

Next Round of NgTLDs / Subsequent Procedures - SubPro Implementation Review Team (IRT)

Update #19 to the At-Large CPWG

**-NgTLD Program O&E Update, Applicant Guidebook Public
Comment #2**

-Registry Commitments Implementation Approach Introduction

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Agenda

ANNOUNCEMENTS

- ⦿ **New gTLD Program Outreach & Engagement Update**
- ⦿ **Second Public Comment for Parts of the Next Applicant Guidebook (AGB)**

INTRODUCTION

- ⦿ **High-Level Approach for Registry Commitment implementation for Next Round**

New gTLD Program Outreach & Engagement Update

- ⦿ ICANN Org commencing regular updates on Program O&E
- ⦿ Planned monthly SubPro IRT call for such updates
 - Starts with **SubPro IRT Call #69 on Tues, 10 Sep 2024 at 13:00 UTC**
 - Agenda & call details: <https://community.icann.org/x/SoBVFQ>
 - These calls are open, no need to be a SubPro IRT participant to join.

Second Public Comment for Parts of the Next AGB

HEADS UP!

- **ICANN org will conduct the second public comment on draft sections of the next Applicant Guidebook for the Next Round of New gTLDs**
- Sections covered:
 1. Applications Assessed in Rounds (Topic 3)
 2. Background Screening (Topic 22)
 3. Closed Generics (Topic 23)
 4. String Similarity (Topic 24)
 5. Root Zone Label Generation Rules (Topic 25)
 6. Registrar Non-Discrimination & Registry/Registrar Standardization (Topic 37)
 7. Registrar Support for New gTLDs (Topic 38)
 8. Legal Compliance
- **When? September 2024**

High-Level Implementation Approach for PICs/RVCs 1

Summary of Board-adopted SubPro Outputs

Mandatory PICs	Safeguard PICs	Registry Voluntary Commitments (RVCs)
<p><u>Rec 9.1</u> Mandatory PICs currently captured in Base RA Spec 11 3(a)-(d) must continue to be included in RA</p> <p>Ref: https://itp.cdn.icann.org/en/files/registry-agreements/base-registry-agreement-21-01-2024-en.html#specification11</p>	<p><u>Aff 9.3</u> Affirms the NGPC framework to apply Safeguard PICs to new gTLD strings deemed applicable to highly sensitive, regulated industries</p> <p>Ref: https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf</p> <p><u>Rec 9.4</u> Include in AGB a process to determine if a string falls into any of the 4 NGPC groups</p> <p><u>IG 9.5</u> Applicant may self identify</p> <p><u>IG 9.6</u> An evaluation panel to be established</p> <p><u>IG 9.7</u> Conduct this eval after the App Comment Period</p> <p><u>Rec 9.8</u> Relevant Safeguard PICs for applicable strings must be in relevant RA</p>	<p><u>Rec 9.9</u> Applicants may submit RVCs to respond to public comments, objections, GAC Early Warning, GAC Advice at any time prior to RA execution; RVCs submitted after application submission date are subject to Application Change Request procedures</p> <p><u>Rec 9.10</u> RVCs must be included in relevant RA</p> <p><u>IG 9.11</u> PICDRP and associated processes to be updated to equally apply to RVCs</p> <p><u>Rec 9.12</u> Applicants must specify whether RVC is limited in time, duration and/or scope and include reasons/purpose for making RVCs</p> <p><u>Rec 9.13</u> RVCs must be readily accessible and presented in a manner that is usable</p> <p><u>IG 9.14</u> ICANN org to evaluate CCT-RT Rec 25 and determine the best method for ensuring RVCs are widely accessible</p>

High-Level Implementation Approach for PICs/RVCs 2

- ICANN Board Community Consultation on Implementation Framework for Content-Related Registry Commitments (Nov 2023 – Feb 2024)
 - **Consultation Topic 2 – Scope of Content-Related Registry Commitments in light of ICANN’s Mission**

1. Are there types of content restrictions in gTLDs that could be proposed by applicants that ICANN must accept?

- ❑ Where applicable content restrictions are formulated to implement the Category 1 Safeguards for strings deemed to be applicable to **highly sensitive or regulated industries** per NGPC Framework and SubPro Rec 9.4.
- ❑ As long as these content restrictions **do not require ICANN to adjudicate compliance** and ICANN is in a position to enforce the outcome of any arms length third party adjudication.

