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2.3.2 Global Public Interest

Background documentation

- Community Comment 2 - Section 2.9
(<https://gnso.icann.org/sites/default/files/file/field-file-attach/cc2-subsequent-procedures-22mar17-en.pdf>)
- Initial Report - Section 2.2.6
(<https://gnso.icann.org/sites/default/files/file/field-file-attach/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf>)
- Sub Group A public comment analysis:
<https://docs.google.com/spreadsheets/d/15zDdzlBwLCz5m2sNXui6N6pporbUq-IDFEwfh4rKi4A/edit?usp=sharing>

Policy Goals / What the WG is Seeking to Accomplish

- Develop policy consistent with ICANN's Core Values under Article 1 Section 1.2 (b)(ii).
- To the extent that mandatory and/or voluntary PICs are carried forward into subsequent procedures, they should be codified in policy.

Public comment summary

High-level Agreements

- Support from most commenters to codify the current implementation of mandatory PICs as policy recommendations. Most commenters believe that no additional mandatory PICs are needed.
- Support from most commenters to continue with the concept of voluntary PICs in subsequent procedures and allow applicants to commit to additional voluntary PICs in response to public comments, GAC Early Warnings, and/or GAC Advice. Most commenters indicated that such voluntary PICs should be allowed even if they change the nature of the original application.
- Support from most commenters that at the time a voluntary PIC is made, the applicant must set forth whether such PIC is limited in time, duration and/or scope such that the PIC can adequately be reviewed by ICANN, an existing objector (if applicable) and/or the GAC (if the voluntary PIC was in response to a GAC Early Warning or GAC Advice).
- Support from most commenters that voluntary PICs should be reflected in the applicant's Registry Agreement; PICs can only be changed after public comment; proposed material changes must take into account comments made by the applicable objector and/or the applicable GAC member(s) that issued the Early Warning, or in the case of GAC Advice, the GAC itself.
- Most commenters support providing single-registrant TLDs with exemptions and/or waivers to mandatory PICs included in Specification 11 3(a) and Specification 11 3(b).

- Most commenters agree that voluntary PICs are an appropriate way to address issues raised in GAC Early Warnings and public comments, or otherwise flagged by the community.

Outstanding Items - New Ideas/Concerns/Divergence

Mandatory PICs:

- Codify existing mandatory PICs:
 - Neustar: Concerns - Does not support additional mandatory PICs.
 - ICANN Org: New Idea - If mandatory PICs are to be codified as policy recommendations, WG should indicate (i) What the categories of strings are; (ii) The process and criteria for applied-for strings to be put into those categories, including who makes the decision, implications on the evaluation and string contention processes; (iii) What the contractual obligations are for each of the categories.
 - RySG: New Idea - Draw a bright line of finality once matters are considered and concluded by the full community (including the GAC).
 - NCSG: Divergence - It encompasses intellectual property policing of Internet content which is beyond the scope and mission of ICANN.
- Additional mandatory PICs:
 - NCSG: Expand mandatory PICs if required as a narrowly-tailored compromise with the GAC, the Board or the Community to settle an application that has been otherwise blocked from moving forward.
- Exemptions and/or waivers:
 - RySG: New Idea - Waivers could be possibly allowed provided some guidance is followed.
 - Valideus: New Idea - It may not be necessary to delete Specification 11 s3(b) for single registrant TLDs if lower threat profile is taken into account when determining compliance.
 - RrSG: Concerns/New Idea - Concerned that PICs created a cycle of comments needing to be inserted into application and then applicant needing to comment, which on the surface is not problematic. What is a problem, is that it appears to create a means to delay an application forever or until the applicant simply quits. Therefore, an Applicant must have a means to get out of the PIC process, possibly via arbitration or a mediation process for the applicant (a PIC arbitration panel or something similar.)

Voluntary PICs:

- Continue concept:
 - ICANN Org: New Idea - Consider whether to have a cut-off point for changes to the voluntary PIC to allow for others to file objections or to allow a new opportunity for objections after the change has been made.

