

Summary of Safeguards under ICANN's Remit
Contractual Compliance and Consumer Safeguards Departments

For community discussion during the 25 September 2017 Webinar on Contractual Compliance and Consumer Safeguards, the Incorporation of Internet Corporation for Assigned Names and Numbers (ICANN) is presenting this broad, paraphrased, summary of ICANN safeguards derived from: ICANN's Articles of Incorporation and Bylaws, the contracts between ICANN and Registries and Registrars, and ICANN policies.

Articles of Incorporation – 22 July 2017:

Article II:

- ICANN is a public benefit corporation.

- ICANN shall promote the global public interest, which is to be determined by the community through an inclusive, bottom-up, multi-stakeholder process.

Article III:

- ICANN shall operate in a manner consistent with the Articles and its Bylaws for the benefit of the Internet community, in conformity with principles of international law and conventions, as well as in compliance with local law through an open and transparent processes.

ICANN Bylaws – 22 July 2017:

- ICANN's mission is to ensure stable and secure operation of unique identifier systems, but ICANN is not to act outside its mission. (Section 1.1 Mission.)

- ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that any such services carry or provide outside the scope of 1.1.(a). ICANN does not hold any governmentally authorized regulatory authority. (Section 1.1(c) see also Section 1.1(d).)

- Within the scope of ICANN's Mission and Core Values, ICANN shall respect internationally recognized human rights pursuant to applicable law, but this Core Value does not obligate ICANN to enforce its human rights obligations or the human rights obligations of other parties. (Section 1.2 (b)(viii) Commitments and Core Values.)

- ICANN shall operate in an open and transparent manner, ensure fairness and encourage fact-based policy development work. (Section 3.1 Open and Transparent.)

- ICANN shall conduct SSR reviews and CCTCC reviews prior to issuing any additional gTLDs. (Sections 4.6(c) and (d) Specific Reviews.)

Base Registry Agreement (31 July 2017)

- 1.2 Technical Feasibility of String. Registry is responsible for ensuring it maintains the technical feasibility to operate a TLD string prior to entering into an Agreement with ICANN.

- 1.3 Representations and Warranties: Registry must provide true and correct information in its TLD application; be duly organized and in compliance with applicable law, as well as be sufficiently funded to operate as a Registry.

- 2.7 Registry Interoperability and Continuity. Registry shall comply with interoperability and continuity specifications (Specification 6).
- 2.8 Third Parties' Rights (Specification 7): Registry shall take reasonable steps to investigate and respond to reports of illegal conduct from law enforcement, governmental or quasi-governmental agencies, but a Registry not required to act if contrary to applicable law.
- 2.13 Emergency Transition. In the event the Registry violates Specification 6 requirements, Registry will comply with ICANN's emergency registry transition process until the Registry can demonstrate it can resume operation of the TLD without a reoccurrence of the same issue leading to the emergency transition.
- 2.14 Registry shall comply with Code of Conduct (Specification 9): Registry may not show preference to any affiliated entity also engaged in registry / registrar services over other third parties also engaged in such services; must maintain separate legal entities if engaged in registry and registrar services; if registry obtains personal data from affiliated registrar, then must make that data available to other third parties.
- 2.17 Registry shall comply with the public interest commitments (Specification 11).
- 2.18 Personal Data. Registry shall notify registrar about need and use of personal data from a registrar's registrant; and shall take reasonable steps to protect such data from loss, misuse, unauthorized disclosure, alteration or destruction; and, may not use or authorize use of such data in an incompatible way without notice provided to registrars.
- Specification 5
 - Registry cannot permit the registration of:
 - (2) Two-character labels at the second level within the TLD;
 - (4) Country and territory names as listed in ISO 3166-1 (4.1), UN Group of Experts on Geographical Names, etc. (4.2), and list of UN member states (4.3);
 - (5) International Olympic Committee, International Red Cross and Red Crescent Movement; or
 - (6) Intergovernmental Organizations.
- Specification 6.
 - Registry Continuity (3.1) Registry shall conduct operations with redundant servers and maintain an emergency operations department to respond to extraordinary circumstances; (3.2) if an extraordinary event occurs, Registry shall use commercially reasonable means to restore critical functions within 24 hours and full functionality within 48 hours; and (3.3) Registry shall maintain a business continuity plan.
 - Abuse Mitigation: (4.1) Registry shall provide to ICANN and publish on its website accurate contact details (email / mailing address) and a primary contact for handling inquiries related to malicious conduct; and (4.2) Registry shall take action to remove orphan glue records if evidence of malicious use.

- Specification 7
 - Rights Protection Mechanisms. Registry shall implement and adhere to rights protection mechanisms (“RPMs”) and/or may develop and implement additional RPMs that discourage / prevent registration of domain names that violate or abuse another party’s legal rights as reflected in registry-registrar agreement. Registry shall not mandate that any owner of applicable intellectual property use any other validation service than ICANN-designated Trademark Clearinghouse.
 - Registry operators must comply with decisions derived from:
 - The Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and Registration Restriction Dispute Resolution Procedure (RRDRP).
 - Uniform Rapid Suspension system (URS).

