COMPILATION OF STAKEHOLDER GROUP/CONSTITUENCY COMMENTS

ON THE REC6 CWG REPORT

Introduction

On 8 December 2010, the GNSO Council adopted a resolution requesting that each Stakeholder Group and Constituency provide feedback to the Council regarding the recommendations contained in the [Report on the Implementation of GNSO New GTLD Recommendation 6](#) dated 21 Sept 2010.   Set forth below are the responses received as of 2 February 2011.

Registries Stakeholder Group

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Forwarded From: David W. Maher on 2 Feb 2011

Dear Glen:

Attached is a statement 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 on the Community Working Group Report on Implementation of GNSO New gTLD Recommendation Number 6, Dated 22 September 2010.

This statement is supported by a supermajority of the RySG.

We would appreciate your bringing this to the attention of the Council.

Thank you

David

David W. Maher
Chair, gTLD Registries Stakeholder Group

Senior Vice President - Law & Policy
Public Interest Registry

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://gnso.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

- o Total # of eligible RySG Members[1]: 14
- o Total # of RySG Members: 13
- o Total # of Active RySG Members[2]: 13
- o Minimum requirement for supermajority of Active Members: 9
- o Minimum requirement for majority of Active Members: 7
- o # of Members that participated in this process: 13
- o Names of Members that participated in this process: 13

1. Afilias (.info & .mobi)
2. DotAsia Organisation (.asia)
3. DotCooperation (.coop)
4. Employ Media (.jobs)

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[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.

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

- Names & email addresses for points of contact
    o Chair: David Maher, dmaher@pir.org
    o Vice Chair: Keith Drazek, kdrazek@verisign.com
    o Secretariat: Cherie Stubbs, Cherstubbs@aol.com
    o RySG representative for this statement: Chuck Gomes, cgomes@verisign.com

Registrar Stakeholder Group

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The RrSG is in general agreement with the responses to the Rec6
recommendations that were recorded by Staff in the Explanatory Memo on
Morality and Public Order included in the proposed final AGB found at:
http://icann.org/en/topics/new-gtlds/explanatory-memo-morality-public-order-12nov10-en.pdf

Tim

Business Constituency

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Forwarded From: Steve DelBianco

This comment is in response to GNSO Council's 08-Dec-2010 request for constituency comments on recommendations of the cross-community working group (CWG) regarding Council's Recommendation 6 (the "morality and public order" section of the draft AGB)

The Business Constituency (BC) addressed this issue in its Dec-2010 comments on the proposed final AGB.
(see page 7 of BC comments posted at
http://forum.icann.org/lists/5gtld-guide/msg00026.html and attached here)

Relevant points from that submission are repeated here in response to Council's request.

In our Dec-2010 comments, the BC explains our rationale for concerns over the proposed objection process:

The BC is concerned that confusion and controversy may result from subjective and undefined aspects of the Limited Public Interest and Community objections.

The BC understands that ICANN may need to outsource objection and evaluation tasks during the new gTLD application process. But a decision to outsource services does not enable ICANN to escape accountability for decisions made by outsourcing vendors. ICANN's Board must be the final resolution body for disputes that arise during evaluation and objection processes.

The challenges of managing both internal and outsourced objection processes underlies the BC's recommendation for an initial batch of fewer than 500 applications:

"The first batch should be limited to significantly fewer than 500

applications, in order to test the operational readiness of newly designed application processing and objection / contention systems."
(see page 3 of our Dec-2010 comments, attached)

The BC also called for more definitions and specifics in the Guidebook section on Limited Public Interest objections:

3.1.2.3 ".. an applied-for gTLD string may be considered contrary to generally accepted legal norms..."

The BC believes that term "generally accepted" should be specifically defined.

The objector must prove substantial opposition within the community it has identified itself as representing.

The BC believes the term "substantial opposition" should be specifically defined.

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.
The BC believes the Guidebook should include a description of the methodology ICANN will use to solicit interest from independent Objectors.

The IO will be selected by ICANN, through an open and transparent process, and retained as an independent consultant.
The BC recommends adding specific decision criteria regarding the selection and supervision of the Independent Objector.

