

**SUMMARY OF PUBLIC COMMENT ON THE
COMMUNITY WORKING GROUP REPORT ON
IMPLEMENTATION OF GNSO NEW GTLD RECOMMENDATION NO. 6**

Disclaimer

This summary is not a full and complete recitation of the relevant comments received. It is an attempt to capture in broad terms the nature and scope of the comments. This summary has been prepared in an effort to highlight key elements of these submissions in an abbreviated format, not to replace them. Every effort has been made to avoid mischaracterizations and to present fairly the views provided. Any failure to do so is unintentional. The comments may be viewed in their entirety at: <http://forum.icann.org/lists/cwg-report-rec6/>

I. Summary and analysis of public comments for the Community Working Group Report on Implementation of GNSO New gTLD Recommendation No. 6 ([Rec6 Report](#))

Comment period ended:	22 October 2010
Summary published:	26 October 2010
Prepared by:	Margie Milam, Senior Policy Counselor

II. BACKGROUND

ICANN is in the implementation planning stage of defining the processes for adding new generic top-level domain name to the Domain Name System. The policy recommendations to guide the introduction of new gTLDs were created by the GNSO over a two year effort. Among these GNSO policy recommendations is Recommendation 6 (Rec6), which states that:

Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.

A cross-community effort involving members of the GAC, GNSO, and the At Large Community (CWG) has resulted in the publication of the [Rec6 Report](#) that addresses concerns that have surfaced from the ICANN Community regarding the proposed implementation of Rec6. The [Rec6 Report](#) describes the results of this bottom-up process, and includes recommendations proposed by the CWG for improving the implementation plan proposed in the Draft Applicant Guidebook-v4 related to procedures for addressing objectionable strings,

while protecting internationally recognized freedom of expression rights. A public comment forum on the [Rec6 Report](#) was held from 22 September 2010 until 22 October 2010.

III. SUMMARY ANALYSIS AND CONTRIBUTIONS

Six contributions were received in the [Public Comment Forum](#) on the [Rec 6 Report](#), including one Advisory Committee, one Stakeholder Group and one Constituency statement. These three statements are provided in **Annex A** of this Summary.

The following contributors participated in the Public Comment Forum (listed in alphabetical order):

<u>Name:</u>	<u>On Behalf of:</u>
曹华平	China Internet Society
Avri Doria	Non-Commercial Stakeholder Group
J.Scott Evans	Intellectual Property Constituency of the Commercial Stakeholder Group
Paul Twomey	Individually
Heidi Ulrich	At-Large Advisory Committee
Danny Younger	Individually

As described in more detail below, the following observations can be reached from the comments submitted in the [Rec 6 Comment Forum](#):

The commentators are generally supportive of the recommendations contained in the Rec 6 Report, and most recommend that the Board adopt them for the New gTLD Program.

IV. GENERAL COMMENTS

Paul Twomey notes that the members of the working group are to be congratulated on the process and the substantive way forward they have suggested. *Comments of Paul Twomey, submitted on 23 October 2010.*

The At-Large Community urges the Board to fully implement the consensus recommendations of the Rec6 CWG. The work of this working group was the very example of the multi-stakeholder, bottom-up process that ICANN claims to be its foundation. The Board must encourage the ongoing work of the Rec6 CWG. *Comments of ALAC submitted by Heidi Ulrich on 23 October 2010.*

The IPC agrees that Rec6 is flawed. The IPC remains skeptical that Rec6 in its current form would be subject to abuses through frivolous challenges and could be used to chill free speech. *Comments of the Intellectual Property Constituency, CSG, submitted by J.Scott Evans on 22 October 2010.*

Danny Younger notes that some in the community have asked for objection procedures to be established in order to ensure that certain proposed or anticipated controversial strings don't become top-level domain names. In his view this is overkill... as long as an ICANN policy clearly states that "no controversial strings will be allowed into the root", he would feel comfortable trusting the Board to recognize that which is, or isn't, controversial and would trust the Board to keep such strings out of the root. *Comments of Danny Younger, submitted on 22 October 2010.*

