

**Advice requested by ICANN Board
regarding definitions, measures, and targets
for competition, consumer trust and consumer choice**

Prepared by the Consumer Trust Working Group,
for consideration of ALAC, ccNSO, and GNSO

Background

This advice was drafted in response to an ICANN board resolution asking for definitions and metrics that will be used to evaluate the gTLD expansion program in a post-launch review required under the Affirmation of Commitments.

ICANN and the US National Telecommunications and Information Administration (NTIA) signed the Affirmation of Commitments (AOC) on 30-Sep-2009. Article 3.c of the AOC is a commitment to *“promote competition, consumer trust, and consumer choice in the DNS marketplace”*.

Article 9.3 expanded on this and committed ICANN to *“adequately address” “competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection” “prior to implementation”*.

Article 9.3 also committed ICANN to perform a review one year after the first new gTLD was delegated, to *“examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice”*.

Community discussions during the AOC review of Accountability and Transparency included calls for *metrics* – objective measures that could be used to assess ICANN’s performance on key aspects of accountability and transparency. Moreover, it was argued that such metrics would help ICANN management to focus its efforts in ways that would measurably improve performance. In that vein, several community members encouraged ICANN’s board to establish metrics for other AOC reviews and commitments, including public interest, consumer trust, competition, and consumer choice.

Since the AOC did not define the terms or measures of competition, consumer trust and consumer choice, the ICANN Board resolved in December 2010 to request advice from the ALAC, GAC, GNSO and ccNSO on establishing the definition, measures, and three year targets for those measures, for competition, consumer trust and consumer. The resolution reads:

Whereas, ICANN has committed to promoting competition, consumer trust and consumer choice in the Affirmation of Commitments

Whereas, if and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN has committed to organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice.

Resolved, the ICANN Board requests advice from the ALAC, GAC, GNSO and ccNSO on establishing the definition, measures, and three year targets for those measures, for competition, consumer trust and consumer choice in the context of the domain name system, such advice to be provided for discussion at the ICANN International Public meeting in San Francisco from 13-18 March 2011.

In response to that Board resolution, community members in the GNSO, ccNSO and ALAC began to organize a joint working group at the Singapore meeting in Jun-2011. The Working Group invited the GAC to participate and welcomes GAC response to this draft advice.

The Consumer Trust, Choice, and Competition Working Group was chartered first by the GNSO Council on [date]. It was intended that the Charter could also be formally endorsed by ALAC and ccNSO, but their endorsement was not a requirement for participation in the Working Group.

In drafting its charter, the Working Group understood that its work was to produce advice for consideration by GNSO, ccNSO, GAC and ALAC, each of whom was asked for advice as part of the Board resolution discussed above. Each AC/SO may act independently on the Working Group's draft advice, and may endorse all, part, or none of the draft advice as it decides how to respond to the Board resolution.

The Working Group understands that the purpose of this advice is to provide ICANN's board with guidance on how to manage and measure the effectiveness of the gTLD expansion program. It is anticipated that definitions, measures, and targets could be established and added as part of ICANN's management objectives prior to the launch of new gTLDs.

It is hoped that these definitions, measures, and targets will be useful to the AOC review team for new gTLDs that is required one year after new gTLDs are launched. However, the Working Group understands that this advice cannot pre-determine or otherwise limit the scope of the future AOC review team.

Community representation on the Working Group

The Working Group on Consumer Trust, Choice, and Competition was formed to respond to an ICANN Board resolution regarding a review of the new gTLD program, as required under the Affirmation of Commitments. Names of Working Group participants and ICANN staff are listed in Appendix A.

Process for developing this Draft Advice

The Working Group began regular meetings after the Singapore meeting in June 2011. Working Group members drafted a charter for consideration by any and all community groups from whom the board solicited advice. The Charter was approved by the GNSO on [date] and is available at [link]

In addition to its bi-weekly conference calls, the working group held public discussion sessions at the Singapore and Dakar meetings, including presentations of preliminary results. In Dakar, the Working Group gave briefings to GNSO Council during its weekend sessions.

This initial draft of advice is being posted for public comment on [date]. The Working Group will assess comments received and expects to offer draft advice to ALAC, ccNSO, GAC, and GNSO before ICANN's June 2012 meeting.

