

ALAC Standing in Community Objection

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- Decision to recommend to the ALAC that Advice be issued on ALAC Standing to file Community Objections in Next Round.
- Basis: It makes little sense to fund ALAC to issue objections if they may be rejected based on insufficient “community” standing.
 - Waste of ICANN funds
 - Waste of At-Large community’s time

2021 Advice

- <https://community.icann.org/download/attachments/157188425/ALAC%20Advice%20on%20New%20gTLD%20Subsequent%20Procedures%20PDP%20Final%2016042021.pdf>
– Section 12, page 16.

The ALAC requires automatic standing to file Community Objections, without which the ALAC would effectively be prevented from raising concerns against any application for a TLD which it views to be wholly not in the interests of individual end users, or deserving the benefit of a commitment from the applicant to mitigate stated concerns.

The ALAC views its responsibility to uphold the interests of individual end users with importance, and had for the 2012 New gTLD application round established a stringent bottom-up participative process involving all five of its Regional At-Large Organizations (RALOs) in deciding to file a Community Objection against an application. As a result of this procedure, the ALAC filed Community Objections against two applications for the <dot>HEALTH TLD.

While the Dispute Resolution panelist who heard and determined those objections did not explicitly dismiss them for a lack of standing, contradictory provisions in the 2012 Applicant Guidebook could allow for a Community Objection filed by the ALAC in future to be dismissed for lack of standing.

Affirmation 31.1 in the SubPro Final Report, *inter alia*, confirms that the ALAC is defined as an established institution for purposes of Objections in subsequent procedures, while Affirmation 31.4 confirms the ALAC's standing to continue to be able to file Community Objections (and Limited Public Interest Objections) in subsequent procedures. With these affirmations, the ALAC can expect some funding for the filing of its selected objections in the next round of applications.

Section 3.2.2 'Standing to Object' of the 2012 Applicant Guidebook (AGB) provides that an established institution associated with a clearly delineated community has standing to object, yet, section 3.2.2.4 requires an established institution associated with a clearly delineated community eligible to file a community objection to still prove two elements to qualify for standing for a community objection. Thus, these two sections in the 2012 AGB arguably conflict with each other when applied to the ALAC.

It is incomprehensible that the ALAC, while on the one hand, funded by ICANN Org to file objections, should have any of its Community Objections, which would be derived through a bottom-up participative process, be dismissed on the ground of a 'lack of standing' to file such objections. Having any of its Community Objections be dismissed on a 'lack of standing' would clearly not only constitute a waste of resources but a procedural impediment to the ALAC carrying out the task of voicing concerns through filing Community Objections. The ALAC strongly believes that any Community Objection that it files in future should be determined on the merits of the objection and not be procedurally dismissed for 'lack of standing'. To ensure this outcome, the ALAC strongly recommends that it be granted, under no uncertain terms, automatic standing to file Community Objections in Subsequent Procedures and in future rounds of the New gTLD Program.

Summary of Advice

- SubPro Report confirms the ALAC's standing to continue to be able to and be funded to file Community Objections (and Limited Public Interest Objections) in subsequent procedures and (presuming proper process followed).
- 2012 AGB confirmed ALAC's right and funding to file objections, but was unclear on the requirement to represent a "clearly delineated community".

Independent Objector

- This is similar to the status of the Independent Objector (IO). But the 2012 Applicant Guidebook (AG) stated: “*The IO is granted standing ... notwithstanding the regular standing requirements for such objections.*”

[Note, the comparison to the IO was not made in the advice statement.]

Board Response

The Board acknowledges that the ALAC have requested an automatic standing to file Community Objections, in order to overcome the barriers to filing the ALAC identified in its interpretation of the eligibility criteria detailed in the 2012 AGB. The Board considered the ALAC's views in the course of its deliberations, but retains confidence in the current process, which will remain in place until such time community consensus is reached on an alternative approach.

ICANN org & IRT

- No indications that ICANN org will include for IRT's consideration, a “notwithstanding regular standing requirements” clause for the ALAC similar to the one for the Independent Objector.

Conclusion

- Without such a notwithstanding clause, it is unlikely that the ALAC would be deemed to formally represent a “community” as defined in the AGB.
- As such, the ALAC filing a Community Objection is likely to not meet the standard for representing the affected community, effectively wasting both the ICANN funds to file the objection as well as the At-Large effort in formulating an Objection.

Advice Points

With respect to ALAC-filed Community Objections

- Automatic standing – direction to DRSP to dispense with regular standing requirements similar to dispensation granted to Independent Objector.
- Guidance or flexibility in defining affected “community” – ALAC may act as representative of target community
- Such that objection ought to be heard purely on merits of objection grounds
- Rebut Last Board response. Community has already spoken.