

gTLD WG - ALAC Draft Statement on Rec6 CWG Report

The ALAC statement on the CWG Report

*Third version, modified during the community consultation conference call and reflecting minor edit suggestions by Alan Greenberg (Oct 22, 16:00 UTC)
This text was formally submitted to the public comments process collecting community feedback on the Rec6 WG report. It has also been submitted to the ALAC for formal endorsement as advice to the ICANN Board.*

The At-Large Community urges the Board to fully implement the consensus recommendations of the Rec6 CWG. The work of this working group was the very example of the multi-stakeholder, bottom-up process that ICANN claims to be its foundation. The Board must encourage the ongoing work of the Rec6 CWG. We are confident that, given some reasonable extra time, outstanding issues that have not yet reached consensus may be resolved.

At-Large has always been generally against the very principle of gTLD string objections based on "morality and public order". However, we see the Rec6 CWG recommendations as an effective way to attend to the most pressing needs while addressing our concerns about the existing implementation. We wholeheartedly concur with the recommendations in the report that achieved *Full Consensus* or *Consensus*. Specifically, we wish to emphasize, as strongly as possible, our support for the CWG's consensus calls to:

- Completely eliminate the term "morality and public order";
- Replace the existing resolution dispute mechanism with processes defined by recommendations 3 and 4 from the CWG Report;
- Limit objection criteria to specific principles of international law and treaty;
- Deny national law as a sole criteria for objections based on these criteria;
- Resolve disputes of this nature early in the application process;
- Require individual government objections to be made either through the Community Objections Process or through one of the ALAC and the GAC;
- Enable the GAC and ALAC to submit objections through the Independent Objector;
- Uphold a gTLD creation process that encourages "the true diversity of ideas, cultures and views on the Internet".

We are also committed to achieving consensus on those issues in which no resolution has yet been made, and encourage the continuation of the CWG in these efforts. We believe that additional time in cross-community discussions would resolve them. We strongly urge support of recommendation of 14.1, to create a "Rec6 Community Implementation Support Team" (Rec6 CIST) to provide input to ICANN Implementation Staff as they further refine implementation details.

It is rewarding and noteworthy that these recommendations, in the main, closely resemble statements on the gTLD application process that were part of the Declaration of the At-Large Summit held during the ICANN meeting of March 2009, which stated:

We emphatically call for the complete abolition of the class of objections based on morality and public order. We assert that ICANN has no business being in (or delegating) the role of comparing relative morality and conflicting human rights.

Abolishing the morality and public order class of objection will eliminate the risk to ICANN of bearing responsibility for delegating morality judgment to an inadequate DSRP.

Certain extreme forms of objectionable strings may be addressed through minor modifications to the "Community" class of objection. While we fully appreciate the motivation behind this class of objection, we cannot envision any application of it that will result in fewer problems than its abolition.

In addition, we wish to explicitly call attention to an issue that received substantial support but not consensus: that a super-majority of the Board should be required to reject gTLD applications based on these criteria.

If any of the above recommendations are seen to be "inconsistent with existing process", that is a clear indication that the "existing process" contains fundamental flaws that have been identified and must be addressed. ICANN's community has spoken in an unprecedented and unambiguous manner, and the At-Large Advisory Committee is proud of our effort to help such divergent views together to produce clear and workable policy.

Reference Documents:

Cross Community Working Group report on GNSO gTLD Recommendation 6 :

<http://gns0.icann.org/issues/new-gtlds/report-rec6-cwg-21sep10-en.pdf> [PDF, 1.06 MB]

Public comment announcement:

<http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm>

Introductory Note from Evan Leibovitch, Chair of the ALAC gTLD WG - sent 7 October 2010

Hello everyone,

As you may know, one of the biggest complaints that At-Large has had with the process of allocating new generic Top-Level Domains (gTLDs) has been a clause in the Applicant Guidebook referring to objections based on "Morality and Public Order". The At-Large objection to it was a significant component of the gTLD commentary that was developed at the At-Large Summit, and opposition to the "MAPO objection" has remained ALAC policy to this day.

Apparently our distaste for this was shared by ICANN's Government Advisory Committee (GAC), though for different reasons. A common effort to revise the MAPO approach was discussed informally between ALAC and GAC members at the Nairobi ICANN meeting, and more formally at the ICANN Brussels meeting. As a result, together with the GNSO -- ICANN's main policy-making body on gTLDs -- a joint working group was created to find common ground on this very controversial issue.

