

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? *

Internet Service Providers and Connectivity Providers Constituency (ISPCP) ▼

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. *

Depending on the nature of the RVC and the reason why the commitment was made in the first place (the nature/criticality of the objection etc.), it would not see proportionate that the absence of an objective and enforceable metric be reason enough for an application not to proceed. Some RVCs may arguably be considered more critical than others and therefore need to be enforceable for the application to proceed.

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. *

If "should" means "there may exist valid reasons in particular circumstances to [not have such a third-party monitoring RVCs] but the full implications must be understood and carefully weighed before choosing a different course." (RFC 2119), the ISPCP believes that in principle and as a rule it is indeed preferable that a third party be in charge of monitoring the registry operator's compliance with that RVC rather than leaving it unmonitored or left to the appreciation of the operator itself. As in Question 2, this may depend on the criticality of the commitment and the reason why it was made. The above is consistent with the SubPro final report guidance on "using an independent third party as an arbiter to determine whether there has been a violation of the commitment would be consistent with ICANN's mission even if ICANN were ultimately required to rely on that third party decision to enforce a pre-arranged contractual remedy, which could include sanctions and/or termination of the Registry Agreement." (SubPro final report p49)

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?

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.

Generally speaking, the SubPro final report identifies improvements to be made to the dispute-resolution processes utilized in the 2012 round, and as the result of the GNSO policy development process, the ISPCP believes these improvements should be implemented.

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

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.

The ISPCP endorses the SubPro WG and GNSO's council's views that 'to the extent that some registries will want to make voluntary commitments in response to public comments, Government Early Warnings, GAC Advice, etc having these commitments reflected in Registry Agreements even if they fall outside of ICANN's core mission is consistent with the Bylaws where neither ICANN itself nor any third party under ICANN's control is required to pass judgment on 'content'.

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.

Beyond the provisions captured in RVCs discussed above, ICANN should not enter into any types of content restrictions in the New gTLD Program: Next Round, considering the scope of ICANN's Mission in relation to Registry Agreements. The ISPCP considers that the approach adopted during the 2012 round regarding content restrictions should remain unchanged.

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 stated above, the ISPCP considers that, consistent with the SubPro WG and GNSO Council's guidance, to the extent that some registries will want to make voluntary commitments in response to public comments, Government Early Warnings, GAC Advice, etc having these commitments reflected in Registry Agreements even if they fall outside of ICANN's core mission is consistent with the Bylaws where neither ICANN itself nor any third party under ICANN's control is required to pass judgment on 'content'.

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.

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