# Public Interest Commitments: Expectations and Enforcement


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# New gTLDs: Over 1200 from .accountant to .yoga

# New gTLDs and Consumer Expectations

- connection between the name of a gTLD and the websites associated with that gTLD

- websites have different extensions to *properly identify the purpose or owner or to give an indication of content or function*

  - 55% of consumer end-users surveyed expected "a very clear relationship" between domain names and websites registered under those domain names.
  - 79% consumer end-users expect that actual use of the domain name to be consistent with the meaning of the gTLD.

# New gTLDs and Consumer Expectations:

- restrictions about who can purchase domain names; trusts that these restrictions will be enforced
  - such restrictions contributed to consumer trust
- trusted entities that offer domain names will
  - take precautions about who gets a domain name
  - screen individuals or companies who register for certain special domain names

- over 80 percent of consumer end-users expected the enforcement of restrictions, such as requiring validation that the person or company registering a website in a given gTLD has valid credentials related to the gTLD

- focusing on new gTLDs, an increasing percentage of consumer end-users (73 percent) expected at least some level of restriction on registrations in specified new gTLDs

# New gTLDs and Consumer Expectations

- **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)

- incentives could relate to applicants who choose to make Public Interest Commitments in their applications that relate to these expectations
- make TLD applicants aware of expectations by inserting information about these expectations in updated Applicant Guidebook

# Public Interest Commitments: Pledge or . . . ?

**Intent:** GAC advises: all commitments and objectives set forth in new gTLD applications (or amendments thereto) should be *transformed into binding contract obligation subject to compliance oversight by ICANN*

- Beijing Communiqué: safeguard advice with mandatory proposals specific to all new gTLDs, regulated gTLDs, and highly-regulated gTLDs (subsequently modified by ICANN Board)
- Mandatory and voluntary PICs
  - Enforceable via Public Interest Dispute Resolution Process (PICDRP)

# Public Interest Commitments: Pledge or . . . ?

- Rgy Agreement Spec. 11:
  - include a provision in its Registry-Registrar Agreement
    - that requires Registrars to include in their Registration Agreements
    - a provision:
      - prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law,
      - providing consequences for such activities (including suspension of domain name)
  - periodically conduct a technical analysis (assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets
    - maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks.
    - provide to ICANN upon request

# Public Interest Commitments: Pledge or . . . ?

ICANN Brd. Correspondence re: enforceability (Botterman to Selli, 12Feb20), Specification 11 3 (a)

- *does not grant ICANN org an enforcement right against registrars who fail to include the required language in their agreements with RNHs or authority over how, or to determine whether, registrars "do impose these consequences*
  - *Instead, RA Specification 11 3(a) provides registry operators and registrars a mechanism to take action against the prohibited activities. In that regard, ICANN org expects registry operators to enforce their Registry-Registrar Agreements (RRAs) with registrars and registrars to in turn enforce their registration agreements with RNHs.*