Anyone may file a [Limited Public Interest Objection]. Due to the inclusive standing base, however, objectors are subject to a ³quick look² procedure designed to identify and eliminate frivolous and/or abusive objections.
The BC believes that open-ended guidelines may create a perpetual loop of opposition. The BC recommends a more specific regime.
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Steve DelBianco
Vice chair for policy coordination
ICANN Business Constituency
www.bizconst.org<http://www.bizconst.org>

13

Non-Commercial Stakeholder Group

-----Original Message-----
From: Avri Doria [mailto:avri@xxxxxxx]
Sent: Wednesday, January 12, 2011 2:00 PM
To: Stéphane Van Gelder; Margie Milam
Cc: Glen de Saint Géry
Subject: NCSG comments to the GNSO Council on the CWG Rec 6 Recommendations.

To the GNSO Council;

Enclosed are the comments from the NCSG. As stated in the comments:

The NCSG strongly recommends that the GNSO Council endorse those recommendations made by the CWG that constituted Full Consensus and Consensus in the CWG, and consider as soon as possible a GNSO position on those recommendations that were the subject of Strong Support within the CWG.

Best Regards,

Avri Doria
Chair, NCSG Executive Committee

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**NCSG COMMENTS TO THE GNSO COUNCIL ON THE RECOMMENDATION 6
CROSS-COMMUNITY WORKING GROUP REPORT AND RECOMMENDATIONS**

The NCSG reiterates its support for concerns raised in the ALAC statement filed in response to the release of the Recommendation 6 Community Working Group ("CWG") Report on the Implementation of Recommendation 6 (the "CWG Report"). The ALAC statement and the NCSG's endorsement of it are archived online at http://forum.icann.org/lists/cwg-report-rec6/.

In particular, the NCSG wishes to draw the Council's attention to the following points from the NCSG-supported ALAC statement, to the effect that in implementing new gTLDs and in relation to Recommendation 6, ICANN should:

- Completely eliminate the term "morality and public order";
- Replace the existing resolution dispute mechanism with processes defined by recommendations 3 and 4 from the CWG Report;
- Limit objection criteria to specific principles of international law and treaty;
- Deny national law as a sole criteria for objections based on these criteria;
- Resolve disputes of this nature early in the application process;
- Require individual government objections to be made either through the Community Objections Process or through one of the ALAC and the GAC;
- Include safeguards to ensure transparency and accountability with respect to an Independent Objector;
- Uphold a gTLD creation process that encourages "the true diversity of ideas, cultures and views on the Internet".

In addition, the NCSG notes that the CWG has recently filed a response to the ICANN Board, in reply to certain specific questions put to the CWG by the Board at the Cartagena meeting. These questions, as contained in Board resolution 2010.12.10.21, related to (1) the roles of the Board, GAC, and ALAC in the objection process, (2) the incitement to discrimination criterion, and (3) fees for GAC and ALAC-instigated objections. The NCSG supports generally the clarifications made by the CWG in its response to these questions, as submitted on 7 January 2011.

The NCSG strongly recommends that the GNSO Council endorse those recommendations made by the CWG that constituted Full Consensus and Consensus in the CWG, and consider as soon as possible a GNSO position on those recommendations that were the subject of Strong Support within the CWG.

The following are additional NCSG comments on the CWG Report and recommendations, which we hope will clarify the reasons for our recommendation to the Council.

(1) Overall Rationale for Support

- Those CWG recommendations that received Full Consensus reflect substantial participation across all ICANN ACs and SOs. Even though the GAC participants were not formally representing either a GAC or individual country view, their participation was a milestone in ICANN cross-community dialogue and provided a very useful governmental perspective to the group and informed its recommendations. The CWG Report is also being considered by GAC members as ICANN moves toward implementing new gTLDs. As such, the NCSG believes that the GNSO – which was the body that formulated the original Recommendation 6 – must weigh in at this time.

(2) Name & Scope of Objection Categories

- The term "Limited Public Interest Objections" (as used in the current version of the draft Applicant Guidebook, or "AGB") was not discussed or recommended by the CWG. The NCSG recommends that the Council consider supporting the term "Objections Based on General Principles of International Law", which was recommended with Strong Support within the CWG.

