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

REGISTRY VOLUNTARY COMMITMENTS (RVCs) / PUBLIC INTEREST COMMITMENTS (PICs)
(formerly Global Public Interest)

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Public Interest Commitments (PICs): Background

- Recap of PICs Implementation in 2012 Round
  - ❖ "PICs" weren't a feature of the New gTLD Program consensus policy
  - ❖ Some PICs were part of the implementation for the 2012 Round, resulting from GAC Advice [1] to the New gTLD Program Committee of the ICANN Board (NGPC), post launch of 2012 Round
  - ❖ Over time, some commitments were incorporated in the Base Registry Agreement
  - ❖ Ultimately, we had "Mandatory PICs" and "Voluntary PICs" *(now "Voluntary Registry Commitments")*:
    - ❑ Mandatory PICs appear in Base RA and apply to all Registries (and some to all Registrars also)
    - ❑ GAC Category 1 Safeguards == Mandatory PICs applying to Registries (and Registrars in some cases) depending on category of applied-for string
    - ❑ GAC Category 2 Safeguards == Mandatory PIC addressing non-exclusive access Registries (Open Generics) for public interest
    - ❑ Voluntary Registry Commitments are Registry-specific commitments
    - ❑ But ALL are Registry Commitments, included in RA as applicable, so are technically "contractually enforceable"

[1] GAC's ICANN46 Beijing Communique, ICANN47 Durban Communique, and ICANN48 Buenos Aires Communique

Key Issues in SubPro

Registry Commitments

(formerly "Global Public Interest")

- Codification of 'Registry Commitments' framework as consensus policy
  - ❑ Mandatory PICs, waivers thereof
  - ❑ Voluntary RCs
- Enforceability
  - ❑ Dispute Resolution Procedure – PICDRP & RRDRP
  - ❑ Contractual Compliance – *needs ongoing research & monitoring*

Review of existing positions on PICs & RVCs (i.e. Voluntary PICs)

ALAC STATEMENTS have touched on:

- Mandatory Public Interest Commitments (PICs)
- Voluntary PICs, timing of Voluntary PICs
- Exemption / Waiver for PICs
- Requirements for RO to operate TLD as verified TLD under certain circumstances
- Unclear, adversarial enforcement process with significant obstacles for reporting of breaches of PICs
- CCT-RT draft report recommendations for more and better data to assess effect of new gTLDs on consumer trust or consumer choice, and whether objectives of New gTLD Program have been achieved

RELATED SubPro Areas/Topics include:

- Public Interest Commitments (PICs)
- DNS Abuse, Safeguards for personal info
- GAC Early Warnings, GAC Advice, Safeguards
- Contractual Compliance

COMPETITION, CONSUMER CHOICE & TRUST (CCT) RECOMMENDATIONS

- Rec. 12: Incentives for ROs to meet user expectations on SL domain use, registrations for sensitive/regulated industries; safety & security of user personal & sensitive info (prerequisite for SubPro)
- *Rec. 15: Amendments to RAA & RA to prevent systemic DNS security abuse (prerequisite for SubPro)*
- Rec. 14: Pro-active anti-abuse measures (high priority for SubPro)
- *Rec. 16: Support ongoing data collection efforts (eg DAAR) (high priority for SubPro)*
- *Rec. 23: Gather data on new gTLDs operating in highly-regulated sectors to include 5 elements (high priority for SubPro & ICANN Org)*
- **Rec. 25: Voluntary commitments must include intended goal, allow sufficient opportunity for community review, Limited Public Interest objection deadlines; organized, searchable (high priority for SubPro & ICANN Org)**

Summary of SubPro Recs/IGs on Mandatory PICs

SUMMARY OF AFFIRMATIONS, RECOMMENDATIONS & IMPLEMENTATION GUIDANCE

Recommendation 6 from 2007 policy, *affirmed under Topic 31 Objections is also relevant here, "Strings must no be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally accepted, internationally recognized principles of law (eg Paris Convention, UDHR)*

Recommendation 9.1:

- **Mandatory Public Interest Commitments (PICs) currently captured in Specification 11 3(a)-(d) of the Registry Agreement must continue to be included in RA for gTLDs in subsequent procedures**.
- Noting that Mandatory PICs were not in the 2007 recommendations, this recommendation **puts existing practice into policy**.
- One adjustment to the 2012 implementation is included in the following Recommendation 9.2 *(i.e. on 1 Exception)*.

