



The Internet Corporation for Assigned Names and Numbers

10 February 2014

Heather Dryden
Chair, Governmental Advisory Committee

Re: NGPC Meeting of 5 February 2014

Dear Heather:

The ICANN Board New gTLD Program Committee (NGPC) met on 5 February 2014 and, among other things, adopted another iteration of a scorecard in response to open items of GAC advice from Beijing, Durban and Buenos Aires. The scorecard, available [here](#), disposes of many of the remaining open items of GAC advice, including the Category 1 Safeguard advice. The NGPC adopted the implementation framework attached as [Annex 2](#) to the scorecard to address this advice, and directed the ICANN President and CEO, or his designee, to implement the Category 1 Safeguard advice consistent with the implementation framework. As described in the scorecard, the NGPC also accepted the advice to re-categorize the string .doctor as falling within Category 1 safeguard advice addressing highly regulated sectors.

I am pleased to inform you that following the NGPC's action on 5 February 2014, there remain only a handful of GAC advice items to resolve. These are:

- 1) .WINE and .VIN (2013-09-09-wine and vin; 2013-11-20-wine-vin (Buenos Aires Communiqué §3));
- 2) .SPA (2013-11-20-spa (Buenos Aires Communiqué §2.a.i.1.c));
- 3) .AMAZON (2013-07-18 – Obj- Amazon (Durban Communiqué §1.1.a.i.1; Buenos Aires Communiqué §2.d));
- 4) IGO and IOC/RCRC acronym protections (2013-11-20-IGO (Buenos Aires Communiqué §6.a.i); 2013-07-18 –IOCRC (Durban Communiqué §5.a.i(sic));
- 5) Category 2 Safeguards– Exclusive Access for 12 strings (Beijing Communiqué Annex I, Category 2, Item 2; Buenos Aires Communiqué §1.e); and
- 6) .HALAL/.ISLAM (2103-04-11-Religious Terms; 2013-11-20-islam-halal (Beijing Communiqué §1.a.ii; Buenos Aires Communiqué §7))

The current status of these items can be found in the scorecard.

The NGPC also wishes to provide an update to the GAC on the following items of advice:

.WINE and .VIN: In response to the GAC's suggestion in the Buenos Aires Communiqué, ICANN has commissioned an independent, third-party expert to analyze



the legally complex and politically sensitive background on this matter in order to consider the appropriate next steps of addressing the GAC's advice.

.GUANGZHOU and .SHENZHEN: The GAC advised the Board not to proceed beyond initial evaluation until agreements between the relevant parties are reached for these applications. The NGPC hereby informs that GAC that ICANN received notice that the applicants for .GUANGZHOU and .SHENZHEN are withdrawing their applications for consideration from the New gTLD Program.

.SPA: In response to the GAC advice, ICANN will not enter into registry agreements with applicants for the .SPA string at this time. The NGPC notes concern about concluding the discussions with the applicants, and in a separate communication requests additional information from the GAC.

.AMAZON: The NGPC continues to move forward with considering the GAC's advice in the Durban Communiqué concerning .AMAZON (and related IDNs). ICANN has commissioned an independent, third-party expert to provide additional advice on the specific issues of application of law at issue, which may focus on legal norms or treaty conventions relied on by Amazon or governments. The NGPC will consider this analysis as it continues to deliberate on the appropriate next steps of addressing the GAC's advice.

.HALAL and .ISLAM: The NGPC continues to consider the GAC's advice on these strings, and takes note of the concerns expressed about delegating the strings. To this end, the NGPC has sent a separate communication to the applicant, which is available for review [here](#).

As requested in the Buenos Aires Communiqué, the NGPC prepared written briefings to provide the GAC with additional background on the identified topics. Attached to this letter are the following briefings:

Attachment A: How strings are identified as being generic

Attachment B: Clarification on whether the Board considers that the existing PIC specifications (including 3c) fully implements the GAC advice in the Beijing Communiqué regarding restricted access registries

Attachment C: Proposed launch program for special cases

Attachment D: The public policy implications of holding auctions to resolve string contention (including community applications)



The NGPC will continue its work to address the remaining open items of GAC advice. We will also provide updates on the NGPC's progress in considering the outstanding GAC advice items.

Best regards,

A handwritten signature in black ink, which appears to read "Stephen D. Crocker". The signature is fluid and cursive, with the first name being the most prominent.

