acts/2007/a2207.pdf> - relevant parts are included in Appendix A.

² ICANN – Internet Corporation for Assigned Names and Numbers, the organisation with responsibility for co-ordination of the Internet. – www.icann.org

³ IANA, the Internet Assigned Numbers Authority, maintain the data for the Internet root zone and co-ordinate any changes to it. IANA is part of ICANN.

has been put in place. ComReg considers that such an approach is the most appropriate and is therefore in the best interests of Irish Internet and domain name users.

3 Regulatory and Legislative Background

The Communications Regulation (Amendment) Act 2007 - hereafter referred to as “the Act of 2007” - amended the Electronic Commerce Act 2000 by, *inter alia*, transferring powers to ComReg to make regulations affecting the management and administration of the .ie country code Top Level Domain (ccTLD) and also implicitly all sub-domains beneath this. The incumbent ccTLD Registry is an independent not-for-profit organisation called IE Domain Registry Ltd. (IEDR).

Until now, the present Registry has had sole responsibility for administering the .ie ccTLD, in agreement with UCD which is the current administrative contact delegated by IANA (i.e. effectively the “Manager” or “Sponsoring Organisation” in IANA’s eyes). The Act of 2007 states that ComReg may, after consultation with the Minister for Enterprise, Trade and Employment, “specify an entity as the authority authorised to register .ie domain names”. IEDR appears to be the most obvious choice as the “authority authorised” since it, in effect, already fulfils this role but, in furtherance of its obligations, ComReg is obliged to take into account the possibility that this might not always be the case. In other words, ComReg must ensure that provisions are made in its proposed regulatory framework, to ensure continuity of service to .ie customers in the event of a failure of the Registry.

It should also be noted that IEDR is not a governing body. The organisation’s primary function is to maintain an up to date database of Internet Domain Names and operate an effective DNS service for the .ie domain in Ireland in the broad public interest.

3.1 IE Domain Registry Ltd – A brief History

Like most ccTLD registries, IEDR’s origins reside in academia. The Registry for .ie started as an informal activity for staff members of University College Dublin’s Computer Services Department. As use of the Internet increased, more domain names were registered. This meant that more resources were allocated to running the Registry and at some point it became necessary to introduce registration fees. As the significant costs of employing staff and paying for equipment to operate the Registry did not fit easily with the university’s charter, UCD’s management decided that it was no longer appropriate for this growing commercial venture to operate from within the university.

Arrangements were therefore made to establish a suitable legal entity that could take over responsibility for the Registry. Following discussions with interested parties (including the Department of Communications), UCD concluded that a not-for-profit company, limited by guarantee, was the most appropriate structure and accordingly IEDR (IE Domain Registry Limited), was founded in 2000. IEDR’s initial Memorandum and Articles of Association were discussed and agreed with the Department of Communications.

UCD appointed the company’s initial set of directors following informal consultations with interested parties and government officials and the majority of the founding Board members of IEDR still remain in post. A deed of agreement was signed, documenting the transfer of assets between UCD and IEDR. A Chief Executive was engaged and the Registry staff were transferred to the new company.

Following a difficult period, the company is now financially strong. Audited and published accounts for 2007 show IEDR made an after-tax profit of just under €25,000 on a turnover of €2.34 million. IEDR's invested reserves were €2 million on December 31st 2007.

3.2 Registering Domain Names – 3 Key terms

For convenience, a brief overview of the main stakeholders in the domain name registration business is provided below as these terms are used frequently throughout this document.

Registry The Registry maintains a database of all registered domain names of the domain in question – in this case all .ie domain names. This database is used to populate the Registry's Domain Name System (DNS) and feed its name-servers and WHOIS servers. IE Domain Registry Ltd. (IEDR) is the current Registry in Ireland for the .ie domain name.

Registrant An individual or organization who registers a domain name.

Registrar / Reseller⁴ A Registrar or reseller will generally have a business relationship with a Registry to register domain names on behalf of registrants. Registrars are typically Internet Service Providers (ISPs) or companies that offer other Internet services such as web and e-mail hosting. In Ireland, the agents of Registrants are known as Resellers rather than Registrars. Ireland's Resellers have a commercial relationship with IEDR.

⁴ These should not be confused with the more generally understood use of the term reseller in other contexts in the domain name business. In those settings, a reseller is an agent of a registrar. They have a commercial relationship with a registrar who in turn has a commercial relationship with a registry or registries.

4 ComReg's current consultation

ComReg's new role under the Act of 2007 obliges it to develop a regulatory framework around the administration of .ie which ensures the protection of consumers and users of the .ie domain while also ensuring that best use is made of this national resource in the service of the State.

