



## ARTICLE 19 response to the GNSO New Subsequent Procedures Draft Final Report

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### Introduction

ARTICLE 19 welcomes the efforts of the Internet Corporation for Assigned Names and Numbers (ICANN) and the Generic Names Supporting Organization (GNSO) to engage in a multi-stakeholder process by holding this [Public Consultation](#)<sup>1</sup> on the GNSO New Subsequent Procedures Draft Final Report<sup>2</sup>.

The consultation is very important for us as it is an important piece to define the rules that ICANN and the GNSO will apply in allowing the next round of domain names especially as this is one of the five objectives under ICANN's Strategic Plan for Fiscal Years 2021-2025.

We thus appreciate the opportunity to provide ICANN and the GNSO with our position on the GNSO New Subsequent Procedures Draft Final Report and we look forward to the discussions that will follow. This statement is made on our own behalf and we also endorse comments by the Non Commercial Stakeholder Group (NCSG) and those of the At-Large Advisory Committee (ALAC).

### About ARTICLE 19

ARTICLE 19 is an international human rights organisation that works to protect and promote free expression, which includes the right to speak, freedom of the press and the right to access information. With regional programmes in Africa, Asia, Europe, Latin America and the Middle East and North Africa, we champion freedom of expression at the national, regional and international levels. The work of ARTICLE 19's Digital Programme focuses on the nexus of human rights, Internet infrastructure, and Internet governance.

1 ICANN GNSO New Subsequent Procedures Draft Final Report

<<https://www.icann.org/public-comments/gnso-new-gtld-subsequent-draft-final-report-2020-08-20-en>>

accessed September 27, 2020

2 GNSO New Subsequent Procedures Draft Final Report

<<https://gnso.icann.org/sites/default/files/file/field-file-attach/draft-final-report-new-gtld-subsequent-21sep20-en.pdf>> accessed September 27, 2020

At ICANN, we engage through the ICANN Empowered Community as members of the Generic Names Supporting Organization under the Non-commercial Users Constituency (NCUC) and as members of the At-Large Advisory Committee (ALAC) directly as part of the European Regional At-Large Organization (EURALO). We work within the ICANN community with the main purpose of raising awareness and coalition building within the community about how the Domain Name System (DNS) affects human rights. This aim would ensure that Section 27.2 of ICANN Bylaws (on Human Rights) and other Bylaws with an impact on Human Rights are implemented in full and put the user at the centre of policy development processes.

## **Summary**

In September 2020, ARTICLE 19 reviewed the GNSO New Subsequent Procedures Draft Final Report.

We specifically provide answers to all the 41 topics under consideration.

Our analysis shows that the draft contains some positive provisions and suggestions on the rules that will govern the next round of domain names but overall is quite vague in the practical steps in some of the topics. For ICANN to be effective in its operations and in delegating the next round of domain names it needs to take into consideration the recent Workstream2 Recommendations especially those on Human Rights. Our submission recognises this fact and that the Internet is a global resource which should be managed in the public interest and appreciate the unequivocally important role which ICANN has to play.

ARTICLE 19 urges ICANN to consider our recommendations below, which would help align the GNSO New Subsequent Procedures Draft Final Report more closely with international best practice.

## **Topic 1: Continuing Subsequent Procedures:-**

On the first topic, we welcome the first affirmation, which maintains the policy contained in the 2012 Applicant Guidebook that recommends that a “systematized manner of applying for generic Top Level Domains (gTLDs) be developed in the long term.” We also welcome the second affirmation that states the New gTLD Program must continue to be administered “in an ongoing, orderly, timely and predictable way.” ARTICLE 19 notes that this New gTLD Subsequent Procedures Initial Report and Public Comment Process

is an attempt to develop recommendations using lessons learned from the 2012 process and we are happy to submit our comments under each of the 40 topics below.

Lastly, we welcome the third affirmation that the primary purpose of new generic Top Level Domains (gTLDs) are to foster diversity, encourage competition, and enhance the utility of the DNS. ARTICLE 19 notes that for freedom of expression and information to be fully exercised online, the Internet needs to be maintained and governed with this public interest goal at the forefront.

