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AT-LARGE ADVISORY COMMITTEE

ALAC Statement on the Revised New gTLD Registry Agreement Including Additional Public Interest Commitments Specification

Introduction

By the Staff of ICANN

An initial draft of this Statement was composed by Holly Raiche, ALAC member from the Asian, Australasian and Pacific Islands Regional At-Large Organization (APRALO) after discussion of the topic within At-Large and on the Mailing Lists.

On 6 March 2013, this Statement was posted on the [At-Large Revised New gTLD Registry Agreement Including Additional Public Interest Commitments Specification Workspace](#).

On that same day, Olivier Crépin-Leblond, the Chair of the ALAC, asked that a call for comments on the draft Statement be sent to At-Large members via the [ALAC Announce Mailing List](#).

On 13 March 2013, a version incorporating the comments received was posted on the aforementioned Workspace.

On 18 March 2013, the Chair requested that Staff open a five-day ALAC ratification vote on the revised Statement.

On 25 March 2013, the online vote resulted in the ALAC endorsing the statement with 10 votes in favor, 0 abstentions, and 0 votes against. You may review the result independently under:

<https://www.bigpulse.com/pollresults?code=2982kmKHzungDM7NVgsgNHez>

The Chair then requested that the Statement be transmitted to the Public Comment process, copying the ICANN Staff member responsible for this Public Comment topic.

[End of Introduction]

The original version of this document is the English text available at <http://www.atlarge.icann.org/correspondence>. Where a difference of interpretation exists or is perceived to exist between a non-English edition of this document and the original text, the original shall prevail.

ALAC Statement on the Revised New gTLD Registry Agreement Including Additional Public Interest Commitments Specification

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 finalized. Because the new RAA will contain important new provisions of benefit to Internet users, the ALAC supports this requirement.

The ALAC remains committed to maximizing benefit and minimizing 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 are, 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.