- Valideus: Concerns - It should not be mandatory to include all PICs in the application.
- IPC: New Idea - Once a string is awarded on the basis of PICs being considered, ICANN Compliance should monitor and enforce the PICs.
- Public Interest Community: Divergence/Concerns/New Idea - voluntary PICs are not in the public interest. They imperil free expression and due process. In the 2012 round, voluntary PICs violated human rights and civil liberties and were not reviewed by the community or ICANN Org. Recommends only allowing VPICs narrowly tailored to concerns of the GAC and Community, always requiring public comment as a revision to the Public Portion of the Application, forbidding PICs outside the scope and mission of ICANN as set out in the New Bylaws.
- CCT-RT: New Idea - Voluntary PICS should be made accessible in an organized, searchable online database.
- Applicant must indicate if PIC is limited in time, duration and/or scope and allow for review by ICANN, an existing objector (if applicable) and/or the GAC (if the voluntary PIC was in response to a GAC Early Warning or GAC Advice):
 - ICANN Org: New Idea - Clarify what is meant by “reviewed by ICANN” (i.e., an evaluation, a completeness check, or something else).
 - IPC: New Idea - Allow time for community comment on proposed PICs and time for filing objections if the PICs change the nature of the application.
- Changes to voluntary PICs:
 - ICANN Org: New Idea - Clarify whether language in draft recommendation is in reference to changes during the application process, or after execution of the Registry Agreement. If it refers to changes after execution of the Registry Agreement, consider how to address the elapsed time between the initial GAC Early Warning, GAC advice, or objection and submission of the changes as circumstances may change in that period.
- Additional process considerations:
 - Valideus: If a voluntary PIC is filed in response to an objection, the objector should have a limited period of time to decide whether to continue with, amend, or withdraw its objection. If the objector withdraws its objection, the objector should be eligible for a partial refund of objection fees.
 - IPC: There must be an established process that allows for predictability and flexibility. Limitations and conditions of voluntary PICs should be expressed beforehand and any changes not foreseen at the time of inclusion/commitment should be further addressed in a process that allows for public input.
- Allowing voluntary PICs after an application has been submitted:
 - BC: Each PIC has to be evaluated on a case by case basis to determine how it is changing the original application. If there is significant change, the PIC should be rejected unless a change has been made to the application first.
- Public consultation if voluntary PIC changes the nature of an application
 - ALAC/BC: Advocates for a short objection period. For the BC, emphasis that the period should be shorter.

- INTA/IPC: Favors a short public comment period to ensure that the PIC addresses the concerns brought forth in the public comments or through the objection.
- RySG: Divergence - Does not support the reopening of public comments or objection periods based on the adoption of voluntary PICs. Dispute resolution through voluntary PICs should enhance predictability, avoid delays, and create a bright line of finality for applications that have followed the prescribed process, thereby reducing the risk that an individual application (or group of applications) will be held in limbo for an extended period.
- Valideus: Divergence - Unless the change to the nature of the application would be to something previously prohibited, we see no reason for public comment on PICs which have been voluntarily adopted.
- BRG: Divergence - The BRG does not foresee any need to re-open public comment periods or objection periods.

Verified TLDs

- Whether registries meeting certain requirements must operate as a Verified TLD
 - INTA/CCT-RT/ALAC/IPC/GAC: Agreement
 - CCT-RT Report: New Idea - (Rec #12) Create incentives and/or eliminate current disincentives that encourage gTLD registries to meet user expectations regarding
 - ALAC: New Idea - Suggests the use of a panel with panellists skilled in the field of consumer trust.
 - IPC: New Idea - Should be decided on a per application basis rather than trying to combine likelihood applications together. The methods of verification will vary based on the type of services being rendered and/or goods being sold.
 - GAC: Concerns - Suggests review of the CCT-RT Report's sections that describe the background of the GAC's safeguard advice, PICs, and implementation by ICANN. Also notes that the CCT Review Final Report states that there are difficulties with assessing the effectiveness of new gTLD consumer safeguards, particularly PICs, due to lack of a reporting framework and associated data.
 - BC: Concerns - Suggests that "likely to invoke a level of implied trust from consumers" be clarified.
 - RySG: Divergence - The RySG does not support requiring registries to operate as verified TLDs. Existing procedure already provides sufficient opportunities to address concerns associated with TLDs related to highly regulated or professional sectors.
- BC: Concerns - Verified TLD registries should abide by their own standards and not allow fake or false information to be provided to register a domain name.

Other Comments

- Council of Europe: Concerns/New Idea - GPI are not adequately defined and protected within ICANN decision making processes. Suggests that the identification of the GPI

based on human rights law justifying specific procedures like CPE. It is strongly recommended to clearly state which GPI ICANN intends to protect through its policies, Bylaws and their implementation.

