



79

COMMUNITY
FORUM

ICANN79 Plenary: Community Consultation on Public Interest Commitments/Registry Voluntary Commitments (PICs/RVCs)

04 March 2024 | 10:30-12:00 AST



Welcome & Background

Agenda

- Review an **overview of input received** on the implementation framework from ICANN community groups to assess degree of community alignment
- Discuss 3 hypotheticals **to explore practical implications** of the GNSO policy recommendations for **registry voluntary commitments** that could relate to contents and usage of gTLDs

Panelists

ICANN Board

Alan Barrett

Becky Burr

ICANN Community

Jeff Neuman (IPC)

Justine Chew (ALAC)

Kathy Kleiman (NCSG)

Nigel Hickson (GAC-UK)

Steve DelBianco (BC)

Thiago Dal Toe (GAC-Colombia)

ICANN Org

Jamie Hedlund

Background

- In **2012 round of the New gTLD Program**, registry commitments related to content in gTLDs were incorporated into Registry Agreements to:
 - Address GAC Advice (sensitive, regulated industry strings); resolve objections; or reflect commitments contained in “community” gTLD applications.
- As part of the **accountability enhancements introduced in 2016**, the ICANN community:
 - Clarified ICANN’s remit with respect to regulation of content and incorporated the “picket fence” contained in Registry Agreements and Registrar Accreditation Agreements into the Bylaws (topics set out for consensus policy development within Bylaws Annex G-1 and G-2)
- **Next Round Policy Recommendations:**
 - Continue to require public interest commitments (mandatory 2012 round PICs) for sensitive, regulated industry strings
 - Permit applicants to propose additional “voluntary” commitments
 - GNSO clarification: Applicant and ICANN must each agree that the commitments are enforceable under the ICANN Bylaws and as a practicable matter

Public Interest Commitments (PICs), specifically the mandatory PICs and safeguard PICs, are the **product of Governmental Advisory Committee (GAC) Advice** concerning new gTLDs from the 2012 round and are **uniform** across the relevant Registry Agreements

Registry Voluntary Commitments (RVCs), which are **comparable to the voluntary PICs** from the 2012 round, may **vary widely** and permit applicants to respond to Public Comments, objections, GAC early warnings, GAC Advice, and other comments from the GAC

ICANN Org Proposed Implementation Framework

Intent of proposed Framework is to **ensure that RVCs contain clear requirements** that ICANN can enforce based on objective criteria

- Applicant would **submit proposed commitments** with a detailed description of how compliance will be monitored and commitments enforced
- **Evaluation** will consider whether the proposed commitments are clear, effective, and enforceable - under the Bylaws and as a practicable matter - based on objective criteria
- If ICANN and applicant can't agree, **commitment would not be approved. Only approved commitments** will be included in **Registry Agreements**
- **Dispute-resolution mechanisms** will apply (PICDRP and RRDRP)
- ICANN would enforce a registry's commitment to comply with the decisions of those mechanisms

Is ICANN permitted under the Bylaws to implement content-restricting commitments in Registry Agreements pursuant to GNSO recommendations? If so, how?

Overview of Input Received for Community Consultation Questions

Opposing Views on Need/Desirability of Bylaws Change

View 1: Don't enter into commitments that restrict content. The Bylaws exclude content from ICANN's mission and that should not change.

A Bylaws change would create a slippery slope - invitation for ICANN to become 'content police'.

View 2: ICANN can and should enter into commitments that restrict content. Bylaws amendment is not necessary- there is no Bylaws prohibition on this.

Accepting (and enforcing) such commitments does not equate to ICANN regulating content.

ICANN Bylaws Section 1.1 (paraphrased*)

(a) ICANN's mission is to ensure the stable and secure operation of the Internet's unique identifier systems (the "**Mission**"). Specifically, ICANN coordinates:

- Allocation/assignment of [top level domains]; and
- Policy on 2nd level registrations where uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS

The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 (the “picket fence”) are within ICANN's Mission.

(b) ICANN shall not act outside its Mission.

(c) Outside the express scope of its Mission, ICANN shall not regulate/restrict content carried/provided by services that use the Internet's unique identifiers.

(d) For the avoidance of doubt and notwithstanding the foregoing: (iv) ICANN shall have the ability to negotiate, enter into and enforce agreements, including public interest commitments, with any party in service of its Mission.

**See full text of [ICANN Bylaws, Section 1.1](#), at Appendix B (including Mission re root servers, numbers, and protocols)*

Open Questions from ICANN org

- **When does a commitment regulate “content”?**
- **May a registry make commitments that differ from consensus policy requirements?**
 - e.g.: require publication of all registrant contact data in public RDDS (no redaction)
- **What should compliance monitoring look like, particularly in absence of third-party monitor?**
- **What are other groups’ views (beyond GNSO/ALAC) on need/desire for Bylaws change?**

Discussion of Hypothetical Registry Commitments

Show Flow

- Overview of hypothetical applied-for gTLDs and assumptions of compliance mechanism proposed by the applicants
- Presentation on each of the 3 types of hypothetical registry commitments
 - Type 1: Registration Eligibility Restrictions
 - Type 2: Acceptable Use Policy
 - Type 3: Additional Usage Restrictions
- Panelists each respond to framing questions for each commitment type [timer will be used]
- Panelists together have a conversation about these registry commitments
- Comments & questions from audience using Q&A pod in Zoom [time permitting]

