



The Internet Corporation for Assigned Names and Numbers

16 January 2013

Heather Dryden
Chair, Governmental Advisory Committee

Re: GAC Communiqué from ICANN 45 Meeting in Toronto, Canada

Dear Heather,

On behalf of the ICANN Board of Directors, I thank you again for the GAC Communiqué from the ICANN meeting in Toronto, Canada (the "Toronto Communiqué"). Following up on our 7 December 2012 letter, below please find the Board response to the GAC Advice provided in the Toronto Communiqué.

1. GAC Member Early Warnings

GAC Communiqué:

The GAC requests written briefing from the ICANN Board on:

- the extent to which applicants will be able to modify their applications as a result of early warnings.
- how ICANN will ensure that any commitments made by applicants, in their applications or as a result of any subsequent changes, will be overseen and enforced by ICANN.

The GAC advises the ICANN Board:

- that it is necessary for all of these statements of commitment and objectives to be transformed into binding contractual commitments, subject to compliance oversight by ICANN.
- The GAC expects that applicants would not be penalised where the standard provisions of a contract are amended in order to meet specific obligations entered into in order to meet governmental concerns.

The GAC encourages ICANN to continue its work to promote awareness of the new gTLD program, and looks forward to further engagement with the community on these issues as the program progresses.

Board Response:

- A. Are New gTLD applicants permitted to modify their applications as a result of early warnings?



Applicants are permitted to modify their applications pursuant to the New gTLD Application Change Request Process and Criteria, posted at <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>. The

determination as to whether changes will be approved is based on a weighing of the following seven factors:

1. *Explanation* – Is a reasonable explanation provided?
2. *Evidence that original submission was in error* – Are there indicia to support an assertion that the change merely corrects an error?
3. *Other third parties affected* – Does the change affect other third parties materially?
4. *Precedents* – Is the change similar to others that have already been approved? Could the change lead others to request similar changes that could affect third parties or result in undesirable effects on the program?
5. *Fairness to applicants* – Would allowing the change be construed as fair to the general community? Would disallowing the change be construed as unfair?
6. *Materiality* – Would the change affect the evaluation score or require re-evaluation of some or all of the application? Would the change affect string contention or community priority consideration?
7. *Timing* – Does the timing interfere with the evaluation process in some way? ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round. (AGB §1.2.7.)

It is not possible to generalize as to whether change requests resulting from early warnings would be permitted in all instances. But if such requests are intended solely to address the “range of specific issues” listed on page 3 of the Toronto Communiqué, and do not otherwise conflict with the change request criteria noted above, then such requests would in all likelihood be permitted.

- B. Will applicants be penalized for seeking amendments to New gTLD registry agreements to meet specific obligations entered into in order to meet governmental concerns?

The Board does not intend to impose any penalty on applicants where the standard provisions of a contract are amended in order to meet specific obligations entered into in order to meet governmental concerns. Additional time may be necessary to execute non-standard registry agreements.

- C. Will applicant commitments be transformed into enforceable contractual obligations?

The New gTLD Program does not currently provide for a mechanism to adopt binding contractual terms incorporating applicant statements and commitment and plans set forth within new gTLD applications or arising from early warning discussions between applicants and governments. To address the concerns raised by the GAC as well as other stakeholders,



staff are developing possible mechanisms for consideration by the Board New gTLD Committee. That Committee will discuss the staff proposals during the upcoming Board Workshop, 31 January – 2 February. We anticipate providing the GAC with an update on our progress on this matter shortly after the conclusion of the Board Workshop.

D. ICANN's continuing efforts to promote awareness of the New gTLD Program

ICANN has several ongoing initiatives to promote awareness of the New gTLD program. These include:

- Frequent updates to the New gTLD microsite (<http://newgtlds.icann.org/>) with fresh content on progress and timelines of the program.
- Ongoing series of regularly-scheduled webinars on matters such as the prioritization draw, objection process, etc.
- Posting of several blogs by ICANN President and CEO Fadi Chehadé regarding aspects of the program.
- Aggressive use of locally-relevant social media to promote all of the above.
- We will launch a broad PR campaign in 2013 most likely with agency help to promote general public awareness that new gTLDs will be delegated into the root, focusing on what they are and what they mean to end users/consumers. While prior campaigns have focused primarily on potential applicants, this campaign will promote education and awareness among users. While the details of the campaign are not yet finalized, it most certainly will involve social media, targeted online and print ads, videos as well as interacting with communities on different levels through speaking engagements.

2. Protections for Intergovernmental Organizations

GAC Communiqué:

While the GAC continues its deliberations on the protection of the names and acronyms of Intergovernmental Organizations (IGOs) against inappropriate third-party registration.

The GAC advises the ICANN Board that:

- in the public interest, implementation of such protection at the second level must be accomplished prior to the delegation of any new gTLDs, and in future rounds of gTLDs at the second and top level.

The GAC believes that the current criteria for registration under the .int top level domain, which are cited in the Applicant Guidebook as a basis for an IGO to file a legal rights objection, provide a starting basis for protecting IGO names and acronyms in all new gTLDs.

Building on these criteria, the GAC and IGOs will collaborate to develop a list of the names and acronyms of IGOs that should be protected. Pending further work with ICANN on specific



implementation measures for this initiative, the GAC believes this list of IGOs should be approved for interim protection through a moratorium against third-party registration prior to the delegation of any new gTLDs.