Stephen D. Crocker, Chair
ICANN Board of Directors

Attachment A

GAC Briefing Regarding Generic Strings

10 February 2014

In its Buenos Aires Communiqué, the GAC requested a written clarification of “how strings are identified as being generic.” This request relates to advice in the Beijing Communiqué where the GAC advised that, “For strings representing generic terms, exclusive registry access should serve a public interest goal.” The GAC also identified a list of strings in the current round that it considered to be generic terms where the applicant is proposing exclusive registry access.

This briefing is being provided to the GAC to provide additional background on how strings are identified as being generic, and the steps ICANN has taken to address the GAC’s advice.

Generic String Defined

The NGPC identified generic strings by first defining the term in the New gTLD Registry Agreement. As provided in Section 3.d. of Specification 11, a “generic string” means “a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others. For example, the applied-for string .MANGO would not be considered a generic string because the applicant is using the string to distinguish its specific brand of clothing and accessories. However, the string could be considered a generic string if it were instead used in the context of mango growers, for example.

Applicant Outreach

ICANN reached out to applicants of the generic strings that the GAC specifically identified as generic in its Category 2 Safeguard advice. As noted in our 29 October 2013 letter to the GAC Chair, ICANN contacted the 186 applicants for generic strings identified in the GAC’s Category 2 Safeguard advice. The applicants were asked to indicate whether the applied-for generic string would be operated as an exclusive access registry. Only a small portion of the applicants (i.e. twelve) responded that the TLD would be operated as an exclusive access registry. For these twelve applicants, ICANN has requested that the applicants provide an explanation for how the proposed exclusive registry access for the generic string serves a public interest goal. The responses are due 17 January 2014 and will be forwarded to the NGPC and GAC for consideration.

Because of the way the New gTLD Registry Agreement is drafted, it was not necessary to reach out to every new gTLD applicant. Section 3.d. of Specification 11 prohibits registry operators of generic strings from imposing exclusive registry access (i.e. imposing eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person’s or entity’s

Attachment A

“Affiliates” [as defined in Section 2.9(c) of the Registry Agreement].) This restriction serves to ensure that generic strings not otherwise specifically identified in the GAC advice would not be able to provide exclusive registry access. A registry operator of a generic string operating as an exclusive access registry would be in violation of the Registry Agreement and subject to the contractual compliance enforcement mechanisms. Moreover, the restriction is included in the Public Interest Commitments Specification and may be enforced through the Public Interest Commitments Dispute Resolution Process.

Attachment B

GAC Briefing Regarding Restricted Access Registries

10 February 2014

At its meeting in Buenos Aires, the GAC requested a written briefing on “whether the Board considers that the existing PIC Specifications (including 3c) fully implements the GAC’s Beijing advice on ‘Restricted Access’ registries, particularly with regard to the need to avoid undue preference and/or undue disadvantage.”

In the Beijing Communiqué, the GAC originally advised that:

As an exception to the general rule that the gTLD domain name space is operated in an open manner registration may be restricted, in particular for strings mentioned under category 1 above. In these cases, the registration restrictions should be appropriate for the types of risks associated with the TLD. The registry operator should administer access in these kinds of registries in a transparent way that does not give an undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage.

The New gTLD Program Committee of the ICANN Board (“NGPC”) believes that the existing PIC Specification fully implements the GAC’s Beijing advice on restricted access registries when considered in conjunction with the other protections in the New gTLD Registry Agreement. This briefing is being provided to provide additional background and clarity on how the NGPC addressed the GAC’s advice.

Analysis of the Advice

The GAC advice suggests that in some cases registries should be restricted. Particularly, the GAC notes that strings listed in its Category 1 Safeguard Advice may need to be restricted. The GAC advice indicates that restricted registries are an exception to the “general rule” that the “domain name space is operated in an open manner”. The GAC further advised that a registry operator should administer access to restricted TLDs in a “transparent” manner. The advice describes how a registry may achieve transparency, such as not granting an “undue preference” to any registrars or registrants, not subjecting them to “undue disadvantage,” and tailoring the restrictions to be “appropriate for the types of risks associated with the TLD.”

The NGPC understood the GAC’s advice to be a call for transparency, which is fundamental to providing consumers choice in the marketplace, and a goal that ICANN supports. Transparency requires that the community be aware of the restrictions; otherwise, the restrictions may be said to be unjustified or undue.

The GAC advice reiterates this call for transparency when it advised the ICANN Board that “all safeguards highlighted in [the Beijing Communiqué] as well as any other safeguard requested by the ICANN Board and/or implemented by the new

Attachment B

gTLD registry and registrars should... be operated in an open manner consistent with general principles of openness and non-discrimination.”

