



CC2 Discussion: Contractual Compliance & TLD Rollout

WT2 | 07 December 2017

Agenda

1

Introduction and
Schedule

2

SOI Updates

3

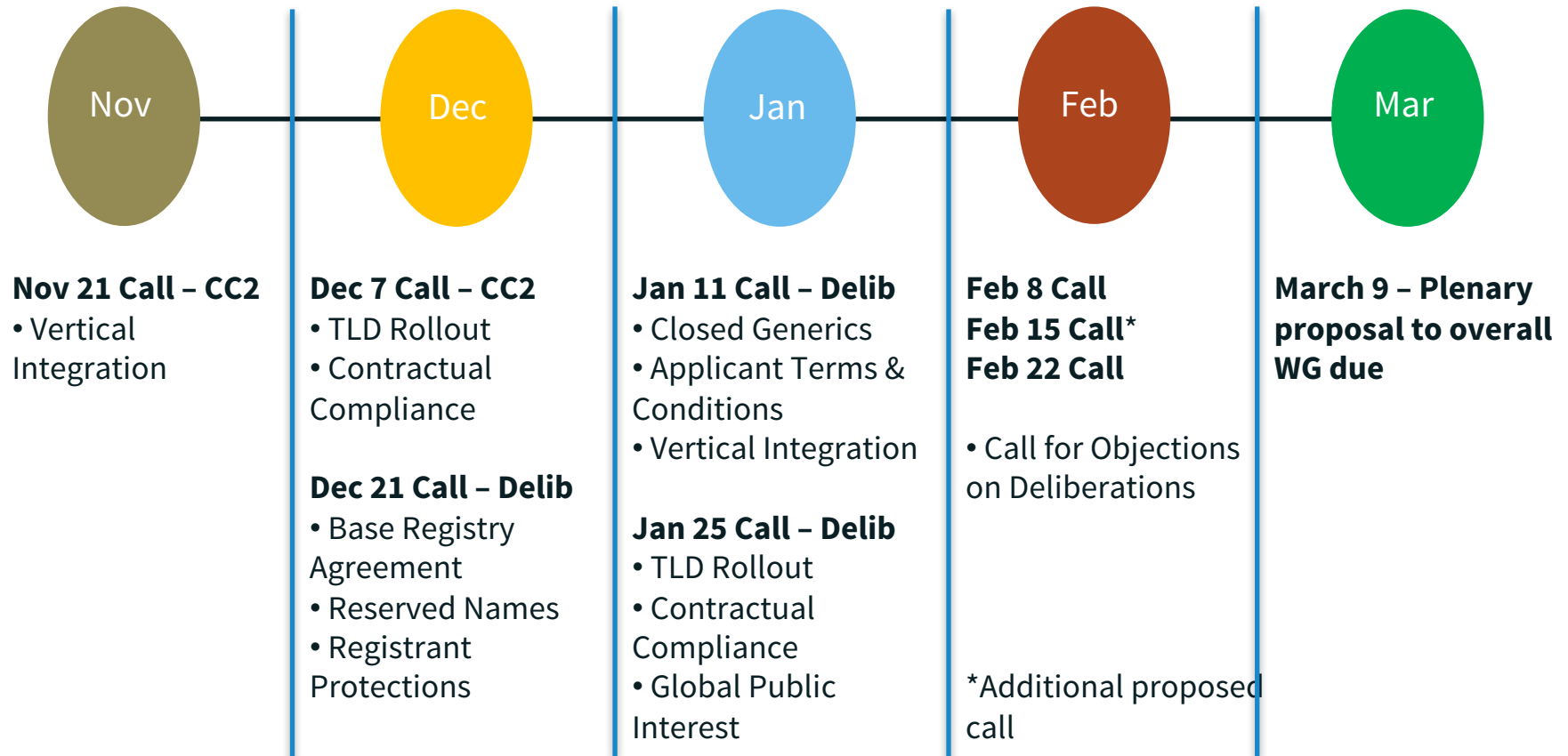
Discussion Recap &
Questions

4

CC2 Comments

1. Introduction and Schedule

Goal: To move towards deliberations and proposals for steps forward for the initial report.



