D R A F T [v4] 5-February-2012

**Advice requested by ICANN Board**

**regarding definitions, measures, and targets**

**for competition, consumer trust and consumer choice**

Prepared by the Consumer Trust Working Group,

for consideration of ALAC, ccNSO, and GNSO

**Background**

This advice was drafted in response to an ICANN board resolution asking for definitions and metrics that will be used to evaluate the gTLD expansion program in a post-launch review required under the Affirmation of Commitments.

ICANN and the US National Telecommunications and Information Administration (NTIA) signed the Affirmation of Commitments (AOC) on 30-Sep-2009. Article 3.c of the AOC is a commitment to “*promote competition, consumer trust, and consumer choice in the DNS marketplace*”.

Article 9.3 expanded on this and committed ICANN to “*adequately address” “competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection” “prior to implementation*”.

Article 9.3 also committed ICANN to perform a review one year after the first new gTLD was delegated, to “*examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice*”.

Community discussions during the AOC review of Accountability and Transparency included calls for *metrics* – objective measures that could be used to assess ICANN’s performance on key aspects of accountability and transparency. Moreover, it was argued that such metrics would help ICANN management to focus its efforts in ways that would measurably improve performance. In that vein, several community members encouraged ICANN’s board to establish metrics for other AOC reviews and commitments, including public interest, consumer trust, competition, and consumer choice.

Since the AOC did not define the terms or measures of competition, consumer trust and consumer choice, the ICANN Board resolved in December 2010 to request advice from the ALAC, GAC, GNSO and ccNSO on establishing the definition, measures, and three year targets for those measures, for competition, consumer trust and consumer. The resolution reads:

Whereas, ICANN has committed to promoting competition, consumer trust and consumer choice in the Affirmation of Commitments

Whereas, if and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN has committed to organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice.

Resolved, the ICANN Board requests advice from the ALAC, GAC, GNSO and ccNSO on establishing the definition, measures, and three year targets for those measures, for competition, consumer trust and consumer choice in the context of the domain name system, such advice to be provided for discussion at the ICANN International Public meeting in San Francisco from 13-18 March 2011.

In response to that Board resolution, community members in the GNSO, ccNSO and ALAC began to organize a joint working group at the Singapore meeting in Jun-2011. The Working Group invited the GAC to participate and welcomes GAC response to this draft advice.

The Consumer Trust, Choice, and Competition Working Group was chartered first by the GNSO Council on [date]. It was intended that the Charter could also be formally endorsed by ALAC and ccNSO, but their endorsement was not a requirement for participation in the Working Group.

In drafting its charter, the Working Group understood that its work was to produce advice for consideration by GNSO, ccNSO, GAC and ALAC, each of whom was asked for advice as part of the Board resolution discussed above. Each AC/SO may act independently on the Working Group’s draft advice, and may endorse all, part, or none of the draft advice as it decides how to respond to the Board resolution.

The Working Group understands that the purpose of this advice is to provide ICANN’s board with definitions, measures, and targets that could be useful to the AOC review team that will convene one year after new gTLDs are launched. However, the Working Group understands that this advice cannot pre-determine or otherwise limit the scope of the future AOC review team.

In addition, the Working Group anticipates that ICANN’s board will establish definitions, measures, and targets early enough to become part of ICANN’s management objectives as it evaluates and delegates new gTLDs in 2012 and 2013.

**Community representation on the Working Group**

The Working Group on Consumer Trust, Choice, and Competition was formed to respond to an ICANN Board resolution regarding a review of the new gTLD program, as required under the Affirmation of Commitments. Names of Working Group participants and ICANN staff are listed in Appendix A.

**Process for developing this Draft Advice**

The Working Group began regular meetings after the Singapore meeting in June 2011. Working Group members drafted a charter for consideration by any and all community groups form whom the board solicited advice. The Charter was approved by the GNSO on [date] and is available at [link]

In addition to its bi-weekly conference calls, the working group held public discussion sessions at the Singapore and Dakar meetings, including presentations of preliminary results. In Dakar, the Working Group gave briefings to GNSO Council during its weekend sessions.