Recommendation 9.2: Provide **single-registrant TLDs** with exemptions and/or waivers to mandatory PICs included in Spec 11 3(a) and Spec 11 3(b).

Not required since

- ❑ *Spec 11 3(a) commitments are required to be passed down to a registrar and from there to the registrant, so not relevant to single registrant TLD.*
- ❑ *Spec 11 3(b) security threat monitoring and reporting requirements not applicable to single registrant TLDs because the threat profile for such TLDs is much lower compared to TLDs that sell SL domains.*

IMPACT For At-Large Consensus Building

- Rec. 9.1 – "Codifies" Mandatory PICs per Spec 11 implementation as policy. With 1 adjustment relating to an exception for single-registrants TLD/RO.
- Rec. 9.2 – Reasonable to provide single-registrant TLDs with exemptions and/or waiver on Spec 11 3(a) and Spec 11 3(b)

Summary of SubPro Recs/IGs on Highly Sensitive & Regulated Strings

SUMMARY OF AFFIRMATIONS, RECOMMENDATIONS & IMPLEMENTATION GUIDANCE

GAC Category 1 Safeguards
(Mandatory – Customization of Base RA)

Per ICANN NGPC Resolution No. 2014.02.05.NG01

- Implementation framework – **3 levels, 4 groups, covering 10 Safeguards**
  - ❖ Regulated Sectors/Open Entry Requirements in Multiple Jurisdiction (Safeguards 1-3)
  - ❖ Highly-regulated Sectors/Closed Entry Requirements in Multiple Jurisdictions (Safeguards 1-8)
  - ❖ Special Safeguards (Safeguards 9-10)
    - o Potential for Cyber Bullying/Harassment (Safeguards 1-9)
    - o Inherently Governmental Functions (Safeguards 1-10)
- Where:
  - ❑ 8 of 10 safeguards, where applicable, included as PICs, customization to Base RA
  - ❑ 7 of 10 safeguards, where applicable, included in Registry-Registrar Agreement

↓

Customization of Base RA
All PICs == Specification 11 2

Affirmation 9.3:

- Affirm framework established by the New gTLD Program Committee (NGPC) to apply additional Safeguards to certain new gTLD strings deemed applicable to highly sensitive or regulated industries, as per in response to GAC Beijing Communique.
- Affirm
  - o a) The 4 groups described in NGPC's scorecard
  - o b) The 4 groups' varying levels of required Category 1 Safeguards
  - o c) The integration of relevant Category 1 Safeguards into the RA, by way of PICs

Recommendation 9.4: Establish a process to determine if an applied-for string falls into 1 of the above 4 groups, to be included in AGB + info about the ramifications of a string found to fall into a group.

Implementation Guidance 9.5: Applicants may choose to self-identify if they believe their string falls into 1 of the 4 groups; to be confirmed per IG 9.6

Implementation Guidance 9.6:

- Each applied-for string to be evaluated by, as part of evaluation process, to determine if fall into 1 of the 4 groups -> subject to applicable Safeguards
- By an evaluation panel to be established (determined in implementation phase, but should comprise experts in regulated industries, also empowered to draw on input from other experts in relevant fields)

Implementation Guidance 9.7: Panel evaluating string in this context should do so after the Application Comment Period is complete.

Recommendation 9.8: If found to fall into 1 of the 4 groups, then relevant Category 1 Safeguards must be integrated int RA as mandatory PICs.

IMPACT For At-Large Consensus Building

- Aff. 9.3 – Good result, codifies GAC Advice per Beijing Communique per 2012 implementation into policy
- Since proposing to be codified, expect less challenges from applicant compared to what happened in 2012 round

GAC Category 1 Safeguards
(Mandatory – Customization of Base RA)

GAC Beijing Communique, "*strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws.*" where GAC identified 145 such strings as requiring safeguards.