- Council of Europe: Concerns/New Idea - The fairness-related issues that require further attention includes ascertaining the ICANN policies concerning human rights protection and promotion. It is to be noted that the notion of "Global Public Interest" (GPI) is referenced in ICANN's Bylaws under Article 1 Section 1.2 (b)(ii) referring to "Core Values" that should guide the decisions and actions of ICANN and further considered in the Initial Report. Yet, there is still little clarity as to what is considered by the ICANN community as GPI, and there are no safeguards within ICANN's decision-making processes to protect GPI. It is advisable that the Final Report provides specific recommendations in this regard, taking into account human rights, sustainable development and corporate responsibility perspective.

CCT-RT Recommendations

- Recommendation 12: "Create incentives and/or eliminate current disincentives that encourage gTLD registries to meet user expectations regarding (1) the relationship of content of a gTLD to its name; (2) restrictions as to who can register a domain name in certain gTLDs based upon implied messages of trust conveyed by the name of its gTLDs (particularly in sensitive or regulated industries; and (3) the safety and security of users' personal and sensitive information (including health and financial information). These incentives could relate to applicants who choose to make public interest commitments in their applications that relate to these expectations. Ensure that applicants for any subsequent rounds are aware of these public expectations by inserting information about the results of the ICANN surveys in the Applicant Guide Books."
- Recommendation 14: "Consider directing ICANN org, in its discussions with registries, to negotiate amendments to existing Registry Agreements, or in consideration of new Registry Agreements associated with subsequent rounds of new gTLDs, to include provisions in the agreements to provide incentives, including financial incentives, for registries, especially open registries, to adopt proactive anti-abuse measures."
- Recommendation 23: In summary, suggests gathering data on new gTLDs operating in highly regulated sectors.
- There are also several recommendations related to DNS Abuse (#15, 16, 23)

Follow-up / Referrals to other sections / parking lot / suggested next steps

Follow-up (with stakeholder groups)

- None

Referrals to other sections

Parking lot

- None

Suggested next steps

2.3.3 Applicant Freedom of Expression

Background documentation

- Community Comment 1 - Wiki page (<https://community.icann.org/x/3B6OAw>)
- Initial Report - Section 2.3.3 (<https://gnso.icann.org/sites/default/files/file/field-file-attach/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf>)
- Sub Group A public comment analysis: <https://docs.google.com/spreadsheets/d/15zDdzlBwLCz5m2sNXui6N6pporbUq-IDFEwfh4rKi4A/edit?usp=sharing>

Policy Goals / What the WG is Seeking to Accomplish

- *Applicant freedom of expression rights should be considered throughout the New gTLD evaluation and any applicable objection processes as well as any Requests for Reconsideration and/or Independent Review Panel proceedings*

Public comment summary

High-level Agreements

- Most commenters agreed that it would be helpful to provide additional implementation guidance in support of protecting applicant freedom of expression rights.

Outstanding Items - New Ideas/Concerns/Divergence

Consideration of other rights/interests:

- Concerns: GAC/Council of Europe/Christopher Wilkinson - Registrant/end-user freedom of expression should also be considered.
- Concerns: INTA - Applicant Freedom of Expression must be weighed against other legitimate interests and rights, including Trademark rights. The majority of LRO cases the panel found for the applicant and against the brand owner objector, indicating that concerns about the consideration of Freedom of Expression within the LRO appear to be unfounded.
- Concerns: IPC - Freedom of expression should not "trump" established intellectual property rights or confuse consumers as to the source of products or services.
- Divergence: RrSG - Freedom of speech ceases where the rights of others are infringed upon.

Procedural considerations:

- New Idea: NCSG - Civil society experts on free expression should be included in the development of materials.
- Concerns: INTA - These guidelines should be settled prior to any new applicant process.

Input on Implementation Guidelines - General:

- ICANN Org: Concerns - WG should provide more information on how freedom of expression rights are to be considered (i.e., what are the evaluation criteria, objection standards, other procedures or processes that should be used to ensure that freedom of expression rights are considered) as well as what specific gaps may have existed in the 2012 implementation.
- NCSG: New Idea - DSPs should be explicitly instructed to consider the applicant's freedom of expression rights and materials for DSPs should include explanation of legal rights.
- INTA: New Idea - Provide evaluators with practical examples as to how this principle has been applied under international law in relation to the adjudication of name/trademark disputes.