General Agreement with the Report Recommendations

At-Large has always been generally against the very principle of gTLD string objections based on "morality and public order". However, At-Large sees the Rec6 CWG recommendations as an effective way to attend to the most pressing needs while addressing its concerns about the existing implementation. At-Large wholeheartedly concurs with the recommendations in the report that achieved *Full Consensus* or *Consensus*. *Comments of ALAC submitted by Heidi Ulrich on 23 October 2010.*

If any of the recommendations described below are seen to be "inconsistent with existing process", that is a clear indication that the "existing process" contains fundamental flaws that have been identified and must be addressed. ICANN's community has spoken in an unprecedented and unambiguous manner, and the At-Large Advisory Committee is proud of its effort to help such divergent views together to produce clear and workable policy. These recommendations include the following:

- 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;
- Enable the GAC and ALAC to submit objections through the Independent Objector;
- Uphold a gTLD creation process that encourages "the true diversity of ideas, cultures and views on the Internet".

Comments of ALAC submitted by Heidi Ulrich on 23 October 2010.

The Non-Commercial Stakeholders Group expresses full endorsement for the statement made by the ALAC, relating to the Rec6 Report. As stated by the ALAC, the NCSG urges the Board to fully implement the consensus recommendations of the Rec6 CWG. *Comments of the Non-Commercial Stakeholders Group, submitted by Avri Doria on 23 October 2010.*

Paul Twomey supports the following Rec6 Report recommendations:
3.1, 3.2, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 5.1, 5.2, 5.3, 6.1, 7.1, 9.1, 10.1, 10.2, 11.2, 11.3, 12.1, 12.2, 12.3, 13.1, 14.1 *Comments of Paul Twomey, submitted on 23 October 2010.*

Name of Objection

Paul Twomey supports changing the name of the objection to "Objection Based on General Principles of International Law." *Comments of Paul Twomey, submitted on 23 October 2010.*

Keep the language tight: "National Law"

For stability and clarity reasons -- to both potential gTLD applicants and to other governments -- it is important that any notification or objection considered under this recommendation be limited to "that a proposed TLD string is contrary to the national law." In the Rec6 Report the phrase "government's perceived national interest" is used. It is important to delineate that this is not the same thing as national law. Law is the considered expression of a government -- either through executive, parliamentary or judicial structured mechanisms. Other phrases such as "perceived national interest" reflect a degree of political consideration which can be more fleeting, be expressed by very junior officials without Ministerial or Parliamentary approval, and often is a matter of debate between different groups within the country and government. Twomey suggests that Recommendation 2.3 limit its language to "national law". *Comments of Paul Twomey, submitted on 23 October 2010.*

ICC should not serve as the Dispute Provider for Rec6 issues

As stated in DAG4, MOPO and Community objection involves races, culture, geography, religion and linguistics which is beyond the scope of business disputes. These areas obviously fall out of the scope and expertise of a chamber of commerce. The Internet Society of China proposes to remove the description that ICC will be the DRSP in the next version of DAG. *Comment of the Internet Society of China, submitted on 22 October 2010.*

Concern about Fees for Disputes

The Internet Society of China is concerned about all of the fees specified in the DAG, including the dispute resolution fees. As the Internet in the developing countries is still in its early stages, such huge charges would definitely stifle the initiative of the developing countries to apply for new gTLDs, and it will go against balanced development of the global Internet. It is expected that ICANN adopt a favorable fee policy for the developing countries. *Comment of the Internet Society of China, submitted on 22 October 2010.*

Standards Needed for Frivolous or Abusive Objections

The IPC supports the consensus to establish standards to determine what constitutes a frivolous or abusive objection and that ICANN should implement sanction and other safeguards to discourage frivolous claims. *Comments of the Intellectual Property Constituency, submitted by J.Scott Evans on 22 October 2010.*

