

**DRAFT**

**Competition, Consumer Trust and Consumer Choice Review Team (CCTRT): Terms of Reference and Methodology**

**1. The Affirmation of Commitments**

The Affirmation of Commitments signed on 30 September 2009 between ICANN and the U.S. Department of Commerce (the “AoC”) contains specific provisions for periodic review of four key ICANN objectives, including “promoting competition, consumer trust, and consumer choice.”

Under the AoC, ICANN agreed to ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation. In AOC Section 9.3, ICANN has committed that “when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN will organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion. ICANN will organize a further review of its execution of the above commitments two years after the first review, and then no less frequently than every four years. The reviews will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.”

This document sets forth the terms of reference and the methodology that the CCTRT will use to carry out its duties under the AoC.

The goal of the CCTRT is to assess the impact of the addition of new gTLDs on competition, consumer trust and consumer choice. In addition, this review shall examine the effectiveness of the application and evaluation process used for the 2012 round of gTLD applications, and the effectiveness of the safeguards enacted to mitigate issues involved in the introduction of new gTLDs. The Program Implementation Review defines effectiveness as, “to what degree the process was successful in producing desired results/achieving objectives.” The CCTRT will use rigorous and objective analysis of both quantitative and qualitative data to produce recommendations for the ICANN Board to consider and adopt.

This inaugural review will lay the groundwork for recurring reviews, which the AoC requires no less frequently than every three years, subject to potential revision of the ICANN bylaws. While the first review will examine the initial impact of the New gTLD Program, future reviews will play an important role in assessing how ICANN continues to meet its commitments in the areas of competition, consumer trust, and consumer choice.

## 2. Background

ICANN has anticipated this review since the AoC was signed with the U.S. Department of Commerce in 2009. Since that time, the ICANN Board has turned to the community for its input on metrics that may be used to result in data-based recommendations. To that end, the ICANN Board tasked the GNSO and ALAC to propose metrics in December 2010. In June 2011, at the ICANN meeting in Singapore, a working group was formed to come up with recommended metrics for the CCT review. The working group's goal was to provide the ICANN Board with definitions, measures, and targets that could be useful to the CCT review team. In December 2012, the group presented the board with a document detailing 70 recommended metrics, with proposed definitions and three-year targets.

The ICANN Board formed the IAG-CCT in September 2013 to review those recommended metrics and make recommendations to the review team based on an evaluation of the feasibility, utility and cost-effectiveness of each of the proposed 70 metrics. The group first met in November 2013, via conference call, then in-person at the ICANN 48 meeting in Buenos Aires. In March 2014, the IAG-CCT made an interim recommendation to commission a survey of Internet users and registrants to gauge their sense of trust and choice, and an economic study on gTLD pricing and marketplace. The ICANN Board adopted those recommendations.<sup>1</sup> In September 2014, the IAG-CCT submitted its final recommendations<sup>2</sup> to the ICANN Board, which adopted those recommendations in February 2015.<sup>3</sup> Those recommendations included the collection of 66 metrics related to competition, consumer trust and consumer choice. The IAG-CCT also revised the original recommendations from the GNSO-ALAC working group.<sup>4</sup>

## 3. Framework

ICANN's commitment to promoting competition, consumer trust and consumer choice within the New gTLD Program requires a clear understanding of the Program's history and its role in ICANN, followed by a focused examination of its development and implementation. As one of the four key objectives to be evaluated as part of the AoC, the CCT review will also help frame how ICANN may approach future rounds of new gTLDs.

### Scope

This review is intended to assess the New gTLD Program's impact on competition, consumer trust and consumer choice. This includes exploring the implementation of policy recommendations from the launch of the program through delegation and on to general availability. To conduct the evaluation, review team members may be asked to review data derived from processes related to the program, as well as broader inputs on marketplace indicators and consumer trends.

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<sup>1</sup> See: <https://www.icann.org/resources/board-material/resolutions-2014-03-27-en#2.c>

<sup>2</sup> See: <https://community.icann.org/display/IAG/IAG-CCT+report>

<sup>3</sup> See: <https://www.icann.org/resources/board-material/resolutions-2015-02-12-en#1.e>

<sup>4</sup> See:

<https://community.icann.org/download/attachments/48349551/Combined%20GNSO%20and%20ALAC%20Advice%20REVISED1.pdf?version=1&modificationDate=1418865491000&api=v2>

Clear definitions of terms and methodology are critical to ensuring the review remains within its scope. According to ICANN's Bylaws, the GNSO makes policy applicable to gTLDs. The review team's mandate does not include making policy recommendations, however, the team may suggest areas where additional policy work on new gTLDs is recommended. The CCTRT may, in assessing the market conditions for gTLDs, examine the competitive behavior of legacy gTLDs and ccTLDs. However, policies and implementation issues related to legacy gTLDs and ccTLDs are outside the remit of this team.