This initial draft of advice is being posted for public comment on [date]. The Working Group will assess comments received and expects to offer draft advice to ALAC, ccNSO, GAC, and GNSO soon after closing of the public comment period.

**Advice on Definitions**

As its initial task, the Working Group considered definitions for Consumer Trust, Competition, and Consumer Choice in the context of the DNS and ICANN’s gTLD expansion program. As a threshold matter, the working group established this definition of *consumer*, which is critical to two of the three defined terms:

**Consumer**: Actual and Potential Internet Users, and Registrants.

Consistent with the *Affirmation of Commitments*, this definition of *Consumer* is designed to focus on the interests of anyone or any entity taking the role of an Internet user or domain name registrant.

The definition focuses not on the nature of an entity, but rather on the *role* they are playing by using the DNS to do resolutions or to register a domain name. Therefore, any entity can be regarded as a consumer, including individuals, businesses, governments, non-profits, etc. When any of these entities are also playing other roles with respect to the DNS – such as a registry operator or registrar – their interests are not relevant to this definition.

Including the above definition of *Consumer*, the working group recommends these definitions for the key terms in the AOC and Board resolution:

**Consumer** is defined as Actual and Potential Internet Users, and Registrants.

**Consumer Trust**is defined as the confidence registrants and users have in the consistency of name resolution and the degree of confidence among registrants and users that a TLD registry operator is fulfilling its proposed purpose and is complying with ICANN policies and applicable national laws.

**Consumer Choice**is defined as the range of options available to registrants and users for domain scripts and languages, and for TLDs that offer choices as to the proposed purpose and integrity of their domain name registrants.

**Competition** is defined as the quantity, diversity, and the potential for market rivalry of gTLDs, TLD registry operators, and registrars.

*Notes on these definitions:*

*Note 1. The Consumer Trust definition has two aspects:*

*First, Internet users need confidence in the reliability and accuracy of the resolution of domain names they reference in email addresses, apps, and web browsing.*

*Second, registrants of domain names need confidence that the TLD registry they have selected will actually fulfill its proposed purpose and promises that drove their selection. For example, a bank that invests in moving its registrations to the .bank gTLD wants to be able to trust that .bank will honor its promise to allow only legitimate banks to hold domain names. The registrant will also trust that ICANN will hold the gTLD operator to its promises, ICANN policies, and any applicable national laws.*

*Note 2. Competition is closely related to the idea of consumer choice.  In fact, competition and consumer choice can be seen as two parts of the same whole, since both touch providers and consumers of services.  All stakeholders should have an interest in providing choice and in avoiding monopoly in order to create an open and informed market for all participants.*

*Note 3. A minority of WG members objected to the inclusion of “national laws” in the definition of Consumer Trust.   Advocates of including the term argued that governments and the GAC expect ICANN and its contract parties to respect applicable national laws, citing several of ICANN’s foundational documents:*

* *Articles of Incorporation: “The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law"*
* *Applicant Guidebook:  “National Law” is cited as potential basis for Government objections, GAC Early Warning, and/or GAC advice*
* *Affirmation of Commitments:  “9.3.1 ICANN additionally commits to enforcing its existing policy relating to WHOIS, subject to applicable laws”*
* *Bylaws: regarding ccTLDs: “provided that such policies do not conflict with the law applicable to the ccTLD manager”*

*In addition, a set of 2011 working papers from the European Commission also cited the importance of national laws, indicate the political lens through which the new gTLD program will be judged by governments.*

**Advice on Measures and 3-Year Targets for Defined Terms**

The board resolution requests advice on measures for each of the three defined terms. Below are the working group’s recommended measures, including columns indicating ICANN staff assessment of difficulty in obtaining and reporting each measure, along with the source of data.

The Board resolution also requested advice on 3-year targets for these measures. For some measures, an appropriate target would be an improvement on performance in the pre-expansion gTLD space. For other measures, such as URS complaints, there is no equivalent data in the pre-expansion gTLD environment.

The Working Group asked ICANN staff to identify baseline values for any measure that applies to the pre-expansion gTLD space, so that future targets could be stated in terms of improvements relative to present performance.