Hypothetical Applied-for gTLDs Overview

	.election	.cancer	.designer
TLD Mission/ Purpose	To help Internet users seeking info on any given election to easily find information regarding the candidates, issues, options, etc.	To disseminate patient-centered, evidence-based health, medical, and other information related to cancer prevention and treatment	To enable fashion brand owners to sell their products online and distribute product-related information
Origin of Proposed Commitments	Restrictions negotiated due to GAC Early Warnings	Restrictions to address an Objection	Restrictions proposed on applicant's own volition

Assumption: Proposed Compliance Mechanism by Applicants

Registry Operator to appoint an **independent oversight board** (acceptable to ICANN) for monitoring and auditing the RO's compliance. The RO must obligate the oversight board to:

- Annually review restrictions and propose any updates that must be made to align with industry best practices;
- Annually audit the Registry Operator's compliance with commitments and report on such audit to ICANN;
- Review and issue binding determinations in response to audit findings and/or complaints alleging registry failure to fulfill its commitments (including commitment to investigate and suspend);
- Immediately report non-compliance by the registry operator to ICANN if such non-compliance is not remedied within a specified time period.

Assumption: Proposed Compliance Mechanism by Applicants (Cont.)

ICANN Compliance will take enforcement action if:

- Registry Operator fails to cure the non-compliance within a specified time period following the compliance investigation by the oversight board or PICDRP;
- Final determination by an arbitrator or court of competent jurisdiction that the registry operator materially breached its commitments;
- ICANN determines that the registry operator has failed to meet its contractual obligation to enforce the registry commitments or meet its reporting obligations.

Commitment Type 1: Registration Eligibility Restrictions

Registrants must be limited to...:

.election	Candidates on a ballot in an official government election, and from legally organized/recognized political associations in applicable jurisdiction <ul style="list-style-type: none">• Registrants' identities must be verified
.cancer	Licensed medical providers and registrants acting on behalf of an accredited medical association or licensed medical institution <ul style="list-style-type: none">• Registrants must provide proof of medical license before acceptance of registration
.designer	Trademark holders and their licensees for fashion brands <ul style="list-style-type: none">• Registrants must provide proof of trademark rights before acceptance of registration

Eligibility must be reconfirmed by the registrant and verified by the registrar or registry [within certain time frequency]

Framing Questions for Discussion

- 1. Are these commitments “regulating content”, considering the scope of ICANN’s Mission as set out in the ICANN Bylaws?**
- 2. Can these commitments be included in the Registry Agreement consistent with the Bylaws?**
- 3. Are these commitments enforceable by ICANN as a practical matter?**

Commitment Type 2: Acceptable Use Policy

Registry Operator prohibits the use of domain names registered within the gTLD to...:

.election	distributed content: <ul style="list-style-type: none">● inciting violence;● constituting hate speech;● contrary to applicable law
.cancer	distributed content: <ul style="list-style-type: none">● that is false or misleading;● including non-peer reviewed research
.designer	distributed content: <ul style="list-style-type: none">● facilitating the sale of counterfeit goods

Registry operator will deny, suspend, or cancel any registration if a domain within the gTLD is used to engage in the aforementioned activities

Framing Questions for Discussion

- 1. Are these commitments “regulating content”, considering the scope of ICANN’s Mission as set out in the ICANN Bylaws?**
- 2. Can these commitments be included in the Registry Agreement consistent with the Bylaws?**
- 3. Are these commitments enforceable by ICANN as a practical matter?**

Commitment Type 3: Additional Usage Restrictions

Registry Operator commits to implement and enforce a registration policy that...:

.election	<ul style="list-style-type: none">• requires registrants to consent to the publication of their own contact data in the public Registration Data Directory Services;• prohibits registrations of domain names for future speculative use;• prohibits registrations of domains for the purpose of blocking the bona fide registration/use by a third party
.cancer	<ul style="list-style-type: none">• prohibits websites and any other services associated with domains registered in the gTLD from distributing targeted advertising
.designer	<ul style="list-style-type: none">• prohibits registrations involving privacy and/or proxy registration services within the gTLD

Registry operator will deny, suspend, or cancel any registration if a domain within the gTLD is used in violation of the aforementioned policy

Framing Questions for Discussion

- 1. Are these commitments “regulating content”, considering the scope of ICANN’s Mission as set out in the ICANN Bylaws?**
- 2. Can these commitments be included in the Registry Agreement consistent with the Bylaws?**
- 3. Are these commitments enforceable by ICANN as a practical matter?**

Closing Remarks

- Check <https://community.icann.org/x/A4B7Eg> for community written input received for PICs/RVCs community consultation
- 31 March 2024 - final deadline for written input submission
- Next Steps

Appendix A

Additional Details on the Overview of Input
Received for Community Consultation Questions

