



14 November 2013

## **Re: Revised Public Interest Commitments Dispute Resolution Procedure**

We welcome the opportunity to comment on the Revised PICDRP, which has seen important improvements through the joint work of ICANN and NTAG PICDRP working group.

The revised version addresses a number of issues raised around the 15 March version, and overall provides a more reasonable process. There are however, a small number of important concerns outstanding.

### **Standard of Harm**

As it currently stands, any person who believes they have been harmed by a Registry Operator's act or omission that is inconsistent with its Public Interest Commitment (PIC) may report such alleged non-compliance simply by alleging they have been harmed. Although it is important for ICANN to provide an avenue to raise allegations of Registry Operator PIC non-compliance conduct, it is also important for ICANN to screen out and reject frivolous complaints. In contrast however, the present PICDRP does not require any particular harm standard.

Allegations of PIC non-compliance should require a demonstration of "material harm", and importantly that ICANN should conduct its Preliminary Review on this basis, in order to discourage frivolous complaints.

### **Substantive Review?**

Section 2.3 references "...ICANN substantive review, as set forth in Section 3.2". This term however is not defined (nor does it appear in Section 3.2).

In Section 3.3, the circumstances under which ICANN would undertake a compliance investigation or invoke the Standing Panel stand in need of clarification. The "Threshold Review Panel" under the Trademark PDDRP serves as a useful benchmark, in particular Section 9.2.3.

### **Repeat Offenders**

In particular due to the low threshold reporting requirements, the severity and number of complaints should be weighed against the success of any ICANN Compliance Review or Standing Panel decision.

### **Objection by the Registry Operator**

In the current PICDRP, ICANN appears to be taking a decision to foreclose parties' options to resort to a court of competent jurisdiction in relation to consideration of any PICDRP determination.

Such ICANN decision would e.g., contradict the precedent established under the UDRP whereby the parties are provided recourse to a court of competent jurisdiction – it is recalled that retaining this court option was an intentional UDRP design element.

Thank you for your consideration.

Yours sincerely,

/s/

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