PROPOSED FINAL DRAFT XX-AUGUST-2012

**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 ALAC, GAC, ccNSO, and GNSO consideration

**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](http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm)[[1]](#footnote-2).

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 Board [resolution](http://www.icann.org/en/minutes/resolutions-10dec10-en.htm#6)[[2]](#footnote-3) (2010.12.10.30) reads as follows:

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 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 7 September 2011. It was intended that the Charter ([link](https://community.icann.org/download/attachments/28903722/Consumer+Choice%2C+Competition+and+Innovation+Working+Group+%28CCI%29+Working+Group+Charter.pdf))[[3]](#footnote-4) could also be formally endorsed by ALAC and ccNSO, but their endorsement was not a requirement for participation in the Working Group. The charter Drafting Team understood that its goal 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 definitions, measures, and targets that could be useful to the Affirmation review team that will convene 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 Affirmation review team. Additionally, this advice is not intended to recommend policy changes or policy development needs.

The advice does not consider any potential consequences of measuring performance, but is only an attempt at identifying metrics per the ICANN Board resolution. Further, the recommendations for any given metric or target does not convey new legal accountability or responsibility on ICANN or Contracted Parties.

The WG attempted to stay true to the Board resolution and the Affirmation of Commitments by recommending metrics that can be measured and that will contribute to the required assessment of the new gTLD program and how it promoted Consumer Trust, Consumer Choice, and Competition.

In addition, the Working Group anticipates that ICANN’s board may want to have definitions, measures, and targets established early enough to become part of ICANN’s management objectives as it evaluates new gTLDs this year. The Working Group recommends that ICANN staff begin to collect appropriate measures and publish baseline data as soon as the Board has acted on advice from ACs and SOs.

The ICANN Board should also consider the resource requirements for collecting new metrics, both in terms of internal staff and expense for external third-party assistance with surveys and other data collection efforts.

Lastly, it is essential when reviewing this advice that the definitions of each term be considered when reviewing the metrics. Both are complements to each other and context can be lost if they are considered alone.

**Scope of this Advice**

The Working Group charter adopted a limited scope for this advice, citing the Board resolution seeking advice on definitions and metrics for the gTLD expansion review that is required in the Affirmation of Commitments.

The Working Group acknowledges that the limited scope it has undertaken provides only a partial evaluation of all choices from the Internet end-user point of view. Considering this perspective, a full examination of choice should not only measure the diversity within registries and registrars, but also examine options whereby users access internet resources without knowing the TLD, or without direct use of the DNS altogether.

Alternate methods of accessing Internet content and services (mobile apps, search engines, social portals, QR codes, etc.) are growing in popularity and themselves present innovative and competitive threats to ICANN-regulated TLDs. As such, they should be considered in any complete evaluation of consumer trust, consumer choice, and competition related to ICANN in general and new gTLDs specifically.

The Governmental Advisory Committee (GAC) has previously stated its view that the benefits of any gTLD expansion should exceed its costs. In comments on draft Advice, the US Government reiterated this position, suggesting that the WG develop metrics sufficient to measure the actual benefits and costs of the expansion program. The WG notes that neither the board resolution nor the Affirmation of Commitments requires a comprehensive assessment and comparison of benefits versus costs of the expansion. Nonetheless, the WG developed many metrics designed to generate useful data on benefits and costs of the gTLD expansion program.

**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. The list includes representatives of the ALAC, CBUC, IPC, NCSG, RySG, RrSG, NCA groups, as well as individual participants.

A dissent position from the NCSG can be found in Appendix C.

**Process for developing this 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 form whom the board solicited advice. The Charter was approved by the GNSO on 7 September 2011 and is available [here](https://community.icann.org/display/CMG/3.++WG+Charter)[[4]](#footnote-5).

In addition to its bi-weekly conference calls, the working group held public discussion sessions at several ICANN meetings, including regular briefings for GNSO Council. At the Prague meeting, the WG gave a briefing to the GAC at its open session.

The initial draft of advice was approved by the Working Group on 22 February 2012 and forwarded to ICANN staff to post for public comment. The Working Group assessed and deliberated on the comments received to construct this final version of Advice for delivery to the ICANN Board. This advice will also be shared with the ALAC, GAC and ccNSO for their consideration, as they may also be developing advice pursuant to the Board’s Dec-2010 resolution.

**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** is defined as actual and potential Internet users and registrants.