**Commented [EA1]:** How should the team consider competitive behavior among legacy gTLDs?

### Data and Metrics

With the ICANN Board's February 2015 adoption of the IAG-CCT's 66 recommended metrics for collection, ICANN staff has been continuously gathering and publishing data related to most of these metrics on the ICANN website: <https://www.icann.org/resources/reviews/cct/metrics>

The February 2015 Board resolution also noted that the IAG-CCT in its final report set aside a group of metrics to be revisited by the CCTRT, when it began its work, as they required additional contextual analysis, or might require additional resources to capture the data. These metrics are noted in Table 4 of the IAG-CCT final report (<https://community.icann.org/download/attachments/48349551/IAG-CCT%20Final%20report.docx?version=1&modificationDate=1418863127000&api=v2>). ICANN staff may provide their recommendations on feasibility for internal data collection and resources required for metrics that may require external data gathering.

### Definitions

An assessment of this type requires a common understanding of the terms associated with the review: competition, consumer trust and consumer choice.

The IAG-CCT adopted the following definitions for their work:

**Consumer:** Consumers generally fall into two categories: (i) Registrants (and potential registrants); and (ii) Internet Users who make use of domains through DNS resolution, such as by navigating to a URL or sending an e-mail.

**Consumer trust:** The confidence Consumers have in the function, authenticity and honesty of the domain name system. This includes (i) trust in the consistency of name resolution; (ii) confidence by Internet users that they can safely navigate to a domain name; (iii) that a TLD registry operator is fulfilling the Registry's stated purpose; and (iv) confidence by a Registrant in a domain's registration process and life cycle.

**Consumer choice:** The range of options available to Consumers for domain names (including in their preferred languages and scripts) that offer meaningful choices as to the proposed purpose and integrity of their domain name registrants.

**Competition:** competition is defined as active attempts by registries, registrars, back-end service providers and resellers to differentiate their products and services to promote consumer takeup or consumer retention.

**Commented [2]:** How's this for a straw man?

**Commented [3]:** This should include registrants. Should we say "participants in the domain name ecosystem"?

## ICANN Evaluation Reports

The AoC mandates an examination of the effectiveness of the application and evaluation processes used in the 2012 round of gTLD applications, including ICANN's implementation of the policy recommendations made for the New gTLD Program. To help inform the CCTRT, staff has compiled and published the Program Implementation Review report to provide staff perspective on the execution of the New gTLD Program, as well as incorporating feedback from stakeholders including applicants, service providers and other community members.<sup>5</sup>

Finally, the review will also consider the effectiveness of safeguards enacted to mitigate abuse. This is understood to include a review of the rights protection mechanisms that were implemented in the program, as well as other efforts to mitigate DNS abuse. Reports produced on these topics will provide detailed insight to help the CCTRT enhance its recommendations and establish a proposed order of priority for implementation, as recommended by Recommendation 9 of the CCWG-Accountability proposal.<sup>6</sup>

### 3. Methodology

#### a) Process

CCTRT work will be conducted in English via conference calls, Adobe Connect web meetings and in person.

I. Teleconferences will be recorded, subject to the right of a member of the CCTRT to take the discussion "off the record." Face to face meetings will be streamed, to the extent practicable and subject to the right of a member of the CCTRT to take the discussion "off the record." Wherever a meeting is taken "off the record," however, the record shall reflect this decision, as well as the underlying considerations that motivated such action.

II. The CCTRT will endeavor to post (a) action items within 24 hours of any telephonic or face to face meeting; (b) detailed minutes within 5 business days of any telephonic or face to face meeting; and (c) streaming video and/or audio recordings as promptly as possible after any such meeting, subject to the limitations and requirements described in subsection (i) above.

III. The CCTRT will maintain a public website, <https://community.icann.org/display/CCT/Competition%2C+Consumer+Trust+and+Consumer+Choice>, on which it will post: (a) minutes, correspondence, meeting agendas, background materials provided by ICANN, members of the RT, or any third party; (ii) audio recordings and/or streaming video; (b) the affirmations and/or disclosures of members of the CCTRT under the CCTRT's conflict of interest policy; (c) input, whether from the general public, from ICANN stakeholders, from ICANN staff or Board members, governments, supporting organizations and advisory committees, etc. Absent overriding

<sup>5</sup> See: <http://newgtlds.icann.org/en/reviews/implementation/draft-program-review-16sep15-en.pdf>

<sup>6</sup> See: <https://community.icann.org/display/acctcrosscomm/Final+Report?preview=/56989168/57999559/Rec%20%20-%20AOC%20reviews%20-%201st%20reading.pdf>

**Commented [EA4]:** The working group suggests limiting observers on calls and face-to-face meetings in a listen-only mode. They would not have the ability to chat in AC rooms or otherwise participate in RT discussions. What is the team's opinion on this suggestion? Further, the group suggests creating an email address that would direct public input to the CCTRT chair and ICANN staff. Clear instructions on the wiki home page would direct members of the public to provide their feedback via this address.

privacy or confidentiality concerns, all such materials should be made publicly available on the CCTRT website within 2 business days of receipt.