2. Need Fundamental Bylaws change to clarify ICANN’s contracting remit regarding content-related commitments?

- ❑ As long as ICANN Board deems a content-related commitment as NOT requiring ICANN to adjudicate whether applicant / RO is in compliance or not, then that’s keeping with ICANN Bylaws, and **no Fundamental Bylaws change needed**
- ❑ In the event **ICANN org obtains legal advice which counsels the need for a limited Fundamental Bylaw change** to make patently clear that such change would protect ICANN from challenges in enforcing content-related commitment violations not adjudicated by ICANN. Difference in interpretation across Community necessitate clarification by way of legal advice.

High-Level Implementation Approach for PICs/RVCs ₃

- ⦿ Board-Community Consultation
 - Consultation explored questions regarding: RVCs' impact on applications; third-party monitor risk-mitigation approach; permissible and non-permissible RVC types; Bylaws change
 - For varied reasons the **community generally does not support amending Bylaws to clarify the scope of ICANN's mission as it relates to content-restrictive commitments** in Next Round RAs
 - Input received and staff produced overview:
<https://community.icann.org/x/A4B7Eg>

- ⦿ ICANN80 Board Resolution (8 Jun 2024)
 - The ICANN Board determines that **ICANN should exclude from the Next Round RAs any RVCs and other comparable registry commitments that restrict content in gTLDs**
 - Commence the implementation of the SubPro recommendations related to RVCs and other comparable RA commitments, including the design and implementation of evaluation criteria and processes to effectuate this exclusion
 - Resolution detail: <https://www.icann.org/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-08-06-2024-en#section2.b>

High-Level Implementation Approach for PICs/RVCs 4

- ⦿ ICANN Board Resolution (8 Jun 2024)
 - Whereas, the Consultation demonstrated that for varied reasons the **community generally does not support amending the ICANN Bylaws to clarify the scope of ICANN's Mission as it relates to content-restrictive commitments in Next Round RAs.**
 - Whereas, during its May 2024 workshop, the Board identified that **granting monitoring and assessment responsibilities to a third party** regarding a registry operator's compliance with content-restrictive RA commitments **would likely constitute regulation of content by ICANN**, as ultimately, it would be ICANN, and not the third party, that would take enforcement action based on the registry operator's failure to remedy the violation of such a commitment.
 - Whereas, during its May 2024 workshop, the Board identified that permitting content-restrictive commitments in Next Round RAs does not appear to be **aligned with the ICANN Bylaws**, and found **no satisfactory mitigation alternatives** to support the stable, secure, and predictable operation of future new gTLDs if ICANN were to include such commitments in Next Round RAs.
 - Resolved (2024.06.08.08), the ICANN Board determines that **ICANN should exclude from the Next Round RAs any RVCs and other comparable registry commitments that restrict content in gTLDs.**
 - Resolved (2024.06.08.09), the Board directs the ICANN Interim President and CEO, or her designee(s), to commence the implementation of the SubPro recommendations related to RVCs and other comparable RA commitments, including the design and implementation of evaluation criteria and processes to effectuate this exclusion.

High-Level Implementation Approach for PICs/RVCs ⁵

We will discuss some of these points in future CPWG calls

- ⦿ High-level AGB Outline for PICs/RVCs
 - **0. Section Introduction**
 - **1. Mandatory PICs**
 - **2. Safeguard PICs**
 - 2.0. Introduction of Safeguard PICs
 - 2.1. Overview of Safeguard PICs
 - 2.2. Framework and Process for Determining Safeguard PICs Applicability
 - **3. Registry Voluntary Commitments (RVCs)**
 - 3.0. Introduction of RVCs
 - **3.1. Factors to Consider Before Proposing an RVC**
 - **3.2. RVC Review**
 - 3.2.1. Applicants must include the reasons and purposes for proposed RVCs
 - 3.2.2. RVC review result notification
 - **3.3. RVC Evaluation Criteria**
 - 3.3.1. Criterion 1: Proposed RVCs must be clear, detailed, mutually understood, objective, and measurable
 - 3.3.2. Criterion 2: Proposed RVCs must be enforceable as a practicable matter
 - 3.3.3. Criterion 3: Proposed RVCs must specify their limitations, if applicable
 - **3.3.4. Criterion 4: Proposed RVCs must not conflict with ICANN agreements and policies [wording TBD]**
 - **3.3.5. Criterion 5: Proposed RVCs must not restrict content**
 - **3.4. RVC Addressing Third-Party Concerns**
 - **3.5. RVC Change**
 - 3.6. RVCs for IDN Variant gTLDs
 - **4. ICANN Org Enforcement**