

# Report of Public Comments

<b>Title:</b>	<b>Proposal for the Use of Mandatory Policy Advisory Boards for Regulated Industry Sector and Consumer-Trust-Sensitive New gTLD Strings</b>
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<b>Publication Date:</b>	21 Mar 2014
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<b>Prepared By:</b>	Heidi Ullrich
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<b>Staff Contact:</b>	Heidi Ullrich	<b>Email:</b>	Heidi.ullrich@icann.org
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## Section I: General Overview and Next Steps

A collaboration between diverse members of the ICANN community proposes the use of mandatory Policy Advisory Boards (PABs) for a subset of new Generic Top-Level Domains (gTLDs) which are targeted at regulated industry sectors and other consumer-trust-sensitive fields.

These ICANN community members assert that PABs are able to address what are perceived to be substantial public-interest deficiencies in the current implementation of ICANN's gTLD expansion program.

The purpose of this public comment period was to obtain feedback and collect broader community input into the further development of the PAB model, and to which TLD strings it may best apply.

The At-Large New gTLDs Working Group will analyze the results, and – in collaboration with other community members – determine subsequent action.

## Section II: Contributors

*At the time this report was prepared, a total of 19 community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.*

### Organizations and Groups:

Name	Submitted by	Initials
New gTLD Applicant Group (NTAG)	Jacob Malthouse	JM
Donuts	Mason Cole	MC
fTLD Registry Services, LLC	Craig Schwartz	CS

RxRights (Comment 1)	Lee J. Graczyk	LG- 1
JFK Stamps.com	Shelly Garcia	SG
American Insurance Association	Angela Gleason	AG
PharmacyChecker.com, LLC	Gabriel Levitt	GL
RxRights (Comment 2)	Lee J. Graczyk	LG - 2
DOTZON GmbH	Katrin Ohlmer	KO
Public Interest Registry	Paul Diaz	PD
The Weather Channel, LLC and Lifestyle Domain Holdings, Inc.	Sheri McGaughy	SM
Intellectual Property Constituency	John C. McElwaine and Nelson Mullins	JM/NM
Canadian International Pharmacy Association	Tim Smith	TS
ACT (the App Association)	Whitley Herndon on behalf of Jonathan Zuck	JS
ICANN Business Constituency (BC)	Steve DelBianco	SD

Individuals:

Name	Affiliation (if provided)	Initials
Christopher Wilkinson	None provided	CW
Oleg Serebrennikov	DOTPAY SA	OS
Byron Holland (submitted by Mark Buell)	None provided	BH
Ron Andruff	None provided	RA

**Section III: Summary of Comments**

*General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

CW was of the opinion that the “proposed Policy Advisory Boards (PABs) are clearly a palliative for a wider issue” that has yet to be addressed. Furthermore, CW also noted that the proposal did not contain any “reference to the real costs of the Policy Advisory Boards, their autonomy, authority and their recourse in the event of disputes.” CW argues that while the original proposal states that the PABs would be financed by

Registries, in order for the PABs to be independent, they would need to be financed by ICANN. CW concludes that the proposal is not consistent with the public interest until the “Registries themselves propose credible and viable global solutions to the issues that have been identified.”

OS of DOTPAY SA felt that at the present time, the PIC framework is sufficient. In reaching this conclusion, OS identified concerns over the proposal for the PABs noting issues of costs for PABs as well as that the PABs proposal is “redundant, since ICANN is already in possession of a full spectrum of regulatory options as regards PIC” including appointing a “standing panel” to review a case.

SM, submitting a joint statement by the Weather Channel LLC, applicant for .weather, and Lifestyle Domain Holdings Inc, one of the applicants for .food, note that the PAB proposal would result in re-opening the Applicant Guidebook. In addition, SM points out that adopting the proposal would “result in ICANN improperly being involved in the content regulation of domains within new TLDs.” This would “move ICANN into the zones of speech censor and competition regulator, both of which are outside of ICANN’s mandate.”

PD of the Public Interest Registry states that it is opposed to the PAB proposal and notes that it “raises significant operational and legal concerns”. PD concludes by noting that if the PAB proposal is pursued, it should be done so within the multi-stakeholder model of bottom-up, consensus-driven policy development process.

JM, representing the New TLD Applicant Group (NTAG), noted the group’s concern over the proposal stating that the New gTLD Program Committee (NGPC) had, in consultation with the GAC, “proposed and approved a process to address the Category 1 Advice through a number of mandatory Public Interest Commitments (PICs) for all strings listed in the GAC Beijing Communiqué.” JM also points out that the Chair of the NGPC had made it clear that the acceptance of the GAC advice and the implementation framework would be the final actions on the GAC advice. It was additionally pointed out that this current proposal was submitted after all other community advice had been considered by the NGPC. In conclusion, JM noted that reopening this issue would impact a number of new gTLD applicants who had already implemented their Registry Agreements as well as undermine those who had supported the accepted framework.