Consultation Process Overview

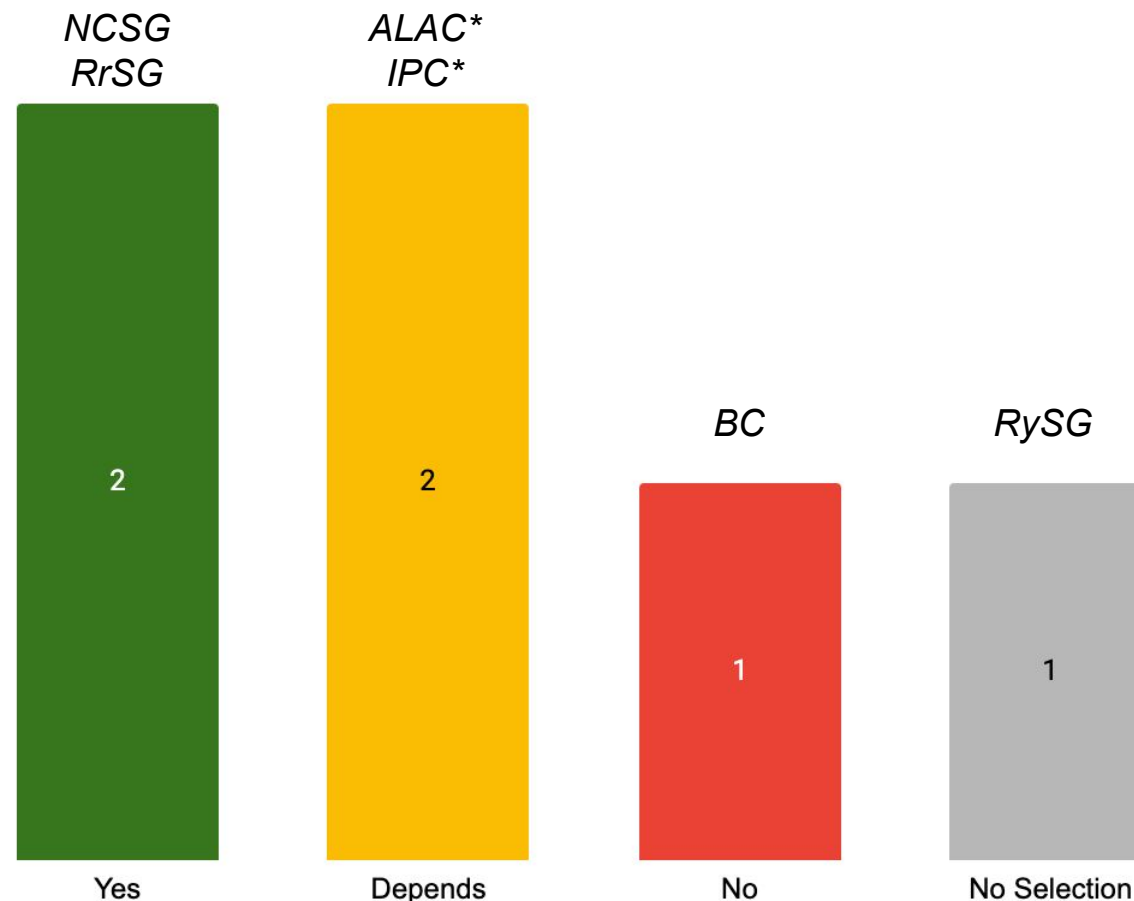
- **23 February 2024: Written input Received**
 - From most GNSO constituencies/stakeholder groups and ALAC
- **31 March 2024: Final Deadline for Submitting Written Input**
 - Governmental Advisory Committee (GAC) expected to submit input by this deadline
- Some groups **affirmatively declined** to participate in the consultation

The following slides are a staff produced overview of community input received by 23 February 2024. For the full record of the community written input on proposed implementation framework for PICs/RVCs, please find them on this wiki page:

<https://community.icann.org/x/A4B7Eq>

Topic 1, Question 1

Question: *If ICANN and the applicant cannot agree on final commitment language that both ICANN and the applicant agree is enforceable under the ICANN Bylaws and as a practicable matter, **should the application be permitted to move forward without that commitment, particularly in circumstances in which an applicant has proposed a commitment as a means to resolve an objection, Governmental Advisory Committee early warning, etc?***



***Note:** ALAC and IPC originally selected “Yes”. Based on Org review of their response to Topic 1, Question 2, it seems “depends” would most appropriately characterize their selection based on the intended meaning of the question

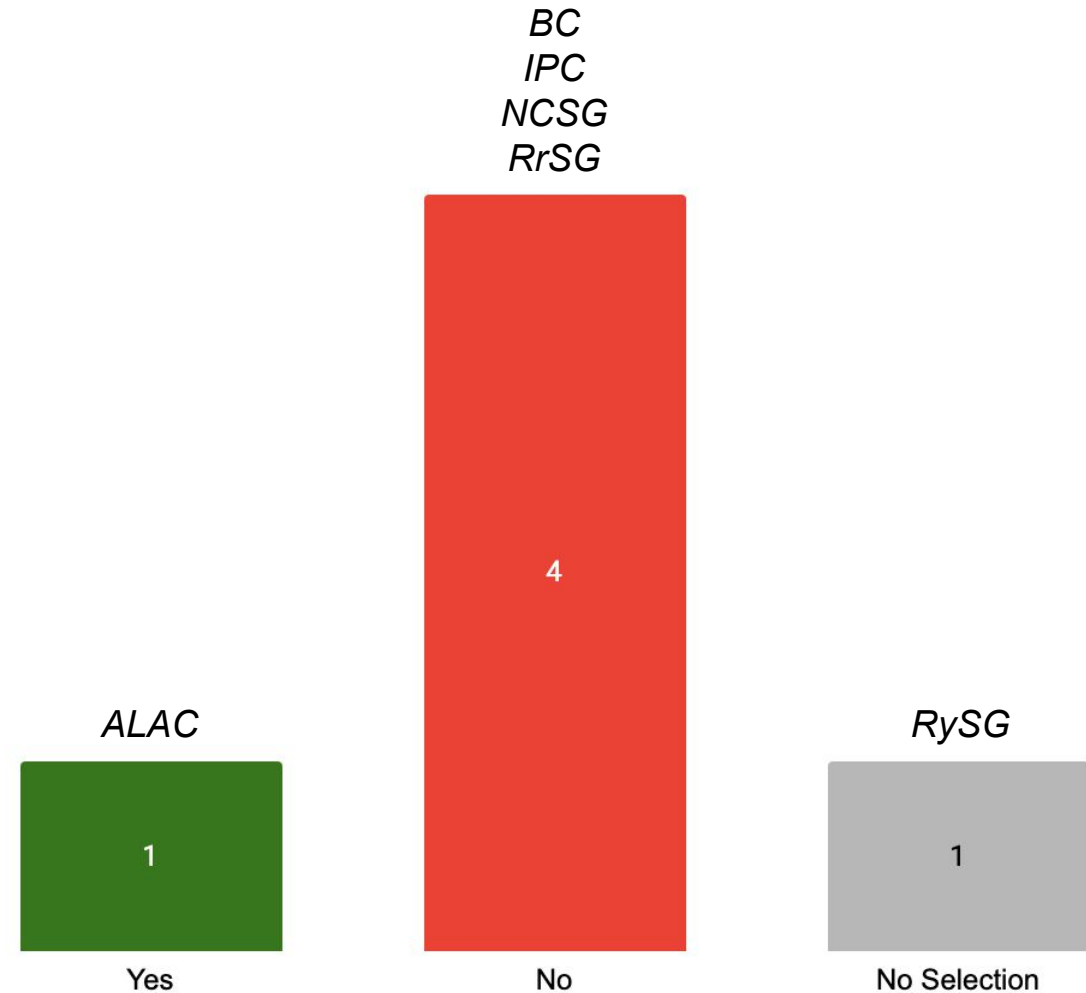
Topic 1, Question 2 (Rationale for Q1)

