

To: ICANN Board, Steve Crocker
From: The Non-Commercial Stakeholders Group
RE: Consumer Metrics Advice Letter – NCSG Concerns on “Trust”
Date: January 30, 2013

The Non-Commercial Stakeholders Group (NCSG) writes to express our dissent from the Consumer Metrics Advice Letter, as forwarded to the Board by the GNSO Council on January 11, stemming from our continued strong concerns with the “trust” metrics and their presentation in that letter. We appreciate the work that has gone into the metrics, but believe that the “trust” measurements in particular rely on a faulty premise, that gTLDs should be predictable, rather than open to innovative and unexpected new uses.

We share these further concerns directly because our dissent is called out in the report in only a preliminary form (an early exchange in the drafting group, rather than later input). When we requested an amendment in the GNSO Council meeting to include this more developed position, the chair suggested that we instead write directly to the Board.

We wish to give the Board additional analysis to inform their deliberation on the meaning of “consumer trust,” because a mistaken interpretation like that given in the largely trademark-driven report would negatively impact the rights and interests of individuals and non-commercial stakeholders concerned with free expression of less popular viewpoints and innovative development of the Internet.

The Consumer Trust Working Group Advice Letter on Consumer Trust, Consumer Choice, and Competition mistakes a platform, a gTLD, for an end-product. A key value of a platform is its generativity – its ability to be used and leveraged by third parties for new, unexpected purposes. Precisely because much innovation is unpredictable, it cannot be predicted for a chart of measures. Moreover, incentives on the intermediaries to control their platforms translate into restrictions on end-users’ free expression and innovation.

Just as we would not want to speak about “trust” in a pad of printing paper, on which anyone could make posters, and we do not ask a road system to interrogate what its drivers plan to do when they reach their destinations, we should not judge DNS registries on their users’ activities.

ICANN’s planned reviews of and targets for gTLD success should not interfere with market decisions about the utility of various offerings.

Therefore, we object to many elements in the second group of “trust” metrics, the “Measures related to confidence that TLD operators are fulfilling promises and complying with ICANN policies and applicable national laws”: namely,

- [1.9] Relative incidence of UDRP & URS Complaints;
- [1.10] Relative incidence of UDRP & URS Decisions against registrant;
- [1.11] Quantity and relative incidence of intellectual property claims relating to Second Level domain names, and relative cost of overall domain name policing measured at: immediately prior to new gTLD delegation and at 1 and 3 years after delegation;

- [1.13] Quantity of Compliance Concerns regarding Applicable National Laws, including reported data security breaches ;
- [1.14] Quantity and relative incidence of Domain Takedowns, including takedowns required by law enforcement.
- [1.15] Quantity and relative incidence of spam from domains in new gTLDs, which could be measured via specialized email addresses and methodologies.
- [1.16] Quantity and relative incidence of fraudulent transactions caused by phishing sites in new gTLDs.
- [1.17] Quantity and relative incidence of APWG / None noted Significantly detected phishing sites using new gTLDs.
- [1.18] Quantity and relative incidence of detected botnets and malware distributed using new gTLDs.
- [1.19] Quantity and relative incidence of sites found to be dealing in or distributing identities and account information used in identity fraud.
- [1.20] Quantity and relative incidence of complaints filed to ICANN regarding inaccurate, invalid, or suspect WHOIS records in new gTLD.

Separately, we object to the targets for the “redirection,” “duplicates,” and “traffic” measures of “choice” in section 2. All of these presume that the use for new gTLDs is to provide the same type of service to different parties, while some might be used to provide different services to parties including existing registrants.

The NCSG welcomes the opportunity to discuss these concerns further with the Board.

Very truly yours,

Robin Gross, NCSG Chair