MC, representing Donuts, also opposed the ALAC proposal for the PABs for similar reasons to JM citing that the NGPC had already rejected the concept of PABs. If the ICANN Board changed direction on this issue now, the result would create “a bifurcated situation whereby registries would be subject to conflicting rules.” MC also noted that the concept of the PABs would be a major change of policy and would thus need to be subject to policy development within the GNSO. MC urged ICANN to close additional public comment on this issue and refer the issue to the GNSO.

On behalf of fTLD Registry Services, LLC, CS notes that they are in principle with ‘the spirit’ of the proposal. However, CS points out several weaknesses in the proposal including among others that limiting the role of the Registry Operator to technical management thus not allowing them to have a seat on the PAB or voting privileges and the “vague and open-ended nature of ‘all interested parties’ is an unacceptable business risk”. fTLD concludes by noting the value that an advisory body could potential add to the administration of gTLDs, but they cannot accept the “mandatory” aspects as set out in the proposal. They would participate in further

discussion within the GNSO.

KO of DOTZON GmbH notes their support of the comments submitted by fTLD Registry Services, LLC, Donuts Inc. and the NTAG. They continue by outlining their three main concerns of the proposal: 1) opposition of the PAB given that the NGPC stated that opinion against the use of PABs; 2) within the current proposal, an individual member of the PAB could impact the operation of the TLD without being liable, and 3) any major changes to the Applicant Guidebook can only be made following consideration by the multi-stakeholder model. KO urges ICANN to close further public comment and refer the matter to the GNSO.

BH states that the concept of PABs is sound. However, he notes several practical problems that arise including those related to funding, membership, decision-making processes, and definitions of regulations industries and professions.

JM/NM, submitting on behalf of the Intellectual Property Constituency (IPC), state that they are in favor of increased safeguards for some sensitive string but that these should be developed within a process involving the full ICANN community. They point out that the PICDRP framework as proposed requires “a lengthy, expensive and adversarial process” that contains “numerous barriers to its effectiveness as a remedy for injured consumer.” JM/NM recommend that the GNSO begin a process to examine additional measures that ensure that “standard and acceptable practices guide new gTLD policies and protect the public interest related to ‘sensitive strings’.”

SD of the Business Constituency (BC) note that it is not certain whether the PICs will provide effective safeguards. They believe that the PAB model should be “actively explored as a potential means of protecting the public interest in a manner that encourages the active involvement of and consultation with regulators, self-regulatory bodies, and other expert parties to establish adequate registry policies including registrant eligibility criteria.

AG on behalf of the American Insurance Association notes their support for the concept of PABs as they believe without them are “limited, if any controls in place to address the concerns that the GAC has identified”. However, they also note recommend that ICANN make further consideration of the exact parameters of any PAB.

JZ of the ACT | App Association states that they support the creation of safeguards implemented through the PABs as this model would allow for strings to be considered on an individual basis. The individual approach is the “best way to protect public interest”.

LG of RxRights submitted two sets of comments. In their first set of comments, they note that they “strongly support the adoption of the mandatory Policy Advisory Board (PAB) model as articulated in the proposal.” They note that the PAB model will assist in ensuring that consumers are not the victim of fraud” by domain registrants who “would co-opt the use of a gTLD for their own gains”. In addition, LG notes that the PAB model will also “permit a broader range of relevant parties to participate in the setting and enforcement of registry eligibility policies”. The second submission from LG was a petition as demonstration of continued concern for the .pharmacy application signed by 21,000 people.

GL of Pharmacy.com, LLC strongly supports the PAB proposal as they believe it will “ permit a broader range of relevant parties to participate in the setting and enforcement of registry eligibility policies.” Additionally,

registries would also hear the views of “independent experts, academics, consumer advocates, and other qualified parties”. They also note that “a gTLD sponsored by pharmaceutical companies and governed by U.S. pharmacy regulators is clearly open to abuse and, thus, consumers -Internet Users - need representation in line with ICANN's bottom-up, multistakeholder consensus policymaking process”.

TS of the Canadian International Pharmacy Association registered its support of the PAB proposal for numerous reasons, including “to ensure that new gTLD applicants for regulated industry gTLDs do not operate the registry in a manner that is antithetical to the overriding goals of competition and innovation” and “to ensure that the protection and promotion of the public interest is furthered via the operation of a regulated industry/profession gTLD”.

RA, who identifies himself as one of the individuals who assisted in developing the concept of the PABs, submitted a comment in which he summarizes the submissions to the ALAC public comment for mandatory PABs. He concludes that the PAB model “should be enacted immediately as an implementation matter for new gTLDs to enable regulated string applicants to move forward in their application process”.

#### **Section IV: Analysis of Comments**

*General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.*

The analysis of the comments received will be prepared by the At-Large New gTLD Working Group.