

To the ICANN Board and ICANN Community:

As outside observers of the operations of the Subsequent Procedures PDP Working Group, we write to express our concern at the shape of the final recommendations, and particularly with regard to ICANN's quiet drift into the politically charged world of content moderation. Specifically, we are concerned that the lack of proper action to address the dangers posed by Registry Voluntary Commitments (RVCs), which represent a significant challenge not only to the integrity of the Final Report, but to ICANN's mission as a whole.

Regulating the content of online speech has long been the third rail of ICANN's operations, and for good reason. ICANN's status as the steward of key technical Internet functions depends, in large part, on its ability to chart a neutral course through areas of political controversy, in order to maintain the trust of all of its diverse stakeholders. An essential part of this is that ICANN must interpret its technical mission narrowly, in terms of facilitating universal resolvability, and without regard to the content being communicated. The bounds of permissible speech are a matter for elected governments to address, not for ICANN.

The lack of clear definitions around the appropriate scope of Registry Voluntary Commitments poses a danger to this function, insofar as it places ICANN as an enforcer over rules which have the potential to drag the organization into any number of controversial political areas. Around the world, online platforms like Facebook and Twitter are under fire from all sides as a result of their involvement in content questions. **Delegating the decision-making to a third-party arbiter would not absolve ICANN over responsibility for the outcomes of these decisions any more than the Facebook Oversight Board has relieved Facebook of the intense scrutiny that follows its decisions.** Is this really the future that ICANN wants?

While neutrality in the content debates is not a practical option for the platforms, it is absolutely a position which ICANN can adopt. The alternative would be to open ICANN up to a flood of new legislation around the world targeting entities that are responsible for moderating content. Given ICANN's recent experience with California's Attorney General examining the sale of Public Interest Registry, it is difficult to see why the organization would voluntarily subject itself to similar scrutiny from global governments over decisions to ban (or not to ban) particular domain names for alleged violations of content moderation commitments that have been incorporated into contracts with ICANN. These moves open up an entirely new attack surface for governments, and threaten to undercut one of the organization's main claims to universal legitimacy: the idea that it stays out of such controversial debates.

By submitting their report without addressing these problems, or examining problematic existing Public Interest Commitments (now called RVCs) and closely evaluating ICANN's limited scope and authority, the Working Group is essentially endorsing registries' ability to continue and expand this practice, writing new terms into their contracts with ICANN, and expecting the organization to support their enforcement. This is anathema not only to ICANN's role in the global Internet, but to the multistakeholder-driven contracting process under which it is meant to operate. It is simply

unacceptable for the Working Group to ignore these concerns, or to kick them down the road, to be addressed by an indeterminate process at some indeterminate time.

We write to you, the ICANN Board, with the hope that you will carefully consider the implications of this decision on ICANN's mission and future operations and create proper scope for what you will accept and enforce as future Registry Voluntary Commitments.

Yours Sincerely,

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