New gTLD Recommendation 6 Cross-Community Working Group Terms of Reference

Draft, 18 August 2010

<u>References</u>

1. GNSO Final Report – Introduction of New gTLDs: **http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm** (Note recommendation 6 in the section titled 'SUMMARY -- PRINCIPLES, RECOMMENDATIONS & IMPLEMENTATION GUIDELINES' as well as the 'Recommendation 6 Discussion' found later in the section titled 'TERM OF REFERENCE -- SELECTION CRITERIA'.
2. New gTLDs Draft Applicant Guidebook, version 4: **http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm** (Note the portions of Module 3, Dispute Resolution Procedures, relating to new gTLD recommendation 6.)
3. Letter from Heather Dryden, GAC Chair, to Peter Dengate Thrush dated 4 August 2010 regarding Procedures for Addressing Culturally Objectionable and/or Sensitive Strings: **http://www.icann.org/correspondence/gac-to-dengate-thrush-04aug10-en.pdf**
4. GAC Principles Regarding New gTLDs, March 2007: **http://gac.icann.org/gac-documents**

<u>Name of the Group</u>

The name of the group shall be 'New gTLD Recommendation 6 Community Working Group' or 'Rec6 CWG' for short.

<u>Purpose of the Working Group</u>

The primary purpose of the Rec6 CWG is to provide guidance to the ICANN new gTLD Implementation Team and the ICANN Board with regard to the implementation of recommendation 6 regarding procedures for addressing culturally objectionable and/or sensitive strings.

The purpose is not to revisit the intended aim of recommendation 6 but rather to develop implementation guidelines that will address the concerns expressed by the Governmental Advisory Committee (GAC), with the objective of preserving the stability, integrity and universal resolvability of the DNS.

<u>Working Group Tasks</u>

The Rec6 CWG is asked to attempt to perform the following tasks:

The overall objective of the Rec6 CWG is to develop recommendations for an effective objections procedure that both recognizes the relevance of national laws and effectively addresses strings that raise national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes. Specific tasks are to:

1. Recommend alternative terms to 'morality' and 'public order', as appropriate.
2. Review the dispute resolution procedures related to recommendation 6 in the New gTLD Draft Applicant Guidebook, version 4. (For convenience, relevant excerpts of the guidebook are included in Appendix A and a flow chart of the dispute process in included in Appendix B.)
3. Deliver a report with any recommendations to the ICANN Board.

Key Assumptions

The following assumptions should guide the work of the Rec6 CWG:
  i.   Recommendation 6 raises public policy issues.
 ii.   No one solution will satisfy all stakeholders because there are strongly divergent views on the underlying issues that recommendation 6 seeks to address.
iii.   This is not a policy development process as defined in the ICANN Bylaws but rather an effort to explore ways of improving the implementation plan of recommendation 6 in response to GAC and ALAC concerns.
 iv.   There is no internationally agreed definition of "Morality and Public Order".

Rules of Engagement

The following rule should guide the operation of the Rec6 CWG: Exchanges should be focused on seeking effective solutions rather than repeating previous exchanges or revisiting the intended purpose of Recommendation 6.

Group Membership & Leadership

The Rec6 CWG will be open to volunteers from all ICANN Supporting Organizations (SO's) and Advisory Committees (AC's) who are willing to constructively contribute to the tasks of the group and respond to the leadership of the group co-chairs. The chairs of the GNSO, GAC and/or ALAC or their designees will serve as co-chairs of the Rec6 CWG.

ICANN will provide:
  • A designated staff support person to assist the group
  • A representative from the ICANN new gTLD implementation team
  • Administrative support
  • An email list
  • A wiki sight and/or other tools as needed

The GNSO, GAC and ALAC must identify at least one person who will serve as a primary liaison between the Rec6 CWG and their respective organizations. Other SO's and AC's may also identify a liaison if desired.

Operational Guidelines & Timeline

In general, the working group should operate using a rough consensus approach. Every effort should be made to arrive at positions that most or all of the group members are willing to support. To the extent possible any recommendations produced should be commented on by the GNSO Council, the ALAC and the GAC.

If possible, the Rec6 CWG should deliver its report with comments from the GNSO, ALAC, and GAC not later than 13 September 2010 to meet the 11-day advance publication that the Board requests for its retreat on new gTLDs. If that is not possible, an interim report should be delivered that provides the status of the work to date, estimates for completion and possible recommendations.

Appendix A

Relevant Excerpts from New gTLD Applicant Guidebook, v.4, Module 3

The following excerpts related to recommendation 6 are taken from the New gTLDs Draft Applicant Guidebook, version 4, module 3.

3.1.1 Grounds for Objection
An objection may be filed on any one of the following four grounds:

. . .

Morality and Public Order Objection – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law.

. . .

3.1.2.3 Morality and Public Order Objection
Anyone may file a Morality and Public Order Objection. Due to the inclusive standing base, however, objectors are subject to a "quick look" procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time. For more information on the "Quick Look" procedure, refer to the accompanying Explanatory Memorandum.

. . .

3.1.3 Dispute Resolution Service Providers
To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date, directly with the appropriate DRSP for each objection ground.
. . .

• The International Center of Expertise of the International Chamber of Commerce has agreed in principle to administer disputes brought pursuant to Morality and Public Order and Community Objections.

. . .

3.1.5 Independent Objector
A formal objection to a gTLD application may also be filed by the Independent Objector (IO). The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet. In light of this public interest goal, the Independent Objector is limited to filing objections on the grounds of Morality and Public Order and Community. Neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the IO to file or not file any particular

objection. If the IO determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest.

Mandate and Scope - The IO may file objections against "highly objectionable" gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) Morality and Public Order objections and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2). The IO may file a Morality and Public Order objection against an application even if a Community objection has been filed, and vice versa. The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed. Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground. The IO may consider public comment when making an independent assessment whether an objection is warranted. The IO will have access to comments from the appropriate time period, running through the Initial Evaluation period until the close of the deadline for the IO to submit an objection.

Selection – The IO will be selected by ICANN, through an open and transparent process, and retained as an independent consultant. The Independent Objector will be an individual with considerable experience and respect in the Internet community, unaffiliated with any gTLD applicant. Although recommendations for IO candidates from the community are welcomed, the IO must be and remain independent and unaffiliated with any of the gTLD applicants. The various rules of ethics for judges and international arbitrators provide models for the IO to declare and maintain his/her independence. The IO's (renewable) tenure is limited to the time necessary to carry out his/her duties in connection with a single round of gTLD applications.

. . .

For a Morality and Public Order Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.

. . .

3.4.3 Morality and Public Order Objection
An expert panel hearing a morality and public order objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order, as reflected in relevant international agreements. Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply. The grounds upon which an applied-for gTLD string may be considered contrary to morality and public order according to internationally recognized standards are:
• Incitement to or promotion of violent lawless action;
• Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin;

• Incitement to or promotion of child pornography or other sexual abuse of children; or

• A determination that an applied-for gTLD string would be contrary to equally generally accepted identified legal norms relating to morality and public order that are recognized under general principles of international law.

Appendix B

(Insert Margie's PDF flowchart)