



The Internet Corporation for Assigned Names and Numbers

21 March 2016

Jonathan Zuck
Chair, Competition, Consumer Trust & Consumer Choice Review

Stephen Coates, Avri Doria, and Jeff Neuman
Co-chairs, GNSO New gTLD Subsequent Procedures PDP Working Group

Re: ALAC and GAC concerns regarding the effectiveness of the Public Interest Commitments (PICs) for sensitive new gTLDs

Dear Jonathan, Stephen, Avri and Jeff,

On behalf of the ICANN Board, I am writing to forward concerns raised by the At-Large Advisory Committee (ALAC) and the Governmental Advisory Committee (GAC) regarding the effectiveness of the contracted Public Interest Commitments (PICs) for the GAC Category 1, Safeguard 1-8 TLDs ("Safeguard PICs").

In the spirit of providing input, the ICANN Board recommends that you review these concerns, and include a comprehensive review of PICs and other protection mechanisms used by registries as part of your efforts to complete the Competition, Consumer Trust & Consumer Choice Review and the GNSO New gTLD Subsequent Procedures PDP.

ALAC and GAC Concerns

Over the last couple of years the ALAC and GAC have expressed their concerns on numerous occasions on the effectiveness of the PICs. More recently, on a call facilitated by the Board on 18 March 2016 between ALAC, GAC and the GNSO chairs, the ALAC and GAC chairs expressed their concerns as follows: "The ALAC and the GAC are concerned that GAC- identified TLDs, if implemented without suitable registrant credential verification/validation or other similar controls, might result in possible consumer harm. It is essential that any future rounds do not result in post-application concerns such as raised by the GAC following the first round, and that potential applicants understand that some sensitive TLDs may require additional protection. A study of the TLDs identified by the GAC, and how applicants address their unique needs may help ensure no such problems in the future."

In addition, on 28 February 2016, the ALAC provided formal Advice to the Board to establish a community-led "Review Committee" of the implementation of the GAC Safeguard Advice. The ALAC Advice is attached to this letter. The Board considered the ALAC Advice during the



ICANN55 meeting. It is also worth noting that the GAC Marrakech Communiqué also voiced support for a separate Review Committee:

“The GAC encourages work by the GNSO and the ALAC to review Public Interest Commitments (PICs) for strings corresponding to highly regulated sectors, including through a dedicated group if possible, and will work through the range of processes considering future gTLD rounds, to ensure public policy considerations are taken into account.”

Options Considered

After extensive discussion, the Board determined that there were three main options to address the ALAC and GAC concerns.

First, ICANN could seek to modify the existing PICs incorporated into the new gTLD registry agreements. This option would not be feasible as more than 1,200 agreements have been executed. Furthermore, modifying these existing agreements would require the approval of the other parties to those agreements.

Second, ICANN could ask the community to form a new Review Committee as suggested by the ALAC. As you know, the Safeguard PICs were the subject of public comment prior to their adoption, and they are currently under review by two well-resourced community groups: 1) the Affirmation of Commitments Competition, Consumer Trust & Consumer Choice Review (“CCT-RT”) and 2) the GNSO New gTLD Subsequent Procedures PDP Working Group (“PDP WG”).

The CCT-RT has established a sub-group focused on new gTLD Safeguards and Consumer Trust. The sub-group is chaired by Laureen Kapin, a consumer protection attorney with the U.S. Federal Trade Commission, is the GAC Chair’s designee to the CCT-RT. The Board understands that the sub-group plans to conduct a rigorous review of the Safeguard PICs that will be reflected in the CCT-RT’s final recommendations.

Similarly, the charter for the GNSO PDP on Subsequent Procedures makes it clear that the Safeguard PICs will be considered:

“Base agreement: Perform comprehensive review of the base agreement, including ... whether Public Interest Commitments (PICs) are the right mechanism to protect the public interest.”

“Global Public Interest: Existing policy advice does not define the application of “Public Interest” analysis as a guideline for evaluation determinations. Consider issues identified in GAC Advice on safeguards, public interest commitments (PICs), and associated questions of



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contractual commitment and enforcement. It may be useful to consider the global public interest in the context of ICANN's limited technical coordination role, mission and core values and how it applies specifically to the New gTLD Program.”

Establishing a third Review Committee would not be practical given that community resources are already dedicated to the CCT-RT and PDP WG.

Finally, the Board discussed the possibility of forwarding the ALAC and GAC concerns to the CCT-RT and PDP WG with a recommendation that these groups review these concerns when considering the PICs/Safeguard issues in their deliberations.

The Way Forward

To explore these three options further, on 18 March 2016, ICANN Board Vice Chair Cherine Chalaby hosted a telephone conference with Alan Greenberg, ALAC chair, Thomas Schneider, GAC chair and James Bladel, GNSO chair, among others. The summary of the call will be posted to the ICANN website soon. There was consensus on the call that to seek modifications of the Safeguard PICs in the new gTLD Registry Agreements was not a viable option. There was also consensus that in light of the ongoing work in the CCT-RT and GNSO WG PDP that establishing a third Review Committee would not be a wise expenditure of scarce volunteer community resources.

The ICANN Board, therefore, recommends that you review the concerns of the ALAC and GAC as part of the ongoing work of the CCT-RT and the GNSO PDP WG.

The ALAC and GAC chairs propose that the ALAC and GAC representatives are available to further elaborate on their concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Crocker".

Dr. Stephen Crocker
Chair, ICANN Board of Directors

cc: Alan Greenberg, Chair, ALAC
Thomas Schneider, Chair, GAC
James Bladel, Chair, GNSO