Regulated Sectors/Open Entry Requirements in Multiple Jurisdiction (Safeguards 1-3 apply)	Highly-regulated Sectors/ Closed Entry Requirements in Multiple Jurisdictions (Safeguards 1-8 apply)	Special Safeguards (Safeguards 9 and/or 10 also apply)
Children: .kid, .kids, .game, .games, .juegos, .play, .school, .Schule, .toys		**Potential for Cyber Bullying / Harassment (Safeguards 1-9 apply):** .fail, .gripe, .sucks, .wtf
Environmental: .earth, .eco., .green, .bio, .organic		
Health and Fitness: .care, .diet, .fit, .fitness, .health, .heart, .hiv, .rehab, .clinic, .healthy (IDN Chinese equivalent), .dental, .physio, .healthcare, .med, .organic	**Health and Fitness:** .pharmacy, .surgery, .dentist, .dds, .hospital, .medical, .doctor	
Financial: .capital, .cash, .cashbackbonus, .broker, .brokers, .claims, .exchange, .finance, .financial, .forex, .fund, .investments, .lease, .loan, .loans, .market, .markets, .money, .pay, .payu, .retirement, .save, .trading, .credit, .insure, .netbank, .tax, .travelersinsurance, .financialaid, .vermogensberatung, .mortgage, .reit	**Financial:** .bank, .banque, .creditunion, .creditcard, .insurance, .ira, .lifeinsurance, .mutualfunds, .mutuelle, .vermogensberater, . Vesicherung, .autoinsurance, .carinsurance	
	Gambling: .bet, .bingo, .lotto, .poker, .spreadbetting, .casino	
Charity: .care, .gives, .giving	**Charity:** .charity (and IDN Chinese equivalent)	
Education: .degree, .mba	**Education:** .university	
Intellectual Property: .audio, .book (and IDN equivalent), .broadway, .film, .game, .games, .jeugos, .movie, .music, .software, .song, .tunes, .fashion (and IDN equivalent), .video, .app, .art, .author, .band, .beats, .cloud (and IDN equivalent), .data, .design, .digital, .download, .entertainment, .fan, .fans, .free, .gratis, .discount, .sale, .hiphop, .media, .news, .online, .pictures, .radio, .rip, .show, .theater, .theatre, .tour, .tours, .tvs, .video, .zip		**Inherently Governmental Functions (Safeguards 1-8 and 10 apply):** .army, .navy, .airforce
Professional Services: .accountant, .accountants, .architect, .associates, .broker, .brokers, .engineer, .legal, .realtor, .realty, .vet, .engineering, .law	**Professional Services:** .abogado, .attorney, .cpa, .dentist, .dds, .lawyer, .doctor	
Corporate Identifiers: .limited	**Corporate Identifiers:** .corp, .gmbh, .inc, .llc, .llp, .ltda, .ltd, .sarl, .srl, .sal	
Generic Geographic Terms: .capital, .town, .city		
Others: .reise, .reisen, .weather		

GAC Category 1 Safeguards (Mandatory – Customization of Base RA)

"The 10 Safeguards"

Category 1 Safeguards as Public Interest Commitments in Specification 11 of the New gTLD Registry Agreement

1. Registry operators will include a provision in their Registry-Registrar Agreements that requires Registrars to include in their Registration Agreements a provision requiring registrants to comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.
2. Registry operators will include a provision in their Registry-Registrar Agreements that requires registrars at the time of registration to notify registrants of the requirement to comply with all applicable laws.
3. Registry operators will include a provision in their Registry-Registrar Agreements that requires Registrars to include in their Registration Agreements a provision requiring that registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law.
4. Registry operators will proactively create a clear pathway for the creation of a working relationship with the relevant regulatory or industry self-regulatory bodies by publicizing a point of contact and inviting such bodies to establish a channel of communication, including for the purpose of facilitating the development of a strategy to mitigate the risks of fraudulent and other illegal activities.
5. Registry operators will include a provision in their Registry-Registrar Agreements that requires Registrars to include in their Registration Agreements a provision requiring Registrants to provide administrative contact information, which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.
6. Registry operators will include a provision in their Registry-Registrar Agreements that requires Registrars to include in their Registration Agreements a provision requiring a representation that the Registrant possesses any necessary authorisations, charters, licenses and/or other related credentials for participation in the sector associated with the Registry TLD string.
7. If a Registry Operator receives a complaint expressing doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents regarding the authenticity.
8. Registry operators will include a provision in their Registry-Registrar Agreements that requires Registrars to include in their Registration Agreements a provision requiring Registrants to report any material changes to the validity of the Registrants' authorisations, charters, licenses and/or other related credentials for participation in the sector associated with the Registry TLD string in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve.

