

Statement of the ALAC in response to “Preliminary Issue Report on New gTLD Subsequent Procedures”

The ALAC congratulates Staff in the drafting of this Preliminary Issues Report. This report goes to a great extent in listing and explaining the issues that have been identified so far either by staff or by community mechanisms. It also provides a full history of the drafting of the New gTLD Applicant Guidebook, as well as the development of the new gTLD program from its inception, including a history of prior new gTLD proof of concept rounds.

The ALAC respectfully submits the following comments with regards to issues identified, section by section. In cases where a section is not mentioned, the ALAC endorses the Issues Report recommendation as presented.

Preliminary note: this Statement makes use of the term “consumer” as used in the Affirmation of Commitments. The ALAC prefers the term “end user” as not all end users are “consumers” in the strictest sense of the term. The term “consumer” is used in order to respect the nomenclature evolved in ICANN.

Section 4.2.1:

Core Value CV7-9 of the GNSO’s Final Report on the Introduction of New Generic Top-Level Domains (8 August 2007) states that “Applications must initially be assessed in rounds until the scale of demand is clear”. The ALAC notes that there was no limit to the number of applications that could be processed in the first round. It is clear that the text in Section 1.1.6 of The Applicant Guidebook promotes an anticipation that a next application round would begin within one year of the close of the application submission for the initial round. This was clearly optimistic and appeared not to foresee the high number of applications received in the initial round. The ALAC is concerned that the Issues Report already mentions that deliberations concerning the cancellation of the program should at a minimum be weighed against the harm that could be incurred, such as to potential applicants who might have assumed that there would be an ongoing program.

In Section 4.2.1.2 there is sadly no mention of the potential harm to consumers in launching a new round when the prior round did not deliver on its public interest promises. Quite the contrary, the Issues Report weakens the importance of this factor with this observation: “Consumer adoption of new gTLDs have not met certain expectations, **though success or failure was not pre-defined**”. We beg to disagree. Some failures were anticipated. Sadly, attempts to mitigate or entirely avoid them were either not fully embraced or, simply ignored. Some must be mentioned for balance to the thread:

- The failure of the PIC regime, that was identified by ALAC, acknowledged by staff and Directors but never satisfied
- The complete and utter failure of the Applicant Support System
- The failure of the Community Evaluation Program to achieve its goals, with poorly-defined communities accepted while legitimate community efforts were rejected
- The increasing use of unpoliced TLDs as sources of spam and phishing
- The failure of the gTLD expansion to help alleviate demand in the legacy TLDs

The ALAC’s point of view is that the issue of Consumer Trust is centre stage and above any and all other issues when it comes to deciding on a next round.

Section 4.2.2 Predictability

The ALAC concurs that predictability is critical for planning and decision making. The unpredictable nature of the current round of new gTLD process has been mentioned by several groups. This unpredictability is traced to the gaping holes in an imperfect Applicant Guidebook that had left a lot of details unresolved. The ALAC's December 2010 Statement to the Board Ref. AL/ALAC/ST/1210/2 (<http://atlarge.icann.org/correspondence/correspondence-08dec10-en.htm>) identified these difficulties and made recommendations. On reflection, the ALAC believes that the ALAC advice back then is still valuable and we maintain that due care and attention needs to be exerted in pacing the work of the proposed PDP at a manageable speed. As such, all issues raised will be thoroughly aired and addressed in order to prevent any segment of the next potential round from contributing to further unpredictability. We urge the Board to reject the urge to rush the process and to take the time to reflect and then fix identified problems.

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The ALAC is not persuaded to the explanation advanced in some quarters that "Late arriving program feedback" is to be blamed for some of the difficulties experienced. For example, the matter of name collisions was identified by the Security and Stability Advisory Committee (SSAC) and was clearly explained in SAC045, dated 10 November 2010 (see: <https://www.icann.org/en/system/files/files/sac-045-en.pdf>). This was several months before the final copy of the Applicant Guidebook was approved by the ICANN Board. Unfortunately this SSAC Advice was neither acknowledged by the Board nor by the GNSO Working Group developing the Applicant Guidebook. This failure to address a serious question in time was therefore traceable to other more worrying factors, one of which certainly was the unseemly rush to secure approval of the Applicant Guidebook by the ICANN Board.

With the understanding that the commercial interests from within ICANN's community pressures to launch a next round as soon as possible, we cannot help but note the numbers so far from this round do not communicate a major pent-up demand for domain names. We again reiterate that this must not be rushed.

Section 4.2.3 Competition, Consumer Trust and Consumer Choice

This section appears to focus primarily on issues of the geographical distribution of new gTLD applications, an objective which the ALAC strongly supports.

