

## PUBLIC INTEREST COMMITMENT DISPUTE RESOLUTION PROCEDURE

Revised: 2 October 2013

The following provisions shall apply to the Public Interest Commitment Dispute Resolution Procedure (PICDRP)

### **A. Compliance Obligations of the Registry Operator**

1. Consistent with the Registry Agreement, the Registry Operator will comply with Specification 11.
2. Each Registry Operator will designate the Abuse Point of Contact (as specified in Specification 6, Section 4.1 of the Registry Agreement) to receive reports forwarded from ICANN. The Registry Operator's Abuse Point of Contact will receive reports from ICANN regarding alleged non-compliance with the Public Interest Commitments described in Specification 11 (PICs).
3. Registry Operator will promptly review and address reports of alleged non-compliance with its PICs, and where applicable, will correct any non-compliance.
4. Registry Operator will document its receipt, investigation of, and response, if any, to reports regarding Registry Operator's alleged non-compliance with its PICs and will provide the documentation relating to any such reports to ICANN as requested by ICANN consistent with the PICDRP.
5. Registry Operator will maintain records and reports relating to any alleged non-compliance with its PICs for three (3) years from the date the alleged non-compliance was reported (unless a shorter period is required by law or approved by ICANN) and will provide them to ICANN upon request.
6. ICANN may audit these records in accordance with the terms of the Registry Agreement as further set forth in the PICDRP.

### **B. ICANN Preliminary Review Process**

#### **1. Notification Requirement and Preliminary Review**

1.1 Any person or entity that believes they have been harmed as a result of a Registry Operator's act or omission in connection with the operation of its gTLD that is inconsistent with its PICs may report such alleged non-compliance by the Registry Operator ("Reporter").

1.2 The Reporter will be required to file a PIC report with ICANN by completing an online form. The contents of the PIC report must specifically identify which PIC(s) form the basis for the report and must specifically state the grounds of the alleged non-compliance with one or more PICs and include supporting documentation. The Reporter must state in detail how it has been harmed by the alleged non-compliance. The Reporter must agree to participate in a conference if the Registry Operator requests to confer with the Reporter as set forth below in Section 2. Failure by the Reporter to complete all required fields in the PIC report will be grounds for ICANN to close the PICPRS report and take no further action.

1.3 ICANN will conduct a preliminary review of the PIC report to ensure that it is complete and states a claim of non-compliance with one or more PICs. ICANN also will make a determination as to

whether the Reporter is in good standing and is not a Repeat Offender as set forth below in Section 5. ICANN's preliminary review is not intended to evaluate the merits of the allegations, but whether the Reporter has completed all of the reporting obligations. In particular, ICANN will review whether the Reporter has: (i) identified the proper parties; (ii) identified at least one PIC with which the Registry Operator failed to comply, (iii) alleged how the Reporter has been harmed; and (iv) set forth the grounds of the claim and submitted appropriate documentation to support the report of non-compliance.

1.4 If the PIC report fails the preliminary review, ICANN will notify the Reporter and the Registry Operator, and the PIC report will be closed.

## **2. Initial Review of the PIC Report and Conference**

2.1 If the PIC report passes ICANN's preliminary review, ICANN will forward the report to the Registry Operator (through its Abuse Point of Contact) and notify the Reporter that the PIC report has been forwarded to the Registry Operator.

2.2 Following receipt of the PIC report from ICANN, Registry Operator may request to confer with the Reporter by emailing a request to the Reporter. Any such request must be designed to make such a meeting feasible and it shall include Registry Operator's contact information and a statement describing the Registry Operator's desire to confer. The Reporter must participate in the requested conference, which may be conducted through email or teleconference or, if both parties agree, in face-to-face meeting(s). The Reporter's failure to participate in the requested conference shall be grounds for ICANN's closure of the PIC report.

2.3 Registry Operator has 30 days from the date ICANN sends the PIC report to the Abuse Point of Contact to conduct the requested conference with the Reporter. Failure by the Registry Operator to conduct the conference within the 30-day time period shall be deemed a waiver of the right to conduct the conference ICANN substantive review, as set forth in Section 3.2, and the PIC report will go back to ICANN for such review.

2.4 If the parties are able to resolve the issues raised by Reporter in the PIC report during the 30-day conference period, the Registry Operator shall inform ICANN and shall provide ICANN with appropriate evidence that the matter has been resolved. Registry Operator shall be required to maintain records of the PIC report and resolution as set forth in Section A.

2.5 If the parties have not resolved the issue(s) raised by Reporter in the PIC report during the 30-day conference period, the PIC report will go back to ICANN for further review. If the Registry Operator requested a conference pursuant to Section 2.2 above and the Reporter failed to participate in that requested conference, ICANN will request evidence of the lack of Reporter participation, and, if necessary, will issue a follow-up to the Reporter regarding its lack of participation in the conference. Registry Operator and/or Reporter must provide evidence of requested conference and lack of Reporter participation within five days of ICANN's request. If the Reporter did not participate in the requested conference, ICANN will close the ticket and notify both the Reporter and the Registry Operator .

## **3. Compliance Review and Investigation by ICANN**

3.1 ICANN shall take into consideration any failure to participate in the requested conference in determining whether to proceed with a compliance investigation or to undertake an enforcement action. ICANN shall not proceed with an investigation of a PIC report if the Reporter failed to participate in a requested conference without demonstrable just cause.

