

## Three Guardrails for Voluntary Public Interest Commitments (VPICs) and Registry Voluntary Commitments (RVCs) in the New gTLDs

ICANN's Bylaws wisely bar the organization from regulating content. Upfront, section 1.1 declares: "ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide." ICANN regulates (or quasi-regulates) layers of the Internet Infrastructure before the content layer; we leave the content to the world regulators, content providers and platforms.

But in 2013 and 2014, ICANN's CEO made a good choice and a bad choice. Then-CEO Fadi Chehadé wanted a place in the registry agreement (the contract between ICANN and a registry) to put promises made by applicants who want to operate new registries to the Government Advisory Committee (GAC) – that was a good choice. But Fadi chose to create a dumping ground for anything registries wanted to commit to for any reason—a bad choice. The name chosen was just as bad: Private or Voluntary Public Interest Commitments.

These "Private PICs" gave registries unprecedented powers, absent any review or veto by the Generic Names Supporting Organization (GNSO, the entity responsible at ICANN for gTLD policy). Most registries restrained themselves – they know ICANN has GNSO-created policies for the registration, transfer, dispute and revocation of domain names. But some registries gave themselves unlimited power to abuse and censor their registrants. Without due process or even reason or rationale, some registries in their "private PICs" gave themselves the power to suspend domain names with no notice and no clear reason (thereby potentially removing hundreds of webpages of speech and commerce, and thousands of email addresses in active use).

***Because these PICs appeared in ICANN contracts, ICANN became the enforcer of these self-selected, arbitrary policies through the PIC Dispute Resolution Process (PICDRP), which was similarly created without a GNSO policy development process*** as opposed to the UDRP, URS, and PDDRP mechanisms (created and under review within ICANN's GNSO framework). Fortunately, ICANN has engaged little with the PICDRP and private PICs to date. *Who wants to run a court with no rules and no reason?* But this dangerous arrangement remains, and threatens to embroil ICANN in questions of speech regulation.

### **A Fresh Look by the ICANN Board**

Fortunately, the ICANN Board raised the issue last month and wrote an open letter to the ICANN working group known as "Subsequent Procedures Policy Development Process Working Group" expressing concern about private PICs that might entangle ICANN in issues that were "outside of ICANN's technical mission." It bears repeating that the one thing explicitly called out in ICANN's Bylaws as being *outside of ICANN's mission* is to "regulate" Internet services "or the content that such services carry or provide." The Board asked the working group for "guidance on how to utilize PICs and RVCs without the need for ICANN to assess and pass judgment on content."

The questions are good and we think the answers are easy and straightforward: let's agree to curb abuse and recommit to ICANN's narrow mission of managing the DNS by placing limits on so-called VPICs:

### **A Solution: Guardrails for Voluntary PICs/RVCs**

#### **1. PICs/RVCs can only address issues with domain names themselves—not the contents of websites or apps that use domain names**

Basically, no Voluntary PICs about content regulation. Registries would continue to be free to use their own judgment about when to suspend the domain name of a website that violates local law or the registry owners' conscience, but we encourage registries, and all providers of Internet infrastructure, to stay out of the content-regulation business as much as possible.

This saves ICANN from the horrible position of enforcing rules completely outside its mission, mandate and conscience, e.g., a possible future .WHITESUPREMACY gTLD in which "Voluntary PICs" require *ICANN* to suspend all registrants who use their domain names to post content about equity, systemic bias, and Black Lives Matter rallies.

Not through ICANN, and not through a third party administered by ICANN, should such clearly content-oriented (and offensive) rules be enforced. Happily, we all agreed in 2016, that the Internet's domain name system is not the place to police speech. *ICANN, the organization that regulates that system, is legally bound not to act as the Internet's speech police.* Let's step away from this landmine quickly.

#### **2. PICs/RVCs should not give registries unbounded discretion to suspend domain names**

Simply put, let's have no absolute monarch with uncontrolled power over the life and death of a domain name. Believe it or not, one registry applicant gave itself the power "at its sole discretion and at any time and without limitation, to deny, suspend, cancel, or transfer any registration or transaction, or place any domain name(s) on registry lock, hold, or similar status" for vague and undefined reasons. This currently affects hundreds of gTLDs and potentially millions of registrations! *But we have spent two decades at ICANN coming up with fair and balanced rules for the creation, revocation and transfer of domain names, along with the handling of domain name disputes.* The idea that someone, for example, within the term of a domain name might offer the registry more money, and thus the registry orders the registrar to unilaterally terminate the domain name contract, is unacceptable.

*How can ICANN fathom enforcing Voluntary PICs with no limits?* It is an absurd thought: ICANN can't – not through its own mechanisms or those of third parties – so these provisions simply should not exist in future voluntary PICs. Absolute monarchs went by the wayside in the last century.

### **3. And PICs/RVCs should not be used to create new policies that didn't come through ICANN processes**

The GNSO makes the policies for gTLDs with the advice of Advisory Committees (including GAC and ALAC) and the approval of the Board. If registries want to go above and beyond by creating protections for the environment, for political speech, for intellectual property, for white supremacists, let them do it in their own terms of use, and subject to other forms of review and opposition, and to market forces, but not enforced by ICANN or delegated by ICANN to a third party for enforcement.

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Overall, voluntary PICs were designed to allow reasonable accommodation of Government Advisory Committee Early Warnings and Advice – a place to confirm that a .HOSPITAL registry may review the authorizations, charters and licenses of this applicant of a “highly-sensitive” string and have the right, on complaint, to consult with the registrant and appropriate supervisory authorities about its authenticity. A .hospital registration should be a hospital registration.

Voluntary PICs may also be a good place to put settlements of Community Objections, where a large segment of the community considers itself part of a gTLD, but is excluded by the rules the gTLD has chosen for itself. If a Community Objector wins a Community Objection, by the rules, the applicant must withdraw its application and lose all chance of becoming registry of the gTLD. However, if they can reach a compromise – reviewed and approved by the Community – they can settle the Objection together and agree on a set of voluntary PIC/RVCs, and move forward to an inclusive gTLD together.

The undersigned support these guardrails because we don't want to see ICANN become another content moderation battleground. They will also help registry operators to resist calls for censorship by certain governments and indeed from anyone who wants to arbitrarily impose rules on the DNS outside our ICANN processes.

Signed,

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