Advice on Definitions

As its initial task, the Working Group considered definitions for Consumer Trust, Competition, and Consumer Choice in the context of the DNS and ICANN's gTLD expansion program. As a threshold matter, the working group established this definition of *consumer*, which is critical to two of the three defined terms:

Consumer: Actual and Potential Internet Users, and Registrants.

This definition of *Consumer* is designed to focus on the interests of global Internet users and registrants -- not on the interests of registrars, registries, resellers, or others in the domain name business. Such a focus is in keeping with the commitments and reviews called for on the AOC.

Given that definition of *Consumer*, the working group recommends these definitions for the key terms in the AOC and Board resolution:

Consumer Trust refers to the confidence registrants and users can have in the consistency of name resolution (from registrar to registry), and the degree of confidence among registrants and users that a TLD registry operator is fulfilling its proposed purpose and is complying with ICANN policies and applicable national laws.

Consumer Choice is evident in the range of options available to registrants and users for domain scripts and languages, and for TLDs that offer choices as to the proposed purpose and integrity of their domain name registrants.

Competition is evident in the quantity and diversity of gTLDs, TLD registry operators, and registrars.

Notes on definitions:

Note 1. The Consumer Trust definition has two aspects:

First, Internet users need confidence in the reliability and accuracy of the resolution of domain names they reference in email addresses, apps, and web browsing.

Second, registrants of domain names need confidence that the TLD registry they have selected will actually fulfill its proposed purpose and promises that drove their selection. For example, a bank that invests in moving its registrations to the .bank gTLD wants to be able to trust that .bank will honor its promise to allow only legitimate banks to hold domain names. The registrant will also trust that ICANN will hold the gTLD operator to its promises and policies and any

applicable national laws.

Note 2. Competition is closely related to the idea of consumer choice. In fact, competition and consumer choice can be seen as two parts of the same whole, since both touch providers and consumers of services. All stakeholders have an interest in providing choice and in avoiding monopoly in order to create an open and informed market for all participants.

Note 3. A minority of WG members objected to the inclusion of “national laws” in the definition of Consumer Trust. Advocates of including the term argued that governments and the GAC expect ICANN and its contract parties to respect applicable national laws, citing several of ICANN’s foundational documents:

- *Articles of Incorporation: “The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law”*
- *Applicant Guidebook: “National Law” is cited as potential basis for Government objections, GAC Early Warning, and/or GAC advice*
- *Affirmation of Commitments: “9.3.1 ICANN additionally commits to enforcing its existing policy relating to WHOIS, subject to applicable laws”*
- *Bylaws: regarding ccTLDs: “provided that such policies do not conflict with the law applicable to the ccTLD manager”*

In addition, a set of 2011 working papers from the European Commission also cited the importance of national laws, indicate the political lens through which the new gTLD program will be judged by governments.

Advice on Measures for Defined Terms

The board resolution requests advice on measures for each of the three defined terms. Below are the working group’s recommended measures, including columns indicating ICANN staff assessment of difficulty in obtaining and reporting each measure, along with the source of data.

Several measures call for “relative incidence” of the data, which would divide the raw data by the total number of registrations in each gTLD zone. This is intended to put small or new zones on a comparable basis with experience in larger and more established zones.

Measures of Consumer Trust

For reference, the definition of Consumer Trust is repeated here:

Consumer Trust refers to the confidence registrants and users can have in the consistency of name resolution (from registrar to registry), and the degree of confidence among registrants and users that a TLD registry operator is fulfilling its proposed purpose and is complying with ICANN policies and applicable national laws.