Community Comments Overview

- **Most inputs recommend that application should proceed (per usual objection/advice processes) WITHOUT agreed commitment**
 - Area for clarification: How to resolve the situation where the proposed commitments intend to address prevailed objections, but ICANN/applicant disagree on language?
- **Different view: application to proceed WITH any applicant-proposed commitment, with the following community-stated reasons:**
 - Ambiguities can be resolved in court in the event of a dispute
 - ICANN should “***create bold enforcement programs even where there is not a detailed, mutually understood and sufficiently objective and measurable commitment.***”

Topic 1, Question 3

Question: *Should all applicants that propose registry voluntary commitments and community gTLD commitments **be required to designate a third party to be charged with monitoring the registry operator's compliance with those commitments, regardless of whether or not the commitments relate to the contents within an applied-for gTLD?***



Topic 1, Question 4 (Rationale for Q3)

Community Comments Overview

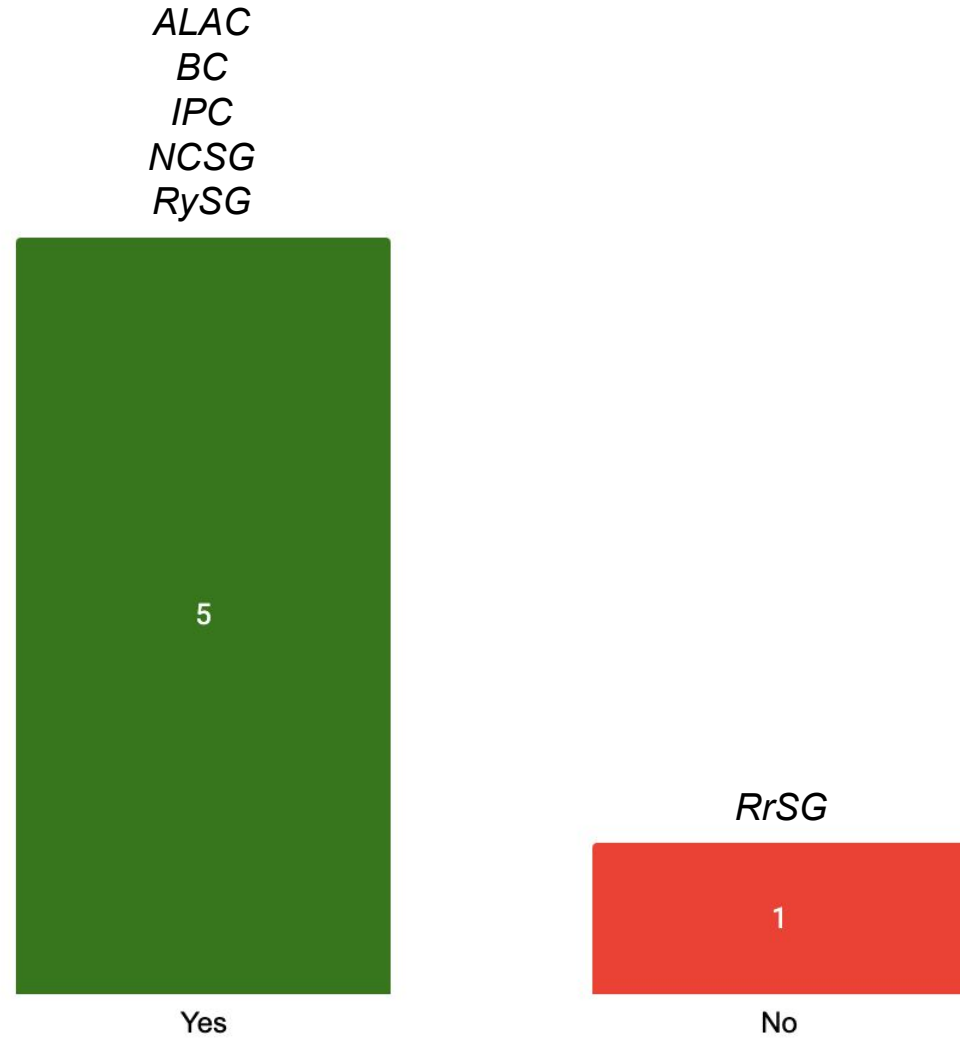
- **Most commenters oppose a required third-party monitoring model for all RVCs** with the following community-stated reasons:
 - ICANN must retain control over compliance with PICs/RVCs
 - Third-party monitoring works against ICANN's governance role in the DNS
 - No policy recommendation requires third-party monitoring
 - No Bylaws provision allows third-party monitoring for content-related commitments
 - ICANN must monitor compliance for certain types of commitments, even content-related

Community Comments Overview

- **Some support third-party monitoring in limited circumstances** with the following community-suggested examples:
 - At registry's discretion
 - With safeguards, including standards/criteria for ICANN assessment/approval
 - ICANN to provide an approved list of third-party monitors

Topic 1, Question 5

Question: Are there any changes that should be made to the **proposed implementation framework**?