Consistent with the *Affirmation of Commitments*, this definition of *Consumer* is designed to focus on the interests of anyone or any entity taking the role of an Internet user or domain name registrant.

The definition focuses not on the nature of an entity, but rather on the *role* they are playing by using the DNS to do resolutions or to register a domain name. Therefore, any entity can be regarded as a consumer, including individuals, businesses, governments, non-profits, etc. When any of these entities are also playing other roles with respect to the DNS – such as a registry operator or registrar – their interests are not relevant to this definition.

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

**Consumer** is defined as actual and potential Internet users and registrants.

**Consumer Trust** is defined as the confidence Consumers have in the domain name system. This includes (i) trust in the consistency of name resolution (ii) confidence that a TLD registry operator is fulfilling the Registry’s stated purpose and is complying with ICANN policies and applicable national laws and (iii) confidence in ICANN’s compliance function.

**Consumer Choice**is defined as the range of options available to Consumers for domain scripts and languages, and for TLDs that offer meaningful choices as to the proposed purpose and integrity of their domain name registrants.

**Competition** is defined as the quantity, diversity, and the potential for and actual market rivalry of TLDs, TLD registry operators, and registrars.

*Notes on these definitions:*

*Note 1. The term “Consumer” was specifically used in the Affirmation and the Board resolution that created this WG. The WG defines "Consumer" as "actual and potential users and registrants". Some commenters believe that the correct term to use in all publications instead of "Consumer" should be "Internet User" and "Consumers" as "Internet Users" whether they are registrants or not.*

*The Consumer Trust definition has three 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, ICANN policies, and any applicable national laws.*

*Third, consumers need to have confidence in the efforts of registry operators and registrars to curtail abuse and to ensure respect for intellectual property rights, prevent fraud, crime, and other illegal conduct, as well as confidence that ICANN will enforce requirements imposed on Registry operators and Registrars to prevent these abuses. If consumers believe that new gTLDs are failing to prevent these abuses, then consumers will lose trust in the domain name system.*

| Trustor  (who trusts) | Trustee  (who/what is trusted) | Aspects  (trust with respect to) |
| --- | --- | --- |
| Registrants and users (referred to as “consumers” in the Affirmation) | The overall domain name system | All aspects, including consistency of name resolution |
| TLD registry operator | Fulfilling its stated purpose and complying with ICANN policies and applicable national laws |
| ICANN, Registry operators and Registrars | Efforts to curtail   susceptibility to abuse of the domain name system |
| ICANN | Ability to enforce requirements imposed on registrars and registry operators, including respect for intellectual property rights and avoidance/minimization efforts relating to fraud, crime, or other illegal conduct. |

*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.*

*Note 4. In the definition of Consumer Choice, “Meaningful" choices for a registrant is having the option of choosing among TLDs that are relevant to the registrant’s desired domain name, at reasonable prices and with expectations of quality of service by the registry operator. For Internet users, “Meaningful” choices would be evident when they are choosing from competing hyperlinks displayed in search results, referrals, advertisements, etc., in that a TLD could convey something about the context, content, and quality of the linked resource.*

*Note 5. Competition is closely related to the idea of Consumer Choice. The WG adopted a distinction in that Consumer Choice is evident in the quality and diversity of TLD choices available to registrants and users. Competition is evident when multiple suppliers are competing in terms of the quality, price, and diversity of TLDs they offer.*

*Note 6. The definition of Competition looks at all TLDs, not just gTLDs. The working group recognizes that ccTLDs are potential competitors to gTLDs, particularly where the ccTLD is marketed to registrants around the world (e.g. .me and .co ).*

*Note 7. Competition leads to more efficient production and provides consumer benefits, such as improvements in pricing, operating quality, service, and consumer choice. However, the proliferation of new gTLDs may also impose costs on consumers and other market participants in the form of cybercrimes, fraud, consumer confusion, and defensive registrations, and it is not yet certain whether competition, or other controls, will eliminate or materially reduce these costs.*

*Note 8. All definitions are presented individually. However, these definitions need to be considered holistically in order to determine "the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust, and consumer choice" (Affirmation Para 9.3)*

**Advice on Measures and 3-Year Targets 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 an assessment of difficulties in obtaining and reporting each measure, along with the source of data. The scope of the metrics are only at the first and second level registrations. Third and higher level registrations of domains are consider out of scope with exception to use of geographic names as outlined in the Applicant Guide Book.