However, the ALAC is also eager to support analysis of the other statistics identified by the IAG-CCT. The ALAC participated in the IAG-CCT with the good-faith understanding that the metrics that were presented by BOTH the ALAC and GNSO would be evaluated when considering how to proceed with future rounds. We would wish the community to neither denigrate nor ignore the metrics defined by the evaluation of the last round's KPIs. A PDP examining the results of this analysis is, in the ALAC's view, mandatory.

The Preliminary Report appears to be questioning the necessity of a PDP to examine Competition, Consumer Trust and Consumer Choice in context of the new gTLD program. The ALAC disputes this, since results from this section's analysis might introduce the following:

- Cancellation of subsequent procedures
- Significant amendments to the nature of the second round applicant criteria, the nature of the applications and the safeguards to be introduced with these applications

- Public Interest Commitments (PICs) that will strengthen Consumer Trust

The ALAC notes that the issue of PICs is addressed in Section 4.3.2. We believe their treatment must determine whether they actually satisfy the purpose of serving the global public interest and not just the narrow contractual obligations. These shortfalls should be evaluated and remedied in this PDP.

The ALAC requests that a validation analysis of the two economic studies commissioned by the Board and delivered on 16 June 2010 and 3 December 2010 be executed in light of the economic results of the current round. Should the evidence show that these studies were incorrect in their assumptions and conclusions, the ALAC recommends and advises a new Study be undertaken to inform decision-making for the program going forward. We believe it should not be possible to continue a program based on incorrect economic assumptions.

Section 4.2.4.2 Questions (on Community Engagement)

Whilst we accept the need for early community engagement as recommended in the Issues Report, we reiterate our perspective, as we earlier asserted, on the handling of SSAC advice on the matter of the name collision. In our view, a Cross-Community chartered working group should be raised to address this matter.

Section 4.2.8 Accreditation Programs

The ALAC is particularly interested in this topic, especially regarding any accreditation program that might accredit end user facing providers.

4.2.14 Support for Applicants From Developing Countries

This issue is of heightened importance for the ALAC. Application Support in the last round is considered a failure due to its over-stringent conditions that made it very hard for any applicant to benefit and/or qualify. Furthermore, very little of ICANN's roadshow was aimed at developing markets at implementation phase. The ALAC is pleased to note that these points were noted in the Issues Report and to be treated as a policy matter in the PDP. The ALAC fully agrees that every effort must be expended to find out the reasons for the small number of applications from developing economies and recommends that the PDP-WG should propose concrete solutions.

4.2.15 Different TLD Types

As a firm supporter of new gTLD application categories, the ALAC has a particular interest in this work and is pleased to note that the Issues Report recommends to include this subject in this PDP..

The ALAC fully supports that the issues partly address Advice from GAC Communiqués regarding Category 1 and Category 2 Safeguards. We do however caution interpretations that could be made from the rather prejudicial and unsubstantiated remarks in the report surrounding claims from applicants attesting full compliance with best practices of certain industries or professional licensing bodies.

4.2.16 Application Submission Limits

The ALAC fully supports this topic to be included in this PDP, as many in our community would support a limited next round of applications aimed primarily at the least developed countries or involving communities that would benefit greatly from having their own gTLD. We would add to this group the standing communities that were disadvantaged by criteria set for community evaluation in this last round. This topic bridges with: 4.2.17 – Variable Fees.

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The ALAC respectfully disagree with the assertion that this topic would not involve policy development. We cannot account this statement if applications for specific Community TLDs and from developing economies are to be effectively integrated into the process. Indeed, the equivalence of Application Support is to remove the barrier by the effective reduction of application fees. That would require policy development.

4.3.2 Base Contract

Please note our point made in Section 4.2.3 concerning PICs. The ALAC believes that significant improvements must be made to the base contract to protect consumers, in line with the terms in the AoC Section 9.3, especially 9.3.b

4.3.4 Compliance

The ALAC disagrees with locating the topic of Compliance solely within the Group 2 - Regulatory Issues. As a result of this narrow classification, no specific issues were identified. We advise and recommend that the Compliance issue should also be included in Group 1, the Overall Process. It is our view that the anticipated growth in the number of Registry operators and gTLDs has a significant impact on the Compliance operations. The ALAC believes that it is highly important to conduct an analysis of the fitness of the Compliance operations as configured to deliver on its mandate. Results from Consumer Metrics should be taken into account too.

The ALAC notes with satisfaction that the recommendation in the Preliminary Issues Report that Compliance as it relates to the new gTLDs would be in scope. However, the ALAC believes that this is an opportunity to revisit the Scope of Compliance and extend its mandate to directly protecting end users and registrants, in the public interest. The ALAC agrees that this topic should be a policy issue and be marked as such in the Issues Report.