To many peoples' delight, this joint working group achieved a phenomenal (in my opinion) amount of consensus between the three groups (ALAC, GAC and GNSO) which included some "very" divergent points of view. We didn't agree on everything, but we did agree on some very specific points. Most important of these points was to recommend against the use of Dispute Resolution Service Providers as described in the current Application Guidebook (<http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-28may10-en.pdf>) (sections 3.1.2.3 and 3.4.3). This has been replaced with a complete consensus that ultimate decisions on contentious strings rests with the Board alone (assisted by independent experts offering opinion on applicability of international law and treaty).

The full recommendations of this working group, which provide far more detailed background than I have provided above, can be read in its report to the Board (<http://gns0.icann.org/issues/new-gtlds/report-rec6-cwg-21sep10-en.pdf>).

The group as a whole intensely disliked even the term "Morality and Public Order", and as a result it was generally referred to as the "Rec 6 WG" (referring to Recommendation 6 of the GNSO's gTLD creation policy which referred to this kind of objection).

ALAC has already endorsed the report, but I am asking this At-Large Working Group about the desirability to add further comment -- as a minority report to emphasise our point of view on areas of divergence, and/or as a further positive re-enforcement that underscores the community's widespread preference for the current WG proposals instead of the existing process.

Further affecting our decision may be the Board resolution from its recent retreat on this issue (<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.9>):

"The Board acknowledges receipt of the Rec6CWG report. This is a difficult issue, and the work of the community in developing these recommendations is appreciated. The Board has discussed this important issue for the past three years. The Board agrees that ultimate responsibility for the new gTLD program rests with the Board. The Board, however, wishes to rely on the determinations of experts regarding these issues. The Board will accept the Rec6 CWG recommendations that are not inconsistent with the existing process, as this can be achieved before the opening of the first gTLD application round, and will work to resolve any inconsistencies. Staff will consult with the Board for further guidance as required."

This wording is vague, and by some interpretations it enables the Board to repudiate some of the important points of consensus. Accordingly, we may want to emphasize the broad community support behind the WG's initiative.

I welcome members of this -- the At-Large working group on ICANN gTLD policy to discuss the report here, as well as to help draft a statement which ALAC would be asked to endorse and send as official community comment.

If requested, I am certainly amenable to holding a community conference call on this issue attended by senior members of the WG as well as At-Large participants in it.

Thanks for your participation and help.

Evan Leibovitch

Chair,

ALAC gTLD Working Group.

Response from Alan Greenberg - sent 9 October 2010

I haven't seen any other comments on this, so I will kick things off. The comments range from minor corrections to what I believe are substantive ones. (Staff note: Alan's comments are in ***bold italics***)

Alan

At 08/10/2010 02:55 AM, Evan Leibovitch wrote:

Hello everyone,

As you may know, one of the biggest complaints that At-Large has had with the process of allocating new generic Top-Level Domains (gTLDs) has been a clause in the Applicant Guidebook referring to objections

based on "Morality and Public Order". The At-Large objection to it was a significant component of the gTLD commentary that was developed at the At-Large Summit, and opposition to the "MAPO objection"

If we use the "MAPO" term in any resultant document, it should be defined on first occurrence.

has remained ALAC policy to this day.

Apparently our distaste for this was shared by ICANN's Government Advisory Committee (GAC),

Despite our often using this title, the actual one is Governmental Advisory Committee.

though for different reasons. A common effort to revise the MAPO approach was discussed informally between ALAC and GAC members at the Nairobi ICANN meeting, and more formally at the ICANN Brussels meeting. As a result, together with the GNSO -- ICANN's main policy-making body on gTLDs -- a joint working group was created to find common ground on this very controversial issue.

To many peoples' delight, this joint working group achieved a phenomenal (in my opinion) amount of consensus between the three groups (ALAC, GAC and GNSO) which included some "very" divergent points of view.

We need to be careful to say that the consensus was reached between individuals, most of whom are members of At-Large, the GNSO and the GAC. To date, the GAC, the GNSO Council and the various GNSO SG/Const. have not formally endorsed it. And I think that the reality is that few will - not because they disagree, but simply due to the relative complexity of doing so.

We didn't agree on everything, but we did agree on some very specific points. Most important of these points was to recommend against the use of Dispute Resolution Service Providers as described in the current Application Guidebook<<http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-28may10-en.pdf>>(sections >3.1.2.3 and 3.4.3). This has been replaced with a complete consensus that ultimate decisions on contentious strings rests with the Board alone (assisted by independent experts offering opinion on applicability of international law and treaty).

See my comment on the Sept 28 Board motion.