To that end ComReg commissioned a third party review of the current situation, in relation to such a regulatory framework, from external experts. ComReg has carefully considered the findings of their report and used these, as well as data provided by the incumbent .ie Registry as important inputs towards the preparation of this consultation paper. The Consultants' report contains a significant amount of commercial information and a great deal of sensitive data on technical and security arrangements and ComReg has decided it would not further serve the public interest to make it publicly available. The key policy issues raised by the report are nevertheless addressed in this consultation paper.

ComReg is now opening this period of public consultation so that the ideas, concerns and comments of the wider Irish Internet Community can also be garnered. Feedback thus obtained will be used as additional guidance to ComReg in arriving at appropriate decisions on a suitable regulatory framework for the .ie domain. This approach is consistent with ComReg's core values of impartiality and transparency.

The Internet world has emerged on a largely unregulated basis of consensus standards and openness and it is ComReg's aim to minimise ongoing regulatory intervention in this area once any identified issues in current arrangements are rectified and a suitable monitoring framework is put in place. ComReg considers that such an approach is the most appropriate and is in the interests of Irish Internet and domain name users.

The consultation period will run from Friday, 27th June 2008 to Friday, 8th August 2008. All interested parties are therefore invited to study the material in this document and submit their views, all of which will be carefully considered. In particular, ComReg would ask respondents to focus their responses as far as possible on replies to the specific questions raised by ComReg, while reserving any other responses to the general question, Q.17.

In order to promote further openness and transparency ComReg will publish all respondents' submissions to this consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24⁵. ComReg would request that electronic submissions be submitted in an-unprotected format so that they can be appended into the submissions document for electronic publication.

⁵ <http://www.comreg.ie/fileupload/publications/ComReg0524.pdf>

5 Consultation Items

5.1 Security, Sensitive Processes and Technical Operations

ComReg, through its independent review, has received guidance on detailed internal⁶ processes, functions, precautionary arrangements and hardware items involved in the present operations of the .ie Registry. This information was obtained with the goodwill and full assistance of the IEDR. Its provision was deemed to be essential by ComReg to allow ComReg to form a baseline picture of the Registry and how it is meeting its obligations regarding controls, security and internal administrative operations around the .ie national resource. ComReg considers that this information should remain confidential for security reasons and/or because it deals with internal or proprietary company matters, the release of which, would not further serve the public interest. The key policy issues raised by the report are nevertheless addressed in this consultation paper.

ComReg is also in receipt of expert opinions on the degree to which these Registry processes and functions just described meet reasonable expectations or could be further improved.

ComReg considers that the right approach to handling this information is to provide the advice received to IEDR for its consideration and for action as necessary. While certain areas for improvement have been documented along with the identified strengths, the former have not resulted in catastrophic failures to date and IEDR’s record of improvement over the last few years provides solid assurance that the necessary corrective steps will be taken as quickly as possible. Nevertheless, in pursuance of its obligations under the Act of 2007, ComReg proposes to formalise this by issuing a direction to IEDR to take all necessary steps to safeguard the .ie domain. ComReg will then, after a reasonable period, revisit any perceived shortcomings to see whether and how they have been addressed.

ComReg realises respondents will have some difficulty in answering the following related questions without having a clear vision of the detailed matters being addressed, but suggests that respondents might take into consideration their knowledge of the complexity of DNS and Registry operations, the huge number of technical, business and other processes involved, and the relatively limited personnel resources of a small ccTLD.

Q.1 Do you agree with ComReg that IEDR should be allowed and expected to review and address any perceived or reported shortcomings in its internal arrangements that might represent risks to the continued safe operation of the .ie domain?

⁶ The emphasis here is on “internal” and the features discussed in this section are only indirectly related (if at all) with the IEDR user community and the interfaces to that community.

Q.2 Do you agree that a period of 12 months is a reasonable period to allow before a preliminary review of progress is made on any corrective action necessary, with a further 6 months allowed to finalise this work?

If you do not agree, please provide your comments and alternative suggestions.

5.2 Corporate Governance

IEDR is, by reason of history, the current Registry and is a private company; whose internal affairs are the sole responsibility of the organisation’s governing body and its management team. ComReg’s interest in the operations of that organisation is therefore focused on how they impact on the management and administration of the .ie domain and on its users and service providers. This cannot be a ‘hands-off’ approach however, as the policies and competencies of the organisation are critical to its performance in administering the .ie domain.

In summary, ComReg’s primary responsibilities are to consumers in general and to the wider Irish Internet Community. The .ie ccTLD is a valuable national resource and ComReg has an obligation to satisfy itself that the Registry is managed in a way that fully meets the objectives⁷ of the relevant legislation. Measures that ComReg must take into account include, *inter-alia*, the possibility that at some point in the future, circumstances may deteriorate and a new or interim Registry might be required.

