



Introduction: Global Public Interest

New gTLD Subsequent Procedures PDP WG - Track 2
1 June 2017

Explanation of the Subject

One of the governing elements in introducing new gTLDs was that they adhere to ICANN's Mission and Core Values, with the subject of Global Public Interest specifically identified in Article 1, Section 1.2 (b), which states:

(iv) Introducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process.

The 2007 Final Report did not attempt to define, or measure the impact of the introduction of new gTLDs on the public interest. Only Recommendation 6 appeared to provide guidance on the subject, though it was limited to the composition of the string, not regarding the behavior of the registry.

Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law. . .

GAC Toronto Communique October 2012

- The Applicant Guidebook ... provides a specific role for the GAC to provide early warnings and advice on new gTLD applications that raise public policy issues.
- The GAC requests written briefing from the ICANN Board on:
 - the extent to which applicants will be able to modify their applications as a result of early warnings.
 - how ICANN will ensure that any commitments made by applicants, in their applications or as a result of any subsequent changes, will be overseen and enforced by ICANN.
- The GAC advises the ICANN Board:
 - that it is necessary for all of these statements of commitment and objectives to be transformed into binding contractual commitments, subject to compliance oversight by ICANN.
 - The GAC expects that applicants would not be penalised where the standard provisions of a contract are amended in order to meet specific obligations entered into in order to meet governmental concerns.

Introducing Public Interest Commitments

- November 2012: GAC files and ICANN public posts 242 Early Warnings on individual new gTLD Applications
- February 2013: Revisions Proposed to Registry Agreement
 - PIC Spec is “a mechanism to allow registry operators to commit to certain statement made by the registry operator in its application for the gTLD, as well as to specify additional public interest commitments, in either case transforming such commitments into binding contractual obligations that may be enforced by ICANN through a new dispute resolution mechanism...”
 - Asked applicants to submit PICs to be posted for public comment.
- PICs posted in March 2013 (1 week prior to Objection Period closing); 499 PIC Specs were received: See <https://newgtlds.icann.org/en/announcements-and-media/announcement-06mar13-en>

Specification 11: Mandatory PICs

- Mandatory PICs
 - Registry Operator will use only ICANN accredited registrars that are party to the Registrar Accreditation Agreement approved by the ICANN Board of Directors on 27 June 2013 in registering domain names. A list of such registrars shall be maintained by ICANN on ICANN's website.
 - Registry Operator agrees to perform the following specific public interest commitments, which commitments shall be enforceable by ICANN and through the PICDRP.
 1. Include in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

Specification 11: Mandatory PICs (continued)

2. Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports ... and will provide them to ICANN upon request.
3. Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.
4. Registry Operator of a “Generic String” TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person’s or entity’s “Affiliates” (as defined in Section 2.9(c) of the Registry Agreement). “Generic String” means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.

Specification 11: Voluntary PICs

- Section 4 of Specification 11
- Were “voluntary” in nature
- No guidance given on what should or shouldn’t be in PICs
- Many filed PICs if there were early warnings issued by the GAC in November 2012 hoping that PICs would address any concerns.
- Types of PICs
 - Anti – Abuse
 - Additional RPMs
 - Geographic Protections
 - Many reserved the right at sole discretion to modify or even eliminate PICs

Questions and Concerns Related to the Subject

The ICANN Board provided suggestions on areas for possible policy work in Annex A to a resolution passed on 17 November 2014 on Planning for Future gTLD Application Rounds. One of those areas identified was focused on “public interest guidance,” which the DG included in the Issue Report:

The New gTLD Program was developed in the spirit of advancing the public interest; however, existing policy advice does not define the application of “public interest” analysis as a guideline for evaluation determinations on individual applications. Issues such as those identified in GAC advice on safeguards, the development of Public Interest Commitments (PICs), and associated questions of contractual commitment and enforcement may be an area for policy development.

Relevant Guidance

Annex A to the ICANN Board resolution on Planning for Future gTLD Application Rounds (17 November 2014):

<https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>

Rationale for Policy Development

ICANN's mission is primarily of a technical coordination role, but its core values note that it should take into account the public interest as it carries out this mission.

The topic of global public interest is not isolated to the New gTLD Program, and therefore may be beyond the scope of this PDP.

It may be more appropriate to integrate the definition of global public interest and policies supporting those interests as they are developed in the wider community.

ICANN's Strategic Plan includes development and implementation of a global public interest framework. Work related to this effort should be taken into account during PDP-WG deliberations.

Questions

As of now, Public Interest Commitments are not incorporated into policy. Our goal is to determine what is an adequate *“application of ‘public interest’ analysis as a guideline for evaluation determinations on individual applications”*. Noting that the Public Interest Commitments were not based upon policy and rather came about as an act of implementation, we should consider if the adopted Public Interest Commitments are sufficient to protect the public interest and provide policy recommendations.

1. *Are the Public Interest Commitments, as they are now, sufficient in addressing the concerns of protecting the public interest in regards to ICANN’s mission?*
2. *If Specification 11 was adopted as it is now into policy, should volunteer PICs be required?*
 - a. *Could volunteer PICs be time limited?*
 - b. *Should volunteer PICs be required/allowed at the application stage?*
3. *Should PICs be incorporated into policy as a measure to protect the “public interest”?*
4. *Are there other ways in which we can consider policy development in order to protect the “public interest”?*