IV. Email communications among members of the CCTRT shall be publicly archived automatically via the CCT-review email [cct-review@icann.org](mailto:cct-review@icann.org).

#### b) ICANN Staff Input

CCTRT staff will facilitate additional data gathering and coordinate dialogue with additional staff to provide expertise regarding certain elements of the program or its operations, as appropriate. To inform the CCTRT's work, staff will also solicit outside expertise as requested by CCTRT members and as budget and resources permit.

ICANN staff may provide written responses to any questions posed by the CCTRT, and/or provide input to the CCTRT in connection with issues that the CCTRT did not raise but which, in the estimation of staff, are relevant to the work of the CCTRT.

ICANN staff will also provide draft operational standards developed with Board oversight, to assist the CCTRT in its deliberations to cover additional topics beyond those identified in this Terms of Reference.

#### **Community Consultations**

Staff will also assist the CCTRT leadership at their request with materials, meeting arrangements and facilitating outreach with other ICANN supporting organizations and advisory committees and the ICANN Board. The CCTRT will explore other avenues for outreach to the public to engage and collect inputs with respect to this review. This may include community sessions both in person at ICANN meetings or online in Adobe Connect web sessions.

#### **4. Work of Review Team**

##### a) Decision-making within the CCTRT

Under the AoC, the CCTRT is to make recommendations regarding how the New gTLD Program impacted competition, consumer trust and consumer choice.

The CCTRT will seek, but will not require, full consensus with respect to such recommendations. To the extent that the CCTRT is unable to achieve consensus with respect to any such recommendations, its reports and recommendations will reflect the variety and nature of the CCTRT views. (See GNSO types of consensus as noted in Section 3.6 of the [GNSO Guidelines](#) for examples.)

Any conflicts of interest that may affect the views of a CCTRT member must be disclosed and addressed in accordance with the conflict of interest policy discussed above. The CCTRT will ensure that all documents are full consensus documents i.e. they accurately reflect the discussion held.

##### b) Meetings

I. Face to Face Meetings: The CCTRT intends to hold its meetings concurrent with ICANN meetings and as needed to advance and complete its review. The CCTRT shall meet in person in (a) Los Angeles on 22-23 February 2015; in Marrakech on 9-10 March 2015; and on additional dates as needed.

II. Telephonic Meetings: In between face to face meetings, the CCTRT and/or working groups of the CCTRT shall conduct regular telephonic meetings. All such meetings shall be publicly noticed on the CCTRT wiki as far in advance as possible, and agendas for each such meeting will be published no fewer than 2 days in advance.

#### c) Reporting

I. Members of the CCTRT are, as a general matter, free to report back to their constituencies and others with respect to the work of the CCTRT, unless the information involves confidential information.

II. While the CCTRT will strive to conduct its business on the record to the maximum extent possible, members must be able to have frank and honest exchanges among themselves, and the CCTRT must be able to have frank and honest exchanges with stakeholders and stakeholder groups. Moreover, individual members and the CCTRT as a whole must operate in an environment that supports open and candid exchanges, and that welcomes re-evaluation and repositioning in the face of arguments made by others.

III. Accordingly, the CCTRT will retain the authority to determine that an interaction will be held under the Chatham House Rule: "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed."<sup>7</sup>

IV. Members of the CCTRT are volunteers, and each will assume a fair share of the work of the team.

V. Members of the CCTRT shall execute the investigation according to the plan, based on best practices for fact-based research, analysis and drawing conclusions.

VI. Where appropriate, and with the consensus of the CCTRT, ICANN staff will be used to provide administrative support services related to travel, meeting logistics, and technology. To preserve the independence and integrity of the CCTRT, however, ICANN staff will perform substantive tasks (i.e., report drafting, etc.) with respect to the work of the CCTRT, as requested. If necessary, the Chair and Vice Chairs of the CCTRT shall propose an approach to providing appropriate support to the CCTRT efforts.

#### d) Participation

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<sup>7</sup> See <http://www.chathamhouse.org/about-us/chathamhouserule> for more information

This rule was developed by the UK "Royal Institute of International Affairs" (whose home is at Chatham House in London) "with the aim of providing anonymity to speakers and to encourage openness and the sharing of information. It is now used throughout the world as an aid to free discussion. Meetings do not have to take place at Chatham House, or be organized by Chatham House, to be held under the Rule".