Measure of Consumer Trust	Obtainable	Reportable	Source
% DNS Service Availability (present SLA is 100%)	Easy	Easy	ICANN
% Availability for Registration Data Directory Services (RDDS). (present SLA is 98%)	Easy	Easy	ICANN
% of Service Availability for Extensible Provisioning Protocol (EPP). (present SLA is 98%)	Easy	Easy	ICANN
% Uptime for Registrars	Doubtful	Moderate	Registrar
Survey of perceived consumer trust in DNS, relative to experiences before the gTLD expansion. Survey could include experiences with malware and spam.	Difficult	Moderate	Unknown
Quantity of breach notices issued to Registry operators	Easy	Easy	ICANN
Quantity of breach notices issued to Registrars	Easy	Easy	ICANN
Quantity & relative incidence of UDRP <i>Complaints</i> , before and after expansion	Moderate	Easy	RPM Providers
Quantity & relative incidence of UDRP <i>Decisions</i> , before and after expansion	Moderate	Easy	RPM Providers
Quantity & relative incidence of URS <i>Complaints</i>	Moderate	Easy	RPM Providers
Quantity & relative incidence of URS <i>Decisions</i>	Moderate	Easy	RPM Providers
Quantity of Registry Operator UDRP Violations	Moderate	Easy	RPM Providers
Quantity of Registry Operator URS Violations	Moderate	Easy	RPM Providers
Quantity of Compliance Concerns w/r/t Applicable National Laws	Difficult	Moderate	LEA/GAC
Quantity of Domain Takedowns	Moderate	Moderate	Registry

ALAC members on the Working Group suggested additional measures that seem to fit within the Consumer Trust definition:

SOCIETAL	Confusion induced in Internet users, by introduction of new gTLDs (can be derived from a regular on-line opinion poll)
SPAM	Quantity of spam received by a "honeypot" email address in each new gTLD
FRAUD	- any non-linear rise in fraudulent transactions caused by phishing sites - percentage of detected phishing sites using a new gTLD
RECORDS	Inaccurate, invalid, or suspect WHOIS records in each new gTLD, and as percentage of registrations
TECHNICAL	Measures of the cleanliness of new gTLD zones (incidence of errors in the zone, such as commas instead of dots, erroneous IP addresses, malformed domains, etc.

Measures of Consumer Choice

For reference, the definition of Consumer Choice is repeated here:

Consumer Choice is evident in the range of options available to registrants and users for domain scripts and languages, and for TLDs that offer choices as to the proposed purpose and integrity of their domain name registrants.

Measure of Consumer Choice	Obtainable	Reportable	Source
Transparency of Registrant Offerings	Difficult	Difficult	Unknown
Clarity of Registrant Offerings	Difficult	Difficult	Unknown
Quantity and relative incidence of New Registrants vs. Existing Registrants	Difficult	Moderate	Unknown
% Defensive Registrations Determined by Quantity of Unique Websites	Moderate	Moderate	Unknown
Registrant Choice among registrars & registries subject to differing national laws	Moderate	Moderate	Unknown
Statistical Measure of Geographic Diversity of registrants in new gTLDs	Doubtful	Moderate	Unknown

Measures of Competition

For reference, the definition of Competition is repeated here:

Competition is evident in the quantity and diversity of gTLDs, TLD registry operators, and registrars.

Measure of Competition	Obtainable	Reportable	Source
Quantity of gTLDs before and after expansion	Easy	Easy	ICANN
Quantity of unique Registry Operators before and after expansion	Easy	Easy	ICANN
Quantity of Registry Service Providers before and after expansion	Moderate	Easy	Registry
Quantity of Registrars before and after expansion	Easy	Easy	ICANN
% New Entrant Share of New Registrations >2011	Difficult	Difficult	Registrar
% New Entrant Among All Registrations (incl. existing Registrations) >2011	Difficult	Difficult	Registrar
Wholesale price of domains offered per Registry	Difficult	Moderate	Registry
Retail price of domains offered per Registry	Difficult	Moderate	Registry
Sunrise price of domains (Premium)	Difficult	Moderate	Registry
Sunrise price of domains (Non-Premium)	Difficult	Moderate	Registry
Retail price of domains offered per Registrar	Difficult	Moderate	Registrar

Targets for recommended measures

The Board resolution requested advice on 3-year targets for these measures. For some measures, an appropriate target would be an improvement on performance in the pre-expansion gTLD space. For other measures, such as URS complaints, there is no equivalent data in the pre-expansion gTLD environment.

The Working Group asked ICANN staff to identify baseline values for any measure that applies to the pre-expansion gTLD space, so that future targets could be stated in terms of improvements relative to present performance.

[insert targets for each measure]

Appendix A

Working Group members:

Rosemary Sinclair - NCSG / WG Chair
John Berard - CBUC / GNSO Liason
Alex Gakuru – NCSG
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