

At-Large Revised New gTLD Registry Agreement Including Additional Public Interest Commitments Specification 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
26.02.2013	Revised New gTLD Registry Agreement Including Additional Public Interest Commitments Specification	Adopted 10Y, 0N, 0A	Holly Raiche (APRALO)	06.03.2013	12.03.2012	16.03.2013	18.03.2013	21.03.2013	22.03.2013	25.03.2013	Dan Halloran daniel.halloran@icann.org	TBC

Comment/Reply Periods (*)		Important Information Links
Comment Open:	5 February 2013	
Comment Close:	26 February 2013	
Close Time (UTC):	23:59	Public Comment Announcement
Reply Open:	27 February 2013	To Submit Your Comments (Forum)
Reply Close:	20 March 2013	View Comments Submitted
Close Time (UTC):	23:59	Report of Public Comments

Brief Overview	
Originating Organization:	ICANN
Categories /Tags:	Top-Level Domains
Purpose (Brief):	To receive community feedback on the revised New gTLD Registry Agreement that includes certain updates and changes, including a Public Interest Commitments Specification
Current Status:	The current draft of the New gTLD Registry Agreement was published in June 2012 as part of the New gTLD Applicant Guidebook: Base Agreement & Specifications [PDF, 917 KB]. The New gTLD Registry Agreement requires various updates and changes, including the addition of the Public Interest Commitments Specification.
Next Steps:	ICANN staff will consider public comments on the revised New gTLD Registry Agreement and recommend any additional necessary changes to the Board for approval.
Staff Contact:	Daniel Halloran
Email:	daniel.halloran@icann.org

Detailed Information
Section I: Description, Explanation, and Purpose
<p>The New gTLD Registry Agreement is the contractual document between successful New gTLD Applicants and ICANN, and will govern the rights and obligations of new gTLD registry operators.</p> <p>ICANN proposes to revise the New gTLD Registry Agreement in connection with developments since the last posting of the Applicant Guidebook in June 2012 and a general review of the contractual needs of the new gTLD program. Among the proposed changes, ICANN has added the Public Interest Commitments Specification.</p> <p>The Public Interest Commitments Specification will require operators of new gTLDs to use only registrars that are party to the 2013 Registrar Accreditation Agreement (which is under negotiation). The Public Interest Commitments Specification is also a mechanism to allow registry operators to commit to certain statements 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 that will be available to any party harmed by a registry operator's failure to comply with such public interest commitments.</p> <p>Concurrent with this public comment period on the proposed revisions to the agreement, ICANN will also ask each applicant to submit a TLD-specific Public Interest Commitments Specification. ICANN will communicate directly with applicants regarding the details of submitting Public Interest Commitments Specification. ICANN expects to request applicants to submit their Public Interest Commitments Specifications by 5 March 2013, and ICANN plans to have them all posted for public review by 6 March 2013.</p> <p>The proposed revised New gTLD Registry Agreement is now open for public comment.</p>

Section II: Background

The new generic Top-Level Domain (New gTLD) Program was developed to increase competition and choice by introducing new gTLDs into the Internet's addressing system. The Applicant Guidebook (AGB) was produced to define the program and provide instructions on the application process. Within the AGB, Module 5 contains the draft New gTLD Registry Agreement. This is the document that will be entered into by successful applicants and ICANN before proceeding to the next phase of delegation and will contain the rights and obligations of each New gTLD registry operator. The current version of the NewgTLD Registry Agreement, published as part of the AGB in June 2012, requires certain updates and changes before it can be finalized for use by successful applicants.

Each new gTLD application includes business plans and statements of intent regarding applicant plans for operation of the proposed new gTLD registry. For example, some applicants stated in their applications that they intend to implement registration restrictions or heightened rights protection mechanisms above those required in the current draft of the New gTLD Registry Agreement. Outside of community-based applications, there are no mechanisms for requiring these plans and objectives to be incorporated into the New gTLD Registry Agreement. The GAC's Toronto Communiqué provided advice to the Board of Directors of ICANN 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." In response to the GAC, the New gTLD Program Committee of the Board has approved a public comment period on a proposed Public Interest Commitments Specification as a mechanism to transform application statements into binding contractual commitments, as well as to give applicants the opportunity to voluntarily submit to heightened public interest commitments. The Public Interest Commitments Specification has been incorporated into the revised New gTLD Registry Agreement as Specification 11 and is being submitted for public comments along with various other updates and changes to the New gTLD Registry Agreement more specifically described in the Summary of Changes, available below.