Topic 1, Question 6 (Rationale for Q5)

Community Comments Overview

- **Divergent** community-suggested changes for the **third-party monitoring model**:
 - Third-party monitoring optional
 - Implement detailed criteria for selecting/assessing/approving third-party monitor
 - Standard requirement for ALL applicants proposing RVCs and Community TLD commitments to identify, and possibly designate, third-party monitor
 - Registries commit to implementing monitoring program; specifics not included in RA
 - Implement RA requirement comparable to **annual Specification 9 review/report** to ICANN concerning Code of Conduct compliance

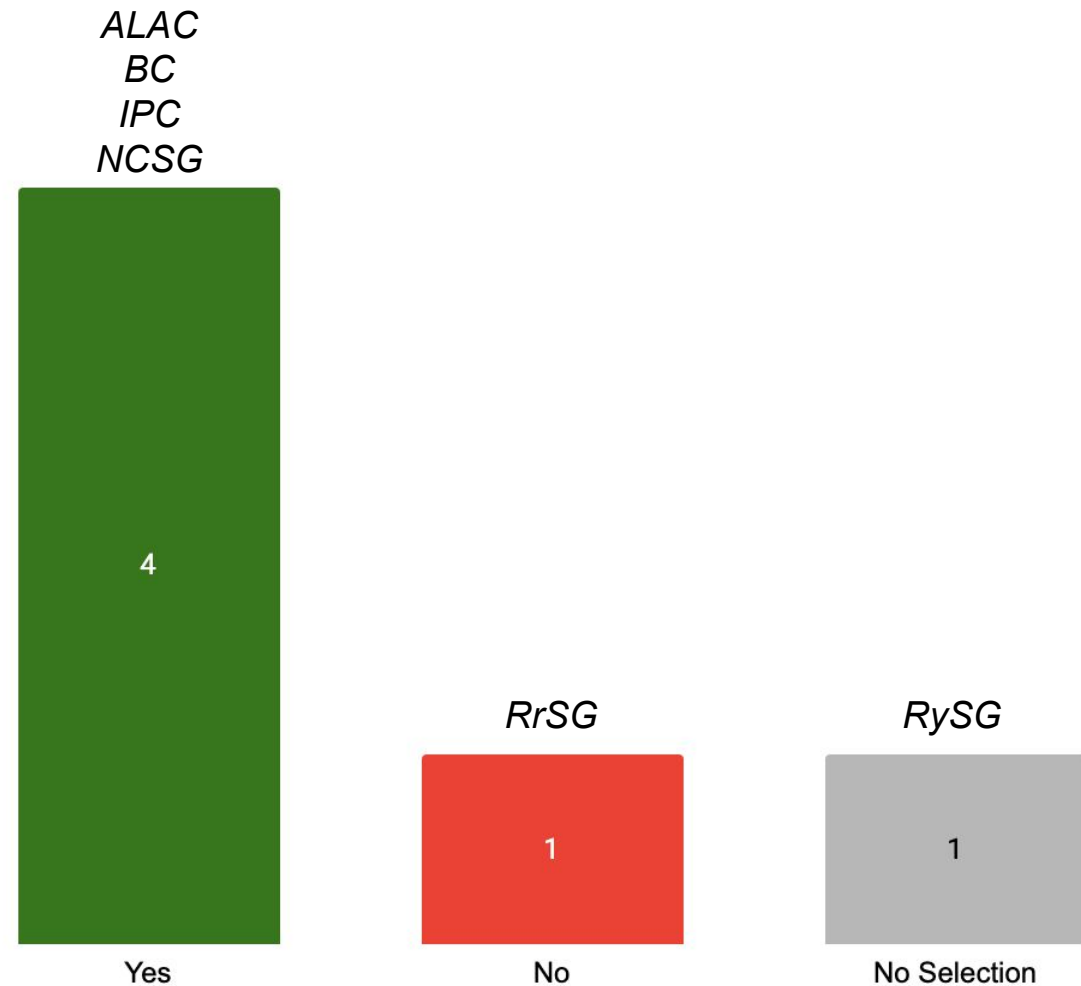
Topic 1, Question 6 (Rationale for Q5) (Cont.)

Community Comments Overview

- **Other community-suggested changes** for the proposed implementation framework:
 - Implement “six principles for review/acceptance of PICs/RVCs”:
 - RVCs only permitted for purpose within ICANN’s scope and mission
 - RVCs must comply with laws applicable to ICANN and registry and must be consistent with ICANN’s core values, fundamental commitments (including non-discrimination)
 - RVCs must have clear nexus to specific applied-for string
 - RVCs must not overrule/contradict GNSO consensus policy
 - All RVCs to be enforced by ICANN’s PICDRP (not registry-specified third party)
 - RVCs to be published for public comment, approved by ICANN legal, GNSO Council, and Board
 - Disallow change to commitments in general

Topic 1, Question 7

Question: Are there any specific **improvements** that should be made to the **dispute-resolution processes** utilized in the 2012 round (the Public Interest Commitments Dispute-Resolution Procedure and the Registry Restrictions Dispute Resolution Procedure) to ensure that these processes provide an effective mechanism for the resolution of disputes concerning the relevant commitments?