Board Response:

In response to and in line with the GAC's advice provided in its Toronto Communiqué that "[the] list of IGOs should be approved for interim protection through a moratorium against third-party registration prior to the delegation of any new gTLDs," the Board's New gTLD Program Committee adopted a resolution on 26 November 2012 that lays the groundwork for providing protections for IGO names and acronyms at the second level, in time for the introduction of the new gTLDs within the first application round. Subject to the receipt of input identifying that doing so would raise a concern with the global public interest or the security or stability of the DNS, the New gTLD Program Committee resolved to include the following names or acronyms on a Reserved Names List:

"The specific IGO names to be protected shall be those names or acronyms that: 1) qualify under the current existing criteria to register a domain name in the .int gTLD; and 2) have a registered .int domain OR a determination of eligibility under the .int criteria; and 3) apply to ICANN to be listed on the reserved names list for the second level prior to the delegation of any new gTLDs by no later than 28 February 2013."

<https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-26nov12-en.htm#1.b>

The Board understands from the Toronto Communiqué that the GAC and IGOs are collaborating to develop a list of the names and acronyms of IGOs that should be protected. The Board requests a status on the work to create this list. In the event that it is not feasible for the GAC to provide such a list by 28 February 2013, the New gTLD Program Committee's resolution will allow for IGO names and acronyms to be identified in sufficient time to allow for the names to be included on the Reserved Names List. Of note, the New gTLD Program Committee was guided by the GAC's comment that "The GAC believes that the current criteria for registration under the .int top level domain, which are cited in the Applicant Guidebook as a basis for an IGO to file a legal rights objection, provide a starting basis for protecting IGO names and acronyms in all new gTLDs" in forming its resolution. Absent a list from the GAC, the protection will be available to those IGOs meeting the current criteria for registration under the .int top-level domain.

The 28 February 2013 deadline is important; the reserved names list must be finalized as ICANN prepares to enter into negotiations for the first new gTLDs to enter the root under the New gTLD Program.



3. International Olympic Committee and Red Cross/Red Crescent

GAC Communiqué:

The GAC welcomes the ICANN Board's Resolution on 13 September 2012, and agrees with the Board that protection for the second level should be in place before the delegation of the first new gTLDs.

The GAC notes the GNSO's Drafting Team has recently posted a set of recommendations, which state that an expedited policy development process (PDP) is required.

The GAC will seek clarification from the GNSO as to its rationale for initiating a PDP. In light of the legal basis for advancing protections for the IOC/Red Cross Names at the top and second levels, which include coverage under international legal instruments and under national laws in multiple jurisdictions, the GAC considers its advice on the matter to fall into the category of implementation rather than policy development. The GAC requests the opportunity to understand the views of the Board in this regard.

Board Response:

The GAC in its Toronto Communiqué requested an opportunity to understand the Board's view on the GAC's position that its advice on the protection of RCRC and IOC names in new gTLDs is a matter of implementation rather than policy development.

In responding to this request, the Board notes that New gTLD Program Committee's Progress Report, published on 3 August 2012¹, specifically addressed the issue of the protection of RCRC and IOC names. The Committee stated that:

"All recent inputs have been reviewed...Review of this material indicates that the appropriate course is for the Board to leave these issues in the hands of ICANN's policy-making bodies. This was the recommendation of the Board in its Singapore resolution when considering protections for the IOC and Red Cross. ICANN staff members are supporting that discussion in the GNSO. The IOC and Red Cross are addressing their comments to the GNSO. The GNSO is properly considering whether to do additional work on these issues."

The development of policy guidance does not necessarily have to always fall within a formal policy development process (PDP). This was recently demonstrated through the GNSO IOC/RCRC Drafting Team's efforts and ability to develop recommendations to provide special protection for the RCRC and IOC names at the second level for the first round of new gTLDs, consistent with the GAC's advice on this issue.

It's important to note that the current GNSO work through the IGO-INGO PDP Working Group is focusing on the broader, more long-term issue of providing special protections for IGO and INGO names in *all* gTLDs. Given the impact that such permanent protections will have on a broad

¹ <http://www.icann.org/en/groups/board/new-gtld/report-03aug12-en.pdf>



spectrum of the community as well as to address the diverse opinions within the community that have been raised related to this matter, the Bylaws reserve to the GNSO the ability to initiate policy development work on this measure. The Board is not in a position to direct the GNSO to abandon policy work on matters within its Bylaws-mandated scope, just as the Board is not a position to direct the GAC on which matters the GAC could consider as issues affecting public policy.

The Board commits, however, that in the event policy recommendations (from the GNSO or any other SO within the ICANN community) are in conflict with GAC advice, the Board will follow all Bylaws-mandated procedures in the consideration of those recommendations. If it is not a Board-initiated PDP, the Board only gets involved in consideration of the policy recommendations after approval by the relevant SO. As the BGRI WG has been focusing on, early engagement by the GAC and other advisory committees into PDPs – even those PDPs that the GAC believes its advice should foreclose – could result in positive outcomes for all in the PDP.

The Board stresses our commitment to working with the GAC as we move forward in addressing the GAC's advice on these matters, and we look forward to further constructive discussions.

I hope that you find the above responsive to the GAC Toronto Communiqué. Thank you again for providing advice and input to the Board.

Best regards,

A handwritten signature in black ink, which appears to read "Stephen D. Crocker". The signature is fluid and cursive, with a large initial 'S'.

Stephen D. Crocker,
Chair, ICANN Board