



Internet Society of Australia
A Chapter of the Internet Society

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ALAC Members and the GNSO Working Group

The Internet Society of Australia (ISOC-AU) welcomes this opportunity to provide comments on the Generic Names Supporting Organisation's (GNSO) Recommendations for the introduction of new generic Top-Level Domains.

ISOC-AU is a non-profit society founded in 1996 which promotes the Internet development in Australia for the whole community – private, academic and business users: the Internet is for everyone! ISOC-AU is a chapter of the worldwide Internet Society and is a peak body organisation that takes a users perspective and draws on the deep technical understanding of our members. We have a longstanding and ongoing commitment to the effective representation of these interests in self-regulatory processes in the telecommunications, domain name and Internet-related services industries.

In general, we support the GNSO Final Report's Recommendations, which provide open, transparent processes in the provision of new Domain Names, and give ICANN an important role in oversight of the operational and technical issues raised with the introduction of new generic Top-Level Domains.

We are concerned, however, that four of the Recommendations give ICANN roles outside of its jurisdiction, and well beyond its operational and technical competence. Our comments on those recommendations are as follows:

Recommendation Three: Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.

Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).

Recommendation Six: Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.

Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).

Both of these recommendations suggest ICANN should be given the power to make judgments about matters of complex domestic and international law. ICANN has neither

the expertise nor the jurisdiction to make such judgments and both of these recommendations should be deleted.

Recommendation Eight: Applicants must be able to demonstrate their financial and organisational operational capability.

The recommendation logically flows from one of the Report's principles – that an applicant must have the capability to meet its obligations. However, this Recommendation does not confine the query to an applicant's 'capability' in relation to their application for a Domain Name', and potentially allows scrutiny of applicants beyond what is necessary to determine their ability to meet their Domain Name obligations. We would recommend that the wording be amended to read ...'capability to meet their obligations in relation to their Domain Name(s)''.

Recommendation Twenty: An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.

This recommendation, again, extends ICANN's role well beyond its area of competence, and begs far too many questions. Who would comprise the 'expert panel'; who determine what 'substantial opposition' might be, or even that it may arise; what is meant by a 'significant portion of the community', and what comprises the 'community' referred to? The Internet community comprises far too wide a range of cultures, religious and philosophical beliefs, and social norms to allow any one 'expert panel' sit in judgment on such issues.

The Report's principles include the following:

The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.

Establishing an 'expert panel' to determine 'substantial opposition' from a 'significant portion of the community' had the very real potential to infringe those very rights. This recommendation should be deleted.