I. Members could be assisted by parties outside the CCTRT and ICANN staff when necessary (e.g. for translation purposes) although the emphasis must remain on direct interaction between the named members. CCTRT Observers should not intervene themselves, nor should they be able to substitute for a member who is unable to participate. This applies to conference calls as well as face-to-face meetings. Remote participation possibilities should be provided in cases where a member is unable to attend a face-to-face meeting. Independent experts are deemed to be full Members of the CCTRT.

II. The CCTRT leadership i.e. Chair [and Issue Leads] of the working group will coordinate the work of the CCTRT, and will serve as full participants in the substantive deliberations of the CCTRT and in the development of the CCTRT'S deliverables. All members of the CCTRT will have equivalent voting rights.

III. External Experts (if applicable). The External Experts are third parties that may be engaged with to support the CCTRT work. These experts would be those engaged aside from the independent experts, who were chosen to participate in the review. Selection of the experts to support the work of the CCTRT will follow ICANN procurement processes and be conducted by an open ICANN RFP. The RFP will be based upon the criteria and expertise that the CCTRT has determined.

e) Tools /Means of Communications

I. The CCTRT will endeavor to use online communications capabilities to further its work. In particular, the RT will use Adobe Connect meeting rooms in connection with its telephonic meetings. The materials available in these settings will be made available to the public in keeping with open and transparent processes and the policies contained in this methodology.

f) Indicators/Metrics

A set of indicators of competition, consumer trust and consumer choice has been adopted by the ICANN Board for consideration in this review.

The CCTRT may identify a methodology for analyzing these metrics. In addition, the CCTRT shall take into account reports created to support review of Program Implementation, Rights Protection Mechanisms, and safeguards against DNS abuse. In addition, the CCTRT may identify other sources of data it wishes to help inform in its review.

Finally, the CCTRT may request additional data or reports be generated to support unanticipated aspects of the review.

**5. Deliverables**

a)Interim Recommendations

The CCTRT might make interim recommendations to the GNSO and/or Board to launch new policy development initiatives, or further implementation work on existing policies, in tandem with the review where there is full consensus among the RT to do so.

**Commented [5]:** I inquired how this has worked on past RTs and there doesn't seem to be a consistent procedure. Given that this team is tasked with reviewing a large amount of complex data to reach unified conclusions, it would be difficult to engage outside parties on an irregular basis.

**Commented [6]:** My understanding of how alternates/proxies have worked on some of the more complex review teams in the past the alternate was generally someone working closely with the principal who would have a strong knowledge of the subject material rather than an irregular outside party. Nonetheless, there may be some value in leaving this to the discretion of participants rather than trying to create a bright line rule.

b) Findings. The CCTRT will present and document its findings on the degree to which the new gTLD program did or did not enhance overall competition, consumer trust and consumer choice in the gTLD space. Further, the CCTRT will present and document the successes and challenges experienced by the community in the application process and the attempt to mitigate the adverse consequences of the new gTLD program.

c) Final Recommendations

I. The CCTRT will endeavor to post its draft prioritized recommendations in December 2016 in order to solicit public comment. Recommendations should be clear, concise, concrete, prioritized and implementable.

II. The recommendations will fall into two categories: those which can be implemented directly by staff and those which require further policy development by the community.

III. Those recommendations should be limited to those designed to enhance the market for gTLDs in general and specifically the further introduction of new gTLDs. These recommendations will be constrained to those designed to

- Enhance competition, consumer trust and consumer choice in the gTLD marketplace; or
- Improve elements of the application and evaluation processes; or
- Advance efforts to mitigate abusive activity in the DNS

IV. The team will document the rationale it has employed for any individual recommendation, and where possible, provide a quantitative target or metric for measurement of the recommendation's success.

d) Recommendations to next Review Panel(s)

Based on substantive review of its work, the CCTRT will provide recommendations regarding the procedures and conduct of future reviews as called for in the AoC. To facilitate the collection of this feedback, a survey will be conducted of all CCTRT members to gather information on the process, methodology and procedures used (so that the next CCT Review may be conducted using these lessons learned.) (so that lessons learnt are available to subsequent CCT Review Teams)

**6. Conflicts of Interest**

The CCTRT has adopted the conflict of interest policy set forth in Attachment A to this Methodology. All member declarations submitted in accordance with the conflict of interest policy will be made public and posted on the CCTRT website.

At every meeting the CCTRT members confirm their declaration is still valid.

**7. Timeline**

**Commented [EA7]:** Note that a more detailed timeline will be included in a forthcoming work plan.

The Review Team will issue the draft report for public comment in December 2016 and solicit input from the Community and stakeholders.

The Review Team will review the comments received on its draft recommendations and refine the report with the goal of producing the final recommendations by April 2017.