

GNSO gTLD Registries Stakeholder Group Statement

Issue: Rec6 Community Working Group (CWG) Recommendations and the Rec6 CWG Responses to the ICANN Board dated 7 January 2010

Date: February 2, 2011

Issue Document and URL: Community Working Group Report on Implementation of GNSO New gTLD Recommendation Number 6, Dated 22 September 2010 (a link to the report can be found at <http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm>)

This statement on the issue noted above is submitted on behalf of the gTLD Registries Stakeholder Group (RySG) in response to the request by the GNSO Council for the comments of stakeholder groups. The statement that follows represents a consensus position of the RySG as further detailed at the end of the document. The RySG statement was arrived at through a combination of RySG email list discussion and RySG meetings (including teleconference meetings).

I. Rec6 CWG Recommendations

The RySG supports the following full consensus and consensus recommendations of the New gTLD Rec6 CWG except as otherwise noted in *italic font* following specific recommendations.

Full Consensus Recommendations

- Rec. 1.1 ICANN should remove the references to Morality & Public Order in the Draft Applicant Guidebook as far as these are being used as an international standard and replace them with a new term. Further details about what is meant with the new term would need to be worked out to ensure that it does not create any confusion or contravene other existing principles such as GNSO New gTLD Principle G and Recommendation 1.
- Rec. 1.2 The name of the Rec6 objection should not be “Morality and Public Order.”
- Rec. 2.1 ICANN should seriously consider adding other treaties as examples in the Draft Applicant Guidebook, noting that these should serve as examples and not be interpreted as an exhaustive list.
- Rec. 2.2 The AGB should refer to “principles of international law” instead of “international principles of law.”

- Rec. 2.5 If individual governments have objections based on contradiction with specific national laws, such objections may be submitted through the Community Objections procedure using the standards outlined in AGv4.
- Rec. 4.1 Ultimate resolution of the admissibility of a TLD subject to a Rec6 objection rests with the Board alone and may not be delegated to a third party.
- Rec. 11.2 The dispute resolution process for Rec. 6 objections should be resolved sooner in the process to minimize costs.

RySG Comments: This same recommendation could be made for all new gTLD dispute processes. It is not clear that recommendation 6 objections should be given priority over other objections.

- Rec. 12.1 The CWG notes that ICANN GAC and At-Large Advisory Committees or their individual governments in the case of the GAC have the possibility to use the 'Community Objection' procedure. A "Community Objection" can be filed if there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.
- Rec. 12.2 The CWG recommends that the fees for such objections by the GAC or the At-Large Advisory Committees be lowered or removed.

RySG Comments: To the extent that there are costs for such objections, would other applicants be expected to subsidize those costs via the fees they pay? Is it fair to ask applicants to subsidize objections to strings that they have invested significantly in?

- Rec. 13.1 The current language from Criterion 4 of AGv4 reads: "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." However, the current language should be revised to read: "A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law."

Consensus Recommendations

- Rec. 3.2 Further guidance as to the standards to determine what constitutes an abusive objection is needed and consideration of possible sanctions or other safeguards for discouraging such abuses.
- Rec. 3.3 In determining whether an objection passes the quick look test, there should be an evaluation of the grounds for the objection to see if they are valid. National law not based on international principles should not be a valid ground for an objection.

Rec. 4.2 Under its authority to obtain independent expertise as stated in Article XI-A of the ICANN Bylaws, the Board shall contract appropriate expert resources capable of providing objective advice in regard to objections received through this process.

Rec. 5.2 The higher threshold (to uphold an objection to a proposed string) should be at least 2/3.

RySG Comments: It might be sufficient to require a simple majority of the Board as stated in the 7 January 2010 response of the CWG to the Board requests for clarification.

Rec. 5.3 Approval of a string should only require a simple majority of the Board regardless of the input from the experts.

Rec. 6.1 The ‘incitement to discrimination criterion’ should be retained but revised as follows: “Incitement to and instigation of discrimination based upon race, age, color, disability, gender, actual or perceived sexual orientation or gender identity, political or other opinion, ethnicity, religion, or national origin.”

RySG Comments: International legal expertise should be consulted on this issue and Recommendation 7.1 below.

Rec. 7.1 The new proposed language should read:

- **Incitement and instigation** of violent lawless action;
- **Incitement and instigation** of discrimination, based upon race, age, color, disability, gender, actual or perceived sexual orientation or gender identity, political or other opinion, ethnicity, religion, or national origin.
- **Incitement and instigation** of child pornography or other sexual abuse of children.

Rec. 9.1 The Rec6 CWG hopes that the mechanisms it proposes in this Report will help limit blocking of whole TLDs at the national level. Blocking of TLDS should remain exceptional and be established by due legal process. The group also recognized that reduced blocking of TLDs is of little value if the result is that the opportunity to create new TLDs is unduly constrained by an objection process. The absence of blocking is of little value if it creates a name space that does not reflect the true diversity of ideas, cultures and views on the Internet.

Rec. 10.2 If requested in writing by the GAC or ALAC the Independent Objector will prepare and submit a relevant Objection. The Independent Objector will liaise with the GAC or ALAC in drafting such an Objection. Any Objection initiated from a GAC or ALAC request will go through the same process as an Objection from any other source and must meet the same standard for success as an Objection from any other source.

