**PUBLIC INTEREST COMMITMENT DISPUTE RESOLUTION PROCEDURE**

**DRAFT: 14 August 2013**

The following provisions shall apply to the Public Interest Commitment Dispute Resolution Procedure (PICDRP)

**A. Compliance Obligations of the Registry Operator**

1. Consistent with the Registry Agreement, the Registry Operator will comply with Specification 11.
2. Each Registry Operator will designate the Abuse Point of Contact (as specified in Specification 6, Section 4.1 of the Registry Agreement) to receive reports forwarded from ICANN. The Registry Operator’s Abuse Point of Contact will receive reports from ICANN regarding non-compliance with the Public Interest Commitments described in Specification 11 (PICs).
3. Registry Operator will promptly review and address reports of alleged non-compliance with its PICs, and where applicable, will correct any non-compliance.
4. Registry Operator will document its receipt, investigation of, and response, if any, to reports regarding Registry Operator’s alleged non-compliance with its PICs and will provide the documentation relating to any such reports to ICANN as requested by ICANN consistent with the PICDRP.
5. Registry Operator will maintain records and reports relating to any alleged non-compliance with its Public Interest Commitments described in Specification 11 for three (3) years from the date the alleged non-compliance was reported (unless a shorter period is required by law or approved by ICANN) and will provide them to ICANN upon request.
6. ICANN may audit these records in accordance with the terms of the Registry Agreement as further set forth in the PICDRP.

**B. ICANN Preliminary Review Process**

1. **Notification Requirement and Preliminary Review**

1.1 Any person or entity that believes they have been harmed as a result of a Registry Operator’s act or omission in connection with the operation of its gTLD that is inconsistent with the commitments, statements of interest and/or business plans set forth in the Registry Operator’s Public Interest Commitments (“PIC”) Specification (Specification 11 to the Registry Agreement) may report such alleged non-compliance by the Registry Operator (“Reporter”).

1.2 The Reporter will be required to file a PIC report with ICANN by completing an online form. The contents of the PIC report must specifically identify which PIC(s) form the basis for the report and must specifically state the grounds of the alleged non-compliance with one or more PICs and include supporting documentation. The Reporter must state in detail how it has been harmed by the alleged noncompliance. Failure by the Reporter to complete all required fields in the PICPRS report will be grounds for ICANN to close the PICPRS report and take no further action.

1.3 ICANN will conduct a preliminary review of the PIC report to ensure that it is complete and states a claim of non-compliance with one or more PICs. ICANN will also make a determination as to whether the Reporter is in good standing and is not a repeat offender as set forth below in Section 5. ICANN’s preliminary review is not intended to evaluate the merits of the allegations, but whether the Reporter completed all of the reporting obligations. In particular, ICANN will review whether the Reporter has: (i) identified the proper parties; (ii) identified at least one PIC with which the Registry Operator failed to comply, (iii) alleged how the Reporter has been harmed; and (iv) set forth the grounds of the claim and submitted appropriate documentation to support the report of non-compliance.

1.4 If the PIC report fails the preliminary review, ICANN will notify the Reporter and the Registry Operator, and the PIC report will be closed.

2. **Initial Review of the PIC Report and Conference**

2.1 If the PIC report passes ICANN’s preliminary review, ICANN will forward the report to the Registry Operator (through its Abuse Point of Contact) and notify the Reporter that the PIC report has been forwarded to the Registry Operator.

2.2 Following receipt of the PIC report from ICANN, Registry Operator may request to confer with the Reporter by emailing a request to the Reporter. Any such request must be designed to make such a meeting feasible and it shall include Registry Operator’s contact information and a statement describing the Registry Operator’s desire to confer. The Reporter must participate in the requested conference, which may be conducted through email or teleconference or, if both parties agree, in face-to-face meeting(s). The Reporter’s failure to participate in the requested conference shall be grounds for ICANN’s closure of the PIC report.

2.3 Registry Operator has 30 days from the date ICANN sends the PIC report to the Abuse Point of Contact to conduct the requested conference with the Reporter. Failure by the Registry Operator to conduct the conference within the 30-day time period shall be deemed a waiver of the right to conduct the conference and the PIC report will go back to ICANN for further review.

2.4 If the parties are able to resolve the issues raised by Reporter in the PIC report during the 30-day time period, the Registry Operator shall inform ICANN and shall provide ICANN with appropriate evidence that the matter has been resolved. Registry Operator shall be required to maintain records of the PIC report and resolution as set forth in Section A.

2.5 If the parties have not resolved the issues raised by Reporter in the PIC report during the 30-day time period, the PIC report will go back to ICANN for further review. If the Registry Operator requested a conference pursuant to Section 2.2 above and the Reporter failed to participate in that requested conference, ICANN will request evidence of the lack of Reporter participation, and, if necessary, will issue a follow-up to the Reporter regarding their participation in the conference. Registry Operator and/or Reporter must provide evidence of requested conference and lack of Reporter participation within five days. If the Reporter did not participate in the requested conference, ICANN will close the ticket and take no further action on the report.