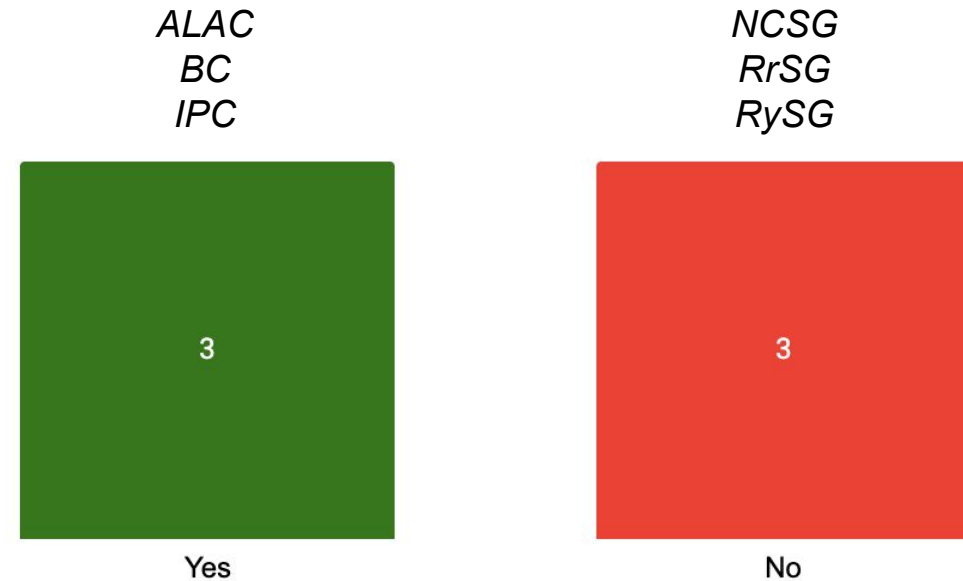
Topic 1, Question 8 (Rationale for Q7)

Community Comments Overview

- Community-suggested improvements for dispute-resolution mechanisms:
 - **Eliminate “measurable harm” threshold** for standing to bring complaint (likelihood of harm to complainant/third parties is adequate for standing)
 - Allow complaint be filed on the ground that **ICANN approved process to enforce a RVC** is not achieving the intended outcome
 - Add contractual provision stating that the **registry operator will not engage in fraudulent or deceptive practices** into the base RA as a PIC
 - **Impose obligations on registries** to take action and **meaningful remedial measures**
 - **Provide opportunity for input from complainant or panel** before ICANN determines whether remedy is sufficient
 - Implement RA requirement comparable to **annual Specification 9 review/report** to ICANN concerning Code of Conduct compliance
 - ICANN to provide further analysis of DPR processes and use to **facilitate separate feedback**

Topic 2, Question 1

Question: Are there any **types of content restrictions** in gTLDs that **could be proposed** by new gTLD applicants that ICANN must accept for inclusion in future Registry Agreements as a matter of ICANN Consensus Policy?



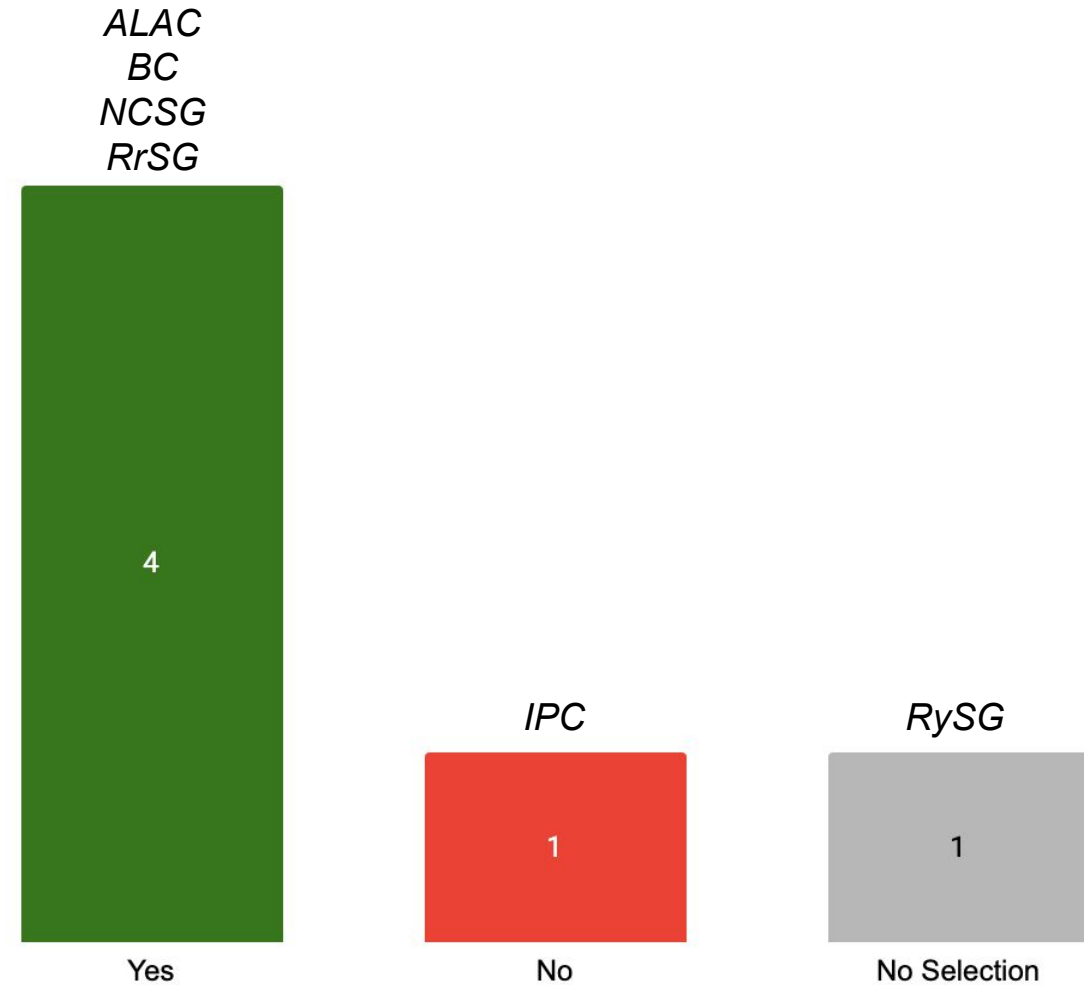
Topic 2, Question 2 (Rationale for Q1)