To that end, ComReg has already undertaken to carry out a confidential due diligence examination of IEDR with the aim of providing analysis, commentary and recommendations on, *inter-alia*, IEDR’s Memorandum and Articles of Association, governance structure and high-level finances, insofar as these could have a bearing on the ongoing security of the .ie domain and/or protection of the interests of its users. Once this examination has been completed, ComReg considers that the appropriate follow-on steps would be to:

- Instruct IEDR to implement any key recommendations that flow from the due diligence examination and/or from this consultation that ComReg deems appropriate and necessary.
- Provide to IEDR any additional more generic recommendations that ComReg deems appropriate, after taking due account of viewpoints expressed by respondents to this consultation.

Note: while the latter recommendations may not be binding on IEDR, ComReg would anticipate that IEDR would recognise their value in harvesting wider public support for its services.

⁷ The purpose of the relevant legislation is “to facilitate easy comprehension, fairness, transparency, avoidance of deception, promotion of fair competition and public confidence with respect to the use of .ie domain names.”

Q.3 Do you consider it necessary for ComReg to take the steps proposed above to protect the consumer interest and the advancement of the .ie namespace? Please provide reasons for your answer.

5.3 Policy Formation, Outreach and Transparency

The general consensus in many internet organisations and in many ccTLD Registries (such as Nominet UK⁸) is that policy development should be undertaken as an open and transparent bottom-up process. It should also be a consultative process that takes account of the views of stakeholders and the local Internet community. This is best achieved through the establishment of an effective Policy Advisory Committee (PAC). This is considered essential by such bodies in the interests of good decision-making and also to ensure protection of the consumer.

An Irish PAC would be responsible for providing advice to the Registry's governing body on the non-operational aspects of managing the .ie domain name. This advice would be non-binding but nevertheless the governing body would be expected to take utmost account of any advice received before making any decisions that affect existing policy or the future direction of the .ie namespace.

The constitution and terms of reference of the PAC would be published on the Registry's website and the ongoing activities of the PAC would also be published. The PAC would be chaired by a person approved by ComReg who represents the interests of the Irish Internet Community and .ie stakeholders. A PAC would create a bridge between the Registry's Board and the Registry's stakeholders which would foster a closer working relationship to the benefit of all concerned.

ComReg is aware that IEDR has previous experience of setting up a similar representative body. IEDR is understood to be currently taking steps towards establishing a new and more effective body and it is possible that this will meet the needs outlined above.

Q.4 Do you agree that the .ie Registry should maintain a Policy Advisory Committee that is broadly representative of stakeholders and the Irish Internet Community in general and of whose opinion it takes utmost account? If so, how should this group be constructed and which matters do you consider it should advise upon?

⁸ <http://www.nominet.org.uk/policy/develop/>

From time to time, changes in policy can have a significant impact on users of domain names and the Internet in general, even going beyond issues that can be resolved solely by a good PAC. ComReg considers that major policy issues such as these should be subject to a process of public consultation as part of a wider approach to open and transparent policy development. This consultation process should be clearly documented and all public consultations should be conducted in a formal and consistent manner.

Q.5 Do you agree that the .ie Registry should adopt a formal consultative process for major policy decisions? If so, what characteristics should this process have?

5.4 Managed Registry Model

Since its inception, the .ie Registry has always operated a “managed” registry model. This means that applications for .ie domain names are vetted against pre-defined eligibility criteria⁹.

The alternative is an unmanaged model, which is on a “first come-first served” basis without any restrictions. This model is more in line with common usage on the Internet, particularly with gTLDs such as .com. However, cyber-crime¹⁰ is much more prevalent within unmanaged domains.

The intention of a managed registry is to ensure that domain names are controlled for the benefit of the public and to avoid abuse. For instance it should not be possible for a person or organisation to acquire a domain name that is the name of an existing company or a registered trade mark to which they have no relationship. Where the specific .ie domain corresponds to a recognised brand, the .ie registrant of that domain is most probably the owner of that brand. Many people consider that this adds important value to .ie domain names and this is seen as a significant reason for choosing .ie.

IEDR considers the managed system secure and reliable. A report¹¹ commissioned by MacAfee earlier this year ranked .ie as the sixth “least risky” ccTLD in the world and IEDR believes this is, in no small part, due to the managed system.

Another attraction of the managed registry approach is that trading and speculating in domain names is almost non-existent, whereas these practices are commonplace in unmanaged registries. The counterpoint is that some consider this to be anti-competitive as there is effectively no market for managed domain names when all such names have the same market value: the price set by the Registry. With the unmanaged approach, domain names are worth their market value, essentially whatever someone is willing to pay for them.