II. Rec6 CWG Responses to the Board dated 7 January 2010

Reference: Rec6 CWG response to the ICANN Board's Cartagena Resolution (2010.12.10.21) requesting that the Rec6 CWG provides its final written proposal with regard to three specific issues by 7 January 2011 (a link to the report can be found at <http://gns0.icann.org/correspondence/>)

The RySG supports the following selected portions of the CWG responses to the Board as referenced above, except as otherwise noted in *italic font*:

Response Area 1a – The Role of the Board in the Objection Process

“... the CWG has recommended that the Board would have to specifically approve any recommendations from third party experts to reject a TLD application based on a Recommendation 6 objection. The CWG has not suggested, however, that the Board be required to take a vote on specific Recommendation 6 objections where the third party experts reject such an objection. Nor did the CWG suggest that the Board be required to approve every new gTLD string.”

Response Area 1b – The Role of Expert Panels in the Objection Process

“A consensus of the CWG recommended that the ICANN Board may "contract appropriate expert resources capable of providing objective advice." The CWG did not recommend that the Board should be a Trier of fact or should hear in the first instance every Rec6 objection with a requirement that it should make a determination on the merits in every case.”

RySG Comments: This response by the CWG seems consistent with the GNSO recommendations regarding new gTLD objection processes.

Response Area 2 - The Incitement to Discrimination Criterion

Regarding the wording of the criteria for incitement to discrimination, the CWG recommended that “expert clarification should be made to the Board on the varying interpretations of the different criteria”.

RySG Comments: This is an issue of international law so we agree with the CWG that experts in international law should be consulted.

Response Area 3 - The Fees for GAC and ALAC-instigated Objections

“A full consensus of the CWG recommended that fees be lowered or removed for objections from the GAC or ALAC. It is the CWG's sentiment that ICANN should provide the ACs appropriate funding for such objections if there is a cost to object.”

RySG Comments: To the extent that there are costs for such objections, would other applicants be expected to subsidize those costs via the fees they pay? Is it fair to ask applicants to subsidize objections to strings that they have invested significantly in?

Response Area 4 - Other CWG Recommendations Not Specified by the Board

The CWG also commented on two areas not mentioned by the Board:

1. “At a minimum, there should be at least one party that has claimed publicly that it would be harmed by the creation of a TLD before the IO can object to it in an effort to reject such an application.”
2. The CWG noted “that the name selected in the Proposed Final Applicant Guidebook – “Limited Public Interest Objection” was not polled by the CWG and “Public Interest Objections” was ranked only third of five names polled.”

RySG Comments regarding the Use of CWGs

The RySG notes that there is a lack of procedures regarding the role of community working groups in ICANN policy development and in implementation of policies. The ICANN supporting organizations (SO’s) all have their respective policy development processes (PDPs) but even those processes do not adequately define the role of CWGs in those processes. The ICANN Bylaws define the roles of SO’s in policy development but do not define policy development procedures involving more than one SO and the community as a whole.

The RySG strongly believes that work needs to be done to develop procedures for CWGs. Critical questions need to be answered: 1) How should CWGs interact within the affected SO PDPs? 2) How can CWG’s operate without undermining the SO PDPs? 3) What role do the SO’s have regarding the results that come out of CWGs? 4) Should CWGs be consulted directly by the Board without input from affected SO’s?

The RySG supports community wide efforts to deal with issues that impact more than one SO and recognizes that there are currently multiple efforts ongoing in this regard. We encourage the continuance of such efforts but also suggest that such efforts reinforce the urgency of developing processes and procedures for CWGs so that results of the groups can be properly integrated into to work of SO’s.

RySG Level of Support

1. Level of Support of Active Members: Supermajority

- 1.1. # of Members in Favor: 11
- 1.2. # of Members Opposed: 0
- 1.3. # of Members that Abstained: 0
- 1.4. # of Members that did not vote: 2

2. Minority Position(s): N/A

General RySG Information

- Total # of eligible RySG Members¹: 14
- Total # of RySG Members: 13
- Total # of Active RySG Members²: 13
- Minimum requirement for supermajority of Active Members: 9
- Minimum requirement for majority of Active Members: 7
- # of Members that participated in this process: 13
- Names of Members that participated in this process: 13
 1. Afilias (.info & .mobi)
 2. DotAsia Organisation (.asia)
 3. DotCooperation (.coop)
 4. Employ Media (.jobs)
 5. Fundació puntCAT (.cat)
 6. Museum Domain Management Association – MuseDoma (.museum)
 7. NeuStar (.biz)
 8. Public Interest Registry - PIR (.org)
 9. RegistryPro (.pro)
 10. Societe Internationale de Telecommunication Aeronautiques – SITA (.aero)
 11. Telnic (.tel)
 12. Tralliance Registry Management Company (TRMC) (.travel)

¹ All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the “effective date” set forth in the operator’s or sponsor’s agreement (RySG Articles of Operation, Article III, Membership, ¶ 1). The RySG Articles of Operation can be found at <<http://gnso.icann.org/files/gnso/en/improvements/registries-sg-proposed-charter-30jul09-en.pdf>>. The Universal Postal Union recently concluded the .POST agreement with ICANN, but as of this writing the UPU has not applied for RySG membership.

² Per the RySG Articles of Operation, Article III, Membership, ¶ 6: Members shall be classified as “Active” or “Inactive”. A member shall be classified as “Active” unless it is classified as “Inactive” pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in a RySG meeting or voting process for a total of three consecutive meetings or voting processes or both. An Inactive member shall have all rights and duties of membership other than being counted as present or absent in the determination of a quorum. An Inactive member may resume Active status at any time by participating in a RySG meeting or by voting.

13. VeriSign (.com, .name, & .net)

- Names & email addresses for points of contact
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