We welcome further engagement opportunities and avail ourselves to be of assistance in case of any questions or concerns.

### **Topic 2: Predictability**

On this topic, we welcome the fixed setting of predictable timeframes and procedures by the Working Group. We note that setting time-frames and procedures upfront provides generic Top Level Domains (gTLDs) applicants with fair and set rules by which they can gauge themselves and ICANN to ensure that the application process is being governed in a fair manner for everyone, as set out in the Applicant Guidebook and base Registry Agreement.

However, we recommend that the Standing Predictability Implementation Review Team (SPIRT) be reviewed on an annual basis and that results of any review should be made publicly available. This would ensure that any future policy changes to the program are informed by clear metrics.

### **Topic 3: Applications Assessed in Rounds (Application Submission Periods).**

On this topic, we welcome the fixed setting of predictable time-frames and procedures by the Working Group. We note that setting time-frames and procedures upfront provides generic Top Level Domains (gTLDs) applicants with fair and set rules by which they can gauge themselves and ICANN to ensure that the application process is being governed in a fair manner for everyone, as set out in the Applicant Guidebook and base Registry Agreement.

### **Topic 4: Different TLD Types**

We welcome the drafting of Recommendation 4. to allow for differential treatment of applications based on either the application type, the string type, or the applicant type. However, we find that the elements of differential treatment to be too limited despite the six categories (Applicant eligibility; Application evaluation process/requirements; Order of processing; String contention; Objections and Contractual provisions) being broad enough.

We recommend that fees should also be made an explicit category for differential treatment, as the topic should be drafted to provide exceptions or concessions, especially for strings that are for non commercial exercise of freedom of expression.

### **Topic 5: Application Submission Limits**

We welcome the work of the Working Group regarding the topic and support the freedom accorded to applicants to submit as many applications as possible, as this would be in exercise of their freedom of expression.

### **Topic 6: Registry Service Provider Pre-evaluation**

We welcome the work of the Working Group regarding this topic and support the predetermined procedure for Registry Service Provider Pre-evaluation, as this sets a fair and predictable process for all applicants.

We also welcome the publication of the list of pre-evaluated RSPs to ensure there is transparency for other real and prospective applicants. We believe that prompt communication by ICANN further supports implementation of Work-stream 2 Recommendations and supports the rights of both the applicants and the public to effectively participate in the governance of the DNS.

### **Topic 7: Metrics and Monitoring**

We welcome the work of the Working Group regarding this topic and support the regular collection, review and publication of relevant anonymized data to understand the impact of the New generic Top Level Domain (gTLD) Program.

We believe that in order to make future policy regarding the generic Top Level Domain (gTLD) Program and the DNS space, these decisions will be greatly informed by the data

collected. We additionally request that the recommendations are redrafted to ensure that this data is collected, used, stored and disposed in line with international standards for data protection and with respect to the right to privacy.

### **Topic 8: Conflicts of Interest**

We welcome the work of the Working Group regarding this topic, especially Recommendation 8.1 that states, “...*ICANN must develop a transparent process to ensure that dispute resolution service provider panelists, Independent Objectors, and application evaluators are free from conflicts of interest. This process must serve as a supplement to the existing Code of Conduct Guidelines for Panelists, Conflict of Interest Guidelines for Panelists, and ICANN Board Conflicts of Interest Policy...*”

By ensuring that the processes are free from conflict of interest, all applicants will be able to access a fair adjudication process to determine the eligibility of their applications. We note that this recommendation facilitates due process for applicants.

It is important that this right is observed in the domain name system as it allows a potential registrant to understand why their registration for a domain name might be rejected, suspended or taken down by a registry or a registrar.

### **Topic 9: Registry Voluntary Commitments/ Public Interest Commitments**

We welcome the work of the Working Group regarding the topic. We especially highlight the fact that the language attempts to meet Recommendation 25 of the Competition, Consumer Choice & Trust (CCT) Recommendations that voluntary commitments must a) allow sufficient opportunity for community review, b) set limited Public Interest objection deadlines c) include intended goal and d) Be organized, searchable.