Disputes about rights to domain names are more frequent in the unmanaged model as there are no eligibility criteria and the failure to register a domain or forgetfulness in re-registering a domain can quickly lead to abuses that have serious and expensive consequences for those concerned. In the context of consumer protection this is an important issue. ComReg considers that the managed approach creates a more secure environment for .ie domain names and the protection of .ie domain name holders is more important than the creation of a market in .ie domain names. Therefore, in ComReg’s view, the .ie Registry should continue to adopt the managed approach for the foreseeable future.

Furthermore, as managed domains are so few, this approach could provide the Irish Registry with a potential long-term unique selling point. It does this without disadvantage to Irish consumers who continue to have a huge range of alternative unmanaged domains from which to choose.

⁹ <http://www.iedr.ie/NamingPolicy.php>

¹⁰ For example, cyber-squatting. This is the practice of registering domain names with the explicit intent of using them to profit from the goodwill of a trademark belonging to someone else.

¹¹ http://us.mcafee.com/en-us/local/docs/Mapping_Mal_Web.pdf?cid=45044

In any event, the fundamental approach taken to managing registration of .ie domain names is a legitimate concern for the Irish consumer and the industry.

Q.6 Do you agree that the Registry should continue to adopt the managed approach to .ie domain name registrations? If not, please provide your arguments and proposals for an alternative approach.

5.5 Competition & Pricing

5.5.1 Competition

A .ie domain name can be registered in either of two ways. A potential registrant can approach the Registry directly or they can choose to purchase their domain name from a reseller. IEDR recommend¹² registering through a recommended .ie reseller. Typically, resellers sell domain names as part of a bundled package which includes the provision of web hosting services, web site design, e-mail accounts etc. In many cases, the domain name is sold at a discount to capture business in the other areas mentioned and names sold in that way can often be obtained at a significantly reduced price compared to a direct registration with the Registry. Resellers do offer “domain only” registrations also, which are still much lower in price than the Registry’s usual direct sale price.

Due to the monopoly nature of the ccTLD registration business at the wholesale level, the Registry should take the utmost care to ensure that it does not compete unfairly with its reseller community in the retail market. It is ComReg’s view that directly competitive selling would be incompatible with the Registry’s responsibilities under the current structures.

The Registry sets the price for direct registrations. It also sets the wholesale price for registrations to the reseller community. It does this without any external oversight. The maximum price the market will accept for registration or renewal of a .ie domain name is, the price charged by the Registry for a direct registration. Therefore, being in a dominant position, the Registry has a responsibility to set pricing so that it promotes competition and innovation amongst resellers but does not put artificial or unfair constraints on them. This means that the Registry should treat its resellers equally. It also means that the Registry should provide its wholesale channels with enough scope and incentive to compete against each other, thereby nurturing a truly competitive environment. If the Registry sets an unduly low ceiling on the price it charges for a direct registration, a proper competitive environment cannot be developed as that leaves less scope for reseller mark-up between the wholesale and retail prices and the principle of non-competition between the Registry and its resellers is then jeopardised. It is ComReg’s preliminary view, that the principle of non-competition is maintained provided the wholesale price of a registration remains significantly lower than the retail price.

¹² <http://www.iedr.ie/HowToRegister.php>

Q.7 Do you agree that deep discounting of its own retail charges by the Registry to the point where it becomes a perceived competitor to its Reseller community is incompatible with the obligations of a ccTLD and should be prevented?

Q.8 Do you agree that the principle of “non-competition” is maintained as long as the wholesale price of a registration remains significantly lower than the published retail price?

It could be argued that by offering direct registration services, the Registry is competing with its own resellers and, especially in view of its special status, that this practice could potentially be anti-competitive. In some countries, the Registry has withdrawn completely from the retail market. IEDR would argue that it is important for it to remain active in the retail market as a “registrar of last resort”. A “registrar of last resort” looks after domain name holders if no other registrar for some category of domain name emerges or whenever a reseller or registrar goes out of business. In the latter case, as a nominally disinterested or neutral party, the Registry can then act on an objective basis in the best interest of the domain name holders by quickly taking control of the orphaned domain names until these domain names can be transferred to another reseller. This usually happens when the domain name registration is to be renewed. ComReg considers that the “registrar of last resort” is a prudent and necessary function of the Registry, although safeguards may be needed in view of the unique status of the Registry with its visibility and control over key aspects of all .ie domains.

