



## The Internet Corporation for Assigned Names and Numbers

8 February 2013

Heather Dryden  
Chair, Governmental Advisory Committee

Re: GAC Communiqué from ICANN 45 Meeting in Toronto, Canada – Enforcing Applicant Commitments

Dear Heather,

On behalf of the Board, I write to follow up on our commitment in our letter of 16 January 2013, to provide a report on our efforts to address one item of advice contained in the GAC Toronto Communiqué.

### Background

In its Toronto Communiqué, the GAC requested a written briefing from the ICANN Board on “how ICANN will ensure that any commitments made by [New gTLD] applicants, in their applications or as a result of any subsequent changes, will be overseen and enforced by ICANN.” The GAC advised the Board that, “it is necessary for all of these statements of commitment and objectives to be transformed into binding contractual commitments, subject to compliance oversight by ICANN.”

In our letter of 16 January 2013, we indicated that there was no existing mechanism in the New gTLD program to address the GAC’s concerns. To respond to the GAC’s advice and the concerns raised by others in the community, staff was asked to develop possible mechanisms to transform applicant commitments (either as set forth within their applications or arising from early warning discussions between applicants and governments) into contractually binding and enforceable obligations. The Board considered the staff proposals at the Board Workshop in Los Angeles on 31 January 2013 – 2 February 2013.

I am happy to report that ICANN has undertaken specific steps to address this item of GAC advice. On 1 February 2013, the New gTLD Program Committee adopted a resolution directing ICANN’s President and CEO to seek public comment on a proposed “Public Interest Commitments” specification (“PIC Spec”) to be added to each new gTLD registry agreement.

(<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-01feb13-en.htm>.)

On 5 February 2013, ICANN opened a public comment forum seeking comment on a revised draft of the New gTLD Registry Agreement that includes the new PIC Spec. (<http://www.icann.org/en/news/public-comment/base-agreement-05feb13-en.htm>.)

### “Public Interest Commitments”

The proposed PIC Spec is a mechanism by which applicants may incorporate additional commitments into their Registry Agreements. As proposed, the PIC Spec has one mandatory provision and two optional provisions. It would require the Registry Operator to use only those registrars that sign onto the 2013 Registrar Accreditation Agreement. It would also allow the Registry Operator to contractually agree to follow the commitments made in certain sections of its application for the gTLD (the specific sections to be selected by the Registry Operator). Finally, it would allow the Registry Operator to identify specific additional commitments – which could be even broader than those undertaken in the application – that it will follow in the operation of the registry.

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Each PIC Spec completed by an applicant would be posted for public review in advance of the Beijing meeting. Once finalized, the relevant PIC Spec would be attached to the relevant Registry Agreement. The Registry Agreement would not be signed until the PIC Spec is completed.

#### Enforcement

The commitment to use only Registrars that have signed the new RAA will be enforceable through the regular contractual compliance process within ICANN. The additional commitments would primarily be enforceable by third parties through a revised Post-Delegation Dispute Resolution Process.

Once the Registry Agreement is in operation, third parties who suffer actual harm as a result of the Registry Operator's alleged noncompliance with the additional commitments or restrictions contained in the PIC Spec would have standing to proceed to dispute resolution. This dispute resolution procedure would be made part of the existing Registry Restriction Post Delegation Dispute Resolution Procedure (PDDRP) and Trademark PDDRP <<http://newgtlds.icann.org/en/applicants/agb>>.

First, there would be a mandatory conciliation phase during which the third party and the Registry Operator are expected to try to informally resolve the issue. If the issue cannot be resolved, the third party complainant will then proceed to a Public Interest Commitment Dispute Resolution Procedure (PIC-DRP) operated by a dispute resolution provider.

If the provider issues findings and recommendations that the Registry Operator is violating the PIC Spec, the matter would then proceed to ICANN's Contractual Compliance for enforcement.

#### Timeframe

As noted above, the PIC Spec and other proposed revisions to the Registry Agreement were posted for public comment on 5 February 2013. Applicants were also invited to optionally designate which parts of their application and which additional promises they will agree to have included in their registry agreement. Applicants' PICs are due on 5 March 2013, and will be publicly posted for public and GAC review.

I hope that you find the above responsive to the GAC's request for a written briefing on enforcing applicant commitments and that it addresses the GAC's advice on this subject.

Best regards,

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

Stephen D. Crocker,  
Chair, ICANN Board