The Board resolution also 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 exact equivalent in the pre-expansion gTLD environment.

The Working Group suggests that the Board ask ICANN staff to develop baseline values for any measure that applies to the pre-expansion gTLD space, so that future targets can be stated in terms of any changes relative to present performance.

For example, a 3-year target for UDRP Complaints in new gTLDs could be any of these:

|  |  |
| --- | --- |
| Type of Target | Example of a target for UDRP complaints |
| Annual total for all new gTLDs | Total UDRP complaints regarding new gTLDs should be fewer than 1000 per year. |
| Rate of incidence for new gTLDs (per 1000 registrations) | The rate of UDRP complaints in new gTLDs should be less than 1 for every 1000 registrations. |
| Relative to prior periods | The number of UDRP complaints for new gTLDs in 2015 should be less than 10% of the number of UDRP complaints in 2014. |
| Relative to legacy gTLDs | In 2015, the rate of UDRP complaints (per 1000 registrations ) in the new gTLDs should be 50% lower than the rate in legacy gTLDs |

Per the Board resolution request, the working group also recommended 3-year targets for measures where we had sufficient information to suggest applicable targets.

Notes about terms used in the tables of measures:

“Legacy gTLDs” refers to gTLDs that were in operation before the present expansion. (i.e., before Jan-2012)

“Registry Operator” refers to the entity holding the contract with ICANN to operate a gTLD.

“Registry Service Provider” refers to a third-party entity providing comprehensive back-end technical operations for a Registry Operator. This term is not meant to include an Emergency Back End Registry Operator (EBERO).

“Relative incidence” of a particular measure would divide the raw data by the total number of registrations in each gTLD zone evaluated. This is intended to put small or new gTLDs on a comparable basis with experience in larger or more established gTLDs.

“Obtaining” refers the availability and level of effort to gather raw data needed for each measure in the table.

“Reporting” refers to any challenges in compiling and publicly disclosing each measure in the table.

**Measures of Consumer Trust**

For reference, the definitions of Consumer and Consumer Trust are repeated here:

**Consumer** is defined as actual and potential Internet users and registrants.

**Consumer Trust**is defined as the confidence Consumers have in the domain name system. This includes (i) trust in the consistency of name resolution (ii) confidence that a TLD registry operator is fulfilling the Registry’s stated purpose and is complying with ICANN policies and applicable national laws and (iii) confidence in ICANN’s compliance function.

