



UPDATE & CONSULTATION ON  
New gTLD Subsequent Procedures  
*Consensus Building on Recommendations*

**TLD ROLLOUT & CONTRACTUAL COMPLIANCE**

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29 April 2020

# Reminder of Key Issues

## TLD Rollout

- Is it necessary / beneficial to have deadlines for applicants to rollout TLDs?
- Are the 2012 round deadlines appropriate?
- Are changes needed in evaluating requests for extensions to deadlines and granting of those extensions?



### ALAC STATEMENTS:

- Topic wasn't extensively covered in Community Comment 2 (CC2) and we did not comment on this topic in CC2 or SubPro Initial Report.



## COMPETITION, CONSUMER CHOICE & TRUST (CCT) RECOMMENDATIONS

- None for either topics

## Contractual Compliance

- SubPro PDP WG Charter: *“While no specific issues were identified, topic as it relates to New gTLDs may be considered in scope but the role of contractual compliance (i.e. enforcing agreements) would be out of scope.”*
- That the foundational elements of the CC Program put in place by ICANN + relevant provisions in the Base Registry Agreement satisfied the requirement of “clear compliance and sanctions process which could lead to contract termination”. Notwithstanding, CC department should publish more detailed data on its activities and the nature of complaints handled.



### ALAC STATEMENTS:

- We agreed with approach in CC2 and strongly supported 2<sup>nd</sup> bullet above in SubPro Initial Report.
- Further, that any other statement by applicant – eg. representations, commitments – beyond those already provisioned in the RA (i.e. section 3, Reps & Warranties, Spec 11 PICs (mandatory and voluntary), Spec 12 for Communities) ought to be included in RA to codify them for enforceability, especially if they proffer benefits to Internet end users. Adherence need to be monitored and enforced by ICANN Contractual Compliance.

# TLD Rollout: Impact of SubPro Recommendations \* as at 28 Apr 2020

## SubPro PDP WG Recommendations

### Affirmation #1

- WG affirms Implementation Guideline I from 2007, “An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.”
- WG supports maintaining the timeframes set forth in the 2012 Applicant Guidebook and base Registry Agreement; namely
  - ❑ (i) that successful applicants continue to have nine (9) months following the date of being notified that it successfully completed the evaluation process to enter into a Registry Agreement, and
  - ❑ (ii) that Registry Operators must complete all testing procedures for delegation of the TLD into the root zone within twelve (12) months of the Effective Date of the Registry Agreement.
  - ❑ In addition, extensions to those time frames should continue to be available according to the same terms and conditions as they were allowed during the 2012 round.

### WG’s Rationale

- Although some WG members were in favor of trying to further define what it means to “use” a TLD, WG ultimately **affirms the existing definition for “use” of a gTLD (namely, delegation into the root and meeting all other contractual commitments with respect to required content)**
- As was the case in the 2012 round, there should be a specified timeframe in which the gTLD should be used; and that the 2012 round timeframes for gTLD rollout continue to be appropriate in subsequent rounds.
- Acknowledges that the provision of extensions to applicants can result in programmatic delays and additional costs and that the lack of a time limit for launch of a gTLD also carries operational costs; nonetheless WG believes maintaining existing rules strikes the right balance between establishing appropriate requirements while providing applicants with flexibility when extra time is needed to roll out a gTLD.

### For At-Large Consensus Building

### Impact

- No new recommendations related to “use” of a TLD.

### Additional intervention

- **Any concerns? What else needs to be done?**

\* From SubPro PDP WG, not limited to recommendations, but also affirmations and implementation guidance

# TLD Rollout: New Issues

## No SubPro PDP WG Recommendations

### ❑ 1. “Squatting” or “Warehousing” of TLDs

- WG discussed Public Comments – differing perspectives – on **whether any adjustments need to be made to the definition of “use” of a TLD and whether any additional measures are needed to prevent possible squatting and/or warehousing of TLDs**, noting that the Working Group did not come to agreement on definitions for terms “squatting” and “warehousing”.

#### No Problem to be Solved

- ❑ Some do not believe that the “squatting” or “warehousing” of TLDs is a documented problem that needs to be solved, and further believe measures to address these concerns should not be considered unless there is a clear definition of the associated terminology. Finds existing requirements & definitions related to use are appropriate and sufficient.

Vs.

#### Significant Problem Exists

- ❑ From another perspective, squatting and warehousing are significant concerns, and new definitions and requirements should be developed regarding how and when a TLD is used.