The full recommendations of this working group, which provide far more detailed background than I have provided above, can be read in its report to the Board<<http://gns0.icann.org/issues/new-gtlds/report-rec6-cwg-21sep10-en.pdf>>. The group as a whole intensely disliked even the term "Morality and Public Order", and as a result it was generally referred to as the "Rec 6 WG" (referring to Recommendation 6 of the GNSO's gTLD creation policy which referred to this kind of objection).

ALAC has already endorsed the report, but I am asking this At-Large Working Group about the desirability to add further comment -- as a minority report to emphasise our point of view on areas of divergence, and/or as a further positive re-enforcement that underscores the community's widespread preference for the current WG proposals instead of the existing process.

The following comments presume that we want to come up with a short document. A discussion over the last day on the GNSO Council list made it clear (comments from Bruce Tonkin) that the Board's preference is for one-page documents, backed up with additional material if needed. If we do not provide this, staff will, and I have a strong preference to us deciding what the most important issues are.

Although we can draw attention to what we are still unhappy with, I suspect that most of them would be even more extreme than what was recommended (as opposed to closer to what is in Applicant Guidebook v4). As such, I think that our chances of getting things changed in this direction are arguably minimal. So we can declare them for the record, but not dwell upon them.

Among the Board motions was one related to the time allowed under which a registrant can respond to a Uniform Rapid Suspension (URS) Notice. The STI group recommended 20 days instead of the 14 days in the IRT report. The Board motion reduced it back to 14 days. The STI group was another one where going into the process, there were large divisions among the members (more so than for the CWG Rec 6 group in my opinion). The issue of 14 vs 20 days was VERY difficult, but ultimately those of us who wanted 20 days made some other compromises (and made "out-of-the-box" proposals) which allowed the entire group to accept 20 days. There is no reason to think that the Board understood the back-room horse-trading that went on to allow this compromise. What they did know was that in the comment period, a number of high-profile groups said 20 days was too long (in addition to some people saying that 20 days was too short).

So the moral of the story is that if we feel strongly that the CWG group consensus got some things right, we need to strongly and explicitly support them in clear terms.

Further affecting our decision may be the Board resolution from its recent retreat on this issue<<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.9>>:

"The Board acknowledges receipt of the Rec6CWG report. This is a difficult issue, and the work of the community in developing these recommendations is appreciated. The Board has discussed this important issue for the past three years.

The Board agrees that ultimate responsibility for the new gTLD program rests with the Board.

This is an impressive statement that says nothing. The Board is ultimately responsible for EVERYTHING that ICANN does.

The Board, however, wishes to rely on the determinations of experts regarding these issues.

In the end, I don't think that anyone on the WG disagreed with using such experts. But I think there was a strong belief that for ICANN to REJECT an application based on this type of objection, the Board had to take strong action (regardless of whether that rejection is supported by the experts). See my note later regarding Board motion 2.7).

The Board will accept the Rec6 CWG recommendations that are not inconsistent with the existing process, as this can be achieved before the opening of the first gTLD application round, and will work to resolve any inconsistencies. Staff will consult with the Board for further guidance as required."

As has been noted by a number of people, the term "existing process" is not defined. Most people are taking it to refer to the processes defined in the Applicant Guidebook v4, but there is disagreement on exactly how this should be interpreted.

This wording is vague, and by some interpretations it enables the Board to repudiate some of the important points of consensus. Accordingly, we may want to emphasize the broad community support behind the WG's initiative.

Agree as noted above.

There was another part of the gTLD motion that is very relevant - 2.7

2.7 Role of the Board

The Board intends to approve a standard process for staff to proceed to contract execution and delegation on applications for new gTLDs where certain parameters are met.

Examples of such parameters might include: (1) the application criteria were met, (2) no material exceptions to the form agreement terms, and (3) an independent confirmation that the process was followed.

The Board reserves the right under exceptional circumstances to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community, for example, as a result of the use of an ICANN accountability mechanism. The Board approves the inclusion of a broad waiver and limitation of liability in the application terms and conditions.

This motion gives staff the responsibility to approve applications in certain (presumably common and not very controversial) cases, but even in such cases, the Board reserves the right to intervene. It is not clear whether it was deliberate or an oversight, but the motion does not give staff the right to refuse an application. If this motion stands, and is interpreted as I have, this means that all refusals must come from the Board - pretty much what many on the CWG were asking for.

I think that we need to explicitly support this notion so that if the Board later changes it, we have a history trail to point back to.

I welcome members of this -- the At-Large working group on ICANN gTLD policy -- to discuss the report here, as well as to help draft a statement which >ALAC would be asked to endorse and send as official community comment.

If requested, I am certainly amenable to holding a community conference call on this issue attended by senior members of the WG as well as At-Large participants in it.

Thanks for your participation and help.

Evan Leibovitch

Chair,

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