

2013

***David Cake 14 March 2013***

So, reading a few PICs that have been filed - while I think the PIC idea has some merit where applications are negotiating with the GAC for specific uses of domains to get around objections etc, the majority of PICs are form letters where the groups that are applying for multiple domains (Donuts, TLDH, etc) are attaching the same PIC to all domains. And in an effort to dodge objections from the GAC, IPC lobbyists, etc are basically putting in the PIC the lobbyist wish list of stuff that would not (or has not) got through the GNSO.

***Milton Mueller 31 August 2013***

I've had trouble following all the thrashing about on PICs and the PICDRP, but on the whole **I view it as a disaster** that should be resisted as much as possible. My understanding is that PICs were not part of the AGB, they were imposed on the process by GAC. As such, they introduce yet another more or less arbitrary form of interference in the freedom of registry operators to do things and have no discernable benefits for registrants.

***Bill Drake: 1 September 2013***

Isn't "no discernible benefits" a rather sweeping and strong ex ante assertion? **Does the fact that you personally don't like the GAC's involvement** in any of this necessarily mean that there can be no instances of useful public interest concerns being raised via this vehicle, even if it wasn't specified in the hallowed AGB? I would agree with Evan that **it'd be useful to engage and seek improvements. NC is after all supposed to be into global public interest concerns**, at least that's what it says on our publicity material. Whether there's sufficient bandwidth at this particular juncture is a different matter...

***Milton Mueller 1 September 2013***

It's incredibly naïve of people to think that slapping the term "public interest" onto something automatically makes it beneficial to the public or something we should support. The other idea behind PICs is to enforce compliance with "statements made by the registry operator in its application for the gTLD, as well as to specify additional public interest commitments, in either case transforming such commitments into binding contractual obligations that may be enforced by ICANN through a new dispute resolution mechanism..."There are also **procedural issues** here. ICANN badly needs to get its allegedly bottom up process institutionalized and accepted by all parties. It is not a good thing when governments, or trademark owners, or law enforcement, or the U.S. Congress or ALAC, or any one of a dozen little pressure groups can rewrite the policies at any moment based on last-second hijacks of the process. That kind of thing **fundamentally undermines both the public interest and the predictability and credibility of ICANN**. The GNSO is supposed to represent all the main stakeholders, and the policies that come out of it are supposed to safeguard the public interest. Sure, there is a role for GAC and ALAC advice on the outcome of a GNSO policy, which could lead to its revision - by the GNSO - but if **we are ever to have a real bottom up policy we cannot embrace a GAC imposition of new contractual obligations**. And the idea that we should be sympathetic to them because someone arbitrarily papered them over with the label "public interest" just makes me shake my head in wonder.

2014

***Milton Mueller 25 December 2014***

And so we have the GAC threatening to kill TLD applications, and the registries trying to save their proposals by negotiating "public interest commitments". We are not really debating whether these PICs actually improve the lot of the general public, we are just engaged in a political bargain between the registries and the GAC. The GAC has already succeeded in appropriating the term. In this case, **I would actually strongly support challenging their use of the term**. So here is a case in which it would be a good idea to challenge the prevailing use of the term. What I don't want to see, however, is acceptance of the idea that ICANN's mandate is a generalized "public interest." That just opens the door for GAC or anyone to make these kinds of demands.

2015 - Discussion with Board at ICANN 53 in Buenos Aires

***Robin Gross 11 May 2015***

Let's discuss these **so-called "public interest commitments"** (PICs) and how they relate to the bottom-up policy development process at ICANN.

***William Drake 14 May 2015***

The question at hand is whether we want to talk about PICs with the Board in BA. I too think that'd be interesting, particularly if we have more to say than there shouldn't be intellectual property stuff abusively inserted into them.

***James Gannon 15 May 2015***

### ***Questions for the Board at ICANN meeting***

\* When performing its work, what situations does the board feel it is exercising its fiduciary responsibility, and does the board take into account the community input when making such decisions.

**\* On the topic of 'Public Interest Commitments' how does the board feel that PICs interact with existing bottom up policy making at ICANN. Does the board feel that there may be a conflict between PICS and multi stakeholder policy development. How does the board plan to enforce PICs, specifically in the case where there may not be community agreement over the actions contained in the PIC?**

\* On the topic of gTLD auction proceeds, does the board plan to accept the community suggestions via the CCWG current being chartered or will the board unilaterally decide the uses for the sequestered funds?

1. what the board thinks is, and is not, its fiduciary responsibility and to whom?
2. How "public interest commitments" relate to the bottom-up policy development process at ICANN. What are the Board's plans for enforcing these PICs? Is e.g. copyright or other IP enforcement part of the plan?