Community Comments Overview

- Community suggested types of content-related commitments that should be permitted:
 - Commitments contained in current base **Registry Agreement, Specification 11(3)(a)-(d)**
 - Restrictions addressing **Category 1 Safeguards** advice
 - Commitments addressing matters identified in **Bylaws Annexes G-1 and G-2**
 - **Community gTLD commitments** requiring third-party monitoring
 - Commitments contained in any RA in force on **1 Oct 2016** and **those do not vary materially** therefrom
 - Restrictions addressing **registrant eligibility**
 - Commitments addressing **DNS abuse**
 - Any commitments **NOT requiring ICANN to adjudicate compliance**
- A group suggested **applying international legal norms** to determine content restrictions that may be warranted

Topic 2, Question 3

Question: Are there any **types of content restrictions** that ICANN should **NOT** enter into in the New gTLD Program: Next Round, considering the scope of ICANN's Mission in relation to Registry Agreements?



Topic 2, Question 4 (Rationale for Q3)

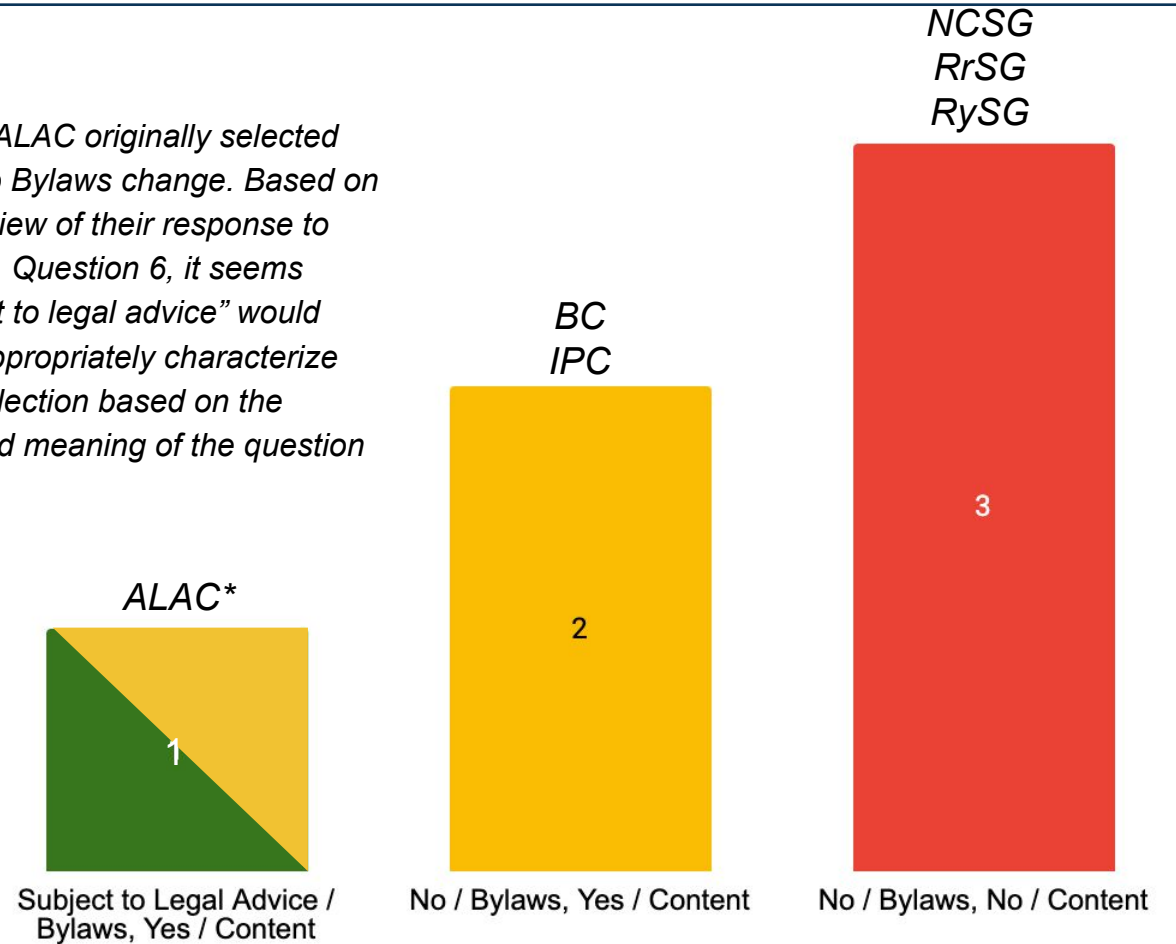
Community Comments Overview

- Community suggested types of content-related commitments that **should NOT be permitted:**
 - **Any content-related commitments**, including but not limited to:
 - Copyrights
 - Political speech
 - Commercial speech
 - Professional licenses/certifications of eligible registrants
 - Any content-related commitments **requiring ICANN to adjudicate compliance**
 - Content deemed **highly objectionable and/or illegal in accordance with local law**
- A group suggested that **registries or governmental agencies should regulate content, not ICANN**

