



The Internet Corporation for Assigned Names and Numbers

30 September 2015

Jonathan Robinson
Chair, ICANN Generic Names Supporting Organization

Alan Greenberg
Chair, ICANN At-Large Advisory Committee

Re: Proposal from Ron Andruff to establish a PICS review committee

Dear Messrs. Robinson and Greenberg:

Mr. Ron Andruff sent the attached proposal to Cherine Chalaby, Chair, Board New gTLD Program Committee (NGPC) to establish a highly-regulated string PICS review committee (PICS review committee). According to Mr. Andruff, the purpose of this committee would be to “ensure a set of PICS that more fully protects public interest is established in an expeditious, open and transparent manner.”

The NGPC does not believe that it currently possesses the authority to establish a new community-based mechanism like the PICS review committee suggested by Mr. Andruff. Rather, consistent with ICANN’s bottom-up multistakeholder model, we think it is more appropriate to provide you with Mr. Andruff’s proposal for your consideration.

Please let us know if you have any questions or concerns. Thank you.

Sincerely,

Cherine Chalaby
Chair, Board New gTLD Program Committee

fact, cut across all nations of the world, thus enabling this policy implementation work to be achieved.

This particular example highlights the fact that more than thirty applicants for highly-regulated strings (from the list provided) consciously chose to wholly disregard the GAC request for PICs. ICANN nonetheless signed contracts with many of these registries notwithstanding the actuality that the applicants for these highly-regulated strings put zero public interest commitments in place.

Example #2: Registries Using String for Self-interest / Unnecessary controls

30	PHARMACY	National Association of Boards of Pharmacy	Contracted	Registration limited to online pharmacies and related entities that meet all regulatory standards in the jurisdictions in which they are based and in which they do business . Validation process under evaluation . Registrants must limit registration to business or trade name . Generic domains not initially reserved/allocated by the registry would not initially be permitted to be registered until discussed within the broader community. Registry operator is looking into active monitoring options for non-compliant activity. Potential creation of policy advisory board
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Apart from the ambiguous, non-committal language noted above in red text, this example demonstrates applicants that have put PICs in place, but have included superfluous ‘safeguards’ that are not intended to protect consumers but rather to limit registration, i.e. autocratic or self-serving controls. The applicant in this case, an American organization, National Association of Boards of Pharmacy (NABP), is effectively an instrument of large pharmaceutical companies⁵. NABP submitted PICs that appear on their face to be reasonable, but in reality they enable the registry to restrict registrations and dictate anticompetitive policies (e.g., see yellow highlight above). By including the phrase, “...**and in which they do business**” at the end of the sentence “...*online pharmacies and related entities that meet all regulatory standards in the jurisdictions in which they are based...*”, NABP institutes a restrictive and exploitative policy that in truth denies all pharmacies the right to do any Internet prescription fulfillment outside of their immediate physical location. This runs directly contrary to the global nature of the Internet and the expectations of consumers, and goes far beyond the legitimate scope of relevant PICs, which should be to assure that a domain

⁵ <http://safe.pharmacy/about-us> From this link it would appear that Eli Lilly and Company, Merck & Co. Inc., Pfizer Inc., Gilead and Janssen Therapeutics are funding the .PHARMACY registry.

registrant fully meets its regulatory obligations in its home jurisdiction and is selling genuine, unexpired, and unadulterated medicines.

The hundreds of thousands, if not millions, of pharmacies all around the world are retail stores; more often than not small businesses. To amplify this point, industry experts cannot come up with a single pharmacy (single store, chain or brand) that has outlets in multiple national jurisdictions (multinational pharmacies). Which begs the question of the purpose of this policy. While a full discussion of this policy with the applicant (registry) should reveal the rationale, in essence this policy supports the pharmaceutical industry's nation-by-nation pricing rules, which directly impacts its ability to maintain the world's highest prescription pricing structure in the United States. Invoking the popular platform of reigning in 'rogue Internet pharmacies' that are purveyors of bad drugs, this unwarranted policy gives the registry the unbridled authority to deny a .PHARMACY domain name to trustworthy licensed pharmacies that meet all other relevant applicable standards.

Example #3: Inclusive Industry-based Strings / Appropriate controls

3	BANK	fTLD Registry Services LLC	Contracted	Registration limited to verified banks, savings associations, and associations, service providers, and government regulators serving the banking industry. Registrants must demonstrate that they are eligible members of the banking community (business charter, mission statement, etc.); banks must provide government regulatory authority and ID issued by this authority.
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This example is the one most often cited as a demonstration of a registry that 'got it right'. Those that agree with this sentiment do so because they believe that the consortium of banks behind the application understands that – irrespective of the whether banking activities are taking place in the digital or physical world – banks have an iron-clad responsibility to meet certain regulatory requirements in their jurisdictions, encourage and develop consumer trust by avoiding fraud and ensuring consumer protection. Internet users expect that a website ending in a .BANK domain name, will ensure certain baseline protections and confidence. This registry operator's requirements for demonstration of being a regulated financial institution stands in sharp contrast to those of portfolio applicants, as no attempt is made to maintain that the term 'bank' could refer to blood bank, sperm bank, river bank, etc. (see yellow highlighted text above), and that protection for consumers should be reactive rather than proactive.

