

Top Level Domain Holdings and Minds + Machines wish to lend our strong support to the comments filed by the Registry Stakeholders Group and to those of the New TLD Applicants Group (NTAG) expressing our strong concern at the proposed changes to the registry agreement. Those groups' comments set out in thorough detail the ways in which these proposed changes contradict and are in violation of community-wide compromises and ICANN's own procedures. Their arguments are cogent, well-reasoned and supported throughout by solid evidence.

But their measured tone cannot convey the astonishment and bitter dismay of many new gTLD applicants over ICANN's eagerness to materially change the rules of the new gTLD program -- by giving themselves the power to unilaterally amend the contract.

An observer of even modest perception might ask why, if ICANN can change the contract to say whatever they want it to say, whenever they it said, do we need a contract at all?

Instead of consulting with or even informing applicants that the basic contract that governs their entire registry was about to change, ICANN just changed it, only allowing comments after the fact. And not just a change, but a change that makes a mockery of everything that a contract signifies, namely the free choice of two parties to do business together. (A claim that no-one is obliged to sign the contract is disingenuous – indentured servitude was also a “contract” and is now rightly illegal.) ICANN’s behavior with regard to the proposed changes are a telling clue about how it will conduct itself when it decides that further changes are required.

In public, ICANN does not even acknowledge the changes as a major topic. Instead, it announces some new success, such as its plan to build new offices around the world, or the news that the Trademark Clearing House will soon be open for business (at an unspecified date). The cognitive dissonance caused by a wide difference between reality and the party line is a hallmark of bureaucratic authoritarianism, and ICANN is making a fair bid to join that club with this renewed assault on the spirit and letter of bottom-up, consensual, multi-stakeholder policy development and decision-making.

Even if ICANN manages to push through this cynical restructuring of the new gTLD program, it is not tenable in the long term. It will remain a source of constant friction, and ICANN will rightly be derided whenever it refers to the Guidebook, which will be treated as a dead letter.

In an another irony, it may fall on the Government Advisory Committee to save ICANN from making an egregious mistake by reminding it of the GAC Principles on new gTLDs (emphases mine):

Delegation of new gTLDs:

*2.5 The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency, and non-discrimination. **All applicants for a new***

gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to applicants prior to the initiation of the process. Normally, therefore, no subsequent selection criteria should be used in the selection process.

and also:

2.13 ICANN should ensure that any material changes to new gTLD operations, policies and contract obligations be made in an open and transparent manner allowing for adequate public comment.

See:

https://gacweb.icann.org/download/attachments/1540189/GAC_28_Lisbon_Communique.pdf?version=1&modificationDate=1312228620000, Annex B

We can only hope that the GAC lives up to its responsibilities to protect the public interest and to the principles that it promulgated five years ago and which it has stuck to ever since. If not, ICANN will have made a mockery of its founding principles.

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