However, we recommend an amendment to Recommendation 9.1 and 9.2 to mandate that all RVCs must be in line with international human rights best practices by requiring registries and registrars to use tools such as human rights impact assessments to document and justify the balance of legitimate interests, and that the Specification 11 should reflect ICANN's Human Rights Core Value.

### **Topic 10: Applicant Freedom of Expression**

We welcome the work of the Working Group regarding this topic and support the affirmation as written. We specifically welcome the reference to the CCWG-Accountability Work Stream 2 Recommendations and specifically Annex 3 of the WS2 Final Report containing the Human Rights Framework of Interpretation (HR-FOI) Final Report and Recommendations – CCWG-Accountability.

ARTICLE 19 is an international human rights organisation that works to protect and promote free expression, which includes the right to speak, freedom of the press and the right to access information. At ICANN, we engage through the ICANN Empowered Community as members of the Generic Names Supporting Organization (GNSO) under the Non Commercial Stakeholder Group (NCSG), Non Commercial Users Constituency (NCUC) and as members of the At-Large Advisory Committee (ALAC) directly as part of the European Regional At-Large Organization (EURALO). We work within the ICANN community with the main purpose of raising awareness and building coalitions within the community in response to the human rights implications of the Domain Name System (DNS). We aim to ensure that Section 27.2 of the ICANN Bylaws (on human rights) and other Bylaws with an impact on human rights are implemented in full and put consideration of the user at the centre of policy development processes.

### **Topic 11: Universal Acceptance**

We welcome the work of the Working Group regarding this topic. However, we note that Affirmations 11.1, 11.2, Recommendations 11.3 and Implementation guidance 11.4 fail to go far enough to provide metrics to measure the success of Universal Acceptance adoption.

We believe that Universal Acceptance is important as it facilitates the ability for all groups and individuals to participate on the Internet using domains that reflect their local languages and scripts, and ensures that they do not face undue obstacles based on their geographic or regional representation, language, gender, age, physical disability, diverse skills, stakeholder group or constituency.

We thus recommend that the section must clearly introduce metrics to measure adoption that registries and registrars should be compelled to publish regularly, and the public

disclosure of policies available to ensure the successful adoption of Universal Acceptance across all registries and registrars.

### **Topic 12: Applicant Guidebook**

We welcome the work of the Working Group regarding this topic and support the affirmations and recommendations as written, especially the provision of language support in the six UN languages.

Additionally, we welcome Recommendation 12.4 that recommends that the focus should be on the user when drafting future versions of the Applicant Guidebook (AGB) and prioritizing usability, clarity, and practicality in developing the AGB for subsequent procedures.

We believe that the language support will further ensure that the DNS promotes participation, inclusion, equality and non-discrimination so that all groups and individuals are able to participate on the Internet using domains that reflect their local languages and scripts and that they do not face undue obstacles based on their geographic or regional representation, language, gender, age, physical disability, diverse skills, stakeholder group or constituency.

### **Topic 13: Communications**

We welcome the work of the Working Group regarding this topic and support the affirmations and recommendations as written, especially mandating that ICANN provide frequent communications with applicants and the public, including comment forums, which will be used to inform evaluation panels.

We believe that prompt communication by ICANN further supports the implementation of Work-stream 2 Recommendations and supports the rights of both the applicants and the public to effectively participate in the governance of the DNS.

### **Topic 14: Systems**

We welcome the work of the Working Group regarding this topic and support the affirmations and recommendations as written. We however request that the Systems are

created in a manner through which any interested party receives updates on any indicated application, without any limiting criteria.

We believe that allowing all interested parties to receive updates on any indicated application further supports implementation of Work-stream 2 Recommendations and supports the rights of both the applicants and the public to effectively participate in the governance of the DNS.

### **Topic 15: Application Fees**

We welcome the work of the Working Group regarding this topic. However, we note that the recommendations fail to go far enough on the issue of fees and refunds, especially for applicants from the Global South or community organizations and thus request that the Working Group should propose exact fees and that recommendations should be drafted providing exceptions or very affordable fees especially for strings that are for non commercial exercise of freedom of expression.

