

PUBLIC COMMENT OF THE NON-COMMERCIAL STAKEHOLDERS GROUP (NCSG) ON THE PROPOSED RENEWAL OF .PRO SPONSORED TLD REGISTRY AGREEMENT

The Non-commercial Stakeholders Group, representing 503 non-commercial organizations and individuals, strongly opposes the inclusion of section 2 of specification 7 in the .pro RA, a clause that is also included in the proposed RA's for legacy TLD's .cat and .travel. The contractual requirements for legacy gTLD's to adopt Uniform Rapid Suspension (URS) and the Trademark Dispute Resolution Procedure (PDDRP) in their renewal agreements represents an attempt to create de facto consensus policy by contractual fiat rather than through the Policy Development Process (PDP) required by ICANN's Bylaws. This clause needs to be removed from the RA before it is submitted to the Board for approval.

This clause was inserted into the RA agreements in an inappropriate manner by ICANN staff. In its Proposed Renewal notice for .pro of 28 May 2015 it is stated that "ICANN has proposed that the renewal agreement be based on the approved new gTLD Registry Agreement". While understanding ICANN's desire to "increase the consistency of registry agreements across all gTLD's" staff do not have a licence to make this recommendation and exercise their power as one of the contracting parties to propose it. Requiring legacy TLD's to base their renewal terms on multiple policies developed for the new gTLD programme is an explicit policy decision reserved for the community through the GNSO PDP process, not for staff to create under the guise of contractual negotiations.

We have serious concerns about expansion of the URS beyond the new gTLD space it was created for. It should be noted that the URS itself was not created through a PDP but was devised as an alleged implementation detail of the new gTLD program, per the 2009 recommendations of the Implementation Recommendation team (IRT). Now staff proposes to extend this policy across all gTLD's, thus creating a de facto consensus policy without any community consultation whatsoever. Extending the URS in this way threatens to dampen free speech by placing many more domains at risk of rapid suspension.

Explicit policy decisions such as this can and should only be made after a properly constituted Policy Development Process (PDP). Therefore, we ask that section 2 of specification 7 be removed from the proposed .pro RAA prior to Board submission, and insist that if these policy changes are desired they be done only after a properly formulated PDP, (convened after issuance of the new gTLD RPM Issues Report), has considered the policy implications of such a move. Staff have a fiduciary responsibility to the multi-stakeholder community which they serve, to respect and apply only those consensus policies which have been clearly approved. They have no remit to extend other policies and include them in the contract, even if the contracting party were to request their inclusion, because the contract is a policy instrument subject to the direction of the community. Initiatives such as these are simply not acceptable in a true bottom up multi-stakeholder organization and must be rejected.

