

Community Consultation on PICs/RVCs

Introduction

When adopting the consensus policy recommendations concerning Public Interest Commitments (PICs) and Registry Voluntary Commitments (RVCs) [on 26 October 2023](#), the ICANN Board directed the ICANN Interim President and CEO, or her designees, to initiate and facilitate a Board-level community consultation before starting the implementation process. The purpose of this consultation is to ensure that the framework for implementing these recommendations remains consistent with the ICANN Bylaws.

To that end, your group is asked to (a) review the proposed [implementation framework](#) document, which proposes a path for implementing these commitments in the New gTLD Program: Next Round; and (b) answer the questions below. Your response to these questions is requested by 23 February 2024, to support a plenary session on PICs/RVCs at ICANN79 Puerto Rico from 02-07 March 2024.

The Board understands that this timeline may be ambitious. Should your group require additional time, the Board kindly requests your submission be received no later than 31 March 2024.

Should you wish to submit additional documentation to support your responses or need further assistance with the form or responses, please contact [REDACTED].

By submitting my personal data, I acknowledge that my personal data will be processed in accordance with the [ICANN Privacy Policy](#) and [ICANN Cookies Policy](#), and agree to abide by the electronic [Terms of Service](#).

The following demographic information must be included with your answers to ensure that responses to this consultation are transparent and associated with the correct community group.

Email *

[REDACTED].....

Please provide your name. *

[REDACTED].....

On behalf of which ICANN community group are you submitting this written input? *

Registrar Stakeholder Group (RrSG) ▼

Consultation Topic 1

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1. In its [Second Clarifying Statement](#), the GNSO Council said that with respect to Registry Voluntary Commitments (RVCs) both ICANN org and the applicant must agree that a proffered commitment is clear, detailed, mutually understood, and sufficiently objective and measurable as to be enforceable.

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?

Yes

No

2. Please explain your answer to question 1 above. *

The RrSG would prefer to keep these commitments as “voluntary”. This is in keeping with the principle of a “permissionless” DNS/Internet.

GAC Early Warnings do not actually “block” an application - they are an indication that a government may have concerns with the application that they may escalate. Agreeing to an RVC in response to a GAC Early Warning is not a requirement for an application to proceed - it can just proceed irrespective of an RVC. GAC Advice is not automatically accepted by the ICANN Board - it needs to be evaluated by the ICANN Board before it is accepted or rejected.

Clarity needs to be provided on how an RVC could be used to “resolve” an “Objection” to an application. If an RVC is offered after an Objection is successful, how does that play out in the application evaluation?

RVCs are not the only means of resolving concerns raised about an application. Alternatively, a private agreement could also be reached.

3. 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? *

Yes

No

4. Please explain your answer to question 3, above. *

Because these are voluntary commitments (and not mandatory), it is the position of the RrSG that third party monitoring should be optional, and any enforcement should be outside of ICANN. Other aspects of Registry operations, such as Spec 9 compliance, are satisfied via self-audit, and voluntary commitments should be treated similarly.

5. Are there any changes that should be made to the proposed implementation framework? *

Yes

No

6. If your answer to question 5 is "yes," what changes should be made, and why?

N/A

7. 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? *

Yes

No

8. If your answer to question 7 is "yes", please explain your answer.

The RrSG has no concerns with the existing dispute resolution policies regarding PICs and registry restrictions.

9. Please provide any further comments you wish to share concerning the proposed implementation framework.

No additional comments

Consultation Topic 2

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1. After the launch of the 2012 round of the New gTLD Program, and as part of the 2016 [IANA Stewardship Transition](#), the ICANN Board adopted new community-developed Bylaws that specifically define the scope of ICANN's Mission. The restated Mission could impact ICANN's ability to enter into and enforce content-related registry commitments that are contemplated for inclusion in future Registry Agreements.

The ICANN Board is concerned with proceeding to permit content-related commitments to be negotiated into Registry Agreements if there is significant potential for ICANN's ability to negotiate and enforce those commitments to be challenged as beyond ICANN's Mission.