### ***Kathy Kleiman 15 May 2015***

Regarding the Public Internet Commitments, I agree with Bill that our discussion needs to be a little more targeted. Certainly a number of companies, particularly portfolio applicants, are throwing in "the kitchen sink" into their PICs and just giving up a lot of things that the GAC and intellectual property owners want. But **a number of applicants are also using their PICs to resolve key questions of their applications** -- and make key resolutions and agreements binding as part of their registry contracts. As you will remember, a number of companies applied for generic terms as "**Closed Generics**" -- e.g., .BOOK wanted all second level domain names to Amazon, .SEARCH all for Google, etc. So I would like to see up being circumspect in how we discuss PICs as many may be **helping some of the broader goals we have worked on** for some time...

### ***Milton Mueller 16 May 2015***

**I don't agree, I object to the whole idea of PICs.** It's an epitome of the kind of overreaching and arbitrariness that ICANN has come to embody. ICANN policy process says something is allowed, people who participated in that process, because they have more clout with ICANN or the U.S. Congress/NTIA change the policy retroactively. Bad.

2016

### ***Avri Doria 05 April 2016***

From the discussion on the CCWG call we just had, it sounds like the solution is for the base contract for gTLDs and the RAA to be changed. In terms of the gTLD contract this is something that the current gTLD subsequent procedures should take up as a policy issue. If the PDP decides to change the base contract and PICS are outside of the mission, then the contract that the PDP recommends could not include PICS. Not sure how to handle the change to the RAA in this case, but it sounds like that would need to be changed, so the next time a new RAA was introduced, then the grandfathering would end.

***Avri Doria 06 April 2016***

I make sure this gets an open discussion in the gTLD subsequent procedures WG. **PICs are most definitely on the docket and it will be close to 10 years before the issue comes to the fore as a practical matter.**

2017

***Kathy Kleiman 7 March 2017***

I think we should also consider asking the Board about the PICs (Public Interest Commitments) submitted by the New gTLD Registries. In some important cases, these **PICs contradict, set aside and even bypass Consensus policy a) made or b) currently being made.** So Minds + Machines, for example, is blocking all IGO names at the second level of its New gTLDs -- although there is a full-blown GNSO Policy Development Process WG looking at that very issue! I think we should be asking the Board about these PICs and raising concerns.

***Milton Mueller 8 March 2017***

As you know, specific PICs were accepted into the New gTLD Agreements. Some of these PICs contradict and even set aside GNSO policy processes and consensus policies. **How can we ensure that PICs do not move ICANN policy outside of its narrow mission** and does not override or ignore consensus processes (and the many hours of volunteer effort, time, research, drafting, editing and reviewing spent creating it)?

2020

Comments on the .org PICs

<https://pad.codingrights.org/p/NCSGCommentPIR>

#### **NCSG Statement on the "PIR Transaction and Proposed Public Interest Commitments Update"**

Back in November 2019, the Noncommercial Stakeholders Group issued a letter to the ICANN Board advocating for Ethos Capital to uphold its previously acquired obligations with regards to noncommercial registrants. The letter also pointed out that it was ICANN's duty to enter into negotiations with Ethos Capital to ensure that its operation of the ORG domain conforms to criteria upon which the original award of ORG was contingent (related to noncommercial registrants).

#### **Lack of a Freedom of Expression related provision on the PIC**

Due to concerns regarding eventual restrictions to rights such as Freedom of Expression, NCSG asked that the PIC text included both a process-oriented commitment to allow the Org Stewardship Council to

veto “modifications” of RO’s policies pertaining to free expression and a positive commitment to ensuring rights such as freedom of expression in the .Org domain. Despite stating this point previously in statements and to the PIR Leadership team, the lack of mention to this request on the modified PIC makes it harder for us to fully support the revised document.

### **Extended registration terms for .org registrants**

With regards to the possible extension of registration terms for .org registrants this was also a topic in which NCSG pointed out the need for a stronger PIR commitment. Despite understanding the eventual policy changes entailed by the proposed change, we would like to, once again, state the need for a stronger PIR involvement in creating such a change.

