

Public Interest Commitment ALAC Review – Followup

The New gTLD Working Group of the ICANN At-Large Advisory Committee (NGWG) has undergone a lengthy review process related to concerns within the community about the use of Public Interest Commitments (PICs) in new gTLDs.

Greatest amongst those concerns are the lack of public oversight, the temporary and arbitrary nature of the “optional” PICs, and an unsure and adversarial enforcement process that created significant obstacles for reporting of breaches.

To that end, the NGWG engaged in a lengthy consultation process with the community, which included a formal Public Comment Process. The results of this PCP were reviewed by the NGWG at the ICANN51 meeting along with other input.

The analysis from the review to date, combined with additional discussions during ICANN51, were as follows:

- Outside of the domain industry itself, there is absolutely no support for the PIC mechanisms in their current form;
- The primary defence of the PIC mechanisms, from within the domain industry, does not stem from satisfaction with the PIC regime itself, but rather that the process is too far along to change;
- The heightened protection measures announced by Fadi, at the start of ICANN51 does not address the deficiencies with PICs, but only indicated additional staff resources to police the (insufficient) mechanisms;
- Almost all of the constituencies within ICANN involved with end-users and registrants -- governments, business and civil society -- shared the ALAC’s concerns on this issue. Such support has taken many forms and degrees, from repeated GAC statements to Business Constituency letters of concern submitted to the Public Comment Process to numerous private comments of support;
- Representations from members of the ICANN Board that the GAC was unconcerned on the matter, expressed at the ALAC-Board meeting during ICANN50, were explicitly contradicted by the GAC Communique issued at that meeting (and again at ICANN51);
- Within the At-Large Community, the timing issue - why revisit the issue now? - was met by a response that the need for remedial action is completely due to the lack of prior consultation. We are not aware of any multi-stakeholder input -- or any community input at all -- that was solicited in the creation of the PICs. That the only remedy available is after-the-fact is beyond the control of the ICANN community; no opportunity was given to fix it while in development;
- The ALAC and others have been critical of the PIC mechanism from the moment it was released, but criticism has generally been ignored. Only the drastic action of formal ALAC Advice, calling for a freeze has attracted attention;
- How ICANN handles public facing issues such as PICs is a significant factor in its ability (or inability) to generate public trust;
- During the WG consultation process we noted, however, that while there is widespread dissatisfaction with PICs as a way to safeguard the public interest, support for Policy Advisory Boards (PABs) as a remedy is far less common. Many concerns were expressed about the potential cost of PABs, the lack of registry participation, and enforcement. Thus, the thrust of the NGWG going forward, may be shifting to

making the PICs more robust, permanent, accessible, and more easily enforceable, rather than advancing PABs as an alternative.

As a result of the above analysis, the NGWG prepared a statement, endorsed unanimously by ALAC and read during the Public Forum at ICANN51, calling for a freeze on the most sensitive gTLDs (as defined by the GAC) pending a review of the methods to instill public trust in these especially-trust-sensitive TLDs.