With this background, the Board seeks your input concerning the scope of content-related Registry Agreement commitments that ICANN should permit registry operators to enter into pursuant to the SubPro PDP Working Group recommendations, taking into account the scope of ICANN's Mission.

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?

To facilitate your consideration of this issue, Appendix 2 to the consultation memo includes examples of commitments from 2012 round Registry Agreements so that the community can better understand the types of commitments that could be proposed by new gTLD applicants in the future.

Yes

No

2. Please explain your answer to consultation topic 2, question 1, above. *

If your answer to question 1 is "yes", please identify with specificity the types of content-related commitments that you believe must be permitted in future Registry Agreements as a matter of ICANN Consensus Policy.

It is very clear that ICANN's mission shall not cover content, specifically "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.." ICANN should continue this mission, and not be actively involved in content moderation.

The RrSG would like to distinguish between content restrictions and registrant restrictions. Content restrictions require ongoing policing and monitoring, and it is likely this obligation will pass through from registries to registrars, requiring additional expense, liability, and compliance concerns for registrars to ensure that prohibited content is not present in such a restricted gTLD. Registrant restrictions are at the time of registration, with minor ongoing monitoring, and can be easily regulated by the gTLD operator (such as .pharmacy).

An example of a content restriction is provided in the proposed implementation framework for .backyardchickens (e.g. no rooster-related content). Restricting rooster-related content would require a significant amount of policing, and could even prohibit valuable content that would benefit such a TLD. For example, a backyard hen farmer might want to promote the pedigree lineage of the roosters that helped sire the hens, show pictures of the roosters that were the fathers, etc. All of this could in theory be prohibited, but would also require review and subjective analysis. This would be a very slippery slope for ICANN, and a substantial departure from its mission. Restricting rooster content would then put ICANN in the place of enforcing laws that prohibit backyard roosters, rather than relying upon the competent government authorities charged with overseeing residential animal husbandry.

Contrast this with restrictions on registrants, e.g. only people who keep hens in their backyard can register domain names in .backyardchickens. This could require a check upon registration to confirm or verify the lack of roosters in the backyard farm, an ongoing commitment not to have roosters, and to ensure a hen-only backyard farm. The registrant would then be allowed to produce whatever chicken related content they want, and registrars and registries would not have to police content (and also make decisions upon the meaning of content). The RrSG prefers this approach over content restrictions in ICANN contracts.

3. 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? *

Yes

No

4. Please explain your answer to consultation topic 2, question 3, above. *

If your answer to question 3 is "yes", please identify with specificity the types of content-related commitments that you believe should not be permitted in future Registry Agreements.

Although certain content can be highly objectionable and/or illegal, laws should not be enforced through Registry Agreements. ICANN already requires registrars and registries to abide by applicable laws, and specific laws or objectionable content should not be memorialized in formal ICANN agreements for ICANN to then enforce. Additionally, registries could enforce their commitments via a pass through to registrars, increasing the burden on registrars and potentially subjecting registrars to liability for legal action brought by registrants.

5. In order for ICANN to have the ability to enter into the content-related commitments recommended by the GNSO for the New gTLD Program: Next Round, a Bylaws amendment appears to be required. For example, an amendment could clarify the scope of future content-related commitments that ICANN may enter into and enforce in future Registry Agreements, including reliance on principles evidenced within the framework (as discussed within Consultation Topic 1). *

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

- 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.
- Yes. 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, and ICANN must move forward with a Fundamental Bylaws change to clarify ICANN's contracting and enforcement remit regarding content-related commitments.

6. Please explain your answer to consultation topic 2, question 5, above. *

As indicated above, it is the position of the RrSG that ICANN should not consider any content-related commitments, thus no changes to the Bylaws are required. ICANN should maintain its existing bylaws which exclude content from its mission, and allowing any changes to this could be a slippery slope opening ICANN to becoming a broader "content police".

7. Please provide any additional comments or information not addressed above that you believe are critical to inform this community dialogue concerning content-related registry commitments in future Registry Agreements.

The RrSG supports the feedback provided by the RySG for this community consultation.

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