3. **Compliance** **Review and Investigation by ICANN**

3.1 ICANN shall take into consideration any failure to participate in the requested conference in determining whether to proceed with a compliance investigation or to undertake an enforcement action. ICANN shall not proceed with an investigation of a PIC report if the Reporter failed to participate in a requested conference without demonstrable just cause.

3.2 If the Reporter and the Registry Operator are unable to resolve the issues in the PIC report during the initial 30-day time period, ICANN shall perform substantive review of the allegations in the PIC report. Within five days of notification by Reporter or Registry Operator that the issues have not been resolved, ICANN will conduct a review and request that the Registry Operator provide explanation of why the Registry Operator believes, notwithstanding the allegations contained in the PIC report, it is in compliance and the basis for that belief. The Registry Operator will then have five days to respond to ICANN’s request for explanation.

3.3 Based on the PIC report received by ICANN and Registry Operator’s response(s) to ICANN’s request for explanation, ICANN will determine whether a compliance investigation is appropriate in a particular case. At ICANN’s sole discretion, ICANN may elect to undertake a compliance investigation with respect to one or more reports and, if so, ICANN will promptly notify Registry Operator. Registry Operator must cooperate with ICANN’s investigation, including providing requested information in a timely manner.

3.4 ICANN or the Standing Panel, as set forth in Section 4 as appropriate, will determine whether the response by Registry Operator satisfies its contractual compliance obligations to ICANN. Registry Operator’s documented compliance with obligations under Part A above will be deemed to be compliant with Specification 11. To the extent the results of ICANN’s investigation demonstrate that the Registry Operator is not in compliance with Part A, ICANN may elect to proceed with enforcement of Registry Operator’s obligations pursuant to Section [ ] of the Registry Agreement directly or to seek the input of a Standing Panel to inform ICANN’s continued handling of the matter. In either case, ICANN shall notify both Registry Operator and Reporter of its decision to seek an enforcement action pursuant to Section [ ] of the Registry Agreement, to seek the input of the Standing Panel, or to take no further action. If ICANN decides the issues raised in the PIC report have been resolved, ICANN will notify the Registry Operator and the Reporter of its decision and close the ticket associated with the PIC report.

4. **Standing Panel**

4.1 A panel of three people shall be appointed by ICANN (Standing Panel). The role of the Standing Panel will be to, upon request by ICANN, evaluate compliance by the Registry Operator with its obligations under Part A above. The PIC report and response, if any, by the Registry Operator will be the basis for the Standing Panel’s compliance evaluation. Additional evidence will not be considered and there will be no hearing. Any information that was exchanged between the Registry Operator and the Reporter after the PIC report was filed may be considered at the request of and in the sole discretion of the Standing Panel.

4.2 Standing Panel shall report its evaluation results to ICANN, which ICANN shall provide to the Registry Operator and to the Reporter

4.3 The Standing Panel will report its evaluation results to ICANN within 15 days from its receipt of notice from ICANN that the Standing Panel’s compliance evaluation relating to a PICPRS report is required. .

4.4 If the Standing Panel finds that the Registry Operator is in compliance, ICANN will close the report, and send a closure email to both the reporter and the Registry Operator

4.5 If the Standing Panel finds that the Registry Operator is not in compliance, ICANN shall notify the Registry Operator, and the Registry Operator shall have a final five days to resolve the noncompliance.

4.6. If the Registry Operator does not resolve the non-compliance after receipt of ICANN’s notice specified in section 4.5 above, ICANN will determine, in its sole discretion, the appropriate remedial measure, if any, and proceed to enforcement.

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5. **Repeat Offenders**

5.1 In the initial review of the PIC report, ICANN shall determine if either the Registry Operator has been found to have not complied with its obligations in Part A such that the Registry Operator should be identified as a Repeat Offender or the Reporter should be identified as a Repeat Offender.

5.2 Factors relevant to the determination of a Registry Operator as a Repeat Offender include, but are not limited to:

* 1. severity of any previous allegations/claims against Registry Operator
  2. the number of registrations that exist in the TLD
  3. whether there has been a pattern or practice of noncompliance and over what period of time

5.3 Factors that are relevant to the determination of whether a Reporter is a Repeat Offender, include, but are not limited to:

* + - * 1. the number of PIC reports filed by the Reporter which were resolved in favor of the Registry Operator
        2. the number of times a PIC report was closed because of a Reporter’s failure to meet and confer with the Registry Operator
        3. the number of times the Reporter filed a PIC report that did not state a claim of noncompliance
        4. whether the Reporter has exhibited a pattern or practice of filing reports that have not passed ICANN’s initial review

5.4 Sanctions, if any, in the form of financial penalties may be imposed by ICANN against any Repeat Offender including a Reporter that is found to have filed reports that did not pass ICANN initial review.

5.5 While ICANN’s handling of the PIC report will include a way in which to identify Repeat Offenders, the determination can be made at any time during the PICDRP.