

Proposal for the Use of Mandatory Policy Advisory Boards for Regulated Industry Sector and Consumer-Trust-Sensitive New gTLD Strings

Purpose/Brief

A collaboration between diverse members of the ICANN community proposes the use of mandatory Policy Advisory Boards (PABs) for a subset of new Generic Top-Level Domains (gTLDs) which are targeted at regulated industry sectors and other consumer-trust-sensitive fields. These ICANN community members assert that PABs are able to address what are perceived to be substantial public-interest deficiencies in the current implementation of ICANN's gTLD expansion program.

The purpose of this public comment period is to obtain feedback and collect broader community input into the further development of the PAB model, and to which TLD strings it may best apply. After the public comment period is complete, the ALAC will analyse the results, and – in collaboration with other community members – determine subsequent action.

Background

In September 2013, Ron Andruff [submitted a proposal to the ICANN Board's New gTLD Policy Committee](#) suggesting the concept of Policy Advisory Boards (PABs) as a way to address what are perceived to be substantial public-interest deficiencies in the new gTLD expansion program. The ALAC was asked for comments at the time, and at the Buenos Aires ICANN meeting, two members of the Business Community acting in their individual capacity – Ron Andruff and Marilyn Cade – met with Olivier Crepin-Leblond, Alan Greenberg and Evan Leibovitch from ALAC to further discuss the PAB model.

On January 27, 2014, the five individuals listed above [sent a letter to the ICANN New gTLD Program Committee](#) requesting it hold a Public Comment Period regarding the use of PABs to address these concerns. Responses dated [February 4](#) from ICANN staff and subsequently [February 20](#) from the ICANN Board have rejected this proposal, prompting the ALAC to consider holding its own Public Comment Process.

The matter was raised and discussed within the At-Large new gTLD Working Group, in which multiple participants expressed support for the PAB proposal. [At its meeting of February 14, 2014](#), the At-Large Leadership Team assigned Vice-Chair Evan Leibovitch to prepare a proposal for an ALAC-initiated Public Comment Period, on the issue of PABs, to be submitted to the full ALAC for approval. On [February 25, 2014](#), the ALAC approved a [motion](#) to submit the document for public Comment. On March 17, 2014, a final edited version was sent to At-Large staff to post for Public Comment

Rationale

While it is agreed amongst the proposers that ICANN itself is not – and should not be – involved in the content regulation of domains within these new TLDs, the original design of the program did not allow for any special external oversight over TLDs related to regulated industries or otherwise using trust-sensitive strings. In response to requests from the GAC and other stakeholders (but without consulting them on the response), ICANN instituted a mechanism called Public Interest Commitments (PICs). While the PIC program superficially provided a mechanism that enabled TLD applicants to demonstrate a set of self-imposed rules intended to satisfy the GAC advice, upon further review PICs are revealed to provide little or no actual public interest benefit:

- They can include wording that allows the TLD applicant/Registry to arbitrarily change or even revoke all of its PICs. At any time, once a Registry's PIC becomes problematic it has the option to change or even revoke its PICs at whim. For example, an applicant has published the following statement at the end of its PIC: “These PICs shall be subject to review by Registry Operator starting in January 2016, and Registry Operator, in its sole discretion, may elect at that time to modify or discontinue any of the PICs herein in the case of a substantial and compelling business need”. This type of unilateral invalidation of PICs has met no opposition from within ICANN's processes.
- Even for PICs that are allowed to remain in force, complaints that they have been breached can only be made by parties that can demonstrate direct harm as a result. (That eliminates governments, consumer groups, whistle-blowers, news media or other third parties). Reporting an abrogated PIC requires a lengthy, expensive, adversarial process that appears biased against the complainant, subcontracted by ICANN to a Dispute Resolution Provider with no required grounding in the specifics of the relevant trust, regulatory or other special circumstances related to the string. In current proceedings, subcontracted dispute resolution processes have ruled against the At-Large Community, challenging even its ability to speak as a “recognized community” during its objections to certain high-trust TLD applications.
- In the unlikely event that a PIC is not arbitrarily changed and a complaint against it succeeds, the remedies offered do not necessarily help the complainant. The TLD operator's contract may be ultimately revoked but there is no accommodation for financial redress or an obligation to revoke the offending sub-domains.

To many stakeholders – especially those stakeholders who provide and use services and products over the Internet – this is not a sufficient infrastructure on which to base trust in the new gTLDs, particularly those related to regulated or sensitive industries. This dissatisfaction was [echoed by the GAC in its Beijing Communiqué](#). In response, a [February 10 letter from the ICANN Board to the GAC](#) claims to address its concerns, however in a manner that uses PICs. The PAB proponents find this response to be completely unsatisfactory and against the public interest.

Outside the world of domain names, most countries have found good reason to regulate professional designations in medicine, engineering, and other fields that are sensitive to

– and depend upon – maintaining high levels of public trust. The Internet Domain Name System cannot be immune from this societal need. The PAB model addresses this need using an open, multi-stakeholder process that maintains heightened public trust while reducing need for legislative action. For ICANN to fail to adequately provide for such protection of public trust is considered to be, to many in the community, an act of negligence. The PIC model, as currently designed and as a standalone model, is wholly inadequate to this function.