While some agree that .BANK's PICs are commendable, it is nonetheless imperative to review even those registries that appear to have gotten their PICs right. In this way, ICANN can confidently point to examples of demonstrable fairness that validate ICANN upholding its Core Values.

Strawman Proposal for Reviewing Highly-regulated String PICS

This proposal enables the indispensable PICs reviews to be done in an accelerated time frame, while ensuring that each Registry-under-review as well as those parties that will be impacted by the PICS are given an appropriate opportunity to present their positions to a Public Interest Commitments Standing Committee (PSC) to fully inform the PSC's recommendations to the NGPC.

In addition, in cases where a registry would like to remove, modify or otherwise amend their PICs at some future point in time, the PSC can assume the role of reviewer/adjudicator on behalf of the community to develop recommendations following the same methodology (noted below).

1. Constitution of PSC (each sends two reps):
 - GAC
 - ALAC
 - BC
 - Registry constituency
 - Registrar constituency
 - NGPC
 - Other C/SG
 - Staff (e.g. Akram or Alan)
2. Staff support to facilitate calls, drafting of summaries, preparing public comments, etc.
3. Methodology:
 - Invite 2 representatives from Registry-under-review and 2 representatives from recognized, impacted group to present views to the 14 PSC members, thereby ensuring that both the Registry and that part of the general public impacted by the string are afforded equal opportunities to inform the PSC determinations around each string.
 - Recordings/transcripts of all meetings (conference calls) will allow any interested community members and other stakeholders to follow/track discussions/information as they are presented.
 - Once the PSC has heard the PICs fully described and clarified, along with the rationale for why those particular PICs were selected as opposed to others, the impacted party will be given equal time to respond or present their case for or against the PICs presented.
 - The PSC will work on a rough consensus basis. After a fulsome discussion, staff will put the PSC determinations/recommendations out for expedited Public Comment. All members of the community and other stakeholders will have the opportunity to bring their views to the discussion via the Public Comment period that will follow each review.
 - Following a review of staff summarized public comments on the PICs of each Registry-under-review, the PSC will submit its recommendations to the NGPC for ratification.
 - Reviews will be undertaken in chronological order according to each applicant's original lottery number (issued at the start of the application review process).

- All 38 highly-regulated strings – pre contract and contracted – must go through the review process. Once PICs for a string have been finally determined and vetted by this process, that applicant/registry will be invited to add them as voluntary PICs to their contracts. Those registries that choose to pushback will face ICANN’s formal unilateral contract revision process.
4. Timing (example of PSC work schedule):
- Week 1 / Day 1: One hour call – 20 minute presentation of existing PICS and rationale by Registry-under-review; 20 minute presentation by impacted group (what they like; what they don’t like; what is missing); 20 minute PSC discussion
 - Week 1 / Day 2-5: PSC members exchange views on-list – pros/cons, support/no support, recommendations...
 - Week 2 / Day 1: One hour call for PSC to discuss/debate views on PICS for string in question
 - Week 2 / Day 2-5: Finalize PSC member views; staff to prepare PSC rough consensus recommendations along with any dissenting arguments for Public Comment and put them out for 21-day Public Comment period)
 - Week 3 – 5: Public Comment
 - Week 6: Staff produces Public Comment summary and delivers it to PSC for final comment/recommendation prior to submission to NGPC
 - Week 7: NGPC receives PSC PICS final recommendations for Registry-under-review. If in agreement, NGPC sends on to GDD staff to implement; if not, sends back to PSC with rationale for further consideration (process begins anew)
 - Week 8: GDD staff requests Registry-under-review to voluntarily undertake recommended PICS (or face unilateral contract change provisions).
 - Week 8: If Registry-under-review agrees to take on recommended PICS, contract revised and Registry is freed from moratorium, i.e. free to move forward unencumbered

This strawman proposal suggests that the PSC could work on 4 strings per month, each string demanding 2 one-hour calls and say, 3-5 hours for the concomitant on-list debate/discussions. While this is an aggressive schedule, there are strings such as .BANK and .INSURANCE that are considered by some to already possess a commitment to necessary safeguards. Overall, we believe that the workload is reasonable, allowing for processing all 39 strings within the course of this calendar year. The additional time required is fully justified in that, once these registries open for business, the public will be impacted by their protective policies (or lack thereof) for many years to come.

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