| **Measure of Consumer Trust** | **Source** | **Anticipated Difficulties in Obtaining and/or Reporting** | **3-year**  **Target** |
| --- | --- | --- | --- |
| *Measures related to confidence in registrations and resolutions:* | | | |
| [1.1] % DNS Service Availability (present SLA is 100%) | ICANN | None noted | 100% |
| [1.2] % Availability for Registration Data Directory Services (RDDS). (SLA is 98%) | ICANN | None noted | 98% |
| [1.3] % of Service Availability for Extensible Provisioning Protocol (EPP). (SLA is 98%) | ICANN | None noted | 98% |
| [1.4] Survey of perceived consumer trust in DNS, relative to experiences before the gTLD expansion. Survey could at least measure experiences with phishing, parking sites, malware and spam; confusion about new gTLDs; user experience in reaching meaningful second-level TLDs; registrant experience in being in a different gTLD; Registrant and Internet User’s experience with regard to cybersquatting. Survey to be conducted at least annually. | Survey Vendor | Moderate difficulty to gain consensus on survey questions.  Survey cost is approx. $100K. | Should show improvement on all survey measures |
| [1.5] % Uptime for Registrar services such as WHOIS, contact info, and complaints, assuming that SLAs are established for these measures in the new RAA | Registrar | Doubtful that Registrars will compile and disclose uptime stats unless required by RAA | SLA in RAA |
| *Measures related to confidence that TLD operators are fulfilling their stated promises and complying with ICANN policies and applicable national laws:* | | | |
| [1.6] Relative incidence of breach notices issued to Registry operators for contract or policy compliance matters. All breach-related notifications should be included in thes measure. | ICANN | None noted | Significantly Lower than relative incidence in legacy gTLDs |
| [1.7] Relative incidence of breach notices issued to Registrars, for contract or policy compliance matters | ICANN | None noted | Significantly Lower than relative incidence in legacy gTLDs |
| [1.8] Quantity of Registry & Registrar general complaints submitted to ICANN’s Internic System | ICANN | Maybe difficult to establish baseline on existing Internic data versus new system | Lower than relative incidence in legacy gTLDs |
| [1.9] Relative incidence of combined UDRP and URS *Complaints.* URS s available only in new gTLDs, so combined UDRP and URS complaints should be compared to UDRP complaints in legacy gTLDs. | RPM Providers | Moderate difficulty obtaining data | Lower than relative incidence of UDRPs in legacy gTLDs |
| [1.10] Relative incidence of combined UDRP and URS *Decisions against registrants* |  |  | Lower than relative incidence of UDRPs in legacy gTLDs |
| [1.11] Quantity of intellectual property claims and cost of domain name policing relating to new gTLDs, measured immediately prior to new gTLD delegation and at 1 and 3 years afterwards.  Incidence of domain name IP cases should not include UDRP/URS filings, which are the subject of separate Consumer Trust measures.  (1) Relative incidence of IP claims should be measured in 3 areas:  IP claims against registrants regarding second level domains in new gLTDs;  IP claims against registrars regarding Second level domains in new gTLDs;  IP claims against new gTLD registries regarding second level domains and TLDs.  (2) Quantity of second level domains acquired because of infringement or other violations of IP rights of acquiring parties  (3) Cost of domain name policing and enforcement efforts by IP owners | IP focused entities | Independent report or survey conducted by IP-focused entity (e.g. INTA, AIPLA, etc.)  Difficult to determine reliable and unbiased source.  If surveyed or sampled, data must be statistically significant. Confidentiality and legal restrictions may require use of third party for data collection and anonymous/aggregate reporting.  Proposal: Poll IP organizations regarding interest in participation and willingness to assist in funding this survey/study. | Declining over time |
| [1.12] Decisions against Registry Operator arising from Registry Restrictions Dispute Resolutions Procedure (RRDRP) | RRDRP Providers | None noted | No adverse decisions |
| [1.13] Quantity of Compliance Concerns w/r/t Applicable National Laws, including reported data security breaches | LEA/GAC | Difficult, because law enforcement and governments may not report this data | Declining incidence from Year 2 to 3 |
| [1.14] Quantity and relative incidence of Domain Takedowns, including takedowns required by law enforcement | Registry | Moderately difficult to obtain and report | Significantly Lower than incidence in legacy gTLDs |
| [1.15] Quantity and relative incidence of spam from domains in new gTLDs, which could be measured via "honeypot" email addresses | SpamHaus | None noted | Significantly Lower than incidence in legacy gTLDs |
| [1.16] Quantity and relative incidence of fraudulent transactions caused by phishing sites in new gTLDs | APWG | None noted | Significantly Lower than incidence in legacy gTLDs |
| [1.17] Quantity and relative incidence of detected phishing sites using new gTLDs | APWG | None noted | Significantly Lower than incidence in legacy gTLDs |
| [1.18] Quantity and relative incidence of detected botnets and malware distributed using new gTLDs | APWG | Not clear on source of data. May require LEA contribution in addition to APWG | Significantly Lower than incidence in legacy gTLDs |
| [1.19] Quantity and relative incidence of sites found to be dealing in or distributing identities and account information used in identity fraud | LEA/Govt | Will require Govt/LEA contribution | Significantly Lower than incidence in legacy gTLDs |
| [1.20] Quantity and relative incidence of complaints regarding inaccurate, invalid, or suspect WHOIS records in new gTLD | ICANN | None noted | Significantly Lower than incidence in legacy gTLDs |
| [1.21] Relative incidence of errors in new gTLD zones (such as commas instead of dots, bad IP addresses, malformed domains, etc.) | ICANN | Moderately difficult to obtain and report | Significantly Lower than incidence in legacy gTLDs |
| [1.22] Qualitative comparison of mission and purpose set forth in the Question 18 of the new gTLD Application with current actual use of the gTLD | ICANN | None noted | No target; comparison only |

Note: Some public comments recognized that ICANN is counterparty to the Registry and Registrar contracts. Consumer Trust will be based not only on industry participants and their activities within the market, but also on the behavior and operation of ICANN. Industry participants and consumers all need to be able to rely on the stable, secure and predictable governance of the critical internet functions that ICANN is responsible for overseeing. Thus ICANN’s performance in managing contract compliance will have an impact on Consumer Trust. Some ICANN compliance performance metrics may be worthy of inclusion in the overall metrics framework.