Principles of International Law

Twomey supports the recommendation that the "Applicant Guidebook should not include as a valid ground for a Rec 6 objection, an objection by an individual government based on national public interest concerns that are specified by the objection government as being contrary to national laws which is contrary to the principles of international law." One of his concerns is that without such a linkage, a unique, one-off power to a government would be open to gaming by well-funded commercial interests with political influence. It is important that any notification or objection under Rec 6 should only derive from a national law which is in accordance with the principle of international law. *Comments of Paul Twomey, submitted on 23 October 2010.*

The IPC agrees that there is not an internationally agreed upon definition of "morality and public order." ICANN should develop language for Rec6 that further defines what is meant by "specific principles of international law as reflected in relevant international instruments of law". The IPC notes that "principles of international law" is a term of art and believes that definition ought to be included in text of Rec6. *Comments of the Intellectual Property Constituency, submitted by J.Scott Evans on 22 October 2010.*

The IPC requests that a measurable criteria for deeming whether an "international instrument of law" is relevant be developed. The IPC requests that a definition of "international instruments of law" is set forth that, at a minimum, references widely adopted international treaties as a non-exhaustive list of such "international instruments of law". *Comments of the Intellectual Property Constituency, submitted by J.Scott Evans on 22 October 2010.*

Clarification proposed for Community TLD provisions

It can be assumed that neither the CWG nor the ICANN Board intended that these new recommendations inadvertently counter the objectives and operations of the community-based rules for new gTLDs. Twomey suggests that for clarity purposes it would be useful to state that the mere limitation of who can be a registrant (i.e. proof of being a member of the community) under a community TLD is not sufficient to trigger an objection under the incitement to and instigation of discrimination provisions envisaged. *Comments of Paul Twomey, submitted on 23 October 2010.*

Balance between National Law and Veto

Both ICANN's bylaws and the consideration of the Working Group would inform the ICANN Board that it should be careful not to view one government alone as having veto power over any particular gTLD string which is designed to serve a global or at least international user group. Twomey supports the recommendation that individual governments file a notification rather than an objection that a proposed TLD is contrary to their national law. *Comments of Paul Twomey, submitted on 23 October 2010.*

Concern about mandating consultation in advance to mitigate conflicts

While generally being supportive of processes which encourage parties to mitigate possibilities of conflict, Twomey fears any mandated requirement to make an applicant identify and consult prior to an application with interested parties who may be concerned under these provisions may result in unforeseen legal and personal safety issues. Particularly in areas related to internationally recognized human rights, Twomey thinks it is best that the Board does not mandate such prior communications. *Comments of Paul Twomey, submitted on 23 October 2010.*

Further Work Needed on Rec 6 Issues

ALAC is committed to achieving consensus on those issues in which no resolution has yet been made, and encourages the continuation of the CWG in these efforts. ALAC believes that additional time in cross-community discussions would resolve them. ALAC strongly urges support of recommendation of 14.1, to create a "Rec6 Community Implementation Support Team" (Rec6 CIST) to provide input to ICANN Implementation Staff as they further refine implementation details. *Comments of ALAC submitted by Heidi Ulrich on 23 October 2010.*

**STATEMENTS SUBMITTED BY SUPPORTING ORGANIZATIONS AND ADVISORY
COMMITTEES**

ALAC Statement on the Community Working Group Report on Implementation of GNSO New gTLD Recommendation Number

The At-Large Community urges the Board to fully implement the consensus recommendations of the Rec6 CWG. The work of this working group was the very example of the multi-stakeholder, bottom-up process that ICANN claims to be its foundation. The Board must encourage the ongoing work of the Rec6 CWG. We are confident that, given some reasonable extra time, outstanding issues that have not yet reached consensus may be resolved.

At-Large has always been generally against the very principle of gTLD string objections based on "morality and public order". However, we see the Rec6 CWG recommendations as an effective way to attend to the most pressing needs while addressing our concerns about the existing implementation. We wholeheartedly concur with the recommendations in the report that achieved *Full Consensus* or *Consensus*. Specifically, we wish to emphasize, as strongly as possible, our support for the CWG's consensus calls to:

- 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;
- Enable the GAC and ALAC to submit objections through the Independent Objector;
- Uphold a gTLD creation process that encourages "the true diversity of ideas, cultures and views on the Internet".