[APPLICABLE WHERE "SPECIAL SAFEGUARDS REQURIED" NOTED]

9. Registry Operator will develop and publish registration policies to minimize the risk of cyber bullying and/or harassment.
10. Registry operator will include a provision in its Registry-Registrar Agreements that requires Registrars to include in their Registration Agreements a provision requiring a representation that the Registrant will take reasonable steps to avoid misrepresenting or falsely implying that the Registrant or its business is affiliated with, sponsored or endorsed by one or more country's or government's military forces if such affiliation, sponsorship or endorsement does not exist.

Summary of SubPro Recs/IGs on Registry Voluntary Commitments

SUMMARY OF AFFIRMATIONS, RECOMMENDATIONS & IMPLEMENTATION GUIDANCE

Recommendation 9.9:

- ICANN must allow applicants to submit Registry Voluntary Commitments (RVCs)(previously called voluntary PICs) in subsequent rounds in their applications and/or to respond to public comments, objections, GAC Early Warnings, and/or GAC Consensus Advice.
- Applicants must be able to submit RVCs at any time prior to the execution of a RA; provided, however, that all RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendations in Topic 20 Application Changes Requests, including, but not limited to, public comment in accordance with ICANN's standard procedures and timeframes.

Recommendation 9.12: At time RVC is made, applicant must set forth whether commitment is limited in time, duration and/or scope, must include its reasons and purposes for making such RVCs such that they can adequately be considered by any entity or panel (eg public commenter, existing objector, GAC) to understand if RVC addresses underlying concern(s)

Recommendation 9.13: RVCs must be readily accessible and presented in a manner that is usable per IG 9.14
Implementation Guidance 9.14: Notes CCT-RT Rec. #25 recommended developing an "organized, searchable online database" for RVCs, which WG agrees to and believes ICANN Org should evaluate this recommendation in implementation phase and determine best method for ensuring RVCs are widely accessible.

Recommendation 9.10: RVCs must continue to be included in applicant's RA.
Implementation Guidance 9.11: The Public Interest Commitment Dispute Resolution Process (PICDRP) and associated processes should be updated to equally apply to RVCs.
"Associated processes" refers to all existing processes relevant to what were formerly known as voluntary PICs.

IMPACT For At-Large Consensus Building

Meeting CCT-RT Rec. 25: Voluntary commitments must ….

- Allow sufficient opportunity for community review, Limited Public Interest objection deadlines – Rec. 9.9
- Include intended goal – Rec. 9.12
- Be organized, searchable – Rec. 9.13 & IG 9.14

Summary of SubPro Recs/IGs on PICDRP and RRDRP

SUMMARY OF AFFIRMATIONS, RECOMMENDATIONS & IMPLEMENTATION GUIDANCE

33. Dispute Resolution Procedures After Delegation

- Under SubPro, limited to RRDRP and PICDRP

Affirmation 33.1: Affirm that the **Public Interest Commitment Dispute Resolution Procedure (PICDRP)** and the **Registration Restrictions Dispute Resolution Procedure (RRDRP)** should remain available to those harmed by a new gTLD Registry Operator's conduct, subject to the recommendation below

Recommendation 33.2: For the PICDRP and the RRDRP, **clearer, more detailed, and better-defined guidance on the scope of the procedure, the role of all parties, and the adjudication process must be publicly available.**

36. Base Registry Agreement

Recommendation 36.4 states: "ICANN must add a contractual provision stating that the registry operator will not engage in fraudulent or deceptive practices." The Working Group discussed two options for implementing the recommendation: the addition of a PIC or a provision in the Registry Agreement.

- A new PIC would allow 3rd parties to file a complaint re: fraudulent and deceptive practices. ICANN would then have the discretion to initiate a PICDRP.
- If a provision regarding fraudulent and deceptive practices would be included in the RA, enforcement would take place through ICANN exclusively.

Which option is preferable and why?

IMPACT For At-Large Consensus Building

- Does Rec. 33.2 sufficiently provide for the promotion and/or understanding of PICDRP and RRDRP?

Note: WG did not conduct an exhaustive review of the PICDRP, because at the beginning of the PDP, no PICDRP cases had been filed. Since that time, only two cases had been filed, WG felt was too few to support an intensive review.