Topic 2, Question 5

Question: Do you agree that ICANN must move forward with a **Fundamental Bylaws change** to clarify ICANN’s contracting remit regarding content-related commitments?

***Note:** ALAC originally selected “Yes” to Bylaws change. Based on Org review of their response to Topic 2, Question 6, it seems “subject to legal advice” would most appropriately characterize their selection based on the intended meaning of the question



No. ICANN should not accept any content-related registry voluntary commitments or community gTLD commitments in the New gTLD Program: Next Round, so no Bylaws amendment is required.

No. While ICANN must accept, agree to, enter into, and enforce content-related registry voluntary commitments and community gTLD commitments in the New gTLD Program: Next Round, no clarification to the ICANN Bylaws is required for ICANN to perform this function.

Subject to Legal Advice. ICANN must accept, agree to, enter into, and enforce content-related registry voluntary commitments and community gTLD commitments in the New gTLD Program: Next Round, no clarification to the ICANN Bylaws is required for ICANN to perform this function unless “ICANN obtains and accepts legal advice compelling that such action be taken by the Board”.

Topic 2, Question 6 (Rationale for Q5)

Community Comments Overview

- **Divergent** community-stated reasons **opposing Bylaws change** due to their different interpretation of “content”:
 - **Bylaws excludes content from ICANN mission**; Bylaws change would provide a “slippery sloping opening for ICANN to becoming a ‘content police’”
 - **Bylaws does not prohibit content-related commitments**; accepting such commitments does not equate to ICANN regulating content
- Bylaws change is only required if ICANN accepts legal advice compelling such action
 - Several groups suggested **seeking independent legal advice** on contracting and enforcement remit regarding content-related commitments
- Stance on Bylaws change is **unknown** from community groups outside of ALAC and GNSO that have not or decided not to respond to the consultation questions

Appendix B

Full text: ICANN Bylaws Section 1.1

ICANN Bylaws Section 1.1

Section 1.1. MISSION

(a) The mission of the Internet Corporation for Assigned Names and Numbers ("ICANN") is to ensure the stable and secure operation of the Internet's unique identifier systems as described in this Section 1.1(a) (the "**Mission**"). Specifically, ICANN:

(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS") and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains ("gTLDs"). In this role, ICANN's scope is to coordinate the development and implementation of policies:

- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and
- That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.

The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 with respect to gTLD registrars and registries shall be deemed to be within ICANN's Mission.

ICANN Bylaws, Section 1.1 (Cont.)

- (ii) Facilitates the coordination of the operation and evolution of the DNS root name server system.
- (iii) Coordinates the allocation and assignment at the top-most level of Internet Protocol numbers and Autonomous System numbers. In service of its Mission, ICANN (A) provides registration services and open access for global number registries as requested by the Internet Engineering Task Force ("IETF") and the Regional Internet Registries ("RIRs") and (B) facilitates the development of global number registry policies by the affected community and other related tasks as agreed with the RIRs.
- (iv) Collaborates with other bodies as appropriate to provide registries needed for the functioning of the Internet as specified by Internet protocol standards development organizations. In service of its Mission, ICANN's scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

(b) ICANN shall not act outside its Mission.

(c) ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority.

ICANN Bylaws, Section 1.1 (Cont.)

(d) For the avoidance of doubt and notwithstanding the foregoing:

(i) the foregoing prohibitions are not intended to limit ICANN's authority or ability to adopt or implement policies or procedures that take into account the use of domain names as natural-language identifiers;

(ii) Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through (C) below, and ICANN's performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (including a request for reconsideration or an independent review process pursuant to Article 4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN's Mission or otherwise exceed the scope of ICANN's authority or powers pursuant to these Bylaws ("Bylaws") or ICANN's Articles of Incorporation ("Articles of Incorporation"):

(A)

(1) all registry agreements and registrar accreditation agreements between ICANN and registry operators or registrars in force on 1 October 2016 [1], including, in each case, any terms or conditions therein that are not contained in the underlying form of registry agreement and registrar accreditation agreement;

ICANN Bylaws, Section 1.1 (Cont.)

(2) any registry agreement or registrar accreditation agreement not encompassed by (1) above to the extent its terms do not vary materially from the form of registry agreement or registrar accreditation agreement that existed on 1 October 2016;

(B) any renewals of agreements described in subsection (A) pursuant to their terms and conditions for renewal; and

(C) ICANN's Five-Year Strategic Plan and Five-Year Operating Plan existing on 10 March 2016.

(iii) Section 1.1(d)(ii) does not limit the ability of a party to any agreement described therein to challenge any provision of such agreement on any other basis, including the other party's interpretation of the provision, in any proceeding or process involving ICANN.

(iv) **ICANN shall have the ability to negotiate, enter into and enforce agreements, including public interest commitments, with any party in service of its Mission.**