4.3.7 Second Level Rights Protection Mechanisms

The ALAC is very surprised that these are not marked as a policy issue. If improvements to these mechanisms must serve the public interest, a careful examination of whether these are effective in this context might need a change in policy. The ALAC understands the possibility of a PDP dedicated to Rights Protection Mechanisms must be independently initiated. But we wish to ensure that such work is not overlooked or does not fall between the cracks if it is not treated as a policy matter in the PDP-WG on subsequent procedures. In our view these matters are clearly linked and best addressed in tandem.

4.3.9 Global Public Interest

Even as the ALAC welcomes this matter being marked as a policy issue, we note that the Preliminary Issues Report Summary Table includes a recommendation that “the global public interest should be constrained to the context of ICANN’s limited technical coordination role, mission and core values” and that this is re-iterated in the Draft Charter in Annex B. Until policy advice defines the application of “Public Interest” analysis as a guideline for evaluation determinations, it is premature to place such a constraint in an Issues Report, especially when Section 4.1 of the report explicitly recommends that this Issues Report should not impose any constraints on how the PDP-WG operates.

4.4.1 Freedom of Expression

The ALAC is pleased to note the adoption in principle of the Community Priority Evaluation Guidelines but recommends a rejection of such a stringent interpretation of communities by the Economist Intelligence Unit (EIU). This has disadvantaged certain diverse and heterogeneous communities, leaving them without protection. The ALAC absolutely supports that this issue be addressed ahead of any next round.

4.4.2 String Similarity

The ALAC welcomes this issue being addressed, as string similarity can cause significant consumer confusion. However, as we have experienced the current process of determination and its delivery of completely inconsistent outcomes even to the point of absurdity in some cases, we recommend the process be reviewed so that as far as possible, inconsistent evaluation is removed. We would recommend that the explanation of string similarity cases in the Issues Report be expanded to include the plural of words.

4.4.3 Objections

The ALAC has a special interest in the Community Objections process and welcomes work now in hand to consider overseeing the process. We are troubled by inconsistency of proceedings and the definition of “community” embraced by objection examiners. The ALAC notes that the Issues Report mentions the reviewing of “rules”, but a deeper study of the consistency of proceeding and outcomes is, in our view, of even greater importance. We are further uncertain whether a review of the rules and basis of objections would evolve to matters of policy. The ALAC errs on the side of caution and therefore recommends that the objections process also be marked as “policy development”.

4.4.5 Community Applications

This topic is very important to the ALAC. We are pleased that the **exact questions which have been asked within the ALAC are being addressed here** and being marked as “policy development”.

4.6.1 Security and Stability

The ALAC is concerned that the report only looks at the process by which Security and Stability of the DNS is undertaken. This topic is of paramount importance to Consumers. Yet, the way this topic is addressed does not take into account any further assessment about Security and Stability considerations beyond the first round of delegations. For example, there is the question as to whether the DNS can incorporate more new gTLDs to the same scale as the current round without jeopardising Security and Stability? In the ALAC’s view, questions of this kind can only be answered by careful analysis, with the SSAC and perhaps even outside contractors engaged. These questions are much more important than the mundane exercise of determining whether the right questions were asked of the new gTLD applicants.

The ALAC refutes the allegation in the report: “Besides the three high-risk strings mentioned above, no other strings were identified to pose a risk to the DNS.” We believe a risk is posed with Name Collision and the three high risk strings (HOME; CORP; MAIL) are not the only potential collisions listed in the SSAC report. While the named strings pose a significantly higher risk of collision than other strings, those others still pose a risk of collision even if judged as not significant enough at this point to warrant further restrictions.

4.6.3 Name Collisions

The ALAC notes that this section repeats and expands the discussion on 4.6.1, with more concise recommendations than those in Section 4.6.1.

The ALAC believes that data obtained from the current round of gTLD expansion should form the basis of a new study of DNS Stability String review. The ALAC supports the conclusion of the Issues Report for a potential PDP-WG to consider these issues further.

4.7.3 Work Process Options

The ALAC is concerned that the GNSO might be tempted to launch a PDP-WG using the Simultaneous method of work. This type of work is indeed very challenging to both ICANN staff and the volunteer community in particular. It provides a significant advantage to participation by those community members who are paid for their attendance, to the detriment of volunteers who are over-stretched when they need to balance ICANN-related pro-bono work with other work. With the ICANN communities complaining of volunteer overload, working on all five preliminary groupings would seriously unbalance the Multistakeholder model that ICANN is built on. Again, the ALAC is concerned that speed and rush might be placed above thoroughness and diligence.

On balance, the ALAC is convinced that amendments to the draft WG Charter are both needed and necessary and we strongly recommend so.