### **Topic 16: Applications Submission Period**

On this topic, we welcome the fixed setting of predictable time-frames by the Working Group. We note that setting a clear time-frame of 13 weeks provides generic Top Level Domain (gTLD) applicants with fair and set rules by which they can gauge themselves and submit their applications as set out in the Applicant Guidebook and base Registry Agreement.

### **Topic 17: Applicant Support**

We welcome the work of the Working Group regarding this topic. We especially welcome Recommendation 17.2, expanding the scope of financial support provided to Applicant Support Program beneficiaries beyond the application fee to also cover costs such as application writing fees and attorney fees related to the application process.

This support is welcome, especially for applicants from the Global South or community organizations and for non commercial exercise of freedom of expression.

### **Topic 18: Terms and Conditions**

We welcome Recommendation 18.1 that requires transparency in ICANN decision-making through the requirement that, “...*Unless required by specific laws, ICANN Board members’ fiduciary duties, or the ICANN Bylaws, ICANN must only reject an application if done so in accordance with the provisions of the Applicant Guidebook. In the event an application is rejected, ICANN org must cite with specificity the reason in accordance with the Applicant Guidebook, or if applicable, the specific law and/or ICANN Bylaws for not allowing an application to proceed. This recommendation constitutes a revision to Section 3 of the Terms and Conditions from the 2012 round...*”

It is important that due process is observed in the domain name system, as it allows a potential registrant to understand why their registration for a domain name might be rejected, suspended or taken down by a registry or a registrar.

### **Topic 19: Application Queuing**

On this topic, we welcome the setting of predictable time-frames and procedures by the Working Group. We note that setting time-frames and procedures upfront provides generic Top Level Domain (gTLD) applicants with fair and set rules by which they can gauge themselves and ICANN to ensure that the application process is being governed in a fair manner for everyone, as set out in the Applicant Guidebook and base Registry Agreement.

We also welcome the prioritization of Internationalized Domain Names (IDNs) in the formula under Recommendation 19.2, as this would further enhance a multilingual Internet and facilitate more inclusive participation.

### **Topic 20: Application Change Requests**

On this topic, we welcome the setting of predictable time-frames and procedures by the Working Group. We note that setting time-frames and procedures upfront provides generic Top Level Domain (gTLD) applicants with fair and set rules by which they can gauge themselves and ICANN to ensure that the application process is being governed in a fair manner for everyone, as set out in the Applicant Guidebook and base Registry Agreement.

### **Topic 21: Reserved Names**

We appreciate that the Working Group took the time to consider the topic. However, we submit that the Working Group ought to have considered further the “Unavailable Names”, referred to in the 2012 AGB as “Reserved Names,” as the restrictions created by the 2012 reserved names schedule is too broad and potentially prevents comments on the work of institutions listed in the Reserved Names lists for example through a .sucks or .fail domain or similar domains.

This topic merits further discussion to ensure that restrictions are narrow and not as broadly worded as in the 2012 Policy to prevent any undue limitations on the choices available to generic Top Level Domain (gTLD) string applicants.

ARTICLE 19 recognises that freedom of expression in the domain name system is important to the free flow of information on the Internet and therefore should be managed in the public interest. This topic should be reconsidered especially as the creation of the Reserved Names lists does not have a documented clear justification that it is created for public interest purposes. This should be rectified to ensure that any reservation of names should always be considered as an exception and not the rule to enable the rights to freedom of expression for all generic Top Level Domain (gTLD) string applicants.

### **Topic 21.1: Geographic Names at the Top-Level (Annex I)**

We note that the Working Group recommendations do little to move beyond the guidance of the International Organization for Standardization (ISO) on what new generic Top Level Domain (gTLD) to prohibit or restrict.