Input on Implementation Guidelines - LRO:

- BC: New Idea - The proposed domain must not be a clear attempt at typosquatting, doppelganger domain or IDN phishing.
- RrSG: New Idea - Case law shouldn't be limited to Common Law. Resolution service providers should take a broader look.
- INTA: New Idea - Regarding fair use, there needs to be a consistent agreed definition and mode of application. WG should consider these rights and the legal effects in various jurisdictions in formulating guidelines.
- BRG/RySG/Valideus/IPC/The United States Postal Service: Divergence - Existing LRO criteria should be maintained.

Suggested criteria to ensure that denial of an application does not infringe on FX rights:

- INTA: New Idea - Suggests a two-step evaluation process. This is likely to arise in the context of a contentious string set or Objection process where third party(s) are disputing an applicant's entitlement to hold a gTLD, including a LRO. It is but one factor in deciding claims in relation to legitimate competing interests.
- IPC: New Idea - Applicants can exercise freedom of expression by applying for a string that does not infringe trademark rights.

Additional Comments:

- ICANN Org: Concerns - The Initial Report states that Module 3 of the AGB addressed only legal rights related to trademarks, however, freedom of expression is discussed in Module 3 of the Applicant Guidebook in connection with the Limited Public Interest objection. The Initial Report states that, "evaluators were tasked with weighing the different policy values, goals, and recommendations, and finding an appropriate balance between competing legitimate interests in their evaluations," however, this description is not accurate. Evaluators were asked to apply specified criteria.
- Christopher Wilkinson: Concerns - For Geo-Names, the jurisdiction of incorporation of the Registry must be the same as the territory or community relating to that Geo-Name.

Follow-up / Referrals to other sections / parking lot / suggested next steps

Follow-up (with stakeholder groups)

- None

Referrals to other sections

- None

Parking lot

- None

Suggested next steps

- None

2.3.4 Universal Acceptance

Background documentation

- Community Comment 1 - Wiki page (<https://community.icann.org/x/3B6OAw>)
- Initial Report - Section 2.3.4 (<https://gnso.icann.org/sites/default/files/file/field-file-attach/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf>)
- Sub Group A public comment analysis: <https://docs.google.com/spreadsheets/d/15zDdzlBwLCz5m2sNXui6N6pporbUq-IDFEwfH4rKi4A/edit?usp=sharing>

Policy Goals / What the WG is Seeking to Accomplish

- *Awareness of issues related to Universal Acceptance should be increased.*
- *Initiatives related to Universal Acceptance should be supported and promoted, as appropriate.*

Public comment summary

High-level Agreements

- Commenters expressed support for the following amendment to Principle B: “Some new generic top-level domains should be internationalised domain names (IDNs), although applicants should be made aware of Universal Acceptance challenges in ASCII and IDN TLDs and given access to all applicable information about Universal Acceptance currently maintained on ICANN’s Universal Acceptance Initiative page, through the Universal Acceptance Steering Group, as well as future efforts.”
- Some commenters agree that no additional work should be proposed beyond that being done by the Universal Acceptance Initiative and the Universal Acceptance Steering Group.

Outstanding Items - New Ideas/Concerns/Divergence

Suggestions for additional work on this topic:

- New Idea: BC - All IDN applicants should receive a letter/memo from UASG describing UASG status and future plans, as well as challenges that IDNs face. These applicants should be required to confirm their willingness to continue with the application.
- New Idea: ALAC - Registries and Registrars, if they are owned by the same entity, should be Universal Acceptance (UA) ready as part of their application. This means that their systems should be ready for IDN registrations, ready handle IDN and non-IDN New gTLDs consistently on nameservers and other machines and able to manage any Email Address Internationalization (EAI), i.e. <nativelanguage>@<idn>.<idn>, as part of the contact information and be able to send and receive emails from these type of

addresses. In addition, Registries and Registrars should take affirmative actions to ensure that their suppliers are also UA ready.

- Concerns: BC - The community needs to involve itself more in the outreach efforts related to these matters.
- New Idea: RrSG - ICANN should invest heavily on educating online services providers about new TLDs.

Other comments:

- New Idea: ALAC - UASG should include and consult ALAC in developing initiatives that better advance principles of UA.
- ALAC: Primary obstacle to the successful expansion of the domain namespace is the rejection of these New strings by legacy code.

Follow-up / Referrals to other sections / parking lot / suggested next steps

Follow-up (with stakeholder groups)

- None

Referrals to other sections

- None

Parking lot

- None

Suggested next steps

- None