



The Internet Corporation for Assigned Names and Numbers

19 December 2014

Alan Greenberg
Chair, At-Large Advisory Committee (ALAC)

Re: ALAC Statement on Public Interest Commitments

Dear Mr. Greenberg:

The ICANN Board New gTLD Program Committee (NGPC) met on 11 December 2014 and continued its discussions regarding the [ALAC Statement on Public Interest Commitments](#) issued on 16 October 2014. Additionally, the NGPC considered the ALAC's [follow-up statement](#) issued on 19 November 2014. The NGPC appreciates the ALAC's willingness to take initiative on the issue as well as the important work undertaken by the ALAC to study and analyze the Public Interest Commitments (PICs).

The NGPC acknowledges the serious concerns expressed by the ALAC, the GAC and other parts of the ICANN community about the PICs in the New gTLD Registry Agreements, which include concerns about their enforcement. After careful consideration of the ALAC Statements, the NGPC determined that it would engage immediately with the ALAC to better understand its concerns and to explore potential solutions. At this stage, the NGPC is not supportive of the ALAC's request to freeze the strings identified by the GAC as requiring enhanced safeguards (Category 1, Safeguards 1-8).

As part of its engagement with the ALAC, the NGPC wishes to discuss potential solutions to the expressed concerns including the possibility of a consensus based policy development process on the PICs.

The NGPC thus invites a small sub-group of the ALAC to meet with a small subgroup of the NGPC as soon as possible. The NGPC also looks forward to meeting with the ALAC during ICANN 52 in Singapore to continue the discussions. To better inform the proposed NGPC/ALAC subgroup discussion, the NGPC includes in the Annex of this letter the reasoning for its decision.

The NGPC values the important role that the ALAC plays in ICANN's multi-stakeholder process and looks forward to productive discussions on this issue.

Sincerely,

Cherine Chalaby, Chair
ICANN Board New gTLD Program Committee

ANNEX

The following information is provided as context and rationale for the NGPC's decision regarding the ALAC Statement on Public Interest Commitments:

- (1) The NGPC consulted with the ICANN community regarding the use of Public Interest Commitments (PICs) to implement the safeguards recommended by the GAC.*

Before implementing the GAC's advice in the Beijing Communiqué regarding safeguards, on 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings. The Beijing Communiqué generated significant interest from the community and resulted in many comments, which the NGPC considered in formulating its response to the GAC advice. On 5 February 2014, the NGPC adopted a framework to implement the GAC's advice, taking into account the community comments. Overall, the NGPC adapted the language of the Category 1 safeguards as appropriate to meet the spirit and intent of the GAC's Category 1 Safeguard Advice in a manner that allowed the safeguards to be implemented as public interest commitments in Specification 11 of the New gTLD Registry Agreement. (<https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf>)

- (2) The PICs in New gTLD Registry Agreements are not arbitrary or optional – PICs are binding and enforceable contractual commitments in the Registry Agreement.*

Commitments made through PICs submitted by applicants, as well as PICs developed by the NGPC to address and implement the GAC's Category 1 and 2 safeguard advice from the Beijing Communiqué are incorporated into Specification 11 of the Registry Agreement. The PICs are binding contractual terms of the Registry Agreement, subject to enforcement through the PICDRP and ICANN Contractual Compliance.

References to "voluntary PICs" simply mean that the language in the PIC was voluntarily drafted by each registry operator (i.e. not ICANN). These are included as a binding and enforceable contractual provision in its Registry Agreement. The reference to "voluntary PICs" does not mean that the registry operator has the ability to decide arbitrarily not to comply with the PICs, nor does it mean that it is optional for a registry operator to comply with its PICs. Once the commitments are included in the Registry Agreement, they become binding contractual terms.

Moreover, every New gTLD Registry Agreement includes a set of PICs developed by the NGPC to implement safeguard advice issued by the GAC on the New gTLD Program. These PICs are standardized language (i.e. drafted by ICANN), and are incorporated into Specification 11 of every New gTLD Registry Agreement. Like the PICs voluntarily submitted and drafted by applicants, the standardized PICs developed by the NGPC also are binding and enforceable contractual provisions, and the registry operator may not arbitrarily decide to ignore these contractual requirements.

- (3) The concept of PICs in New gTLD Registry Agreements was the subject of multiple public comment periods where community input was duly taken into account by the NGPC.*

Before implementing the GAC's advice on the safeguards, on 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings. Additionally, the NGPC gathered input from the community at various ICANN meetings and the NGPC deliberated for several months on the appropriate method to implement.

Before taking each action to address the safeguards, the NGPC factored the community comments into its rationale during its deliberations on an appropriate path forward. (For an example, see <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a.rationale>).

- (4) *The development of the Public Interest Commitment Dispute Resolution Process (PICDRP) was informed by multiple public comment periods with input from the community. Material changes to the Public Interest Commitment Dispute Resolution Process (PICDRP) would be subject to the amendment procedures established in the New gTLD Registry Agreement if not adopted as part of a GNSO Consensus Policy.*

The final version of the PICDRP resulted from multiple public comments periods where the community was able to provide feedback into how the PICDRP should work. (See <https://www.icann.org/public-comments/draft-picdrp-2013-10-02-en> and <https://www.icann.org/en/system/files/files/report-comments-draft-picdrp-14may13-en.pdf>). Material changes to the PICDRP would be subject to the amendment procedure in Section 7.6 of the [Registry Agreement](#). Additionally, changes to the PICDRP may be binding on all Registry Operators to the extent that the changes are developed and adopted in accordance with the ICANN Bylaws provisions on Consensus Policies and relate to the subject matter set forth in Specification 1 of the Registry Agreement.

- (5) *The NGPC recently provided [input](#) to the GNSO to identify areas that may be appropriate for discussion for an evaluation of the current gTLD application round and for possible adjustments for subsequent application procedures*

In the NGPC input to the GNSO, the NGPC identified the application of a “public interest” analysis within the New gTLD Program. This analysis, and potential policy development, could include issues such as those identified in GAC advice on safeguards, ALAC concerns on safeguards, the development of PICs, and associated questions of contractual commitment and enforcement.

- (6) *The NGPC considered the concept of Policy Advisory Boards, and after careful consideration determined that such a proposal would be more appropriately considered through the bottom-up policy developed process.*

In November 2013, the NGPC considered the Policy Advisory Board model, which the ALAC published for public comments in March 2014. (<https://www.icann.org/public-comments/pab-new-gtld-strings-2014-03-21-en>). The NGPC reviewed the analysis and summary provided by the ALAC and determined that such a proposal would be more appropriately considered through the bottom-up policy development process.