## For At-Large Consensus Building

### Impact

- Does this “ignore” points identified by the CCT-RT Review on “squatting” and/or “warehousing”?

### Additional intervention

- Assuming that squatting and warehousing are well-defined, significant concerns to At-Large, how do we push for mechanisms or guardrails against these?
- Any other concerns? What else needs to be done?

# TLD Rollout: New Issues

## No SubPro PDP WG Recommendations

### ❑ 2. RA Renewal subject to Sunrise registration phase <sup>1</sup>

- WG considered a proposal put forward by a member that the **new Registry Agreement should contain a clause that denies contract renewal if registries have not had a Sunrise registration phase**. Specification 13 Brand Registries would be exempted from this clause.

#### Support

- ❑ Expressed that a gTLD should operate for the benefit of the Internet community, drawing on the analogy of public land use.
- ❑ So, if a gTLD is not “used” for an extended period, it is effectively taken out of circulation, closing off a segment of the gTLD space that could be used by someone else.
- ❑ Therefore, “unused” TLDs are contrary to the intent of the New gTLD Program and provisions of the AGB

**Vs.**

#### Oppose

- ❑ Reiterated that there is no agreement of an issue or problem to solve, and further expressed that Sunrise is not an appropriate proxy for “use.”
- ❑ Forces all applicants and ROs into model of selling domain names to third parties, hampering innovation and new business models in the gTLD space.
- ❑ It can take time for businesses to find the right niche for their gTLD, and business plans can change over time - setting an arbitrary deadline serves neither registries or the gTLD ecosystem.
- ❑ Delays, programmatic changes, and other circumstances during the course of the 2012 round impacted many registries’ plans to launch, citing in particular the impact on registries from the global south.
- ❑ Hope for greater predictability in SubPro, but noted the need for flexibility to support the ability of registries to navigate program requirements.

## For At-Large Consensus Building

#### Impact

- WG did not come to an agreement on whether there is a problem to solve on this topic, and therefore no new recommendations related to “use” of a TLD.
- Proposal not taken forward.

#### Additional intervention

- **Any concerns? What else needs to be done?**

[1] New gTLD registries are required to offer a Sunrise period of at least 30 days – to allow trademark holders an advance opportunity to register domain names corresponding to their marks before names are generally available to the public. Data on Sunrise period can be found at <https://newgtlds.icann.org/en/program-status/sunrise-claims-periods>

# Contractual Compliance: Impact of SubPro Recommendations \* as at 28 Apr 2020

## SubPro PDP WG Recommendations

### Affirmation #1

- WG affirms Recommendation 17 from the 2007 policy, **“A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.”**

### Recommendation #2

- ICANN’s Contractual Compliance Department **should publish more detailed data on the activities of the department and the nature of the complaints handled**; provided however, that ICANN **should not publish specific information about any compliance action against a Registry Operator unless the alleged violation amounts to a clear breach of contract.**
- To date, ICANN compliance provides **summary statistics on the number of cases opened, generalized type of case, and whether and how long it takes to close.**
- **More information must be published on the context of the compliance action and whether it was closed due to action taken by the RO, or whether it was closed due to a finding that the RO was never out of compliance.**

### WG’s Rationale

- Supports existing policy Recommendation 17, noting that a clear compliance and sanctions process is important for ensuring that contracted parties meet their contractual obligations and face appropriate consequences when they fail to do so, including the potential for contract termination.
- Believes that by providing additional data and corresponding insights based on that data about the activities of ICANN’s Contractual Compliance department and the nature of complaints handled, ICANN can better support the community in evaluating the functioning of the New gTLD Program and developing policy on this topic in the future.

### For At-Large Consensus Building

### Additional intervention

- Enforcement by CC is out of scope here, but for larger purpose (metrics – data collection), need to “unpack and study” existing range, depth, relationship of data collected, monitored and used to identify gaps to go into Base RA?
- **Do we want or need to do anything about this now?**

\* From SubPro PDP WG, not limited to recommendations, but also affirmations and implementation guidance

# ICANN Contractual Compliance Performance Reports

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## ICANN Contractual Compliance Performance Reports

Performance measurement provides metrics to the community on compliance activities through the dashboard and additional reports related to operational data, regional data and complaint specific data. The reports measure EFFICIENCY and EFFECTIVENESS as defined below.

Efficiency is defined as "doing things right" and measures process cycle time, response time, backlog, staffing utilization among other measures.