Furthermore, if an individual or organisation prefers a direct registration and they are willing to pay for it even at a higher price, then ComReg considers that this option should be available provided the customer has the information necessary to make such an informed choice¹³. Nevertheless, the facilitation of direct registrations, if coupled with significant registry retail discounts, could risk serious allegations of unfair competition by the registry operator, who is operating from a privileged market position. ComReg believes that safeguards against such risks need to be enshrined in the terms of reference of the Registry Operator and will be giving due consideration to this, going forward.

Q.9 Do you agree that the registrar of last resort is a prudent and necessary function? If not, please explain your reasoning.

¹³ IEDR provides this information on its website. Please see: <http://www.iedr.ie/HowToRegister.php>

Q.10 Do you agree that consumers should have the choice to register .ie domain names directly with the Registry?

5.5.2 Pricing

The Act of 2007 states that ComReg may “*prescribe the fees (if any) to be paid on registering and renewing the registration of a .ie domain name*”. In 2003, the price of a direct registration was €125 (exclusive of VAT). In 2007 the price had reduced to €65 (exclusive of VAT). IEDR has delivered consecutive price reductions for each of the last 5 years. This includes the direct retail price and also the wholesale price afforded to resellers. In the same period, the number of resellers operating in the market has risen to over 80¹⁴. In general resellers have welcomed the steady reductions in prices that IEDR has introduced and in that environment ComReg considers that there is no need for an immediate price-related intervention, as such intervention could interfere with market dynamics and have an adverse affect on competition.

However, it is important that ComReg monitor any changes in pricing to ensure that there is no scope for abusive practices in the marketplace. Based on the figures to date there is no evidence suggesting that any irregular or indiscriminate pricing practices have taken place.

When the price of a .ie domain registration is benchmarked against the price in other countries there are two over-riding factors that must be considered. Firstly, .ie is a managed domain and therefore there is an administration cost per application to check¹⁵ against eligibility criteria. ComReg considers that this extra cost is worthwhile in the interests of consumer protection.

Secondly, .ie domains appeal mainly to Irish individuals and organisations and therefore the market for .ie domain names is relatively small, especially when compared with Internet-wide gTLDs such as “.com”. Therefore, economies of scale are correspondingly more limited in the Irish market when compared to such markets and even compared to larger ccTLD markets such as the UK, Germany or France.

Q.11 Do you agree that the price of registering a .ie domain name seems reasonable, proportionate and competitive and therefore market intervention by ComReg is not currently necessary? If not, please explain your reasoning.

¹⁴ <http://www.iedr.ie/ListResellers.php>

¹⁵ This involves manual effort, so scope for price reduction is affected.

5.6 Handling Disputes and Improper Registrations

This sections deals with disputes that may arise between two parties over the right to use a particular .ie domain name. It also covers situations where a registrant or reseller has a grievance with the Registry over its refusal to register a domain name in the first place and how decisions of the Registry can be appealed.

5.6.1 Disputes - “bad faith” registrations

As outlined earlier, IEDR operates a managed registry system. Therefore, few disputes about bad-faith registrations arise. Occasionally however, these do happen. IEDR’s web site lists 17 disputes that have occurred since 2003¹⁶. These disagreements generally revolve around concerns about cyber-squatting, Intellectual Property issues, trademark disputes or examples of a company’s name and branding being misused. This is a fairly well understood problem in the domain name business and mature procedures exist to deal with such disputes. It should also be noted that a Registry is almost always a neutral third party in these cases. It has no vested interest in which registrant becomes the approved domain name holder, apart from entering the appropriate data in the Registry database and its WHOIS and DNS servers. In this respect the Registry normally seeks a ruling from an independent expert.

A number of TLD Registries use ICANN’s Uniform Dispute Resolution Process (UDRP). Some ccTLD Registries use UDRP also. In this scheme, an independent agency assesses evidence from disputing parties, the Registry, resellers or registrars and any other relevant data sources such as trade mark registries. This independent agency is usually the World Intellectual Property Organisation (WIPO). Determinations by the independent agency are normally binding on both parties. However, the costs of UDRP are high and the time taken to reach a decision makes it somewhat unpopular.

For handling disputes in .ie concerning who should be the holder of a domain name, or when alleged examples of bad faith registrations occur, IEDR has adopted a localised version of UDRP called ieDRP¹⁷.

Although a few ccTLD Registries use the generic UDRP mechanism offered by WIPO, it is far more common that a ccTLD Registry develops its own local Alternate Dispute Resolution Process (ADRP) which tends to be both quicker and cheaper for the disputing parties. ComReg was advised that European ccTLD registries which use a locally developed ADRP in preference to the UDRP include Belgium, the UK, Austria, Sweden, Norway, Finland, Denmark, Italy and the .eu ccTLD. For example, in Belgium the Centre for Arbitration and Mediation (CEPINA¹⁸) provides this service.