Any attempts towards setting preventive protection rights as opposed to curative rights leads to complications in domain name applications as well as evaluation processes. This is the case as preventive measures have been more restrictive to freedom of expression as opposed to curative measures which are only applied whenever things are not working as per policy. We urge Working Group to consider the following questions in further work on the topic:

- What specific advice or other guidance should TLD application evaluation and dispute resolution panelists (and other evaluators) be given, to ensure that the

policy principle of protecting applicant rights to freedom of expression can be effectively implemented?

- When considering objections, what are the concrete guidelines that can be provided to dispute resolution providers to consider “fair use”, “parody”, and other forms of Freedom of Expression (FoE) rights, in its evaluation?
- In the evaluation of a string, what criteria can ICANN and/or its evaluators apply to ensure that the refusal of the delegation of a particular string will not infringe an Applicant’s freedom of expression rights?

We recommend that the Working Group identifies the full spectrum of human rights issues impacted by these policy recommendations and their subsequent implementation in the envisaged multilingual domain name space. This can be through using tools such as human rights impact assessments to document and justify the balance of legitimate interests under the topic.

Lastly, the recommendations in this topic should strike a delicate balance between the applicants right to express themselves and use any words and the rights for companies or cities to other brand names derived from generic, well-established keywords, which, in some cases, include city names.

## **Topic 22: Registrant Protections**

We support the recommendations as written under affirmations/ recommendations 22.1, 22.2, 22.3, 22.4, 22.5, 22.6 and 22.7 as they provide registrants with appropriate and important protections to ensure that they are free to fully exercise their human rights online.

## **Topic 23: Closed Generics (also known as Exclusive Generics)**

We appreciate that the Working Group took the time to consider the topic. We note that there was no agreement from the Working Group with respect to either allowing or disallowing Closed Generics.

With regards to the three proposals submitted as options, we submit that the most appropriate is the Proposal for Public Interest Closed Generic gTLDs (PICG TLDs).

ARTICLE 19 believes that the proposal clearly outlines the rationale of implementing new closed generic top level domains in the public interest within the DNS while supporting the publication of robust and useful content to meet the public interest obligations implied by the string and set out in the GAC Advice through the Beijing Communique dated April 11, 2013.

#### **Topic 24: String Similarity Evaluations**

We support the recommendations as written under the affirmations/ recommendations 24.1, 24.2, 24.3, 24.4, 24.5, 24.6 and 24.7, especially as the restrictions are narrow enough to prohibit singulars and plurals of the same word within the same language/script and to expand the scope of the String Similarity Review to include singulars/plurals. The recommendations as drafted provide a clear, consistent standard for subsequent procedures that will provide greater predictability for applicants.

We request that all restrictions governing string similarity should not extend to other scripts or languages as this would not be excessive as the strings might have different meaning or application in the other scripts or languages.

#### **Topic 25: Internationalized Domain Names (IDNs)**

ARTICLE 19 believes that a multilingual Internet further provides opportunities for freedom of expression and information, as well as freedom of association and assembly online. We thus welcome the Working Group deliberations on the topic and the ongoing work at the GNSO Council to produce the 2020 IDN Scoping Team Final Report.

We thus welcome the affirmations and recommendations under 25.1, 25.2, 25.3, 25.4, 25.5, 25.6, 25.7 and 25.8, especially as the use of Root Zone Label Generation Rules (RZ-LGR) to govern IDNs allows for a consistent approach aimed at providing new generic Top Level Domain (gTLD) applicants with clear predictability. However, we note that Recommendation 25.2 and Implementation Guidance 25.3 on automation of the RZ-LGR in the evaluation processes should be implemented with caution, so as not to restrict freedom of expression and information. We request that governance of IDNs should be in strict compliance with Section 27.2 of the ICANN Bylaws (on human rights) to ensure that all registrants have the opportunity to express themselves online.

## **Topic 26: Security and Stability**

We welcome the work of the Working Group regarding this topic and support all the affirmations and recommendations as written, with the exceptions of Recommendation 26.2 that states, “ICANN must honor and review the principle of conservatism when adding new generic Top Level Domains (gTLD) to the root zone” and Recommendation 26.9 that states, “In connection to the affirmation of Recommendation 4 from the 2007 policy, Emoji in domain names, at any level, must not be allowed.”

