

Public Interest Registry

Comments on the **REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE** (“RRDRP”)

Issue URL: <http://icann.org/en/topics/new-gtlds/rrdrp-clean-12nov10-en.pdf>

Public Interest Registry, manager of the registry of the .ORG top level domain, (“PIR”) appreciates the opportunity to share its views with ICANN regarding the RRDRP during this extended comment period.

The RRDRP, in our view, has received too little attention. It is aimed at a group of registries which do not yet exist – Community-based Registries (“Community TLDs”) – and the group does not yet have experienced and well-informed registry members to review and critique these procedures. We believe the challenge procedures set forth in the RRDRP will expose these same Community TLDs to a level of harassment and abuse that is higher than that faced by existing TLDs.

The risk under the RRDRP is extraordinary. Any decision by a Provider may include as remedies:

- “suspension of accepting new domain name registration in the gTLD”, and
- “the termination of a registry agreement.”

ICANN should provide the Community TLDs, and their registrants, with special protections. Instead, the RRDRP provides them with more threats and more exposure to serious risks.

We recommend that:

- **The standards for challenging a TLD must be set at a fair and high level;**
- **There be an Independent Threshold Review as in the PDDRP to limit meritless complaints; and**
- **The Individual Complaint proceeding proposed for the first time in Footnote 1 of the RRDRP (only in DAG5 and without public discussion) be deleted on the grounds that it has not been properly explained, justified or vetted with the Internet Community.**

Detailed comments follow, and PIR would welcome the opportunity to discuss them with ICANN’s attorneys and staff.

I. Footnote 1 must be deleted.

Footnote 1 is a wholly new addition to DAG5. There is no comment citing reasons for its addition, and it strays far from anything introduced in earlier versions of the Guidebook.

Under Footnote 1, any Community TLD would be exposed to a series of challenges to individual second level domain name registrations. This is unprecedented exposure to risk. Allowing a Community TLD to be challenged for each and every domain name registration opens up the floodgates of harassment and abuse.

II. The RRDRP should have the same procedures and safeguards as the PDDRP.

The PDDRP and the RRDRP are similar types of proceedings. They allow third parties to challenge new gTLD Registries. With similar purposes and parties, the two Procedures should reflect similar procedures, yet PDDRP procedures are far more rigorous. Community TLDs are likely to have fewer resources than their other registry counterparts. As a matter of public interest and public policy, the protections against abuse in the RRDRP should be as strong as in the PDDRP, including:

- A. Parties to the Dispute must not be allowed to have two chances at the same case in two different procedures (PDDRP and RRDRP).
- B. Footnote 1 must be deleted.
- C. Standing and Standards - As in the PDDRP, the RRDRP must have high requirement for standing and standards in the RRDRP. ICANN should raise the requirements and set a clear and reasonable burden of proof on the Complainant. Standing should not be allowed to provide ammunition for those who lost fights in their communities – including the fight to run the Community TLD (and now seek to show their “harm”) and/or the grudges and differences that run through almost all communities.
- D. The complaint requirements should be changed - At a minimum, the aggrieved party must show by clear and convincing evidence that:
 - 1. It has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports,
 - 2. The Registry has failed in a substantial and consistent manner to serve the defined community (as the Registry has defined it and as ICANN has accepted in the Registry Agreement),
 - 3. The registry operator’s affirmative conduct has caused substantial harm to the complainant, and
 - 4. There is a pattern of bad conduct harmful to the complainant.
- E. Threshold Review - The RRDRP should include an independent Threshold Review for the same reasons the PDDRP includes such a review. The wording of the Threshold Review, as carefully set out in the current PDDRP, should be added into the RRDRP -- with only minor changes for differences in the proceeding. A certification that the party has not already filed a similar action against the Community TLD in another ICANN proceeding should be added.

Conclusion

PIR appreciates this opportunity to submit these comments, and looks forward to significant improvements in the RRDRP that reflect the real world needs of Community TLDs. These new Registries will bring diversity and outreach to the domain name system and deserve protection.