**Measures of Consumer Choice**

For reference, the definitions of Consumer and Consumer Choice are repeated here:

**Consumer** is defined as actual and potential Internet users and registrants.

**Consumer Choice**is defined as the range of options available to Consumers for domain scripts and languages, and for TLDs that offer meaningful choices as to the proposed purpose and integrity of their domain name registrants.

| **Measure of Consumer Choice** | **Source** | **Anticipated Difficulties in Obtaining and/or Reporting** | **3-year**  **Target** |
| --- | --- | --- | --- |
| *Transparency and clarity of gTLD registry benefits and restrictions, so that registrants and users can make meaningful distinctions when choosing TLDs.* | | | |
| [2.1] Registry website should clearly disclose benefits and restrictions. | Audit of Registry websites | Moderate difficulty in auditing registry’s display of terms and conditions for each gTLD they offer. | All Registries should disclose  (e.g. ICM’s [disclosure](http://www.icmregistry.com/about/sponsored-community/)[[5]](#footnote-6) for .xxx ) |
| [2.2] Registrars websites should clearly disclose gTLD benefits and restrictions in the terms & conditions for each respective TLD they offer. | Audit of Registrar websites | Moderate difficulty in auditing registrars’ display of terms and conditions for each gTLD they offer. | All Registrars should disclose for all offered TLDs |
| [2.3] gTLD registry benefits and restrictions should be clear and understandable to registrants and users. | Ry and Rr websites;  surveys | A survey of registrants and users could assess clarity. | All disclosures should use “plain language” |
| [2.4] Annual surveys of perceived consumer choice in DNS, relative to experience before the gTLD expansion. (Survey in conjunction with Consumer Trust survey noted in above section).  Survey should assess public awareness of new gTLDs. Survey should also measure costs of defensive or duplicate registrations. Survey should assess motivations, intent, and satisfaction with new gTLDs. | Survey Vendor | Moderate difficulty to gain consensus on survey questions.  Survey cost is approx. $100K. | Should show improvement on all survey measures |
| *Range of options available to registrants and users in terms of scripts and applicable national laws* | | | |
| [2.5] Quantity of TLDs using IDN scripts or languages other than English | Registry websites | None noted | Increase in the number of TLDs in IDN scripts or languages other than English, relative to 2011 |
| [2.6] Quantity of Registrar websites offering IDN scripts or languages other than English | Registrar websites | None noted | Increase in the number of Registrars in IDN scripts or languages other than English, relative to 2011 |
| [2.7] The percentage of IDNs as compared to the total gTLDs in each script or language should be compared to the percentage of people who use each particular language or script | Registry websites and statistical determination of number of speakers or script users | Must identify reliable source of number of speakers or users of each language or script | The percentage of IDNs should trend closer to the percentage of the population that uses that script over time |
| [2.8] Quantity of different national legal regimes where new gTLD Registry Operators are based | Registry websites | Not difficult, if each nation is counted as a separate legal regime | Number of choices in new gTLDs > number in legacy gTLDs |