For example, a 3-year target for UDRP Complaints in new gTLDs could be any of these:

|  |  |
| --- | --- |
| Type of Target | Example of target for UDRP complaints |
| Annual total for all new gTLDs | Total UDRP complaints regarding new gTLDs should be fewer than 1000 per year. |
| Rate of incidence for new gTLDs (per 1000 registrations) | The rate of UDRP complaints in new gTLDs should be less than 1 for every 1000 registrations. |
| Relative to prior periods | The number of URS complaints for new gTLDs in 2015 should be less than 10% of the number of URS complaints in 2014. |
| Relative to legacy gTLDs | In 2015, the rate of UDRP complaints (per 1000 registrations ) in the new gTLDs should be 50% lower than the rate in legacy gTLDs |

In the last column of the table below, the working group recommends 3-year targets for measures where we had sufficient information to suggest applicable targets.

Notes about terms used in the tables of measures:

“Obtaining” refers the availability and level of effort to gather raw data needed for each measure in the table.

“Reporting” refers to any challenges in compiling and publicly disclosing each measure in the table.

“Relative incidence” of a particular measure would divide the raw data by the total number of registrations in each gTLD zone evaluated. This is intended to put small or new gTLDs on a comparable basis with experience in larger or more established gTLDs.

**Measures of Consumer Trust**

For reference, the definitions of Consumer and Consumer Trust are repeated here:

**Consumer** is defined as Actual and Potential Internet Users, and Registrants.

**Consumer Trust**is defined as the confidence registrants and users have in the consistency of name resolution and the degree of confidence among registrants and users that a TLD registry operator is fulfilling its proposed purpose and is complying with ICANN policies and applicable national laws.

| **Measure of Consumer Trust** | **Source** | **Anticipated Difficulties in Obtaining and/or Reporting** | **3-year**  **Target** |
| --- | --- | --- | --- |
| *Measures related to confidence in registrations and resolutions:* | | | |
| % DNS Service Availability (present SLA is 100%) | ICANN |  | 100% |
| % Availability for Registration Data Directory Services (RDDS). (present SLA is 98%) | ICANN |  | 98% |
| % of Service Availability for Extensible Provisioning Protocol (EPP). (present SLA is 98%) | ICANN |  | 98% |
| Survey of perceived consumer trust in DNS, relative to experiences before the gTLD expansion. Survey could measure experiences with malware and spam; confusion about new gTLDs; | Survey Vendor | May be difficult to gain consensus on survey questions. Survey will cost approx. $100K. | Should show improvement on all survey measures |
| % Uptime for Registrar services such as WHOIS, contact info, and complaints, assuming that SLAs are established for these measures in the new RAA | Registrar | Doubtful that Registrars will compile and disclose uptime stats unless required by RAA | SLA in RAA |
| *Measures related to confidence that TLD operators are fulfilling promises and complying with ICANN policies and applicable national laws:* | | | |
| Relative incidence of notices issued to Registry operators, for contract or policy compliance matters | ICANN |  | Lower than incidence in legacy gTLDs |
| Relative incidence of breach notices issued to Registrars, for contract or policy compliance matters | ICANN |  | Lower than incidence in legacy gTLDs |
| Quantity & relative incidence of UDRP *Complaints*, before and after expansion | RPM Providers | Moderate difficulty obtaining data | Lower than incidence in legacy gTLDs |
| Quantity & relative incidence of UDRP *Decisions against registrant*, before and after expansion | RPM Providers | Moderate difficulty obtaining data | Lower than incidence in legacy gTLDs |
| Decisions against Registry Operator arising from Registry Restrictions Dispute Resolutions Procedure (RRDRP) | RRDRP Providers |  | Any adverse decisions |
| Quantity & relative incidence of URS *Complaints* | RPM Providers | Moderate difficulty obtaining data. Cannot compare with legacy gTLDs. | Declining incidence from Year 2 to 3 |
| Quantity & relative incidence of URS *Decisions against registrant* | RPM Providers | Moderate difficulty obtaining data. Cannot compare with legacy gTLDs. | Declining incidence from Year 2 to 3 |
| Quantity of Compliance Concerns w/r/t Applicable National Laws | LEA/GAC | Difficult, because law enforcement and governments may not report this data | Declining incidence from Year 2 to 3 |
| Quantity and relative incidence of Domain Takedowns | Registry | Moderately difficult to obtain and report | Lower than incidence in legacy gTLDs |
| Quantity of spam received by a "honeypot" email address in each new gTLD | SpamHaus |  | Lower than incidence in legacy gTLDs |
| Quantity and relative incidence of fraudulent transactions caused by phishing sites in new gTLDs | APWG |  | Lower than incidence in legacy gTLDs |
| Quantity and relative incidence of detected phishing sites using new gTLDs | APWG |  | Lower than incidence in legacy gTLDs |
| Quantity and relative incidence of complaints regarding inaccurate, invalid, or suspect WHOIS records in new gTLD | ICANN |  | Lower than incidence in legacy gTLDs |
| Relative incidence of errors in new gTLD zones (such as commas instead of dots, bad IP addresses, malformed domains, etc.) | ICANN | Moderately difficult to obtain and report | Lower than incidence in legacy gTLDs |

