

At-Large Revised Public Interest Commitments Dispute Resolution Procedure (PICDRP) Workspace

Comment Close Date	Statement Name	Status	Assignee (s) and RALO(s)	Call for Comments	Call for Comments Close	Vote Announcement	Vote Open	Vote Reminder	Vote Close	Date of Submission	Staff Contact and Email	Statement Number
23.10.2013	Revised Public Interest Commitments Dispute Resolution Procedure (PICDRP)	Adopted 12Y, 0N, 1A	Alan Greenberg (NARALO)	30.10.2013	06.11.2013	07.11.2013	07.11.2013	11.11.2013	12.11.2013	13.11.2013	Krista Papac krista.papac@icann.org	AL-ALAC-ST-1113-02-00-EN

Comment / Reply Periods (*)

Comment Open Date:

2 October 2013

Comment Close Date:

23 October 2013 - 23:59 UTC

Reply Open Date:

24 October 2013

Reply Close Date:

14 November 2013 - 23:59 UTC

Important Information Links

[Public Comment Announcement](#)

[To Submit Your Comments \(Forum\)](#)

[View Comments Submitted](#)

Brief Overview

Originating Organization:

ICANN

Categories/Tags:

- Top-Level Domains

Purpose (Brief):

Seeking comments on the Revised Public Interest Commitments Dispute Resolution Procedure

Current Status:

Awaiting comments

Next Steps:

Review public comments and revise if necessary

Staff Contact:

Krista Papac

[Email Staff Contact](#)

Detailed Information

Section I: Description, Explanation, and Purpose:

As previously reported, a dispute resolution procedure will be put in place to address complaints that a Registry in the New gTLD Program may not be complying with the Public Interest Commitment(s) in Specification 11 of their Registry Agreement with ICANN. A draft procedure was published in draft form on 15 March 2013. A variety of feedback was provided, including comments submitted through [public comment forum](#). ICANN has considered the input received and has created a [Revised PICDRP](#) [PDF, 209 KB] that is being published for comment.

Section II: Background:

Specification 11 in potentially over 500 new gTLD Registry Agreements will have voluntary Public Interest Commitments that the Registry has made and with which the Registry has agreed to comply. Specification 11 will also have mandatory Public Interest Commitments that the Registry must comply with in all new gTLD Registry Agreements. To effectively and efficiently resolve any issues that might arise regarding non-compliance with a Registry's Public Interest Commitments, ICANN Contractual Compliance will administer the PICDRP.

Section III: Document and Resource Links:

- [Revised PICDRP](#) [PDF, 209 KB] (2 October 2013)
- [Draft PICDRP Requirements](#) [PDF, 349 KB] (15 Mar 2013)
- [Registry Agreement](#) [PDF, 2.15 MB]

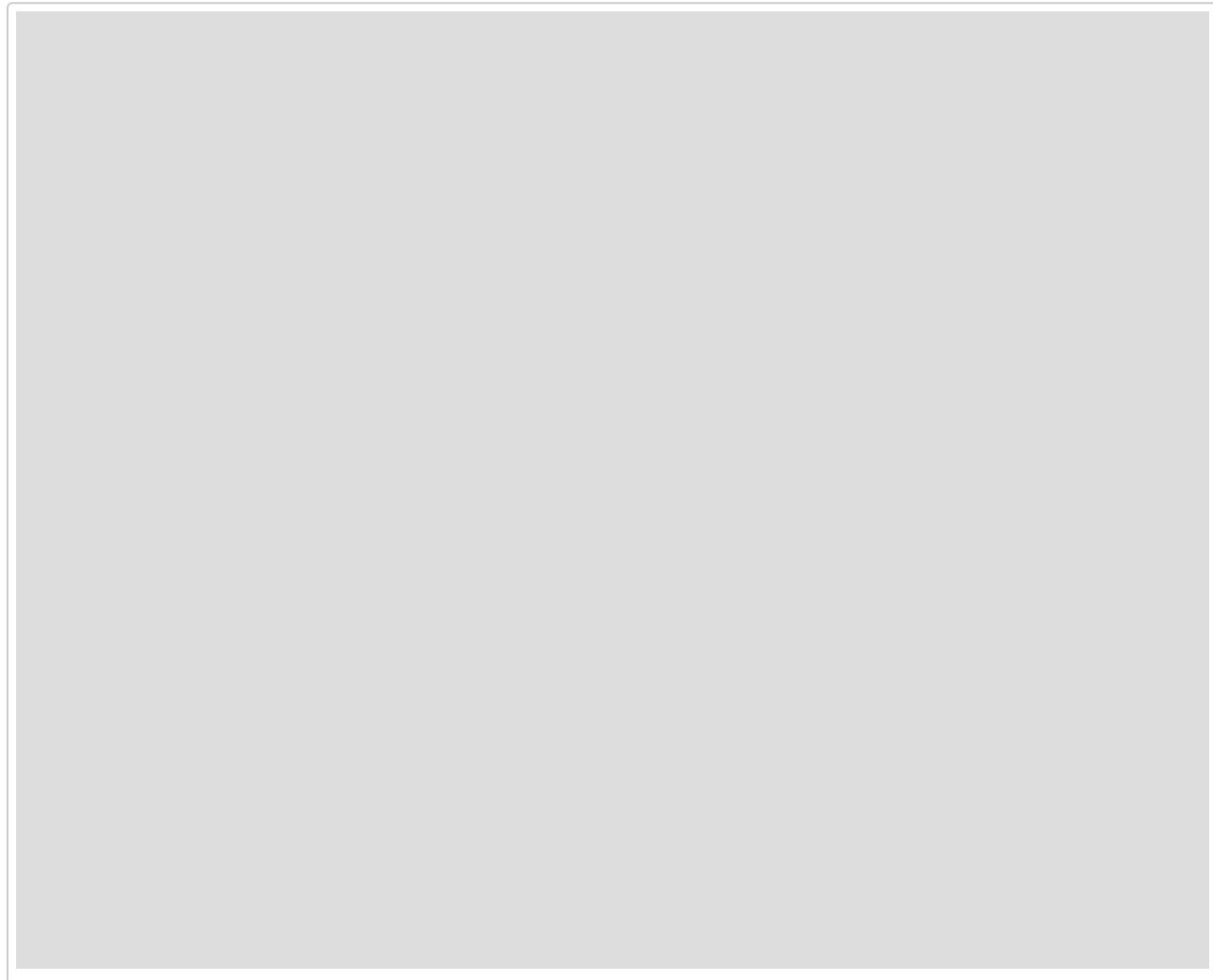
Section IV: Additional Information:

Comments submitted during the previous public comment period have largely been addressed in this Revised PICDRP, including the request that ICANN itself ensured compliance with the PICDRP. ICANN notes that a couple of comments submitted in the public comment forum suggested that the standard of harm be changed from "measurable" to "material" and that the burden of proof be changed from "preponderance of evidence" to "clear and convincing evidence." ICANN has considered these requests in light of the nature of the obligations that are to be challenged under the PICDRP. We note that these specific issues were debated during the development of the Trademark Post-Delegation Dispute Resolution Procedure (Trademark PDDRP) and the Registry Restriction Dispute Resolution Procedure (RRDRP), and a distinction was made between the standards and burden of proof for the Trademark PDDRP as opposed to the RRDRP because of the obligations that those procedures were meant to address. As the Trademark PDDRP is intended to essentially address a pattern and practice of misconduct by the registry operator, the community discussion ultimately lead to a standard of harm and burden of proof higher than that for the RRDRP, in which the Registry Operator is being challenged for failing to comply with a commitment that it made in its Registry Agreement. Given that the PICDRP will also be challenging the Registry Operator's failure to comply with a commitment that it made in its Registry Agreement, it seems logical to adopt the same standard and burden of proof as found in the RRDRP. Accordingly, the standard of harm and burden of proof in the PICDRP will remain as stated in the version that was posted for public comment.

(*) Comments submitted after the posted Close Date/Time are not guaranteed to be considered in any final summary, analysis, reporting, or decision-making that takes place once this period lapses.

FINAL VERSION TO BE SUBMITTED IF RATIFIED

[Please click here to download a copy of the PDF below.](#)



FINAL DRAFT VERSION TO BE VOTED UPON BY THE ALAC

The ALAC appreciates the radical changes made to the PICDRP in response to the comments of the first draft. The process seems far more appropriate for addressing potential harms caused by a registry's failure to honour the Public Interest Commitment aspects of their registry agreements. Placing contract enforcement within ICANN and the removing the need to pay for the privilege of reporting a contractual infringement sends a far better message regarding ICANN's attitude towards contractual compliance. The ALAC particularly supports the concept of taking action against repeat registry offenders.

However, the ALAC still firmly believes that this process does *not* address the **PUBLIC INTEREST** aspect of Public Interest Commitments.

There must be a provision for allowing reports of PIC violations, and particularly substantive PIC violations without the need to demonstrate harm. Possible sources of such reports must include:

- Governments on behalf of their citizens;
- Applicable industry regulators, licensing bodies and similar organizations;
- Consumer protection and similar organizations;
- Registrants; and
- Internet users.

A significant aspect of the PIC is to ensure registrant and Internet user *trust* in the TLD, and to disallow reports of the perceived loss of that trust greatly lessens the benefit of the PIC, and could serve to make them completely ineffective.