An outright ban of emojis at all levels without permitting them for second level domains (SLDs) is too prohibitive. ARTICLE 19 notes that there are already registered emoji SLDs in generic Top Level Domains (gTLDs), and thus the recommendation by the Working Group would favour incumbent emoji domains and prevent new entrants that are motivated to exercise their freedom of expression and information. We note that this approach is discriminatory and points to a need for consistent policy that would apply to all domains equally.

We thus recommend further discussion on permissible applications for second and third levels of domain names to allow for registrants to express themselves freely.

## **Topic 27: Applicant Reviews: Technical & Operational, Financial and Registry Services**

We welcome the work of the Working Group regarding this topic and support all the affirmations and recommendations as written, especially Recommendation 27.2, which simplifies the scoring framework. This would ensure predictability and consistency in application of the rules for all applicants. Additionally, we welcome recommendations 27.3 and 27.5 and Implementation Guidance 27.4, as these are consistent with the current efforts under Work Stream 2 to support ICANN transparency. The publication of the Clarifying Questions (CQs) and responses to those CQs further supports the implementation of Work-stream 2 Recommendations.

## **Topic 28: Role of Application Comment**

We welcome the work of the Working Group regarding this topic and support all the affirmations and recommendations as written, as these are consistent with the current efforts under Work Stream 2 to support ICANN transparency and in particular, the

publication of public comments and their responses during the new generic Top Level Domains (gTLDs) application process as this further supports implementation of Workstream 2 Recommendations.

### **Topic 29: Name Collisions**

We welcome the work of the Working Group regarding this topic and support all the affirmations and recommendations as written, especially on the use of the New gTLD Collision Occurrence Management framework. At this time, we do not support the replacement of this framework by a new Board approved framework that may result from the Name Collision Analysis Project (NCAP) Studies I, II and III. Any proposal for a new mitigation framework would be premature given the work of the NCAP studies group is yet to be completed.

### **Topic 30: GAC Consensus Advice and GAC Early Warning**

We welcome the affirmations and recommendations as written, especially as they call for GAC advice to have “clearly articulated rationale, including national or international law or policy basis.” We also welcome Recommendation 30.4 that calls for revision of Section 3.1 of the 2012 Applicant Guidebook, stating that GAC Consensus Advice “will create a strong presumption for the ICANN Board that the application should not be approved.”

We also welcome Recommendation 30.7, which would allow for Registry Voluntary Commitments (RVCs, formerly Voluntary PICs), to address GAC Early Warnings and/or GAC Consensus Advice. This would prevent pre-emptive restriction on freedom of expression as a result of GAC Early Warnings and/or GAC Consensus Advice. This is the case as the application of GAC Advice and Early Warnings in the 2012 round was interpreted to be very restrictive. We would also recommend that the language in Recommendation 30.7 be further revised to provide for a clear appeals mechanism to allow for applicants to appeal GAC Early Warnings and/or GAC Consensus Advice.

We also welcome these recommendations as they are in line with Recommendation 33 of the Competition, Consumer Choice & Trust (CCT) Recommendations and international best practices on freedom of expression.

### Topic 31: Objections

We welcome the work of the Working Group under the topic, especially as the affirmations and recommendations clearly outline the four grounds for new generic Top Level Domains (gTLDs) application objections: (1) String Confusion (2) Legal Rights (3) Limited Public Interest (4) Community.

We also welcome the use of neutral, third party dispute resolution providers and the option for parties to mutually agree on one panelist or a three-person panel, as this transparency and due process allows for disputes to be resolved faster and more equitably.

We also welcome the Implementation Guidance 31.13, which provides that information about fees and refunds for dispute resolution processes should be readily available prior to the commencement/opening of the application submission period. However, we note that the recommendations fail to go far enough on the issue of fees and refunds, especially in considering concessions for applicants from the Global South or community organizations. Thus, we request that the Working Group propose exact fees and that recommendations should be drafted providing exceptions or concessions, especially for strings that are for non commercial exercise of freedom of expression.