3.2 Within ten business days of the notification of Section 2.3 by Reporter or Registry Operator that the issues have not been resolved, ICANN will request that the Registry Operator provide an explanation of why the Registry Operator believes, notwithstanding the allegations contained in the PIC

report, it is in compliance with its PIC and the basis for that belief. The Registry Operator will then have ten business days to respond to ICANN's request for explanation.

3.3 Based on the PIC report received by ICANN and Registry Operator's response(s) to ICANN's request for explanation, ICANN will determine whether a compliance investigation is appropriate in a particular case. At ICANN's sole discretion, ICANN may elect to invoke the Standing Panel or undertake a compliance investigation with respect to one or more reports and, if so, ICANN will promptly notify Registry Operator. Registry Operator must cooperate with ICANN's investigation, including reasonably providing requested information within ten (10) business days of ICANN's request..

3.4 ICANN or the Standing Panel, as set forth in Section 4 as appropriate, will determine whether the response by Registry Operator satisfies its contractual compliance obligations to ICANN. Registry Operator's documented compliance with obligations under Part A above will be deemed to be compliant with Specification 11. To the extent the results of ICANN's investigation demonstrate that the Registry Operator is not in compliance with Part A, ICANN may elect to proceed with enforcement of Registry Operator's obligations pursuant to Section 4.3 of the Registry Agreement directly or to seek the input of a Standing Panel to inform ICANN's continued handling of the matter. In either case, ICANN shall notify both Registry Operator and Reporter of its decision to seek an enforcement action pursuant to Section 4.3 of the Registry Agreement, to seek the input of the Standing Panel, or to take no further action. If ICANN decides the issues raised in the PIC report have been resolved, ICANN will notify the Registry Operator and the Reporter of its decision and close the ticket associated with the PIC report.

#### **4. Standing Panel**

4.1 A panel of three people shall be appointed by ICANN (Standing Panel) at ICANN's expense. The role of the Standing Panel will be to, upon request by ICANN, evaluate compliance by the Registry Operator with its obligations under Part A above. Prior to any evaluation, all members of the Panel shall be required to disclose to ICANN any facts or circumstances that are known to the Panel member and could reasonably be seen as raising a question about the Panel member's impartiality or independence. ICANN will provide such disclosures to the Reporter and the Registry Operator. If ICANN determines, on its own or based on a request from one of the parties, that the Panel member's disclosure might reasonably be viewed as undermining his or her impartiality, the Panel member shall be replaced. The PIC report and response, if any, by the Registry Operator will be the basis for the Standing Panel's compliance evaluation. Absent exceptional circumstances, additional evidence will not be considered and there will be no hearing. Any information that was exchanged between the Registry Operator and the Reporter after the PIC report was filed may be considered at the request of and in the sole discretion of the Standing Panel.

4.2 The Standing Panel shall report its evaluation results to ICANN, which ICANN shall provide to the Registry Operator and to the Reporter.

4.3 The Standing Panel will report its evaluation results to ICANN within 15 days from its receipt of notice from ICANN that the Standing Panel's compliance evaluation relating to a PICPRS report is required.

4.4 If the Standing Panel finds that the Registry Operator is in compliance with its PICs, ICANN will close the report, and send a closure email to both the Reporter and the Registry Operator.

4.5 If the Standing Panel finds that the Registry Operator is not in compliance with its PICs, ICANN shall notify the Registry Operator, and the Registry Operator shall have 30 days to resolve the noncompliance and notify ICANN of the remedial measures taken.

4.6 If the Registry Operator does not resolve the non-compliance after receipt of ICANN's notice specified in section 4.5 above, ICANN will determine, in its sole discretion, the appropriate remedial measure, if any, and proceed to enforcement. Should the Registry Operator object to the enforcement

determination, it may in its discretion avail itself of the Dispute Resolution mechanisms in the Registry Agreement.

## 5. Repeat Offenders

5.1 In the initial review of the PIC report, ICANN shall determine if either the Registry Operator has been found to have not complied with its obligations in Part A such that the Registry Operator should be identified as a Repeat Offender or the Reporter should be identified as a Repeat Offender.

5.2 Based on the last three rolling years, factors relevant to the determination of a Registry Operator as a Repeat Offender include, but are not limited to:

- a. severity of any previous PIC allegations/claims that satisfied ICANN's preliminary review against Registry Operator;
- b. the number of PIC complaints relative to the number of registrations that exist in the TLD; and
- c. whether there has been a pattern or practice of noncompliance with the PIC.

5.3 Based on the last three rolling years, factors that are relevant to the determination of whether a Reporter is a Repeat Offender, include, but are not limited to:

- a. the number of PIC reports filed by the Reporter which were resolved in favor of a Registry Operator;
- b. subject to Section 2.2, the number of times a PIC report was closed because of a Reporter's failure to meet and confer with a Registry Operator;
- c. the number of times the Reporter filed a PIC report that did not state a claim of noncompliance; and
- d. whether the Reporter has exhibited a pattern or practice of filing reports that have not passed ICANN's initial review.

5.4 ICANN may impose financial sanctions against any Registry Operator that is found to be a Repeat Offender. ICANN may bar future reporting from any Reporter that is found to be a Repeat Offender.

5.5 While ICANN's handling of the PIC report will include a way in which to identify Repeat Offenders, such determination can be made at any time during the PICDRP or otherwise.