The ALAC understands that removing the need to demonstrate harm has the potential for increasing the number of reports that ICANN must respond to, and the ALAC is prepared to work with ICANN to develop reasonable controls to lessen the potential for ICANN devoting unreasonable efforts on addressing capricious or frivolous complaints. To address the need to reasonably limit the resources that ICANN must devote to such cases, it might be acceptable that a single registrant or user report does not trigger a full-blown investigation, but mechanisms must be put in place to ensure that patterns are recognized and swift action is taken if the very trust that the PIC is supposed to engender does not exist. Any such rules must err on the side of welcoming reports of PIC non-compliance, not rejecting them. ICANN has a past history of not being concerned with compliance-related complaints from individuals, and this MUST not be replicated with regard to PICs.

The ALAC understands and generally supports the level of flexibility that ICANN has built into this version of the PICDRP regarding penalties for PIC violations. However, to balance that and create a level of confidence that ICANN is taking the PICs seriously and that violations are not being treated lightly, there must be a high level of public reporting on the entire PIC reporting and enforcement process. Transparency is key to ensuring faith in the system; publication of PIC infractions would be a very effective method of encouraging registries to honour their PICs.

The ALAC also offers the following more specific comments on the terms within the PICDRP:

- The use of the undefined term "good standing" is both vague and inappropriate. If there are criteria under which ICANN will decide to not follow up on a report, they must be clearly stated and subject to appeal.
- There should be no requirement for interaction between a Reporter and Registry if the complaint issues identified in the report are factually identifiable; there is no need to negotiate evidence-based issues.
- Although perhaps obvious to some, it should be explicit that the Standing Panel will include one or more members with clear understanding of Public Interest issues.

Although this document is specifically on the process by which ICANN will address third-party reports on PIC violations, it is essential that ICANN makes it clear that ICANN may as well choose to take action against PIC violations purely on its own accord.

FIRST DRAFT SUBMITTED

AG Comment: After hearing the comments regarding the new DRP draft and before I actually read it, I was expecting to see a document that had some minor changes from the earlier version. Instead I found a completely new process that bore virtually no resemblance to the earlier one. The requirement to demonstrate harm is still there, and that forms the basis for this comment. But the process has been largely brought in-house, with no dispute process provider and no fees, and as such is MUCH more amenable to addressing our concern for enforcing the PUBLIC INTEREST part of Public Interest commitments.

ALAC Statement on the Revised Public Interest Commitments Dispute Resolution Procedure (PICDRP)

The ALAC appreciates the radical changes made to the PICDRP in response to the comments of the first draft. The process seems far more appropriate for addressing potential harms caused by a registry's failure to honour the Public Interest Commitment aspects of their registry agreements. The ALAC particularly supports the concept of taking action against repeat offenders.

However, the ALAC still firmly believes that there must be a mechanism for ensuring PIC compliance even when the entity reporting the issue cannot demonstrate that it has suffered harm.

The ALAC understands that removing the need to demonstrate harm has the potential for unreasonably increasing the number of reports that ICANN must respond to, but to demand a demonstration of personal or corporate harm makes a mockery of the term **PUBLIC INTEREST** Commitment.

There must be a provision for allowing reports of PIC violations, and particularly substantive PIC violations without the need to demonstrate harm. Possible sources of such reports must include:

- Governments on behalf of their citizens
- Consumer protection and similar organizations
- Registrants
- Internet users

It is understood that opening the process to registrant and Internet users who have not been directly harmed has the potential for both large numbers of complaints and for frivolous complaints. However, a significant aspect of the PIC is to ensure registrant and Internet user TRUST in the TLD, and to disallow reports of the perceived loss of that trust greatly lessens the benefit of the PIC, and could serve to make them completely ineffective.

To address the need to reasonably limit the resources that ICANN must devote to such cases, it might be acceptable that a single registrant or user report does not trigger a full-blown investigation, but mechanisms must be put in place to ensure that patterns are recognized and swift action is taken if the very trust that the PIC is supposed to engender is not there.

The ALAC understands and generally supports the level of flexibility that ICANN has built into this version of the PICDRP regarding penalties for PIC violations. However, to balance that and create a level of confidence that ICANN is taking the PICs seriously and that violations are not being treated lightly, there must be a high level of public reporting on the entire PIC reporting and enforcement process. Transparency is key to ensuring faith in the system; publication of PIC infractions would be a very effective method of encouraging registries to honour their PICs.

Although this document is specifically on the process by which ICANN will address third-party reports on PIC violations, it is essential that ICANN makes it clear that ICANN may as well choose to take action against PIC violations purely on its own accord.

[I am tempted to compare PICs to public health regulations that restaurants are subject to. People do not have to get sick or die before a restaurant needs to correct their violations (although sickness or death is a fine way of being alerted to the problem). And in many jurisdictions, there are very prominent signs displayed in restaurants saying whether they meet public health requirements – a VERY strong incentive for not being cited for infractions. I contrast that to the position the Montreal took for many years; that one would not want to publicize infractions, because that could hurt the restaurant's business!

Let me know if you think that this might be a good way to demonstrate our position.]