- Specification 11
 - Registries will only use ICANN accredited Registrars.
 - Registry agrees to perform the following specific public interest commitments (enforceable by ICANN through PICDRP):
 - 3(a) include a provision in Registry-Registrar Agreement requiring registrars to include a provision in its agreements with registrants prohibiting the distribution of malware, botnet operation, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.
 - 3(b) Registry will periodically conduct a technical analysis to assess whether domains are being used to perpetrate security threats (pharming, phishing, malware, and botnets) and provide records of such analysis to ICANN upon request.
 - 3(c) Registry shall operate in a transparent manner and publish clear registration policies.
 - 3(d) A “generic string” Registry may not impose requirements on registering names in the TLD that would limit registrations to a single person or entity.

- Specification 12:
 - Registry shall implement and comply with all community registration policies that may be attached to a particular agreement, such as restrictions on who can register a domain name in a particular gTLD because it may be associated with a regulated industry or sector, for example, .bank and .pharmacy.

- Specification 13:
 - Provisions for the designation and operation of .Brand TLDs.

2013 Registrar Accreditation Agreement:

- 3.7.2 Registrar shall abide by applicable laws and governmental regulations.
- 3.7.3.2 Registrant must provide accurate contact information and update as necessary.
- 3.7.7.7. Registrar can only process personal data consistent with notice to registrant on how such data will be processed.
- 3.7.7.9 To registrant's knowledge and belief, it may not directly or indirectly infringe the legal rights of any third party.
- 3.7.9 Registrar shall abide by any Consensus Policy prohibiting or restricting warehouse of, or speculation in, domain names by registrars.
- 3.8 Registrar shall have in place a policy and procedures for resolution of domain name disputes and shall comply with the UDRP.
- 3.18 (1) Registrar shall publish / maintain on home page of Registrar's website a valid email contact to receive reports of abuse and Illegal activity; and shall take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse; and (2) maintain a dedicated abuse point of contact, including a dedicated email address and telephone number monitored 24 /7 to receive reports of Illegal activity from law enforcement, consumer protection, quasi-governmental or other similar authorities from the jurisdiction in which the Registrar is established or maintains a physical office. Well-founded reports of Illegal Activity submitted to these contacts must be reviewed within 24 hours by an individual empowered to take necessary and appropriate action, but Registrar not required to take any action in contravention of applicable law; and (3) Registrar shall publish on its website a description of its procedures for the receipt, handling, and tracking of abuse reports; document its receipt of and response to all such reports; and maintain the records related to such reports for the shorter of two years or longest period permitted by applicable law, and shall provide such records to ICANN upon reasonable notice.
- 3.20 Notice of Bankruptcy, Convictions, and Security Breaches. Registrar will give ICANN notice within seven (7) days of... (iii) any unauthorized access to or disclosure of registrant account information or registration data. The notice required pursuant to Subsection (iii) shall include a detailed description of the type of unauthorized access, how it occurred, number of registrants affected, and any action taken by Registrar.
- 5.5 Agreement may be terminated before its expiration by ICANN if (2.1) Registrar is convicted by a court of competent jurisdiction of a felony or other serious offense related to financial activities, or is judged by a court of competent jurisdiction to have (2.1.3) actual knowledge (or through gross negligence) permitted Illegal Activity in the registration or use of domain names or in the provision of Registrar by any Registered Name Holder of inaccurate Whois information...; and (2.4) is found by ICANN, based on upon findings of arbitral tribunals, to have been engaged, either directly or through its Affiliate, in a pattern and practice of trafficking in or use of domain names identical or confusingly similar to a trademark or service mark of a third party in which the Registered Name Holder has no rights or legitimate interest; and (7) Registrar

continues acting in a manner that ICANN reasonably determines endangers the stability or operational integrity of the Internet after receiving three (3) days notice of that determination.

Consensus Policy

- The Uniform Domain-Name Dispute-Resolution Policy (UDRP) establishes procedures for the resolution of most trademark disputes through parties by agreements, court action, or arbitration prior to the cancellation, suspension or transfer of a domain name. While UDRP is a contractual requirement, per 4(h) and 6 of the policy, ICANN is not involved and is not a party to any dispute.

Sunrise Services

- Consistent with Trademark Clearing house policies, upon the issuance of a new gTLD, Trademark Rights holders are granted 30 days of priority access to register domain names associated with their trademark prior to the TLD being open to public registrations.

Whois Data Reminder Policy

- Annually, a Registrar must contact a Registrant with a reminder to review and update any requisite Whois data or the registrant may face cancellation of the registered domain.

Expedited Registry Security Request (ERSR)

- In the event an imminent security threat to a TLD, a Registry may request certain, limited contract waivers to the Registry Agreement so the Registry may respond to the incident.

Name Collision Occurrence Management Framework

- Framework and policy for resolving name collisions between private networks and the public DNS upon the issuance of a new gTLD.

Registrant's Benefits and Responsibilities

- Registrant is entitled to accurate and accessible information about:
 - The identity of the ICANN Accredited Registrar;
 - The identity of any proxy or privacy service;
 - Registrar's terms and conditions and pricing information;
 - Terms and conditions and pricing information for privacy;
 - The customer support and privacy services offered by the Registrar;
 - How to raise concerns and resolve disputes with your Registrar; and
 - Instructions that explain Registrar's processes for registering, managing, transferring, renewing, and restoring domain name registrations, including through any proxy or privacy services.
- Registrant shall not be subject to false advertising or deceptive practices by a Registrar including deceptive notices, hidden fees, and any practices that are illegal under the consumer protection law of Registrant's residence.