



Topic Introduction: New gTLD Applicant Freedom of Expression

New gTLD SubPro PDP WG | Sub Team 3 | 16 January 2016

Background

The 2007 Final Report attempted to balance the rights of applicants, as noted in Principle G, and others related to the program, as noted in Recommendation 3.

Principle G:

The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.

Recommendation 3:

Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).

Issue Description

The issue, as identified by the DG, is whether ICANN gives adequate consideration to the protection of human rights, particularly with respect to new gTLDs and right to freedom of expression, freedom of association, freedom of religion, and principle of non-discrimination.

“ICANN’s Procedures and Policies in the Light of Human Rights, Fundamental Freedoms and Democratic Values”

Council of Europe report presented at ICANN50 (June 2014) examining ICANN’s global public interest responsibilities from an international human rights perspective:

- Universal Declaration of Human Rights
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- European Convention on Human Rights

Section 2.4 **Human Rights Analysis of the New gTLD Application Procedures** focuses on human rights considerations related to mechanisms in the New gTLD Program.

Questions and Concerns Related to the Topic

Excerpts from the COE report:

- GAC Early Warning (and others): “There have been several cases and disputes involving potentially ‘sensitive expressions’ in applied-for gTLDs which exemplify the delicate balance needed to protect the fundamental rights of applicants and other Internet users.” (p 27)
- String Confusion Objection and the Legal Rights Objection: “A delicate balance is at stake where freedom of expression needs to be weighed against the property rights of trademark owners.” (p 29)
- Community Priority Evaluation (CPE): “A narrow interpretation [of community] could restrict the ability of community organizations to associate i.e. to group them together to achieve goals. It could therefore impact on the right to freedom of assembly and association and the positive obligation resting upon states to protect vulnerable groups.” (p 31)
- Auction Procedures: “...pluralism and diversity can be threatened by auctions as a way to allocate a scarce resource, because this could lead to the concentration of TLDs in the hands of a small group of wealthy portfolio applicants.” (p 35)

Rationale for Policy Development

At the time of drafting, the Issue Report noted that other groups within ICANN were beginning to examine ICANN's policies and procedures from a human rights perspective. Coordination with these groups will be an important step in scoping potential work for the SubPro WG:

- Cross Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights
- CCWG-Accountability WS2 – Sub Group on Human Rights
- GAC Human Rights and International Law Working Group