### Topic 32: Limited Challenge / Appeal Mechanism

We welcome the work of the Working Group under the topic, especially the introduction of appeal mechanisms for the next round of generic Top Level Domains (gTLDs), in response to previous submissions made by the non-commercial stakeholders that explained how the accountability mechanisms of the 2012 generic Top Level Domains (gTLDs) round were clearly insufficient to properly facilitate challenges to decisions on evaluations.

These recommendations are in line with Recommendation 35 (3) of the Competition, Consumer Choice & Trust (CCT) Recommendations that the “...*Subsequent Procedures PDP should consider adopting new policies to avoid the potential for inconsistent results in string confusion objections. In particular, the PDP should consider the following possibilities: ...3) Introducing a post dispute resolution panel review mechanism....*”

It is important that due process is observed in the domain name system, as it allows potential registrants to understand why their registration for a domain name might be rejected, suspended or taken down by a registry or a registrar.

However, we note that Recommendation 32.2 under the topic fails to go far enough on the issue of fees and refunds to facilitate the dispute resolution process, especially for applicants from the Global South or non-commercial organizations. We find that the language that “*fees are modest, transparent, and flat*” to be very vague and thus request that the Working Group should propose exact fees and that recommendations should be drafted to provide exceptions or concessions, especially for strings that are for non-commercial stakeholders exercise of freedom of expression.

### **Topic 33: Dispute Resolution Procedures After Delegation**

We welcome the work of the Working Group on the two dispute resolution procedures within its remit, which include the Registration Restrictions Dispute Resolution Procedure (RRDRP) and the Public Interest Commitment Dispute Resolution Procedure (PICDRP).

We specifically welcome Recommendation 33.2, which is in line with our previous comments on the matter, that “*...For the Public Interest Commitment Dispute Resolution Procedure (PICDRP) and the Registration Restrictions Dispute Resolution Procedure (RRDRP), clearer, more detailed, and better-defined guidance on the scope of the procedure, the role of all parties, and the adjudication process must be publicly available...*”

However, we note that the recommendations fail to address any subsequent changes to the RRDRP and the PICDPR procedures and request that changes to the process should be carried out after public consultation, in accordance with the ICANN Bylaws, and not only with input from ICANN staff.

Lastly, we recommend that the topic should clearly provide mechanisms for appeal once the disputed parties exhaust the RRDRP and the PICDPR procedures.

### **Topic 34: Community Applications**

On this topic, we welcome Recommendation 34.2 that the Community Priority Evaluation (CPE) process must be efficient, transparent and predictable. We agree with the observations from the Working Group that “...*the 2012 CPE process lacked the appropriate level of transparency and predictability...*” We also welcome Recommendation 34.3 and Implementation Guidance 34.3 that, “...evaluation procedures (including any supplemental dispute provider rules) are widely available before the opening of the application submission period...”

However, we recommend that changes be made to the Community Priority Evaluation (CPE) Guidelines from 2012 on the term “community” to allow that it be applied more broadly. Communities, especially at the grassroots level, may define themselves differently from how they are defined by external actors. A broader interpretation of the term would facilitate greater inclusion of communities, particularly those that are subject to systemic marginalisation.

Second, we recommend that the Community Priority Evaluation (CPE) Guidelines from 2012 be amended to ensure that these community evaluations are determined by a panel consisting of experts in the community’s specific/relevant field or by a relevant subject matter or community expert of regional or international standing.

Third, we do not accept that size, registration or longevity of a community are reasons to deny a Community Application.

We additionally recommend that the following mentioned documents under the topic are made mandatory for publication, especially within a defined time limit: Clarifying Questions (CQs), responses to CQs, letters of opposition to a Community Application and the documented support for the application.

### **Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets**

We welcome the work of the Working Group on this topic, but object to Recommendation 35.2, which facilitates private resolution through private auctions. We believe that private resolution of contention sets would limit transparency and scrutiny of the management of the DNS. The standard that applicants submit “...bona fide (“good faith”) intentions...” is too vague to ensure that all applicants regulate their conduct in a precise manner.