|  |  |  |  |
| --- | --- | --- | --- |
| *Measures designed to assess whether prior registrants chose new gTLDs for primarily defensive purposes. . Each measure is a potential indicator of defensive registration, and not a precise indicator. These measures must be considered jointly, not separately. Targets accommodate likely over-counting of defensive registrations.* | | | |
| **Measure of Consumer Choice** | **Source** | **Anticipated Difficulties in Obtaining and/or Reporting** | **3-year**  **Target** |
| [2.9] A defensive registration is not seen as an improvement in choices available to registrants. **For purposes of this measure, “defensive registrations” are Sunrise registrations & domain blocks.**  Measure share of (Sunrise registrations & domain blocks) to total registrations in each new gTLD | Zone snapshot at end of Sunrise | Obtainable, since Registries must publish zone before open registration begins. | Post-Sunrise registrations > 85% of total registrations.  Post-sunrise registrations should increase over time. |
| [2.10] Relative share of new gTLD registrations already having the same domain in legacy TLDs prior to expansion For this measure, count all registrations that redirect to domains in legacy TLDs. | Zone data | Moderate difficulty to snapshot each new gTLD zone | “Redirected” registrations < 15% of all new registrations;  This % should decline over time |
| [2.11] Automated analysis or online survey of sample of “duplicate” registrations in new gTLDs. For purposes of this measure, “duplicate” registrations are those where registrant reports having (and still maintaining) the same domain name in a legacy gTLD. | Online Survey | Obtainable, using either ICANN or external survey tools and advice | “Duplicate” registrations < 15% of all new registrations;  This % should decline over time |
| *Other measures of Consumer Choice in new gTLDS* | | | |
| [2.12] Measure the increased geographic diversity of registrants across all new gTLDs, as indication of new choices created by gTLDs expansion. (Do not count privacy/proxy registrations or registrations that fail to resolve) | Zone and WHOIS data | The working group sought but not find an index or statistical measure of geographical diversity | Diversity should be greater than in legacy gTLDs;  Diversity should increase from previous year. |
| [2.13] Survey or Study to gauge the frequency with which users access internet resources via tools that do not reveal the TLD. (e.g. QR Codes, search results, apps, etc. that do not display URLs) | Online survey or empirical study | User survey may be too subjective to provide data.  Refer to Consumer Choice survey of users noted above (page 13) | No Target |
| [2.14] Annual survey of perceived consumer choice relative to experiences before the gTLD expansion (to be performed in conjunction with Consumer Trust survey suggested on page 8.  Survey should assess public awareness of new gTLDs. Survey should also measure costs of defensive or duplicate registrations. Survey should assess motivations, intent, and satisfaction with new gTLDs. | Online survey or empirical study | User survey may be too subjective to provide data.  Refer to Consumer Choice survey of users noted above (page 13) | Should show improvement on all survey measures |
| [2.15] Website traffic is an indicator of trust, choice, and competition. User traffic in new gTLDs should be compared to contemporary user traffic in legacy gTLDs. If comprehensive traffic data is not available, sampling should be used. | DNS Scrubbers / ALEXA | Data sources need to be researched and confirmed | Compare to show growth in new gTLD traffic relative to growth in legacy gTLDs |

**Measures of Competition**

For reference, the definition of Competition is repeated here:

**Competition** is defined as the quantity, diversity, and the potential for and actual market rivalry of TLDs, TLD registry operators, and registrars.

| **Measure of Competition** | **Source** | **Anticipated Difficulties in Obtaining and/or Reporting** | **3-year**  **Target** |
| --- | --- | --- | --- |
| [3.1] Quantity of total TLDs before and after expansion, assuming that gTLDs and ccTLDs generally compete for the same registrants | ICANN | None noted | Increase of 2x over 2011 (311[[6]](#endnote-2)) |
| [3.2] Quantity of gTLDs before and after expansion | ICANN | None noted | Increase of 10x over 2011 (18[[7]](#endnote-3)) |
| [3.3] Quantity of unique gTLD *Registry* *Operators* before and after expansion | ICANN | None noted | Increase of 2x over 2011 (14[[8]](#endnote-4)) |
| [3.4] Quantity of unique gTLD *Registry Service Providers* before and after expansion | ICANN and Ry Operators | None noted | Increase of 2x over 2011 (6[[9]](#endnote-5)) |
| [3.5] Quantity of Registrars before and after expansion, along with indication of country where Registrar is based. | ICANN | None noted | No target;  compare to 2011 ( 1000[[10]](#endnote-6) ) |
| [3.6] Relative share of new gTLD registrations held by “new entrants”. For purposes of this measure, “new entrants” are gTLDs run by *Registry Operators* that did not operate a legacy gTLD. A "new entrant", as being one whose ownership is not among owners of legacy gTLD registries. | ICANN; Zone files for new gTLDs | Moderately difficult to obtain. | No target, but new entrants should operate a significant percentage of new gTLDs. |
| [3.7] To assess competitive impact of new gTLDs, measure the quantity of second level registrations per gTLD and ccTLD on a weekly or other interval. TLD attributes should be noted with the data (i.e. open/closed registration, country of operations, single registrant, etc.) | Zonefiles &/or 3rd Party | None noted | No Target |
| [3.8] Quantity of second level registrations in the new gTLD space where that same string “unique” does not appear as a registration in any of the zones in the legacy space or the CCs on a weekly or other interval basis (data analyzed in conjunction with website traffic identified in Choice) | Zonefiles &/or 3rd Party | None noted | No Target |
| *Measures related to prices for domain registrations (see legal note in Appendix B)* | | | |
| [3.9] *Wholesale* price of new gTLD domains offered to the general public. (do not evaluate gTLDs with registrant restrictions). | Ry & Rr data gathered by 3rd Party Vendor | Difficult to obtain.  (see legal note in Appendix B) | No target; compare to 2011 and to unrestricted legacy gTLDs |
| [3.10] *Retail* price of new gTLD domains offered to the general public. (do not evaluate gTLDs with registrant restrictions). | Ry & Rr data gathered by 3rd Party Vendor | Difficult to automate collection.  (see legal note in Appendix B) | No target; compare to 2011 and to unrestricted legacy gTLDs |
| [3.11] Qualitative assessment of non-price competition through innovations that benefit registrants and users, particularly for new market segments | Study | Studies for ICANN typically cost $100 - $150K. | No Target |

