



COMMENTS OF THE INTELLECTUAL PROPERTY CONSTITUENCY ON THE PROPOSED RENEWAL OF THE .CAT SPONSORED TLD REGISTRY AGREEMENT

The Intellectual Property Constituency (IPC) appreciates the opportunity to provide comments and clarifications regarding the proposed renewal of the .CAT Sponsored TLD Registry Agreement (RA), particularly in light of comments and other discussions relating to the inclusion of the Uniform Rapid Suspension (URS) RPM. The IPC applauds legacy Registry Operators that choose to implement the RPMs contained in the New gTLD Registry Agreement. The IPC also encourages Registry Operators to voluntarily go above and beyond the minimum rights protections. Whether adding new restrictions against abusive registrations, implementing blocking or creating new dispute procedures, those best practices should be encouraged and do not require a PDP for TLD Operators to implement.

This extends to other features of the New gTLD Registry Agreement, such as the adoption of Specification 11 in the .CAT RA, including (among other things) the standard Public Interest Commitments. We support the .CAT Registry Operator's decision to include the PICS as well.

The claims that the Registry Operator's choice is "illegitimate" and "inappropriate" are without merit.¹ An individual Registry Operator's choice to adopt the URS or any other feature in the New gTLD Registry Agreement does not constitute "consensus policy." Indeed, the very concept of "choice" is antithetical to the concept of "consensus policy." Furthermore, there is clearly no requirement that an RPM must become consensus policy before it can be adopted by a registry. We have already learned that from Donuts and Rightside Registry, both of whom adopted a form of "blocking" as an RPM, which was also not consensus policy. Also contrary to the claims made in other comments, the IPC reminds ICANN and the other commenters that the URS was adopted pursuant to a multistakeholder process and was the result of discussion, compromise and consensus.

The IPC also notes that a number of other claims made in comments opposed to the adoption of the URS by .CAT are not supported by fact. The claim that the URS "has largely displaced the existing UDRP system for the new gTLDs" is absurd.² A review of proceedings since the launch of new gTLDs shows significant use of both the URS and the UDRP. IPC members have noted that they use both the URS and the UDRP, applying them in different cases based on various circumstances.

Claims that "numerous Internet users will be unable to use their domains without any due process based on nothing but overzealous claims from trademark attorneys"³ are alarmist and untrue, given that the URS (unlike the UDRP) offers losing registrants a right to appeal a decision, and the URS (unlike the UDRP) limits a complainant's right to pursue future claims after certain instances of abusive complaints.

¹ <http://forum.icann.org/lists/comments-cat-renewal-28may15/msg00001.html>.

² <http://forum.icann.org/lists/comments-travel-renewal-12may15/msg00006.htm>.

³ <http://forum.icann.org/lists/comments-cat-renewal-28may15/msg00001.html>.



Finally, the “clear-cut cases of abuse” standard in the URS limits the circumstances in which it can be used, amply protecting registrants in the process. We trust that ICANN recognizes that these characterizations of the URS are baseless and merely reveal that the commenter does not like the URS. Such comments should not in any way influence ICANN or the .CAT Registry Operator (or other Registry Operators) in adopting the URS.

The renewal of the .CAT agreement raises other issues as well. The public comment “Brief Overview” notes that “Part VI of Appendix S (“Public Whois Specification”) [of the current .cat registry agreement] was not included in Specification 12 [of the proposed new agreement] because it is now incorporated to Approved Services (Exhibit A).” IPC urges that both texts be carefully reviewed to ensure that no significant provisions have been omitted in the course of this transition. Specifically, we note that the following obligations contained in the current agreement do not appear to be picked up in the new agreement:

- (1) The current agreement provides that “Subject to any future policy regarding Whois data adopted by ICANN, domain name registrants will be required to provide correct contact information....” We were unable to locate a similar requirement in the proposed new agreement.
- (2) Under point 5 of the cited Part VI of Appendix S, “the Registry will offer access to the full data of individuals that have chose [sic] non disclosure to law enforcement agencies.” No similar reference to law enforcement access appears in the proposed new agreement to our knowledge.

We note there have also been a number of wording changes in the transition of Whois obligations from Appendix S to Exhibit A, many of which reflect the changed terminology now being applied to registration data services. We do not think these changes are intended to reflect any change in the .cat registry’s current obligations to make this data publicly available; however this should be confirmed. In this regard, some of the phrasing of the proposed agreement provisions in section 5 of Exhibit A could be misleading and deserves further review. For example, the text refers to information about the name of a company or business that makes a .cat registration as “private contact information,” a phrase that is not used in the existing agreement and which is typically used to describe information that will be protected from disclosure by the party to whom it is disclosed. This could easily lead some to think that it will not be publicly accessible via Whois or any successor system. Since this impression would obviously be mistaken, ICANN should consider whether some alternative phrasing would be clearer (for example, the existing agreement uses the phrase “applicable personal data” to cover this).

Respectfully Submitted,

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