3. Discussion Recap: Contractual Compliance

Recap: We had one previous call on Contract Compliance where we address that the Final Issue Report identified no specific concerns. Out of previous Public comments about the Preliminary Issue Report, concerns were raised around applicant representations in their applications, the reliance the community can place on those representations, and how those representations are ultimately integrated into the Registry Agreement. We discussed that we need to define the scope of what we can address in policy in relation to Contractual Compliance and/or in what area of the PDP we can address that. It was decided to seek further feedback in CC2 comments.

We discussed that scope must be limited to areas where we can offer recommendations on data collecting and contractual requirements to registries in order to better serve the role and results of Contractual Compliance. Additional feedback was sought in CC2.

Goal: Our goal is to use the CC2 feedback to better address scope and issues highlighted, as well as potentially translating those representations in contractual requirements and data analysis.

3. Discussion Recap: Contractual Compliance

Discussion: The following are the takeaways that were raised in our previous May 25th call. We should deliberate further on the scope and how we can address the following.

- Compliance tends to operate as a blackbox. Recommendations to enhance transparency about new gTLDs would be useful.
- Public Comment raised issues in regards to predatory pricing of Registries. The opinion was raised that this was outside of role of Contractual Compliance if it is not explicit in the RA.
- Are there any areas we can ask ICANN Compliance for data to better understand the duties of Compliance and offer recommendations for improvement?
- It was suggested that we reach out to Contractual Compliance to ask them what data would help them better fulfill their role.
- Suggested approach for policy development in this area was to ask ICANN for what data they collect from Registries in order to enforce the contracts and make recommendations.

4. CC2 Comments

Goal of CC2 Comment Review: Reviewing CC2 is our second pass through the WT2 topics. The goal of this is to review the feedback provided and discuss this input and the material of the topic in the WT2. Further questions may be made to commentators for clarification.

For Contractual Compliance CC2, our focus was to clarify our approach for deliberations related to Contractual Compliance. As a part of the feedback, issues relating to Contractual Compliance were raised. We should list out each of these issues and discuss their relation to the scope and/or we can consider this in another area.

4. CC2 Questions: 2.8.1 Contractual Compliance

2.8.1 - Noting that the role of Contractual Compliance is to enforce the registry agreement and any changes to that role are beyond the scope of this PDP, the WG is not anticipating policy development related to this topic. The WG expects that any new contractual requirements would be made enforceable by inclusion in the base agreement. Do you agree with this approach?

Jannik Skou, INTA, Nominet, RySG, BRG, Afiliias, and ALAC agree with the WG expectation that any new contractual requirements would be made enforceable by inclusion in the base agreement.

Sample excerpts:

“Yes, the RySG is of the view that any compliance related requirements are be made enforceable by inclusion in the Registry Agreement and for registries established during subsequent procedures an updated base agreement would be advisable.”

– RySG, BRG, Afiliias

“The ALAC agrees with the approach.” -- ALAC

4. CC2 Questions: 2.8.1 Comments

INTA, Jannik Skou, and John Poole provided additional regarding contractual compliance.

Excerpts:

“Yes, the RySG is of the view that any compliance related requirements are be made enforceable by inclusion in the Registry Agreement and for registries established during subsequent procedures an updated base agreement would be advisable.” – RySG, BRG, Afilias

“. . . However, INTA and its members, have long called for **greater transparency** from Contractual Compliance with both the need for **more granular and meaningful data** on the activities of the department and the nature of the complaints dealt with; and better communication with complainants about the steps taken in response to complaints reported to the department. There have been a number of troubling operational practices engaged in by registry operators during the first new gTLD round. These practices include **arbitrary and abusive pricing for premium domains targeting trademarks; use of reserved names to circumvent Sunrise; and operating launch programs that differed materially from what was approved by ICANN.** These troubling practices seem to **violate the spirit, if not the letter, of various contractual obligations in the RA**, and must be addressed by the PDP-WG in order that they are clearly and specifically prohibited in subsequent procedures.” – INTA