**Appendix A**

Working Group members:

Rosemary Sinclair - NCSG / *WG Chair*

John Berard - CBUC / *GNSO Liaison for WG*

Alex Gakuru – NCSG

Cheryl Langdon-Orr - ALAC

Olivier Crepin-Leblond – ALAC

Carlos Dionisio Aguirre - NCA

Steve DelBianco – CBUC

Wendy Seltzer - NCSG

Jonathan Zuck - IPC

Jonathan Robinson - RySG

Tim Ruiz - RrSG

Evan Leibovitch – ALAC

Tobias Mahler – Individual

Michael Graham - IPC

ICANN Staff:

Berry Cobb

Margie Milam

Julie Hedlund  
Michael Salazar

Brian Peck  
Paul Redmond

Maguy Serad

Nathalie Peregrine

Gisella Gruber-White

**Appendix B**

**Note from ICANN Legal Department, regarding collection of non-public data on domain prices.**

As part of devising measures for Competition, the Working Group sought advice from ICANN’s Legal Department on the collection and publishing data on domain name prices, at both wholesale and retail level. The response from ICANN legal is shown below.

Thank you for the constructive work underway to meet the Board's request for community assistance on this consumer metrics issue.  The team has clearly considered many aspects of consumer choice and the breadth of proposed metrics appears to be well thought out.  While we do not wish to constrain the work proposed, the office of the General Counsel has expressed concerns regarding the collection of price-related information as part of the consumer metrics.  Collection and comparison of non-public price-related information raises antitrust concerns in this context, particularly where market participants may have access to the collected information.  This is not meant to restrict the Working Team from reviewing how competition may have been created through the introduction of new gTLDs, but rather to avoid the expansion of a community discussion into areas that may raise questions of anti-competitive conduct, or lead to outcomes that could impose anti-competitive restrictions.

ICANN is not currently in the position of collecting non-public price information from its registries and registrars.  Requiring submission of non-public pricing information from its contracted parties would represent a change to ICANN's relationships with its contracted parties, and imposes risks to ICANN as the holder of this compiled confidential information.  In addition, it is not only ICANN that comprises the review teams required under the Affirmation of Commitments.  There is the possibility that those with existing or future interests in the TLD industry are members of the team.  Providing persons on a review team with non-public pricing information across an entire industry (information that is not ICANN's to begin with) provides the possibility for anti-competitive conduct, even if there are restrictions in place for the use of the information, creates a significant risk to ICANN as a whole.

One of the concerns regarding the consideration of price-related information - whether it is publicly available or not - is the possibility that an outcome of a future review results in a price–related recommendation.  To that extent, any consideration of price-related recommendations is not recommended, as it would raise both legal and accountability issues.  ICANN does not wish to encourage the creation of recommendations that are legally not feasible to implement.  That outcome is not desirable for your team, for the review team, or for ICANN.  We look forward to working with you to continue to provide guidance on this issue as you complete your work.

Note: *While this legal concern is appreciated, the Working Group notes that none of the measures suggested in this draft advice document would require ICANN to issue any recommendations for how registrars and registries price their domain names.*

*Nor does this advice presume that ICANN itself would be responsible to collect or publish any data that is confidential due to its contract party role. Third-parties could be hired to collect data under confidentially provisions, and to report results in the aggregate and/or use anonymous labels.*

**Appendix C**

**The following is a dissent position from the Non-Commercial Stakeholder Group:**

NCSG believes that many of the "Consumer Trust" metrics rely on a faulty premise, that gTLDs should be predictable, rather than open to innovative and unexpected new uses.

These metrics mistake a platform, a gTLD, for an end-product. A key value of a platform is its generativity -- its ability to be used and leveraged by third parties for new, unexpected purposes. Precisely because much innovation is unanticipated, it cannot be predicted for a chart of measures. Moreover, incentives on the intermediaries to control their platforms translate into restrictions on end-users' free expression and innovation.

