

From: [REDACTED]
To: [iotrfc2016](#)
Subject: Anonymous Comment to IOT RFC 2016
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The U.S. government's role is to protect the interests of the U.S., including its citizens. It is not ICANN's role, mission, nor intention to do so. ICANN's sole goal is to protect itself from liability at every opportunity.

For example, in the new gTLD application round, they require that applicants give up their constitutional right to litigate in exchange for very limited accountability mechanisms, contained in ICANN's Bylaws, which the ICANN Board self proclaims are "non-binding" upon them. See Module 6 to the Applicant Guidebook at <https://newgtlds.icann.org/en/applicants/agb>, which states:

"6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FOR A ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT."

In the recent DotAfricaConnect Trust v. ICANN in California Federal court ruling (see: <http://domainincite.com/docs/75-Order-Granting-Preliminary-Injunction-DCA-Trust-April1216.pdf>), the judge just deemed the litigation waiver to be unconscionable. Of course, ICANN argued that applicants are "sophisticated parties" so the litigation waiver should be upheld. Luckily, the judge did not see it that way.

In recent Independent Review Panel (IRP) decisions (found here: <https://www.icann.org/resources/pages/accountability/irp-en>) many recent IRP Panels have voiced grave concerns about ICANN's accountability. The IRP process is costly, usually in the millions of dollars, takes years, and is heavily weighted in ICANN's favor because ICANN lawyers wrote the Supplemental IRP rules under the International Centre for Dispute Resolution (ICDR).

Another issue I would like to point out is that ICANN's Government Advisory Committee has provided the ICANN Board with consensus advice every meeting since Beijing in 2013 to add additional public safeguards by way of Specification 11 Public Interest Commitments (PICs) to the Registry Agreement for Category 1 highly regulated strings. On February 5, 2014, the New gTLD Program Committee (NGPC), under authority of the ICANN Board, accepted GAC advice on Category 1 Highly Regulated Strings (see implementation framework at: <https://newgtlds.icann.org/en/applicants/gac-advice/cat1-safeguards>). ICANN has yet to implement any meaningful safeguards other than add language to Specification 11 that registrants will self certify that they have the qualifications to register such category 1 highly regulated extensions. To add insult to injury, ICANN has allowed the .DOCTOR registry operator to remove Specification 11 PICs if it becomes inconvenient or too costly for them to implement (See .DOCTOR Specification 11 Agreement (See: <https://gtdresult.icann.org/application-result/applicationstatus/applicationchangehistory/794>) which you will note the very last sentence states:

"These PICs shall be subject to review by Registry Operator starting in January 2016, and Registry Operator, in its sole discretion, may elect at that time to modify or discontinue any of the PICs herein in the case of a substantial and compelling business need."

ICANN has caved to the pressure from big commercial interest registries and registrars because implementation of such safeguards causes them loss of profits to their business. Safeguards such as verification of proper credentials to register a category 1 highly regulated domain name for the integrity, security, and stability of the IoT is a small price to pay to safeguard the public. Criminal will absolutely seize on any opportunity to exploit any weakness in the IoT system. Who will require ICANN to bear the burden of correcting such oversights and can they be corrected before disaster strikes?

It is my recommendation that the U.S. government remain fully engaged in the direct oversight of ICANN and the IoT and to have safety pull back mechanisms to enforce ICANN Board compliance. Putting all of the IoT eggs in ICANN's basket will lead to corruption by big commercial and government interests. We cannot allow ICANN to turn into FIFA. ICANN Board cannot be trusted to self regulate. Thank you.

Anonymous

Thank you.