GNSO gTLD Registries Stakeholder Group Statement

Issue: Revised PICDRP

Date: 31 October 2013

Public Comment URL:

http://www.icann.org/en/news/public-comment/draft-picdrp-02oct13-en.htm

This statement on the issue noted above is submitted on behalf of the gTLD Registries Stakeholder Group (RySG). The statement that follows represents a consensus position of the RySG as further detailed at the end of the document. The RySG statement was arrived at through a combination of RySG email list discussion and RySG meetings (including teleconference meetings).

The RySG wants to first of all join the NTAG in thanking "ICANN for listening to feedback from new gTLD applicants and the community at large regarding the Public Interest Commitment Dispute Resolution Process (PIC-DRP)" and "subsequently (incorporating) many of the Working Group's recommendations into this revised PIC-DRP".

The RySG would also like to propose a few additional changes to the procedure that we believe would improve it in ways that are consistent with other dispute processes in the new gTLD program and in registry agreements. We are willing to discuss these with you if that would be helpful.

Section B comments

1. Section 1.1 permits "any person or entity that believes they have been harmed" to file a PIC report. Thus, with an eye on the PIC SPEC to operate the TLD in a "transparent manner consistent with general principals of openness and non-discrimination" a registry operator will be subject to an unlimited array of actors who can file such reports under the PICDRP. We have raised this "standing" problem in prior discussions with ICANN as we believe the potential for unintended adverse consequences is high. Both ICANN and the registry operator (RO) might be subject to continuous nuisance complaints from registrants. Take for example the hypothetical registrant who is denied registration for a reason that the registrant does not understand. Such a registrant will be empowered by this PICDRP to file a complaint with ICANN alleging that he or she was "harmed" by the RO's registration polices because such policies were not transparent and were not applied in a non-discriminatory manner. Such complaints in the past would be dealt with by the registrar, but now will consume resources from ICANN and the RO. We believe this "standing" problem can be partially mitigated by raising the threshold for the alleged

harm to a materiality standard. Thus, the reporter must allege "material" harm. In addition, we suggest that a reporter be required to pay a nominal filing fee (e.g., 100 USD) that is refundable if the reporter prevails. This would be consistent with the procedures for objections in the new gTLD process where objectors had to pay a refundable filing fee. The main difference in this case is that the fee would not be sufficient to cover the costs of the dispute resolution process as happens with new gTLD objections, but it would hopefully be enough to discourage frivolous reports while at the same time being small enough for individuals to afford. A waiver could be provided for organizations like the GAC and the ALAC.

2. Section 1.1 states that anyone can report operations of the TLD that are "inconsistent" with the PIC SPECS. The standard should not be "inconsistency" but rather "non-compliance." Thus, Section 1.1 should be changed in this regard.

3. Section 1.2: "PICPRS" does not appear to be defined. What is a "PICPRS?"

4. Section 2. The title of this section is "Initial Review of the PIC Report and Conference." There is however nothing in Section 2 that describes what is done by ICANN during this "initial review." It doesn't appear that there is an "initial review" separate from the "preliminary review" in Section 1 and the "compliance review" in Section 3. Thus, the section heading should be changed so that it is clear there is no "initial review."

5. Section 2.1-2.5; 3.1. There are inconsistencies in the language of these sections about the consequence to the reporter for refusing to appear at a conference.

Compare the following:

- Section 2.2: "The Reporter's failure to participate in the requested conference shall be grounds for ICANN's closure of the PIC report."
- Section 2.5: "If the Reporter did not participate in the requested conference, ICANN will close the ticket and notify both the reporter and the Registry Operator."
- Section 3.1: ICANN shall not proceed with an investigation of a PIC report if the Reporter failed to participate in a requested conference without demonstrable cause."

We recommend that these sections be harmonized so that it is clear that the failure to attend a conference will result in the closure of the report.

6. Section 4. We believe that the Standing Panel should be composed of people with the skills to perform the task required from the panel. Thus, the panel should consist of contract compliance experts. This would be consistent with the makeup of Registry Services Evaluation Panels (RSEP) in registry agreements where qualification criteria are defined.

7. Section 5.2 (a)-(b): The standard for determining whether an RO is a repeat offender is unacceptable in that it is based in part on the mere seriousness and quantity of prior allegations. We recognize that only those complaints that pass ICANN's preliminary review will be counted but this does not change the fact that completely false allegations can be used to

determine whether a RO is a Repeat Offender. Consider this hypothetical: a reporter files a report that an RO is using Whois data in a manner that violates the privacy of registrants in a European country. The report on its face passes ICANN's preliminary review because it "sets forth the grounds of the claim and included appropriate documentation." Upon further review, ICANN determines that the report is false and that the RO is not using Whois data as alleged. The report is closed. Under the Section 5 standards, this "serious" allegation is counted against the RO in the determination as to whether the RO is a repeat offender.

8. Section 5.4. ICANN should define the financial sanctions mentioned in this section. Also, the PICDRP should make it clear that such financial sanctions are subject to the dispute procedures in the RA.

RySG Level of Support

1. **Level of Support of Active Members**: [Supermajority]
   1.1. # of Members in Favor: 12
   1.2. # of Members Opposed: 1
   1.3. # of Members that Abstained: 1
   1.4. # of Members that did not vote: 3

2. **Minority Position**(s):

General RySG Information

- Total # of eligible RySG Members[1]: 19
- Total # of voting RySG Members: 17
- Total # of Active Voting RySG Members[2]: 17

[1] All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the "effective date" set forth in the operator's or sponsor's agreement (RySG Charter, Article II, RySG Membership, Sec. A). The RySG Charter can be found at http://www.gtldregistries.org/sites/gtldregistries.org/files/Charter_for_RySG_6_July_2011_FINAL.pdf

[2] Per the RySG Charter, Article II, RySG Membership, Sec.D: Members shall be classified as "Active" or "Inactive". An active member must meet eligibility requirements, must be current on dues, and must be a regular participant in RySG activities. A member shall be classified as Active unless it is classified as Inactive pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in three consecutively scheduled RySG meetings or voting processes or both. An Inactive member shall continue to have membership rights and duties except being counted as present or absent in the determination of a quorum. An Inactive member immediately resumes Active status at any time by participating in a RySG meeting or by voting.

- Minimum requirement for supermajority of Active Voting Members: 12
- Minimum requirement for majority of Active Members: 9
- # of Members that participated in this process: 17
- Names of Members that participated in this process:

    1. Afilias
    2. Charleston Road Registry (non-voting)
    3. CORE (non-voting)
    4. Dot Kiwi
    5. Donuts
    6. DotAsia Organisation
    7. DotCooperation
    8. Employ Media
    9. Fundació puntCAT
    10. ICM Registry LLC
    11. International Domain Registry
    12. Museum Domain Management Association – MuseDoma
    13. NeuStar
    14. Public Interest Registry (PIR)
    15. Societe Internationale de Telecommunication Aeronautiques – SITA
    16. Telnic
    17. Tralliance Registry Management Company (TRMC)
    18. Universal Postal Union (UPU)
    19. VeriSign

- Names & email addresses for points of contact
    - Chair: Keith Drazek, kdrazek@verisign.com
    - Alternate Chair: Paul Diaz, pdiaz@pir.org
    - Secretariat: Cherie Stubbs, Cherstubbs@aol.com
    - RySG representative for this statement: Chuck Gomes (cgomes@verisign.com)