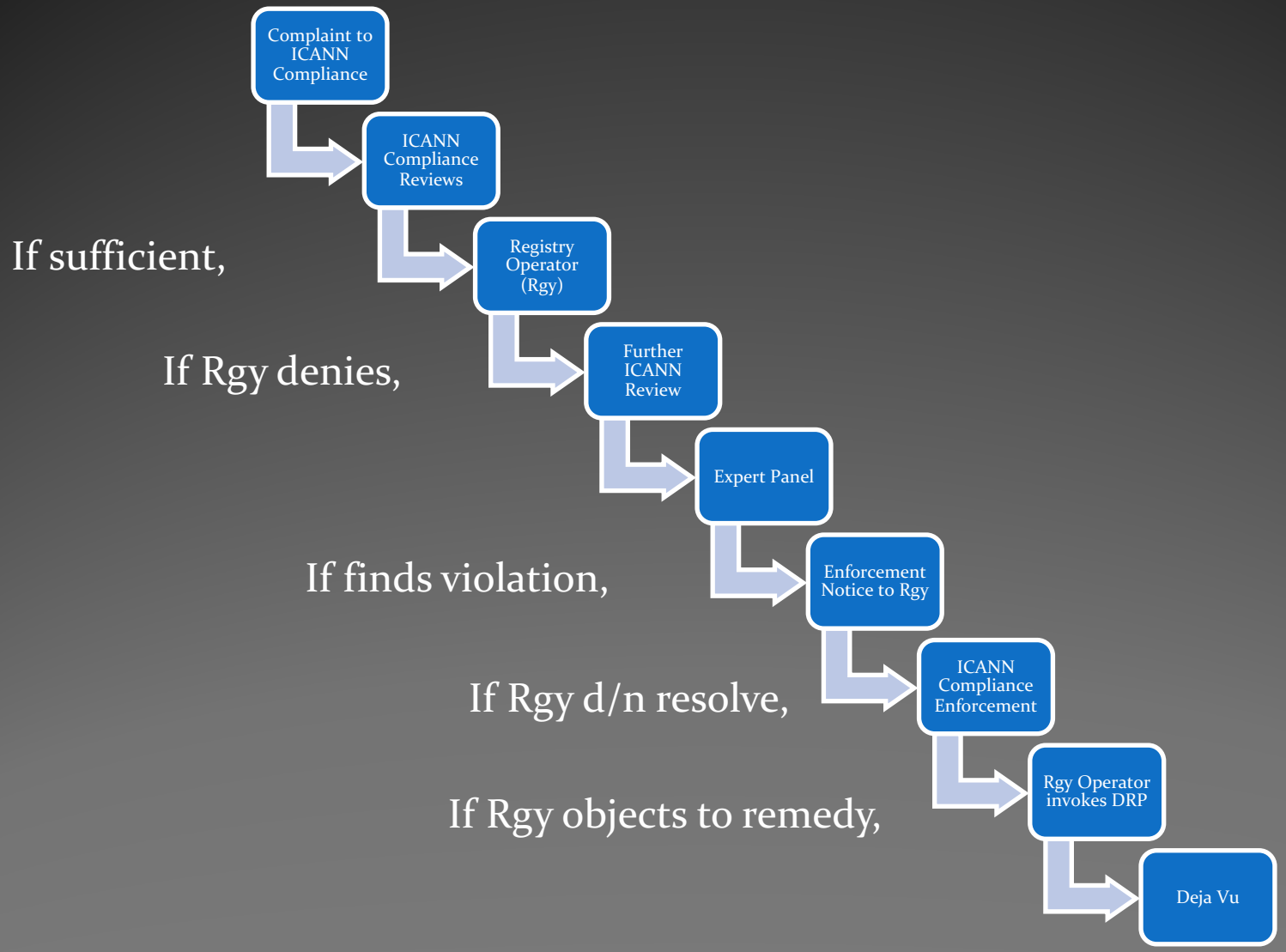
- Re: Rgr. Agreement: *the RAA does not prescribe the specific consequences that registrars must impose on domain names that are the subject of abuse reports. ICANN org has no contractual authority to instruct registrars to delete or suspend domain names.*

# PICDRP: Enforcement Mechanism or . . .

GAC has expressed concerns that the PICDRP is:

> *complex, lengthy, and ambiguous, raising questions as to its effectiveness in addressing serious threats* (London and Singapore Communiqués)

# PICDRP: A Stairway to Nowhere?



# PICDRP Problems:

- Compliance may decline to impose any remedial measure, even if Rgy d/n comply Enf. Notice
- May be no resolution to the report of non-compliance b/c Rgy can invoke yet another separate DRP
- Timelines: more than 105 days can pass before

# Room for Improvement:

PICs need to result in clear and enforceable contract obligations

- more than obligation to require language in downstream contracts
- required consequences for breach
- timely and effective mechanisms to resolve disputes
  - timelines need to be nimble to deal with serious threats

# Room for Improvement:

Domains in highly regulated gTDs carry an implicit message of trust to the public

→ should require Rgys to:

- verify and validate registrants' credentials "at the time of registration"
- conduct periodic post-registration checks to ensure registrants' validity and compliance