ComReg considers that the UDRP approach may not meet the timelines of disputing parties and it may also be more expensive. In particular, resource constraints on individuals or small businesses that may have the clearest right to a domain name may drive them to consider the cost and effort of pursuing the matter excessively burdensome.

¹⁶ <http://www.iedr.ie/IEDRP-Decisions.php>

¹⁷ <http://www.iedr.ie/DisputeRes.php>

¹⁸ www.cepina.be

This can be so even if the potential loss of good name and risk of other harm are very serious for the party involved. It might be more appropriate for the Registry to have an alternative local, impartial and independent procedure.

Q.12 Do you agree that the .ie Registry should consider developing an Irish Alternative Dispute Resolution Process (ADRP) or do you consider ieDRP (the localised version of UDRP) to be satisfactory? If the former, what characteristics should this ADRP have?

5.6.2 Disputes - Rejected Registration Requests

The ComReg commissioned report highlights that there is no formal process to follow whenever IEDR rejects an application. The reseller can however contact Registration Services and ask them to reconsider. If the original decision is upheld, the reseller can then appeal to senior management and ultimately to the IEDR Board. However, this process is not formal or published.

ComReg considers that a more formal, but not onerous, process is needed. This process should be simple, yet impartial and should be clearly documented.

Q.13 Do you agree that the Registry should develop and document an open, transparent and formal process for rejected registration requests? If so, how should it be organised?

5.7 Escrow of Registry Data

The objective of a data escrow scheme is to enable a third party to recreate the vital functions of an organisation's IT infrastructure, given the necessary hardware. In the context of a TLD Registry, this involves the Registry database and other data derived from it, such as DNS zone files and a WHOIS database.

With an escrow arrangement, the Registry periodically sends a complete set of this data to a mutually approved, trusted and entirely independent third party, the escrow agent, who verifies the data and stores it securely. In the event of a catastrophe or business failure, the escrow agent can release the data to a selected replacement Registry so that the Registry operations can be resumed with minimum¹⁹ delay. This arrangement is usually underpinned by a legally binding contract. IEDR does not have any such data escrow arrangements at present.

¹⁹ There is likely to always be some unfortunate delay, due to learning experience and set-up time. A key issue is that the former registry provider (or its agents or liquidator) should not be in a position to add to this delay.

The Act of 2007 states that ComReg is “*at all times entitled to have access to all internet .ie domain name databases and any associated records*”. ComReg considers this measure was approved by the Oireachtas so as to ensure that ComReg can take all steps necessary to guarantee the ongoing continuity of services to .ie domain name holders, regardless of the standing of the incumbent Registry Operator. ComReg also firmly believes that an escrow arrangement is an essential step towards such assurance and is integral to ensuring public confidence in the long-term security of .ie. A catastrophic failure²⁰ of the Registry resulting in no access to .ie domain names could cause considerable damage to Irish enterprises as well as to the international reputation of Ireland as a sovereign state.

Q.14 Do you agree that it is essential to establish full and effective escrow arrangements for the .ie Registry to ensure continuity of service in the event of Registry failure? If so, on what basis and to what extent do you consider that an escrow agreement should be introduced?

The subject of escrow is garnering much attention in the domain name business and is an active topic of discussion at ICANN. If escrow arrangements were to be introduced in Ireland, then the question of applying them to resellers as well as to the Registry must be considered.

It is ComReg’s view that escrow for resellers is not currently required, as there are many resellers to choose from and the cost of setting up such an arrangement might be prohibitive, burdening existing resellers unnecessarily and creating a barrier for new entrants to the market. Furthermore, fall back arrangements already exist, such as Registry-provided “registrar of last resort” (See Section 5.5 above) to provide additional security and peace of mind in the event of reseller failure.

Q.15 Do you agree with ComReg that there is not a current need to introduce escrow arrangements for registrars/resellers for the foreseeable future?

5.8 ComReg’s approach to Regulation

The Act of 2007 conferred on ComReg significant new powers in relation to the regulation of the .ie domain. The existence of this legislation of itself means that the Oireachtas has already considered and made provision for implementation measures to be carried out under it – including the adoption of secondary legislation – as appropriate.

²⁰ For example, bankruptcy, technical failure, force majeure or any other unforeseen difficulties that might arise. Notwithstanding, ComReg believes there is evidence that IEDR is a solid company with significant financial reserves and has identified nothing to suggest that any major risks exist to the operation of the Registry in the foreseeable future.

The Internet world has emerged on a largely unregulated basis of consensus standards and openness and ComReg's focus is therefore to ensure that any steps it might take in furtherance of its obligations are reasonable and proportionate.

