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

Introduction

Alan Greenberg, ALAC member from the North American Regional At-Large Organization (NARALO) ALAC Executive Committee member, and ALAC Liaison to the GNSO composed an initial draft of this Statement after discussion of the topic within At-Large and on the Mailing Lists

On 30 October 2013, this Statement was posted on the [At-Large Revised Public Interest Commitments Dispute Resolution Procedure \(PICDRP\) Workspace](#).

On that same day, Olivier Crépin-Leblond, Chair of the ALAC, requested ICANN Policy Staff in support of the ALAC to send a Call for Comments on the draft Statement to all At-Large members via the [ALAC Announce Mailing List](#).

A version incorporating the comments received was later posted to the aforementioned website.

On 8 November 2013, the Chair of the ALAC requested that ICANN Policy Staff in support of the ALAC open a ratification vote on the Statement.

On 13 November 2013, Staff confirmed that the online vote resulted in the ALAC endorsing the Statement with 12 votes in favor, 0 votes against, and 1 abstention. You may review the result independently under: <http://www.bigpulse.com/pollresults?code=35484Y93Nnvq2UhaNJza7G8I>

Summary

1. 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 honor the Public Interest Commitment aspects of their registry agreements. However, the ALAC still firmly believes that this process does *not* address the **PUBLIC INTEREST** aspect of Public Interest Commitments.
2. There must be a provision for allowing reports of PIC violations, and particularly substantive PIC violations without the need to demonstrate harm.
3. 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.
4. 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.

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 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 honor 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.