Summary of SubPro Recommendation on DNS Abuse Mitigation

SUMMARY OF AFFIRMATIONS, RECOMMENDATIONS & IMPLEMENTATION GUIDANCE

Recommendation 9.15:

- **WG believes that work within the ICANN community on the topic of DNS abuse should take place in a comprehensive and holistic manner, addressing both existing TLDs and those that will be delegated in the future.**

- Given that the PDP is chartered to address only new gTLDs that will be delegated in subsequent application rounds, WG does not believe it is in the proper position to address DNS abuse, and **therefore defers to broader community efforts on this topic**.

They reached this conclusion after duly considering the DNS Abuse related CCT-RT recommendations, which includes 14, 15, and 16. Note, however, that the ICANN Board only passed through a portion of recommendation 16 to this WG (amongst several other community groups) and recommendations 14 and 15 remain in a "Pending" status

IMPACT For At-Large Consensus Building

- No recommendations on mitigating domain name system abuse other than stating that any such future effort must apply to both existing and new gTLDs (and potentially ccTLDs).

- Not acting on CCT-RT
  - Rec. 14: Pro-active anti-abuse measures;
  - Rec. 15: Amendments to RAA & RA to prevent systemic DNS security abuse; and
  - Rec. 16: Support ongoing data collection efforts

- GAC's 4 May 2020 consolidate input specifically reiterated GAC Advice that CCT-RT recommendations regarding DNS abuse need to be addressed prior to the beginning of the next application round – some said holistic approach needed vs some say PDP should provide recommendation on this issue

New/Unresolved Issues

❑ 1. "Verified" TLDs

- WG discussed concept of "verified" TLDs and considered whether there should be incentives to operate TLDs in this manner in cases where it is not mandatory.
- One definition of a verified TLD is one that requires verification of eligibility prior to use, adherence to standards, autonomy to take back a name, and ongoing verification – no agreement on this definition.
- Concept of verification is tied to regulated sectors since entities in these sectors are often subject to licensing or credentialing that ensures entities meet specific criteria or standards.
- Discussed Merits and drawbacks of incentivizing verified TLDs – reviewed CCT-RT recommendation 12 on whether establishing incentives for operating verified TLDs could be a means to address this recommendation -- potential methods of establishing such incentives
    - Fee reduction.
    - Priority in application processing.
    - Incentives for registrars to carry verified TLDs.

Pros

- Improve trust and confidence in specific areas/industries where there may be sensitivities/risks
- Contribute to improved consumer protection through registrant verification prior to domain name use and through ongoing monitoring of the domain space for compliance with registry standards

Cons

- This topic is closely connected to content and policy on the issue could constitute a form of content regulation
- Existing procedure already provides sufficient opportunities to address concerns associated with TLDs related to highly regulated or professional sectors and therefore further categories of TLDs are not necessary

- **WG ultimately agreed that its Recs & IGs on highly sensitive & regulated strings were sufficient, so no additional recommendations for incentives to operate verified TLDs**

IMPACT For At-Large Consensus Building

- No recommendation to meet CCT-RT Rec. 12 on incentives for ROs to meet user expectations on SL domain use, registrations for sensitive/regulated industries; safety & security of user personal & sensitive info (even though marked as prerequisite for SubPro)
- Do we agree with WG that Aff. 9.3, Rec. 9.4 & IGs 9.5, 9.6, 9.7 and Rec. 9.8 on highly sensitive & regulated strings are sufficient to not recommend incentives to operate verified TLDs?

Summary of SubPro Recs/IGs on Contractual Compliance

SUMMARY OF AFFIRMATIONS, RECOMMENDATIONS & IMPLEMENTATION GUIDANCE

41. Contractual Compliance

Affirmation 41.1: Affirm Recommendation 17 from 2007 policy, "A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination."

Recommendation 41.2:

- ICANN's Contractual Compliance Department should publish more detailed data on the department's activities and the nature of the complaint handled; provided however that ICANN should not publish specific info about any compliance action against a RO 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 info 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 *(to better support the community in evaluating the functioning of the Program and developing policy on this topic)*

IMPACT For At-Large Consensus Building

- Can anything else be conceivably done about this Rec. 41.2?