We are also committed to achieving consensus on those issues in which no resolution has yet been made, and encourage the continuation of the CWG in these efforts. We believe that additional time in cross-community discussions would resolve them. We strongly urge support of recommendation of 14.1, to create a "Rec6 Community Implementation Support Team" (Rec6 CIST) to provide input to ICANN Implementation Staff as they further refine implementation details.

It is rewarding and noteworthy that these recommendations, in the main, closely resemble statements on the gTLD application process that were part of the Declaration of the At-Large Summit held during the ICANN meeting of March 2009, which stated:

We emphatically call for the complete abolition of the class of objections based on morality and public order. We assert that ICANN has no business being in (or delegating) the role of comparing relative morality and conflicting human rights.

Abolishing the morality and public order class of objection will eliminate the risk to ICANN of bearing responsibility for delegating morality judgment to an inadequate DSRP. Certain extreme forms of objectionable strings may be addressed through minor modifications to the "Community" class of objection. While we fully appreciate the motivation behind this class of objection, we cannot envision any application of it that will result in fewer problems than its abolition.

In addition, we wish to explicitly call attention to an issue that received substantial support but not consensus: that a super-majority of the Board should be required to reject gTLD applications based on these criteria.

If any of the above recommendations are seen to be "inconsistent with existing process", that is a clear indication that the "existing process" contains fundamental flaws that have been identified and must be addressed. ICANN's community has spoken in an unprecedented and unambiguous manner, and the At-Large Advisory Committee is proud of our effort to help such divergent views together to produce clear and workable policy.

STATEMENT FROM THE NCSG

To the ICANN Board,

The Non-Commercial Stakeholders Group of the GNSO (NCSG) expresses full endorsement for the statement made by the ALAC, relating to the Report on Implementation of GNSO New gTLD Recommendation No. 6 made by the Community Working Group (Rec6 CWG) . As stated by the ALAC, we urge the Board to fully implement the consensus recommendations of the Rec6 CWG.

Thank you,

Avri Doria
Chair, NCSG Executive Committee

IPC COMMENTS FOR ICANN ON THE NEW gTLD RECOMMENDATION #6 CROSS-COMMUNITY WORKING GROUP REPORT

The Intellectual Property Constituency ("IPC") is a constituency of the GNSO and represents the full range of trademark and other intellectual property interests relating to the DNS. IPC members are international, regional and national intellectual property organizations from around the world, corporate entities with intellectual property interests (often as owners of intellectual property), and individuals with an interest in intellectual property matters. The IPC appreciates this opportunity to provide its comments on the Report published on 21 September 2010 by the New gTLD Recommendation #6 Cross-Community Working Group ("Re6 CWG").

The conclusion of the Report is that "Rec6 is flawed in certain respects and can be improved." The Report goes on to identify several recommendations that the Rec6 CWG believes would improve the implementation of Rec6. Rec6 is one of the recommendations included in the GNSO Final Report. Specifically, it states that:

Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.

The GNSO Final Report further explains that:

Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention of the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).

As an initial matter, the IPC agrees that Rec6 is flawed. As stated in its July 20, 2009 comments on the Draft Applicant Guidebook version 3 and explanatory memoranda, the IPC remains skeptical that Rec6 in its current form would be subject to abuses through frivolous challenges and could be used to chill free speech.

The IPC supports the consensus that there is not an internationally agreed upon definition of "morality and public order." As such, ICANN is urged to continue to work on developing language for Rec6 that further defines what is meant by "specific principles of international law as reflected in relevant international instruments of law". To this end, the IPC understands that this "principles of international law" is a term of art and believes that definition ought to be included in text of Rec6.

Furthermore, the IPC requests that a measurable criteria for deeming whether an "international instrument of law" is relevant be developed. In addition, the IPC requests that a

definition of "international instruments of law" is set forth that, at a minimum, references widely adopted international treaties as a non-exhaustive list of such "international instruments of law".

The IPC also supports the consensus that there ought to be standards set to determine what constitutes a frivolous or abusive objection and that ICANN should implement sanction and other safeguards to discourage frivolous claims.