Effectiveness is defined as "doing the right things" and measures include the number and categorization of people serviced, the accomplishments aka enforcement criteria and resolution, quality of service via the complaint satisfaction survey at the closure of every ticket.

### Metrics and Dashboards

Current and previous years

#### Contractual Compliance Metrics for a rolling 13-month period

- Percentage of Registrars with Complaints by Region & Country
- Percentage of Registries with Complaints by Region & Country
- Complaints per Notification Cycle by Region
- Informal Complaints by Region
- Formal Complaints by Type & Region
- Formal Notices (Enforcement)
- Complaint Count by TLD Round & Region
- Domain Count by gTLD per Region
- Domain Count Trends by gTLD
- Domain Count by Registrar

Additional Contractual Compliance related data can be found at:


- Competition, Consumer Trust and Consumer Choice (CCT) Metrics

#### Complaint Count

March 2019 - March 2020

Registrar Informal: 22,498  
Registry Informal: 2,404  
Formal: 15

#### % of Registrars with Complaints by ICANN Region



Hover to see % for that region, and click to see a table with detailed metrics.

About Contractual Compliance:

<https://www.icann.org/resources/pages/compliance-2012-02-25-en>

ICANN Contractual Compliance Performance Reports: <https://features.icann.org/compliance>

# ICANN Contractual Compliance Dashboard

Contractual Compliance Performance Measurement: <https://features.icann.org/compliance/dashboard/report-list>

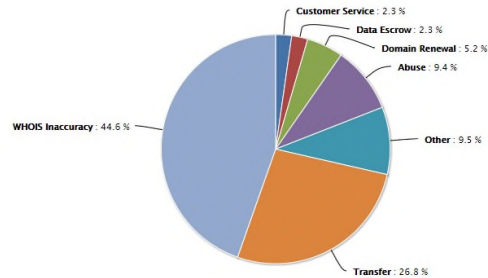
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## ICANN Contractual Compliance Dashboard for March 2020

ICANN provides a monthly dashboard summarizing contractual compliance complaints activity for the month. These monthly metrics show the complainant volume as they advance through the overall contractual compliance Informal & Formal process. [Learn more about this dashboard report »](#)

### Registrars



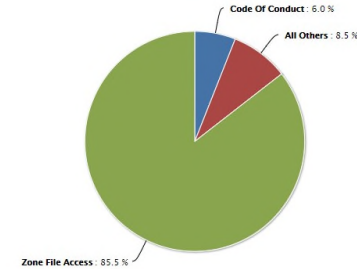
### Registrar Complaint Volume & Distribution

Complaint Type	March 2020	Closed before 1st Inquiry / Notice
Abuse	145	97
CEO Certification	1	0
Customer Service	35	27

### Compliance Process Volume & Turnaround Time

March 2020	Quantity Sent	Process Turnaround Time
Volume 1st Notice Sent	137	10.5
Volume 2nd Notice Sent	29	9.3

### Registries



### Registry Complaint Volume & Distribution

Complaint Type	March 2020	Closed before 1st Inquiry / Notice
Abuse Contact Data	2	1
Code Of Conduct	12	0
Monthly Report	4	0
Public Interest Commitments (PIC)	1	1
Registration Restrictions Dispute Resolution Procedure	1	1
Registry Data Escrow	5	1
Registry Fees	0	0
Registry Other	1	0
Reserved Names/Controlled interruption	1	1

### Compliance Process Volume & Turnaround Time

March 2020	Quantity Sent	Process Turnaround Time
Volume 1st Notice Sent	137	5.9
Volume 2nd Notice Sent	22	5.8
Volume 3rd Notice Sent	11	6.0
Volume Breach	-	-
Volume Suspension	-	-
Volume Termination	-	-
Volume Contract Non-Renewal	-	-
Volume Closed All - as of Current Month = 195		



# Contractual Compliance: New Issues

## No SubPro PDP WG Recommendations

### 1. Should these be addressed by SubPro PDP WG?

- WG discussed Initial Report Public Comment responses that provided different perspectives on whether there is evidence of the following issues, as well as different perspectives on whether these topics should be addressed by the PDP:
  - Arbitrary and abusive pricing for premium domains targeting trademarks;
  - Use of reserved names to circumvent Sunrise;
  - Operating launch programs that differed materially from what was approved by ICANN.
- Acknowledges concerns raised by some WG members but it did not come to agreement that recommendations should be put forward on these topics, and therefore none are included in this report.

## For At-Large Consensus Building

### Additional intervention

- **Do we want or need to do anything about this now?**