### **.Org Stewardship Council (OSC)**

The proposed PICs dated April 15th, 2020 included that the *“Registry Operator will, in accordance with the .ORG Stewardship Council charter (the “Charter”), notify and consult with the .ORG Stewardship Council with respect to modifications proposed by Registry Operator to its policies in the .ORG domain name space regarding: (x) censorship and freedom of expression; and (y) use of .ORG registrant and user data (the “Designated Policies”). The .ORG Stewardship Council will have authority to provide independent advice on and a binding right to veto modifications proposed by Registry Operator to the Designated Policies.”*

The NCSG believes that two additional measure can be taken to make the role of the OSC more effective, which should be reflected in the proposed PICs as well as the draft OSC charter:

1. The OSC should be given the mandate to review PIR policies for .org (such as any anti-abuse policies adopted by the registry) to ensure that these policies do not negatively impact non-commercial registrants in the .org space, with particular emphasis on their ability to express themselves freely and the processing and use of registrant data by the registry.
2. PIR should adopt a complaints system, where .org registrants are able to appeal decisions made by the registry in the implementation of its policies concerning freedom of expression and processing/use of registrant data. The OSC should be a party in the review of any such complaints, and should be able to overturn registry decisions, if the decisions are found to conflict with existing PIR policies (i.e. if implementation of PIR policies are not consistent with their intent).

Furthermore, the proposed PICs state that *“... , Registry Operator reserves the right at all times to ensure compliance in its sole judgment with applicable laws, regulations and **ICANN policies.**”* (emphasis added)

PIR cannot reasonably be expected to follow advice from the OSC, in the event that this advice conflicts with the registry’s contractual obligations towards ICANN. However, the OSC should be given the mandate to enter into discussions with PIR on policy recommendations it advocates for in the course of gTLD policy development at ICANN. Again, this particularly concerns the development of policy

recommendations that may impact freedom of expression and/or the processing of non-commercial registrants' gTLD registration data.

Although PIR cannot be expected to follow OSC advice, which would conflict with ICANN policies, the OSC should be in a position to advise PIR in the course of the development of these policies, particularly where the policies in question impact the OSC's mandate.

### **OSC Representation and NCSG participation**

NCSG also informed the PIR leadership the need for more independence on the proposed ORG Stewardship Council (OSC). Despite being a point that was mentioned on the new PICs and PIR statements, we believe the proposed process could still be improved. Specifically, they say "The PIR Board will not appoint the first five members of the .ORG Stewardship Council. To ensure independence, Ethos will engage an internationally-recognized executive search firm to oversee and manage a process for identifying candidates to be the inaugural members. The search firm will solicit applications from a variety of .ORG Stakeholders, including ICANN's Non-Commercial Stakeholder Group (NCSG) and At-Large Advisory Committee (ALAC) and provide its proposed nominations to a Selection Committee established by the PIR Board."

When it comes to the ORG Stewardship Council representatives, we would like to state the following:

- (a) From what it seems, even with the new proposed selection process, PIR will still be responsible for selecting all the OSC members. Additionally, despite the mention to NCSG on the document, there are no guarantees that the selection committee nor PIR will ensure NCSG's participation on the OSC. We also must note that ALAC contains, and to some extent is more representative of, commercial users as well as noncommercial users and has no historical connection to the ORG domain;
- (b) PIR and Ethos Capital should ensure that the OSC members include multiple and well-known experts in topics such as free speech and freedom of expression, human rights and copyright/trademark/fair use. Also, as pointed above, it is of utter importance that the selected appointees hold the same compromise with ensuring that the registry keeps its alignment with the Noncommercial registrants.

## 2021

### ***Bruna Martin dos Santos 9 March 2021***

#### **1. Registry Voluntary Commitments**

Main outcome would be to discuss enforceable mechanisms for contracted parties to make commitments to the community, enforced by ICANN contract compliance and so forth. Session will also present a short discussion on PICs after the 2012 round and the Subpro process that took us to today's moment of RVCs. Introduction - History of PICs and RVCs (Jeff Neuman)

Guiding questions

On the assumption that PICs/RVCs are the main mechanism for Contracted Parties to make enforceable commitments to the ICANN community (or public), are there limits on their enforceability, e.g. under the ICANN Bylaws?

Are there specific challenges with enforcing PICs/RVCs as part of the Registry Agreement (i.e. binding contract that all gTLD registry operators enter into with ICANN)?

Panelists should give real-life examples if possible.

What are the education gaps that ICANN org, Contracted Parties, or other parties (if any) should be addressing prior to further gTLD expansion?

How can enforcement of PICs/RVCs be framed to avoid the risk that ICANN org will need to make potential decisions on content?

What registrant rights or interests need to be protected?

What practical options can panelists suggest?

### **SUMMARY**

I think that disagreements with PICs / RVCs fall into the following categories:

- Disagreement with Process
  - Started by the GAC and not a bottom up process
- Disagreement with Content
  - Public Interest is an empty term without standing
- Disagreement with the role of ICANN
  - Could expand the ICANN remit to content moderation

Over time, opinions may have softened from not entertaining the concept of PICs / RVCs to engaging with the process but still seems to be cautious towards, if not still against, the concept.