



New gTLD Applicant Freedom of Expression

New gTLD SubPro PDP WG | Sub Team 3 | 18 April 2017

Background

The 2007 Final Report attempted to balance the rights of applicants, as noted in Principle G, and others related to the program, as noted in Recommendation 3.

Principle G:

The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.

Recommendation 3:

Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).

INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS (ICCPR)

Article 19.

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals.

UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Issue Description

The issue, as identified by the DG, is whether ICANN gives adequate consideration to the protection of human rights, particularly with respect to new gTLDs and right to freedom of expression, freedom of association, freedom of religion, and principle of non-discrimination.

The PDP has been tasked with examining whether GAC Advice, community processes, and reserved names impacted this goal.

Coordination with these groups will be an important step in scoping potential:

- Subsequent Procedures WT2 – Reserved Names
- Cross Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights
- CCWG-Accountability WS2 – Sub Group on Human Rights
- GAC Human Rights and International Law Working Group

“ICANN’s Procedures and Policies in the Light of Human Rights, Fundamental Freedoms and Democratic Values”

Council of Europe report presented at ICANN50 (June 2014) examining ICANN’s global public interest responsibilities from an international human rights perspective:

- Universal Declaration of Human Rights
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- European Convention on Human Rights

Section 2.4 **Human Rights Analysis of the New gTLD Application Procedures** focuses on human rights considerations related to mechanisms in the New gTLD Program.

Questions and Concerns Related to the Topic

Excerpts from the COE report:

- GAC Early Warning (and others): “There have been several cases and disputes involving potentially ‘sensitive expressions’ in applied-for gTLDs which exemplify the delicate balance needed to protect the fundamental rights of applicants and other Internet users.” (p 27)
- String Confusion Objection and the Legal Rights Objection: “A delicate balance is at stake where freedom of expression needs to be weighed against the property rights of trademark owners.” (p 29)
- Community Priority Evaluation (CPE): “A narrow interpretation [of community] could restrict the ability of community organizations to associate i.e. to group them together to achieve goals. It could therefore impact on the right to freedom of assembly and association and the positive obligation resting upon states to protect vulnerable groups.” (p 31)
- Auction Procedures: “...pluralism and diversity can be threatened by auctions as a way to allocate a scarce resource, because this could lead to the concentration of TLDs in the hands of a small group of wealthy portfolio applicants.” (p 35)

2014 - GAC Proposal on Geographic Names

GAC Proposal V. 3 – August 29, 2014

<https://gacweb.icann.org/download/attachments/27132037/Geo%20names%20in%20new%20gTLDs%20Updated%20%20V3%20%2029%20august%202014%5B4%5D.pdf?version=1&modificationDate=1411549935000&api=v2>

- *Geographic names should not be allowed to be registered as gTLDs, unless requested by the relevant communities where they belong or after a specific authorization given by the government or community to the applicant.*
- *The national community and geographic meaning of the requested strings as new gTLDs must prevail above any other interest.*
- *Governments should keep the right to oppose the delegation of a top level domain (even if it is not included on that list) on the basis of its sensitivity to national interests. Furthermore, that right should be enhanced for future rounds.*

View from the Other Side: Robin Gross, IP Justice

Potential “Chilling Effects” of such proposals on Applicants Freedom of Expression as outlined in the Joint Civil Society Comments on the GAC proposal.