**Measures of Consumer Choice**

For reference, the definitions of Consumer and Consumer Choice are repeated here:

**Consumer** is defined as Actual and Potential Internet Users, and Registrants.

**Consumer Choice**is defined as the range of options available to registrants and users for domain scripts and languages, and for TLDs that offer choices as to the proposed purpose and integrity of their domain name registrants.

| **Measure of Consumer Choice** | **Source** | **Anticipated Difficulties in Obtaining and/or Reporting** | **3-year**  **Target** |
| --- | --- | --- | --- |
| Transparency and clarity of gTLD registry benefits and restrictions, so that registrants and users can make meaningful distinctions and informed choices | Registry proposal and marketing info | Difficult to define and measure |  |
| Quantity and relative incidence of New Registrants vs. Existing Registrants | Zone and WHOIS data | Moderate difficulty: Need to determine whether a new gTLD registrant already had domains in legacy gTLDs. | < X% |
| % Defensive Registrations in new gTLDs, where “defensive” registrations are those where the new registration points to an existing website in a legacy gTLD. | Zone and WHOIS data | Moderate difficulty: Need to determine whether a new gTLD registrant already had the same domain in legacy gTLDs. | < X% |
| Registrant Choice among registrars & registries subject to differing national laws |  | Moderate: need to assess diversity of national laws where Rr/Ry is based | # of choices presented by new gTLDs |
| Statistical Measure of Geographic Diversity of registrants in new gTLDs | Zone and WHOIS data | Doubtful: Need a measure of geographic diversity | Diversity should be greater than in legacy gTLDs |

**Measures of Competition**

For reference, the definition of Competition is repeated here:

**Competition** is defined as the quantity, diversity, and the potential for market rivalry of gTLDs, TLD registry operators, and registrars.

| **Measure of Competition** | **Source** | **Anticipated Difficulties in Obtaining and/or Reporting** | **3-year**  **Target** |
| --- | --- | --- | --- |
| Quantity of gTLDs before and after expansion | ICANN |  | Increase of Y % |
| Quantity of unique Registry Operators before and after expansion | ICANN |  | Increase of Y % |
| Quantity of Registry Service Providers before and after expansion | ICANN and Ry Operators | Moderately difficult to obtain | Increase of Y % |
| Quantity of Registrars before and after expansion | ICANN |  | Increase of Y % |
| % of *new* registrations (after 2011) that are in gTLDs operated by new entrants | Registrars | Difficult to obtain and report. Need to define and capture *new* registrations | > X % |
| % of *all* registrations (after 2011) that are in gTLDs operated by new entrants | Registrars | Difficult to obtain and report. Need to define and capture *new* registrations | > X % |
| Wholesale price of domains offered per Registry | Registries | Difficult to obtain and report. | Avg price lower than legacy gTLDs |
| Retail price of domains | Registries and Registrars | Difficult to obtain and report. | Avg price lower than legacy gTLDs |
| Sunrise price of domains (Premium) | Registries | Difficult to obtain and report. |  |
| Sunrise price of domains (Non-Premium) | Registries | Difficult to obtain and report. |  |
| Cost to permanently block registration of a domain (e.g. ICM Sunrise for .xxx) | Registries |  |  |

Appendix A

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