ComReg's aim is to minimise ongoing regulatory intervention in this area once any identified issues are addressed and a suitable monitoring framework has been put in place. The aim of this monitoring framework is primarily to ensure ComReg is well-placed to identify any future risks but it may also contribute to providing data that can complement ComReg's role of providing market statistics to decision makers and the public. ComReg considers that such a light approach is the most appropriate one and is therefore in the best interests of Irish Internet and domain name users.

Q.16 Do you agree with ComReg's objective of minimising ongoing regulatory intervention in this area as soon as any identified issues are addressed and a suitable monitoring framework has been put in place?

5.9 Other Issues

Respondents are invited to comment on any other topic or issue that they consider has not been addressed adequately or at all in this Consultation Document.

Q.17 Do you wish to comment on any other relevant issues which may bear on ComReg's approach to regulation in this area? If so, please discuss these issues.

6 Submitting Comments

All comments are welcome. However, it will make the task of analysing responses easier if comments are referenced to the relevant question numbers from this document.

The consultation period will run from Friday, 27th June 2008 to Friday, 8th August 2008, during which the Commission welcomes written comments on any of the issues raised in this paper.

In order to promote further openness and transparency, ComReg will also publish all respondents' submissions to this consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24.

ComReg requests that electronic submissions be submitted in an-unprotected format so that they can be appended into the submissions document for electronic publication.

Having analysed and considered the comments received, ComReg will publish a Response to Consultation in October 2008 providing details of its approach to regulation of .ie.

7 Next Steps

ComReg will take full account of the responses to this consultation, as guidance going forward. Once consideration of responses has been taken into account, ComReg will publish its Response to Consultation which will provide specific details on any course of action deemed necessary.

The regulatory framework for .ie will then be put in place via secondary legislation which will:

- a) Formalise the relationship between ComReg and the Registry as well as the registry's (currently de-facto) relationship with the wider .ie domain.
- b) Set out any conditions of operation by way of any policy decisions taken as a direct result of the Consultants' Report, Due Diligence examination or this Consultation process.
- c) Provide for a monitoring framework so that ComReg has a sound basis for assessing the performance of the Registry going forward.
- d) Provide for the imposition of an ongoing levy on the Registry to cover ComReg's costs. This levy will be reasonable, proportionate and cost-based.

ComReg considers that none of the above demands the undertaking of a Regulatory Impact Assessment (RIA), either because their global impact is limited or because – in principle - they are a predictable outcome of the Act of 2007. However, ComReg will again consider the need for a RIA in the future prior to the introduction any new regulations of significant import.

Appendix A - Legislation

Relevant Section of Communications Regulation (Amendment) Act 2007

Communications Amendment Act 2007

PART 4 Registration of Domain Names

- 31.— In this Part, ‘.ie domain name’ means the top level of the global domain name system assigned to Ireland according to the two-letter code in the International Standard ISO 3166-1 (Codes for Representation of Names of Countries and their Subdivision) of the International Organisation for Standardisation.
- 32.— (1) The purpose of this Part is to facilitate easy comprehension, fairness, transparency, avoidance of deception, promotion of fair competition and public confidence with respect to the use of ‘.ie’ domain names.
- (2) A person shall not use an ‘.ie’ domain name unless the name is registered in accordance with regulations made under this section.
- (3) The Commission may make regulations for the purposes of this section, but only after consultation with the Minister for Enterprise, Trade and Employment and such other persons and public bodies (if any) as the Commission thinks appropriate.
- (4) In particular, regulations under subsection (3) may do all or any of the following:
- (a) specify an entity as the authority authorized to register ‘.ie’ domain names;
 - (b) prescribe the form and manner in which an application for registration or renewal of registration of an ‘.ie’ domain name is to be made;
 - (c) prescribe the circumstances and manner in which, the terms on which and the period for which an ‘.ie’ domain name may be registered;
 - (d) prescribe the circumstances and manner in which, the terms on which and the period for which registration of an ‘.ie’ domain name may be renewed;
 - (e) prescribe the circumstances and manner in which an application for registration or renewal of registration of an ‘.ie’ domain name can be refused by the registering authority;
 - (f) empower the registering authority to revoke the registration of an ‘.ie’ domain name in specified circumstances;
 - (g) confer a right of appeal against—
 - (i) a refusal of an application for registration or a renewal of registration of an ‘.ie’ domain name, and
 - (ii) the revocation of the registration of such a name;
 - (h) provide for the procedure for hearing and determining appeals;

- (i) prescribe the fees (if any) to be paid on registering and renewing the registration of an ‘.ie’ domain name and the time within which and the manner in which such fees are to be paid;
- (j) provide for such other matters relating to registration as appear to the Commission to be necessary or desirable for the purposes of this section.

