

PICs/RVCs Community Consultation Webinar - Q&A Record

No.	Question	How was it asked?	How was it answered?	Answerer Name	Written Answer	Live Answer
1	The Board has GAC Advice in favor of permitting Registry Voluntary Commitments. The GNSO Council has clarified that these must be within the ByLaws in order to be enforceable. Would the Board be intending to review each proposed RVC independently in the next round to determine compliance with the ICANN Mission and ByLaws and enforceability?	Written (Q&A Pod)	Written	Becky Burr Jamie Hedlund	- Becky Burr: Thanks for the question. The mechanism for reviewing proposed RVCs is TBD - Jamie Hedlund: One further clarification - in the event that an RO wishes to revise an RVC incorporated into its agreement, the proposed change would also be subject to public comment before it could be added.	
2	What does "effective" mean, in this context?	Written (Q&A Pod)	Written	Jamie Hedlund	Thanks for the question. For a commitment to be effective, it must be clear and specific enough to be meaningful - if an applicant commits to take an action, the commitment needs to spell out how the applicant will take that action, how the RO's compliance with that commitment will be monitored/ensured, etc. Hope that makes sense. Thanks.	
3	Where does public comment (as required by the Sub Pro Final Report recommendation) fit into the implementation by Compliance?	Written (Q&A Pod)	Written	Jamie Hedlund	Thanks. The agreement, along with proposed RVCs, would go out for public comment prior to execution.	
4	Should we respond to Q1 under the assumption that an unresolved GAC Objection will block an application, as was the case in 2012 round?	Written (Q&A Pod)	Written	Lars Hoffmann	Thank you. GAC early warnings should not be presumed to block an application. They are meant to let an applicant know of concerns in advance where problems could arise with an application. GAC Advice will be taken into account as required by the Bylaws, but also do not create a presumption that the application will not be approved. This language was in the last round AGB, but this language will be removed in this round.	
5	Thanks Jamie. How will public comment be taken into account by ICANN Org and the Board before contracting?	Written (Q&A Pod)	Written	Jamie Hedlund	Org would take into account any comments received with respect to an RVC and, where appropriate, would re-engage with the applicant to address any significant concerns raised, including whether the proposed RVC is clear and enforceable.	
6	Thanks Jamie. The public comment step should likely be formally incorporated into the framework slide.	Written (Q&A Pod)	Written	Jamie Hedlund	The public comment step is part of the normal contracting process. there will not be a separate public comment process for RVCs only.	
7	I think an RVC that is proposed involves an Application Change Request. Certain procedures apply there. Is this correct?	Written (Q&A Pod)	Written	Lars Hoffmann	Thank you. You are right. According to proposed framework, once an RVC is agreed between applicant and ICANN, it would need to be 'added' to the application. Which in turn, per Final Report, would trigger, a change request with related processes kicks in.	
8	Given that existing PICs are grandfathered in the ByLaws, have problems arisen?	Written (Q&A Pod)	Live	Becky Burr Jamie Hedlund		[Live Answer - Zoom Recording Timestamp] - Becky Burr: 00:44:49-00:46:18 Zoom Transcript: I can tell you what my understanding as the rapporteur for the accountability working group, and it was my recollection. My take away from this, that we were essentially grandfathering things that existed in the way that we existed. I don't remember actually, specifically well, maybe that's not true. I don't think that there was an intention to say that if a PIC appeared in a 2012 application that same PIC, and I'm talking about voluntary PICs, could be used in a subsequent round. There are a lot of people on this call who are part of that. But I would not interpret what we intended at that time, to essentially say, these formulations of registry voluntary commitments can be used repeatedly into the future. Oh, a different question. She's asking whether the existing PICs have caused problems. And for that I am not equipped to respond that. To Jamie question. [Live Answer - Zoom Recording Timestamp] - Jamie Hedlund: 00:46:25-00:46:49 Zoom Transcript: The question is, have the current existing PICs caused any problems. Is that correct? Yes, that's right. So yeah, so there have been almost no complaints or enforcement action based on the existing PICs. So from that perspective, they have not caused any problems.

