

**Submission to the
Legislative Council Panel on Information Technology and Broadcasting (“Panel”)
in relation to
the review of administration of Internet domain names in Hong Kong
and Administration’s briefing to the Panel on new institutional arrangements of the
HKIRC**

1 INTRODUCTION

PCCW is pleased to make the following submission to the Legislative Council Panel on Information Technology and Broadcasting in relation to the review of administration of Internet domain names in Hong Kong.

This presents an opportunity for industry stakeholders to provide feedback to the Panel to gain further insight into the practical issues faced by businesses in Internet domain names matters in Hong Kong.

2 GENERAL COMMENTS

In line with the guidelines and principles adopted by the global Internet community for ccTLDs administration, the new institutional arrangements are aimed at improving the corporate governance, operational efficiency, transparency and openness of HKIRC. It is noted that a Consultative and Advisory Panel, which is expected to have broad representation from various industry and community stakeholders, will be established to oversee major issues and decision making process and provide diverse viewpoints from stakeholders for consideration by the Board of HKIRC.

It is noted that HKIRC has on 31 March 2009 issued a notice to seek public consultation on the list of organizations to be invited to nominate for Consultative and Advisory Panel members, and invitees will include Former Directors on the HKIRC Board in 2007-08. It is not clear from the notice what is the HKIRC’s rationale for inviting Former Directors who served on the HKIRC Board in 2007-08 in addition to the organizations listed in the notice, given that the CAP is intended to comprise of (i) different classes of Internet users, (ii) the education sector and academia, (iii) ICT industry and related sectors, (iv) the legal, accounting and corporate management professions, and (v) certain Government and public bodies.

Of particular importance is the drafting of the new MOU which will be binding on the HKIRC Board's decision making processes and defines HKIRC's duties and PCCW welcomes the opportunity for the public and interested stakeholders to comment on the MOU before it is finalized.

It remains yet to be seen the effectiveness of the new institutional arrangements on improving the administration of Internet domain names in Hong Kong.

3 COMMENTS ON OPERATIONAL ISSUES IN CURRENT DOMAIN NAME REGISTRATION SYSTEM

In addition to the new institutional arrangements of HKIRC, there are a few operational issues in the current domain name registration system that should be addressed by HKIRC's new board when reviewing the existing policies on domain names registration and procedures in Hong Kong:-

(a) Transfer of Expiry Date

PCCW is concerned that where a domain name is required to be transferred between different legal entities, the paid-up period for which the domain name is valid with the current registrant ("Transferor") is not automatically transferred to the Acquiring Registrant ("Transferee"). It is noted that none of the provisions in the current Domain Name Registration Agreement for .hk Domain Names¹ ("Agreement") or the Rules for .hk Domain and Sub-domains² ("Rules") permits this cancellation of existing renewal period to occur.

Clause 11 of the Agreement allows for the transfer of a Domain Name registration to another party in accordance with the provisions set forth in the Rules. In accordance with clause 3.2 of the Rules, when the Transferor and Transferee apply to transfer a domain name a contract period must be elected with the initial contract period commencing on the domain name's activation date. Additionally, in accordance with

¹ https://www1.hkdnr.hk/register/registraion_agreement.jsp?path=register&item=2

² <https://www1.hkdnr.hk/register/rules.jsp>

the Registration Agreement, the Transferor's rights and obligations associated with the Domain Name registration shall be transferred to the Transferee once a transfer is completed. This appears to imply that the transfer of the existing period of domain name registration should also be transferred from the Transferor to the Transferee.

Under the current HKDNR process, an existing requirement exists whereby a domain name which maintains a paid-up future expiry date to have its existing paid-up time period effectively cancelled when the registrant owner of a domain name is being transferred between different legal entities (note this does not apply where the legal entity concerned is only as a result of a legal change of company name).

This existing process strongly discourages large organizations from entering into longer term domain name renewal arrangements due to the higher rate and frequency of a requirement to transfer domain names between different subsidiary/affiliate entities within the same organization.

The current process of cancellation of all paid for services without any form of compensation to the Transferor or the Transferee could be perceived as more of a profit grabbing exercise that detracts value from the long-term domain name registration and/or renewal process. This also is expected to have a subsequent flow-on impact to HKDNR in having to process a greater number of renewals due to the increased frequency of renewals due to the lower period of renewal (i.e. renew a domain name each year rather than renew for the domain name for a 5-year period).

(b) Back Order System

Around the world different measures are adopted for the capturing of various gTLD and ccTLD domain names which have been allowed to lapse by their existing registrants. From experience, it is found that in all circumstances this service delivered provides both a fair and equitable process to all potential registrants that may have an interest in acquiring an existing registered domain name. The Official Domain Registry of the Philippines provides one example of an existing waitlist domain name service – see: <http://dotph.domains.ph/domain/waitlist/>.

Currently there does not exist an effective backorder or deleting domain name capturing system for .hk domain names that would allow any potential registrant with a fair and

equitable process to capture a .hk domain name as it is permitted to be deleted in accordance with the Agreement and Rules.

At present an interested person must each day perform a manual online check of domain names pending deletion. Often where multiple entities have a common interest in a domain name it comes down to who is the quickest rather than through the use of a fairer backorder/auction approach.

It appears that Clause 6.1 of the Rules provides HKDNR with the right to reserve domain names at any time for the purposes of auctioning that domain name in accordance with Rule 7.2.

PCCW would very much welcome the establishment of a mechanism or procedure to waitlist domain names that are already registered and which may be permitted to lapse by their existing owners.

(c) Opening up of new domains

In recent years, ICANN has been proposing and is in the process of implementing dramatic expansion to the gTLD addressing system on the basis that it will allow for more innovation and offer more choice. The arguments for opening up the generic top-level domain names may arguably be valid for the gTLD which is a domain space used by anyone globally.

In terms of the ccTLD domain names such as .hk, it is contended that such a similar expansion should not be followed without extensive public consultation. With a choice of 13 .hk domain names to choose from (2 of which are for government organizations), there is no real commercial or community need to open up additional domains. Any proposal to open up new additional domains may well be perceived as another profit grabbing exercise and will likely result in a resurgence of cyber squatting activities in Hong Kong.

As stated above, the policy making process of HKIRC should be open and transparent. The new MOU should expressly set out the types of major issues that the HKIRC Board will require to seek prior consultation with the Consultative and Advisory Panel and public consultation before a decision is made, and the opening up of new domains should be one of them.

4 CONCLUSION

PCCW is generally supportive, on a directional basis, of the new institutional arrangements of the HKIRC; however, we would invite the Panel to kindly consider the suggestions as mentioned herein.