The ALAC joins other members of the ICANN community in supporting the Policy Advisory Board model as described below – used for regulated fields and trust-sensitive strings (such the strings listed as "Category 1" in the GAC Communiqué) – as an effective, implementable and necessary solution to many of the trust issues that have been raised related to new gTLDs.

We are asking for comments from the wider ICANN community.

Policy Advisory Board Model Proposal

From the document: Regulated Industry gTLD GAC Safeguards Implementation via a Policy Advisory Board Model, 24 September 2013, with some minor text added since.

Introduction:

This outline provides a mechanism by which the GAC safeguard advice for protecting the public interest can be implemented so that, as Internet users interact with domains at new “sensitive string” gTLDs associated with regulated industries and professions, they can be assured that the registrants are bona fide entities engaged in legitimate activities. The safeguards can be fully developed and implemented through the establishment of balanced and inclusive Policy Advisory Boards that can develop appropriate registrant eligibility criteria and registry policies -- that can then in turn be incorporated within enforceable Public Interest Commitments Specifications (PICS) for the registry.

Guiding Principles

- Limit the primary role of regulated industry gTLD operators to technical management of the gTLD and implementation of policies established by the representative and inclusive Policy Advisory Board; operator shall not have a seat or vote on the Policy Advisory Board
- Ensure that registrant eligibility policies are inclusive, transparent, pro-competitive and non-discriminatory and serve the affected community and the general public, particularly Internet users of domain registrant services
- Recognize that national laws, especially those relating to cross-border e-commerce, have not kept pace with the explosive growth of the commercial Internet over the past 15 years, and that therefore additional measures are

required to ensure that standard and acceptable practices guide new gTLD policies and protect the public interest

- gTLD manager shall be responsible for authenticating registrants in conformance with Policy Advisory Board established eligibility criteria
- Registrants shall be responsible for adhering to the policies established for the particular gTLD
- Ensure adoption of a standard and accepted model capable of custom configuration for each sensitive string/regulated industry or profession gTLD via Advisory Board determinations that protect the rights and specify the responsibilities for gTLD applicants and registrants and thereby assure rights equivalency and elimination of undue advantage
- All costs associated with establishing and operating a gTLD Policy Advisory Board shall be borne by the new gTLD applicant

Function

- To ensure that the protection and promotion of the public interest is furthered via the operation of a regulated industry/profession gTLD
- To ensure that new gTLD applicants for regulated industry gTLDs do not operate the registry in a manner that is antithetical to the overriding goals of competition and innovation
- To ensure that the Policy Advisory Board is inclusive of all affected parties and reflects global diversity, participation in the Board should be open to all parties with a demonstrated connection to the industry associated with the gTLD string. Such parties include regulators, wholesale and retail industry participants as well as their representative industry trade organizations, and consumer and public interest groups

Representation

- All regulated industry gTLDs shall establish an Policy Advisory Board to determine the policies of the registry, including registrant eligibility policies
- Such Policy Advisory Board shall be made up of 12-18 representative members from the broad spectrum of affected parties, including, but not limited to, users, suppliers, distributors, regulators, and consumers of registrant services reflective of global diversity in its overall composition. Stakeholder groups involved could include (non-exhaustive list):
 - Accrediting organizations: Organizations that accredit practitioners with proven track record of responsible selling of product/service online across the global span of the internet.
 - Experts & Advocates: Experts and policy advocates with documented knowledge of the trustworthy delivery of product/service.
 - Safety Coalitions & Organizations: Coalitions and other recognized organizations of stakeholders in favor of protecting access to safe online regulated products/services.

- Internet Freedom Experts/Organizations: Independent watchdogs of freedom of use of the Internet.
 - Global Internet Commerce Experts/Organizations: Representation from individuals/groups from the relevant regulated industry/profession who can bring experience of best practices in online commerce in this global environment.
 - Consumers and Benefitting Organizations: consumers and organizations that rely on the products/services and have developed expertise in safe processes that enable them to source products/services from other parts of the world.
 - Constituent groups: those that recognize the need for the product/service to be delivered online for accessibility to affected constituents
 - Global enforcement groups: Internationally recognized authorities with global perspective of the need for the product/service and associated regulation and enforcement.
 - Human Rights expert: with particular knowledge of the issues pertaining to access to the products/services.
 - National enforcement groups: with first-hand experience dealing with complexities/benefits of distributing product/service within and across borders. Purpose would be to assist with the development of international protocols
 - Operators of the top-level-domain registry and their service providers
- Policy Advisory Board applicants who are not accepted due to numerical limitations shall have an opportunity to rotate on to the Policy Advisory Board as others rotate off at appropriate intervals, however all interested parties must be regularly apprised of Board activities and decisions with formal avenues for providing input and feedback.

Appeals Process

- Should any affected party feel that they are not adequately represented on the Policy Advisory Board, or feel that they are unduly rejected or barred from becoming a part of the Policy Advisory Board, or that the Policy Advisory Board is not meeting its obligations to the affected parties community, they shall have the right to take their grievance to neutral third party that will act as an Ombudsman to resolve the matter
- Should any potential applicant for the new gTLD be rejected or barred from registering a new gTLD, when they believe that they meet the applicable criteria, or that such criteria is unduly discriminatory, they shall have the right to take their grievance to a neutral third party that will act as an Ombudsman to resolve the matter.
- Any grievance brought before an Ombudsman shall be paid for by the new gTLD applicant and shall be free of costs for the aggrieved party