4. CC2 Questions: 2.8.1 Comments

“... **SPEC 13 TLDs/exemption of code of conduct TLDs with only NIC.brand (one domain name registered) should not have to go through annual audit of compliance with Spec 13.** ICANN should be able to check for them selves that the TM is still in the TMCH and also to check if the brand is now in the primary business of domain names.” – Jannik Skou

“It depends. So far **ICANN contractual compliance has been a “joke”** as far as registrants are concerned.” – John Poole

5. Discussion Recap: TLD Rollout

Recap: The Issue Report noted that the Working Group may want to collect data/input to determine the degree of concern related to delegation timeline requirements. A question on this topic is included in CC2, so review of CC2 responses may be a good first step.

Goal: The goal is for the WG to explore and decide whether that a change is needed, then it may choose to adjust Implementation Guideline I or develop new policy language.

Discussions: Through our discussions several questions were raised and it is suggested that WG should request data related with delegation timeline, requested extensions, reasons for requested extensions and TLD termination statistics est. from ICANN, in order to have informed discussions.

5. Discussion Recap: Additional Questions

Data Request:

- Requested delegation extension after signing RA o # Accepted/# Denied (and why if possible)
- Exceeded delegation deadline without requesting extension o # Extended/# Terminated (and why if possible)

Response provided by ICANN:

- ICANN received approximately **45** requests for extension, and granted over **30** extensions to the 12 month delegation deadline. Important to remember the context, this is out of the over 1200 contracted new GTLDs. **In general, the GDD team worked with the R.O. to find a path toward delegation within or as close to the 12 months as practicable.**
- Approximately **15** gTLDs had their Registry Agreements terminated prior to delegation for lack of demonstrable progress, but to a large extent, there was mutual consent with the R.O. that they were not going to move to delegation (all of these were brands).

5. Discussion Recap: Additional Questions

Primary reasons for requested extension:

- Change of RSP prior to delegation
- Assignment of TLD to another RO prior to delegation (often including a change of RSP as well)
- R.O. challenges with partnering (contracting) with Data Escrow Agent (requirement to pass PDT)
- Internal turnover in the new R.O. &/or lack of internal consensus that the firm wants the TLD(s).

6. CC2 Questions: 2.7.1 TLD Rollout

2.7.1 The Applicant Guidebook specified timelines by which applicants had to complete the contracting (9 months) and delegation (12 months) steps of the process. However, this requirement only means that the contract needs to be executed and nic.TLD be delegated. Are these timeframes reasonable? Is there still a need for these requirements? Please explain.

6. CC2 Questions: 2.7.1 Comments

Jannik Skou, Nominet, John Poole, Afiliast, RySG and BRG agreed that these timeframes were reasonable.

Sample excerpts:

Yes these are reasonable. We would also agree **that there should be some longstop date by which contract execution and first delegation are to take place.**” – Nominet

“**Yes.** ALL gTLDs are supposed to be for the benefit of registrants and the global internet community, not registry operators (I know that comes as a surprise to the GNSO, the GDD (Global Domains Division), and others within ICANN. A registry operator that fails to timely operate the registry should be terminated.” – John Poole

“**Yes, we believe that these requirements are reasonable** to avoid speculative applications. We further believe that the extensions provided and the criteria applied by ICANN in evaluating/granting those extensions have been reasonable and continued to serve the intended purpose.” – RySG, BRG

6. CC2 Questions: 2.7.1 Comments

Afilias, Jannik Skou, and BC provided additional input on aspects of TLD rollout.

Excerpts:

... the requirement to begin escrowing data for only a nic.TLD site seems premature.” – Afilias

“... once evaluated TLD applicants should be GUARANTEED contract/delegation (in other words contention set /clarifying questions etc.) within a certain time frame (say 1.5 years, otherwise an option to withdraw and get full application fee back).” – Jannik Skou

“Applicants and ICANN both need to adhere to the specified timelines. During the last application round, ICANN often took weeks and even months to respond or send acknowledgement of applications and inquiries. When they did respond, applicants were provided with a very short “response due date” otherwise the issue would be closed. This resulted in a very one-sided process.” – BC