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9	<p>Tx for today. What does the ICANN Board think must remain within the Multistakeholder process? Alternatively how much can the MSM be bypassed. Can you comment on a proposed NCUC PIC/RVC Principle: #4. RVCs must not contradict or overrule the scope or output of a completed GNSO PDP.</p> <p>[Live Question - Zoom Recording Timestamp] 00:37:53-00:39:17</p> <p>Zoom Transcript: We have been discussing, NCUC and the Business Constituency and others have been discussing PICs and RVCs. And our concern that in 2012 everything was thrown, they were never reviewed. So actually, I have 2 questions, one in the chat. But the first question is, we understand that there will be a review process and public comments. But we don't understand how those comments will be reviewed. What's the standard by which they will be reviewed and evaluated? Do you think this framework is trying to provide some of that? And then the other question is and I don't think I've heard it mentioned, but if I missed it, please let me know. How do we make sure that we're not bypassing the multistakeholder process? If there's a proposed registry voluntary commitment that completely contradicts something that came out of a 4 year policy development process working group? What are we gonna do with that? And how do we protect the fact that we operate by consensus policy, and that we make our rules together, and we make compromises and agreements together, and that some people don't like those compromises and want to come back for the third, fourth, and fifteenth bite at the apple. Thanks.</p> <p>[Live Question - Zoom Recording Timestamp] 00:39:50-00:40:46</p> <p>Zoom Transcript: There were 2 questions, but let's focus on what happens if a proposed PIC, or more likely RVC contradicts or overrules or sets aside the output of a completed GNSO PDP. We've gone into these policy development process working groups sometimes for 4 years at a time, and we have worked through and compromised and created rules on many different things, including, for example, intellectual property. Let's say that a proposed RVC goes beyond or sets aside something that was in a GNSO PDP, how are we protecting the multistakeholder model here? And I'm sorry if I missed it, but I didn't hear. I'd I'd love to hear how we protect the fact that we create most of our rules by consensus. Thanks.</p>	Written (Q&A Pod) & Live	Live	Becky Burr		<p>[Live Answer - Zoom Recording Timestamp] 00:40:47-00:42:49</p> <p>Zoom Transcript: This is a hard question. I think that it would help us if we were talking about concrete examples here, because I can imagine somebody making a commitment that went beyond that, provided greater protections than a consensus policy did. For example, I can imagine a circumstance where that would be simply offering greater protections than consensus policy provides based on a particular set of circumstances that are appropriate or going beyond ICANN's authority in some way to enforce. So I think I understand the question you're asking. I, personally think that you know, communities, for example, may want to have rules that provide greater protection for additional protection in certain cases, in ways that wouldn't be objectionable. But I also can imagine situations where somehow that feels like somebody being forced into something that goes beyond what the ICANN policy process is able to do. And honestly, I think that really goes to the crux of this question here. You know, can you ask ICANN to enforce content restrictions, for example, or restrictions that are not the subject of consensus policy here. And that's what we want to tease out. So please provide some examples of that, and let's have a discussion on that, because I think it's a critical question.</p>

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10	<p>[Live Question - Zoom Recording Timestamp] 00:30:47-00:33:21</p> <p>Zoom Transcript: At the Hamburg meeting the NCUC had invited me to participate on a panel where we considered the PICs/RVCs enforcement, and the NCUC had a particular point of view. The BC had a more subtle point, and we composed 6 stress tests which I put a link to in the chat and be glad to email it around. We had employed stress tests during the transition of the IANA authority from the US Government to ICANN in 2016, and the stress tests are a very useful way, and they match what you've done with hypotheticals. In other words, don't grab an RVC or a PIC that was done in the 2012 round because everyone will then debate the facts of what was behind that and how we interpreted it, and what happened later. I think you're on the right track to come up with hypothetical. And that is the whole point of a stress test. It's a plausible hypothetical scenario under which people won't disagree on what the facts were, because there are no facts. Right? You're presenting a hypothetical. And we did 6 of them, and I invite everybody to consider those, and the BC will probably submit them. But I simply wanted to raise, the number one stress test and the number one stress test that we came up with was what a bad outcome it would be if the GAC removed some objections based on safeguards in the next round. And they remove the objections because an applicant put in a bunch of registry voluntary commitments. And the GAC believed that they were enforceable. Well, that would turn into a bait and switch disaster for ICANN. If, after the applicant had gone to delegation, ICANN later concludes that it cannot enforce those RVCs. So the point of this is that we need to clarify way before an application proceeds as to whether a particular set of RVCs can be enforced, and the GAC needs to know that before they withdraw or modify a gating objection against an application. So I would just look for some confirmation that Staff understands the importance, and the Board understands the importance of coming up with very clear procedures, so we don't bait and switch with governments on their objections. Thank you.</p>	Live	Live	Becky Burr		<p>[Live Answer - Zoom Recording Timestamp] 00:33:39-00:34:18</p> <p>Zoom Transcript: Well, I think your point is very well taken, but I think that we don't want to have a bait and switch situation with anybody. So that is part of why we're trying to get these questions and sort of really delve into these things in depth, so that we know going in that the commitments that people make are enforceable practically and that enforcement would be consistent with the ICANN bylaws, so that nobody feels like they've been, you know, that they've they've been tricked.</p>
11	<p>[Live Question - Zoom Recording Timestamp] 00:34:40-00:35:55</p> <p>Zoom Transcript: This might just be a process question, but asking the question whether we believe that a bylaw changes is necessary feels strange to me, because Becky mentioned, everybody can become a constitutional scholar quickly, or something like that, and I guess that's what concerns me is that I mean, do we want the necessity of a bylaw change to be a function, a public comment, or of reality? It feels like there ought to be an objective answer to that question based on the other 2 questions. In other words, I feel like within the At-large community. We have the ability to say, for example, yes, ICANN must be able to accept and enforce content related RVCs. And not have an opinion about whether or not a bylaw change is necessary to accomplish that. That that feels like something peculiar for us as trying to represent the end users to try and figure out that feels like there ought to be an objective answer to that question.</p>	Live	Live	Becky Burr		<p>[Live Answer - Zoom Recording Timestamp] 00:36:01-00:37:15</p> <p>Zoom Transcript: Unfortunately, the objective answer to that question is probably unknowable until you get all the way to the end of an accountability mechanism testing it. We've asked people to provide their opinions and to explain their opinions for purposes of having this discussion and seeing if we can get everybody onto the same page understanding that. But in the end you know, these kinds of things are very difficult to answer with absolute certainty as an objective measure. So I understand why you're asking that question and the reason you're asking that question is part of the reason why I sort of said, please just don't say yes. Think through what you're saying, and let's get all of these arguments on the table and make sure we're all talking about the same thing.</p>