(5) The regulations shall provide that persons who have registered ‘.ie’ domain names before the regulations came into operation are taken to have registered those names in accordance with the regulations.

(6) A person who contravenes subsection (2), or contravenes a regulation made under this section, is liable on summary conviction to a fine not exceeding \$5,000.

33.— (1) In order to provide a fund to meet the expenses properly incurred by the Commission in performing its function with respect to the use of ‘.ie’ domain names, the Commission may, by order, impose a levy on the entity authorised to register ‘.ie’ domain names in the State. The order shall specify the deadline for payment of such a levy.

(2) While an order made under subsection (1) remains in force, the entity shall, before the deadline specified in the order, pay to the Commission the amount of levy so specified.

(3) If the entity fails to pay a levy by the deadline fixed for payment, the Commission may, by proceedings brought in a court of competent jurisdiction, recover from the entity the amount of the levy as a debt due to the Commission.

34.— The Commission is at all times entitled to have access to all internet ‘.ie’ domain name databases and any associated records.

35.— (1) If the Commission considers it necessary to do so, it may, with the consent of the Minister, designate a person on an interim basis as the registration authority for the purposes of regulations in force under section 32.

(2) A designation under subsection (1) or subsection (3) is to be for a period not exceeding 12 months and is to be on such terms as may be specified in the designation.

(3) A designation under subsection (1) or this subsection may, with the consent of the Minister, be renewed for a further period not exceeding 12 months on such terms as may be specified in the renewal of the designation.

(4) This section has effect despite anything to the contrary in regulations in force under section 32.”.

Appendix B – Consultation Questions

List of Questions

- Q.1 Do you agree with ComReg that IEDR should be allowed and expected to review and address any perceived or reported shortcomings in its internal arrangements that might represent risks to the continued safe operation of the .ie domain? 9
- Q.2 Do you agree that a period of 12 months is a reasonable period to allow before a preliminary review of progress is made on any corrective action necessary, with a further 6 months allowed to finalise this work? If you do not agree, please provide your comments and alternative suggestions..... 10
- Q.3 Do you consider it necessary for ComReg to take the steps proposed above to protect the consumer interest and the advancement of the .ie namespace? Please provide reasons for your answer..... 11
- Q.4 Do you agree that the .ie Registry should maintain a Policy Advisory Committee that is broadly representative of stakeholders and the Irish Internet Community in general and of whose opinion it takes utmost account? If so, how should this group be constructed and which matters do you consider it should advise upon? 11
- Q.5 Do you agree that the .ie Registry should adopt a formal consultative process for major policy decisions? If so, what characteristics should this process have? 12
- Q.6 Do you agree that the Registry should continue to adopt the managed approach to .ie domain name registrations? If not, please provide your arguments and proposals for an alternative approach..... 14
- Q.7 Do you agree that deep discounting of its own retail charges by the Registry to the point where it becomes a perceived competitor to its Reseller community is incompatible with the obligations of a ccTLD and should be prevented?..... 15
- Q.8 Do you agree that the principle of “non-competition” is maintained as long as the wholesale price of a registration remains significantly lower than the published retail price? 15
- Q.9 Do you agree that the registrar of last resort is a prudent and necessary function? If not, please explain your reasoning. 15
- Q.10 Do you agree that consumers should have the choice to register .ie domain names directly with the Registry? 16
- Q.11 Do you agree that the price of registering a .ie domain name seems reasonable, proportionate and competitive and therefore market intervention by ComReg is not currently necessary? If not, please explain your reasoning.

- Q.12 Do you agree that the .ie Registry should consider developing an Irish Alternative Dispute Resolution Process (ADRP) or do you consider ieDRP (the localised version of UDRP) to be satisfactory? If the former, what characteristics should this ADRP have? 18
- Q.13 Do you agree that the Registry should develop and document an open, transparent and formal process for rejected registration requests? If so, how should it be organised? 18
- Q.14 Do you agree that it is essential to establish full and effective escrow arrangements for the .ie Registry to ensure continuity of service in the event of Registry failure? If so, on what basis and to what extent do you consider that an escrow agreement should be introduced? 19
- Q.15 Do you agree with ComReg that there is not a current need to introduce escrow arrangements for registrars/resellers for the foreseeable future?19
- Q.16 Do you agree with ComReg's objective of minimising ongoing regulatory intervention in this area as soon as any identified issues are addressed and a suitable monitoring framework has been put in place? 20
- Q.17 Do you wish to comment on any other relevant issues which may bear on ComReg's approach to regulation in this area? If so, please discuss these issues. 20