We thus recommend that private resolutions be disallowed, so that every contention has a chance for public input from all interested parties.

### **Topic 36: Base Registry Agreement**

On this topic, we welcome the work of the Working Group. However we recommend revisions to Recommendation 36.4, which states that, “...*ICANN must add a contractual provision stating that the registry operator will not engage in fraudulent or deceptive practices...*” The recommendation as written is vague and too broad, and may therefore be used to limit freedom of expression and information. An example can be that a registry or registrar would misinterpret the recommendation and proactively take action against registrants without providing them a chance to appeal the registry’s or registrar’s decision. We thus recommend that the language should be revised to reflect that “...*the registry operator will not engage in breaking the law in their country of registration...*”

This revision would provide certainty for registrars that they are not compelled under their agreements to monitor each registrant under them.

### **Topic 37: Registrar Non-Discrimination & Registry/Registrar Standardization**

We welcome the work of the Working Group on this topic, especially the inclusion of a public comment process through Recommendation 37.1 whenever a Registry is applying for a Code of Conduct exemption of using an ICANN accredited registrar.

We note that increased transparency of ICANN and the Registry/ Registrar Code of Conduct further supports the implementation of Work-stream 2 Recommendations.

### **Topic 38: Registrar Support for New gTLDs**

We welcome Affirmation 38.1 that, “...*The Working Group affirms existing practice that it is up to a registrar to determine which gTLDs it carries...*”

We note that this freedom granted to registrars would prevent a registry from making a unilateral decision that might force a registry to carry a generic Top Level Domain (gTLD) without being prepared, which in turn would cascade to the registry’s poor handling of registrant data.

### **Topic 39: Registry System Testing**

We welcome Recommendation 39.1 and Recommendation 39.4 that, “...*The Working Group affirms existing practice that it is up to a registrar to determine which gTLDs it carries...*” and “...*Registry System Testing (RST) must be efficient...*”

Our position through the ICANN CCWP-HR has been that all registrars should provide Domain Name System Security Extensions (DNSSEC) as part of their service and implement DNS-based Authentication of Named Entities (DANE). We note that these recommendations and the application of these technical standards would protect registrants’ right to privacy.

### **Topic 40: TLD Rollout**

On this topic, we welcome the fixed setting of time-frames by the Working Group. We note that setting time-frames (of 9 months and 12 months) upfront provides generic Top Level Domain (gTLD) applicants with fair and set rules by which they can gauge whether they are fulfilling their obligations as set out in the Applicant Guidebook and base Registry Agreement.

### **Topic 41: Contractual Compliance**

On this topic, we welcome the recommendations for more ICANN transparency. We emphasize that Recommendation 41.2 should be retained as drafted, that, “...*ICANN’s Contractual Compliance Department should publish more detailed data on the activities of the department and the nature of the complaints handled; provided however, that ICANN should not publish specific information about any compliance action against a registry operator unless the alleged violation amounts to a clear breach of contract. To date, ICANN compliance provides summary statistics on the number of cases opened, generalized type of case, and whether and how long it takes to close. More information must be published on the context of the compliance action and whether it was closed due to action taken by the registry operator, or whether it was closed due to a finding that the registry operator was never out of compliance...*”



We note that implementation of the recommendation as drafted further supports the implementation of Work-stream 2 Recommendations, which have already gone through Board approval.

## **Conclusion**

ARTICLE 19 is grateful for the opportunity to engage with ICANN and the GNSO in this process in light of the five objectives under ICANN's Strategic Plan for Fiscal Years 2021-2025.

We look forward to continued collaboration to strengthen human rights considerations in the Domain Name System and particularly in ICANN's policies and procedures. We welcome further engagement opportunities and avail ourselves in case of any questions or concerns.

If you would like to discuss this analysis further, please contact Ephraim Percy Kenyanito, Senior Digital Program Officer, at [ephraim@article19.org](mailto:ephraim@article19.org). Additionally, if you have a matter you would like to bring to the attention of the ARTICLE 19 Digital Programme, you can contact us by e-mail at [digital@article19.org](mailto:digital@article19.org).