Just as we would not want to speak about "trust" in a pad of printing paper, on which anyone could make posters, and we don't ask a road system to interrogate what its drivers plan to do when they reach their destinations, we should not judge DNS registries on their users'

activities.

ICANN's planned reviews of and targets for gTLD success should not interfere with market decisions about the utility of various offerings.

In particular, NCSG disagrees with attribution at the gTLD level of the second group of "trust" metrics, the "Measures related to confidence that TLD operators are fulfilling promises and complying with ICANN policies and applicable national laws:" namely, 1.9, 1.10, 1.11, 1.13, 1.14, 1.15, 1.16, 1.17,1.18, 1.19, 1.20. It is further inappropriate to use unverified complaints as a basis for metrics (1.9, 1.11, 1.20).

Separately, NCSG disagrees with setting targets for the "redirection,"

"duplicates," (2.10, 2.11) and "traffic" (2.15) measures. All of these presume that the use for new gTLDs is to provide the same type of service to different parties, while some might be used to provide different services to parties including existing registrants.

**Endnotes**

1. Affirmation of Commitments: <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm> [↑](#footnote-ref-2)
2. Consumer Trust Board Resolution: [http://www.icann.org/en/minutes/resolutions-10dec10-en.htm#6](http://www.icann.org/en/minutes/resolutions-10dec10-en.htm" \l "6) [↑](#footnote-ref-3)
3. Consumer Metrics Charter: <https://community.icann.org/display/CMG/3.++WG+Charter> [↑](#footnote-ref-4)
4. Consumer Metrics Charter: <https://community.icann.org/display/CMG/3.++WG+Charter> [↑](#footnote-ref-5)
5. ICM’s Disclosure: <http://www.icmregistry.com/about/sponsored-community/> [↑](#footnote-ref-6)
6. IANA.org db (<http://www.iana.org/domains/root/db>). There were 311 TLDs before expansion, assuming that gTLDs and ccTLDs generally compete for the same registrants. Of 326 TLDs delegated at the root, we counted 311 as of Jan-2012:

   293 Country Code TLDs (38 were IDN)

   18 Generic TLDs (4 generic, 3 generic-restricted, 11 sponsored); omitting .gov, .mil, .int

   [↑](#endnote-ref-2)
7. gTLDs before expansion, including 4 generic, 3 generic-restricted, 11 sponsored (omit.gov, .mil, .int, .edu) - **17**:

   |  |  |
   | --- | --- |
   | AERO | ASIA |
   | BIZ | CAT |
   | COM | COOP |
   |  | INFO |
   | JOBS | MOBI |
   | MUSEUM | NAME |
   | NET | ORG |
   | PRO | TEL |
   | TRAVEL | XXX |

   [↑](#endnote-ref-3)
8. Quantity of unique Generic Registry Operators before expansion – **14**:

   VeriSign Global Registry Services

   Telnic Ltd.

   NeuStar, Inc.

   DotAsia Organisation Ltd.

   DotCooperation LLC

   Afilias Limited\*\*\*

   mTLD Top Level Domain Limited dba dotMobi\*\*\*

   Museum Domain Management Association

   Employ Media LLC

   Public Interest Registry (PIR)

   Fundacio puntCAT

   Societe Internationale de Telecommunications Aeronautique (SITA INC USA)

   Tralliance Registry Management Company, LLC.

   ICM Registry LLC

   \*\*\*The total count of RO should be listed at 14, because dotMobi & RegistryPro are wholly owned by Afilias. However, the WG did not have time to determine the affiliate count for Registrars and to maintain consistency for this draft, dotMobi and RegistryPro will count as unique [↑](#endnote-ref-4)
9. Quantity of Generic Registry Service Providers before expansion – **6**:

   VeriSign Global Registry Services

   Afilias Limited

   NeuStar, Inc.

   CORE Internet Council of Registrars

   Public Interest Registry (PIR)

   Midcounties Co-operative Domains Ltd [↑](#endnote-ref-5)
10. ICANN Accredited Registrars List (<http://www.icann.org/en/registrars/accredited-list.html> )

    **1000** Registrars before Jan-2012 \*\*\*\*

    \*\*\*\* This number reflects all accredited Registrars and does not represent affiliated entities [↑](#endnote-ref-6)