Section III: Document and Resource Links

- [Revised gTLD Registry Agreement with Public Interest Commitments Specification 2013-02-05 - clean](#) [PDF, 886 KB]
- [Revised gTLD Registry Agreement with Public Interest Commitments Specification 2013-02-05 - red-lined](#) [PDF, 787 KB]
- [Summary of Changes 2013-02-05](#) [PDF, 445 KB]
- Draft gTLD Registry Agreement 2012-06-04 version: [Base Agreement & Specifications](#) [PDF, 917 KB]
- ICANN Website for New Generic Top-Level Domains Applicant Guidebook: <http://newgtlds.icann.org/eTBCplicants/agb>

Section IV: Additional Information

None

() 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 issues raised by this consultation are broader than the proposed new Public Interest Commitments Specification (PICS). This response will largely be confined to the proposed PICS, with one exception. The new Specification 11 requires new gTLDs to use only accredited registrars that have signed the new Registrar Accreditation Agreement (RAA) once it is finalised. Because the new RAA will contain important new provisions of benefit to internet users, the ALAC supports this requirement.

The ALAC remains committed to maximising benefit and minimising confusion in the creation of new gTLDs. We believe that significant gTLD growth is necessary to enhance end-user choice and healthy competition in the Internet namespace. The ALAC participated in GNSO [Consumer Trust, Consumer Choice, and Competition Working Group](#) specifically to develop metrics that would evaluate the achievement of benefit (or otherwise) of the new gTLDs to internet users. The proposed PICS is, potentially, an additional tool to enhance benefit for end users.

The revised registry agreement for new gTLDs requires registry compliance with most of the more technical elements included in the gTLD application. However, the registry agreement did not provide mechanisms for turning the public interest statements of an applicant into commitments that were enforceable under the new gTLD registry agreement. The proposed revisions, the subject of this consultation, attempt to address that issue.

The ALAC's first concern is that it is left up to the individual applicants to identify which, if any, elements of their application will be nominated as Public Interest Commitments. As the new Specification 11 states: *Registry Operator to insert specific application sections here, if applicable*. In other words, the registry operator may choose not to nominate any element of their application that are Public Interest Commitments, or nominate only those elements of the application that the registry operator wants considered as a commitment.

Clause 18 of the Application asks applicants to identify potential public interest components of their application including:

- The 'mission and purpose' of the proposed gTLD
- How the applicant expects the 'proposed gTLD will benefit registrants, Internet users, and others'
- What 'operating rules' will be adopted 'to eliminate or minimize social costs?'

All of those questions potentially give rise to public interest elements of an application, and form the basis on which comments and/or objections to the application are made. Yet under the proposed arrangements, ICANN has no oversight on what, if any, elements of the application are nominated as PICS.

Given that it is the application that is the basis on which judgments are made on whether to accept an application, and whether objections should be made to an application, ICANN must be given power to ensure that if an application has public interest components in it, the applicant submits a PICS that includes all of those public interest components.

The other area of concern is the enforceability of PICS.

Again, under the new Specification 11, a registry operator's obligations in relation to PICS *shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process (PICSDRP) established by ICANN*. It is not clear why there should be a separate compliance regime for some and not other elements of registry agreements with ICANN. This is particularly true since the dispute resolution processes in the revised registry agreement now include a mediation process that must be followed before arbitration is begun. It is difficult to further comment on compliance processes since the elements of the proposed PICSDRP have not been developed, or if they have, are not publicly available for comment.

While the ALAC welcomes ICANN recognition of the public interest in new gTLDs, we believe that ICANN has a further role to play in ensuring that public interest elements of applications are both identified and enforceable.

FIRST DRAFT SUBMITTED

The issues raised by this consultation are broader than the proposed new Public Interest Commitments Specification (PICS). This response will largely be confined to the proposed PICS, with one exception. The new Specification 11 requires new gTLDs to use only accredited registrars that have signed the new Registrar Accreditation Agreement (RAA) once it is finalised. Because the new RAA will contain important new provisions of benefit to internet users, the ALAC supports this requirement.

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The ALAC's first concern is that it is left up to the individual applicants to identify which, if any, elements of their application will be nominated as Public Interest Commitments. As the new Specification 11 states: *Registry Operator to insert specific application sections here, if applicable*. In other words, the registry operator may choose not to nominate any element of their application that are Public Interest Commitments, or nominate only those elements of the application that the registry operator wants considered as a commitment.

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Given that it is the application that is the basis on which judgments are made on whether to accept an application, and whether objections should be made to an application, the ALAC believes that ICANN must be able to ensure that the major public interest elements included in application are selected by an applicant as PICS.

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