- On the specific issue of the legal standards that need to be satisfied in order to bring a successful objection (i.e. the "incitement" and "instigation" criterion), the NCSG recommends that the Council support wording and standards that make it clear a higher threshold than mere incitement to or promotion of certain conduct is the baseline standard. First, it is strongly suggested that a single gTLD – in and by itself – cannot incite anyone to do anything. Incitement is a term that incorporates various elements that relate to content/context, a function that falls outside ICANN's purview. The wording 'incitement to or promotion of' appears to offer a relaxed standard and given the significance of these objections it should not be acceptable.
NCSG is of the opinion that the bar should be raised and should include terminology that does not require ICANN to have to check content when dealing with such objections. To this end, it is recommended that these types of objections should be based on a two-prong system: **incitement and instigation**. This provides a higher bar to substantiate objections

and has the following advantages:

1. it does not require ICANN to go into the process of checking Content/context of the gTLD; and,
2. it ensures that the bar is high in order to substantiate such objections; and
3. it is in line with principles of international law and international criminal law.

- On the listing of different categories of discriminatory behavior, the NCSG recommends that, for the sake of clarity and certainty, the Council support the recommendation that the full list of possible discriminatory acts, as listed in the CWG Report, be used instead of a single, general catch-all category.

(3) Costs for GAC & ALAC Objections
- The NCSG supports the CWG recommendation that costs be at least lowered for objections filed by the GAC or ALAC, on the ground that such objections (if any) would first have gone through the GAC's and ALAC's own internal processes to ensure validity such as to represent a consensus of the relevant AC. The Council should also consider the possibility of supporting the removal entirely of objection fees from such GAC or ALAC objections.

(4) The Independent Objector ("IO")
- Some NCSG members believe that the IO office should be removed entirely from the new gTLD process because it is ripe for abuse. On the assumption, however, that some IO function remains in the final AGB, the NCSG urges the Council to support a more detailed framework for such an office – including metrics for selecting, renewing and measuring the performance of the IO. In this regard, the NCSG notes that although CWG recommendation 10.1 is recorded as a Divergent recommendation, it nonetheless received support from a simple majority of CWG members. The NCSG believes that the suggestions contained in CWG recommendation 10.1 represents an important step forward in ensuring fairness, transparency and accountability on the part of the IO, in particular, as regards linking the IO's function more directly to enabling truly harmed groups to file valid rather than abusive or frivolous objections. The NCSG agrees with the CWG that the IO should not be used to facilitate secret objections, but should operate transparently. For accountability purposes, any objections raised by an IO must be triggered by at least one party who publicly claims it will harmed by the creation of a tld.

(5) Role of "Dispute Resolution Service Providers" ("DRSPs") & the ICANN Board

- Although some NCSG members support the elimination from the new gTLD process of a third party DRSP, to the extent that ICANN elects to retain the services of such a provider, the NCSG urges the Council to support a process that limits these services to purely administrative functions (e.g. ensuring compliance with procedural formalities). In line with the CWG Full Consensus recommendation that the Board retain ultimate responsibility for approving or denying a new gTLD application that has been subject to a Recommendation 6 objection process (even though, in making such a determination, the Board will be free to rely on the advice of independent experts), the NCSG recommends that the Council advise the Board to ensure that any and all independent experts have been properly vetted and a full search for appropriate experts in a particular case has been conducted (as opposed to relying solely on experts appointed on a non-transparent basis by the DRSP).

- The NCSG notes that it does not support the use of the term DRSP and is using it solely because of the language in the current AGB. The NCSG recommends that the Council support the following description of the Recommendation 6 objection process: (i) that the objection process is not a dispute resolution process as the latter term is commonly understood, but rather an expert determination as to whether a proposed string contravenes international law principles; (ii) upon such expert determination – which need not be an adversarial, trial-like process – the Board then has to decide whether or not to approve or deny the application; and (iii) the Board may make its decision based not only on the expert determination, but also on other factors such as Internet security and stability issues.

Respectfully submitted,
The Non-Commercial Stakeholder Group (NCSG)
Date: 12 January 2011