Implementation of the Advice

The NGPC’s implementation of the GAC’s advice on restricted access registries should be viewed holistically in the context of all of the changes made to the New gTLD Registry Agreement to address GAC advice. First, the NGPC included specific new language in the Public Interest Commitments (PIC) Specification (Specification 11) to address the advice. The new Section 3.c. states:

Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.”

The contractual language focuses on transparency because of the central role transparency plays in ensuring that restrictions do not provide undue preferences or subject parties to undue disadvantages. The text of the PIC Specification was crafted to meet the spirit and intent of the GAC’s advice in a way that is appropriate as contract language. As a result, it is not verbatim to the GAC advice wording.

Second, by implementing the GAC advice as a contractual obligation in the PIC Specification, the GAC’s advice (as implemented) has the weight of a binding contractual obligation that may be enforced through the new dispute resolution mechanism that will be available to a party harmed by a registry operator’s failure to comply with such public interest commitments. In this way, there is accountability built into the implementation of the GAC advice.

Finally, the NGPC’s response to the GAC advice should be considered alongside the NGPC revisions to the Registry Agreement to address the Category 1 Safeguard advice in the Beijing Communiqué. As stated by the GAC in its advice, and acknowledged by the NGPC in Resolution 2013.07.02.NG07 <<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en.htm#1.c>>, the safeguard advice regarding “Restricted Access” is related “in particular for strings mentioned under category 1”.

Attachment C

GAC Briefing Regarding TLD Launch Programs 10 February 2014

At its meeting in Buenos Aires, the GAC issued advice concerning launch programs in new gTLDs, as follows:

Special Launch Program for Geographic and Community TLDs

The GAC recognizes the importance of the priority inclusion of government and locally relevant name strings for the successful launch and continued administration of community and geographic TLDs.

The GAC appreciates that the Trademark Clearinghouse (TMCH) is an important rights protection mechanism applicable across all the new gTLDs and has an invaluable role to fulfill across the new gTLD spectrum as a basic safety net for the protection of trademark rights.

a. The GAC Advises the ICANN Board:

- i. that ICANN provide clarity on the proposed launch program for special cases as a matter of urgency.

To provide additional clarity, ICANN posted the Approved Launch Program Application Review Guidelines on 19 December 2013 (see <http://newgtlds.icann.org/en/about/trademark-clearinghouse/launch-application-guidelines-19dec13-en.pdf>). This briefing is being provided to the GAC to supply some additional background on this topic as well as to note the additional clarifications that have been provided to the community in response to the GAC advice.

Rights Protection in the New gTLD Program

The New gTLD Program was built to include a set of rights protection mechanisms for the new gTLD namespace. This is a significant feature of the program, and the set of mechanisms reached were developed by many stakeholders, including the GAC. For example, all new gTLD registries are required to offer a Sunrise Period (to provide an early opportunity for rights holders to request domain names in a TLD before they are generally available to the public), as well as a Trademark Claims service operated during at least the first 90 days of general registration (this provides notifications to registrants and to affected rights holders when names are registered). These services are supported by a Trademark Clearinghouse that has been designed and implemented to serve rights holders and registries during the startup phases of a TLD. Additional mechanisms, such as the UDRP and URS, remain available once the startup phases of a TLD have been concluded.

Registry Agreement

Attachment C

The Registry Agreement provides that all new gTLD registries must provide the Sunrise and Trademark Claims services in accordance with the requirements specified by ICANN. This is in line with the GAC's advice that both Sunrise and Trademark Claims should be mandatory. The business and technical requirements for these services are contained in the Rights Protection Mechanism (RPM) Requirements, which are incorporated into Specification 7 to the Registry Agreement. These include requirements such as, for example, technical testing processes, minimum notice periods, timeframes, and registration restrictions, as well as technical specifications.

Developing the RPM Requirements

The RPM Requirements have been developed with community input, and provide specificity around the registry and registrar implementation of Sunrise and Claims services. The goal in developing this set of requirements was to create a standard process across TLDs, balanced with sufficient flexibility for registry business models. That is, the objective is for registries to have discretion to carry out their individual launch plans, so long as the minimum requirements and rights protection objectives are met. Significant care was taken to ensure that the requirements would not undermine the rights protections which were a significant part of the program.

Development of the requirements was based on the balancing of input received via multiple means. A draft set of requirements was posted in April 2013, which was discussed during the ICANN meeting in Beijing. Staff continued to seek and review stakeholder feedback, including holding an open consultation. This feedback was used to develop a revised draft set of RPM Requirements, which was posted for public comment in August 2013. In addition, a set of community-proposed changes were posted for comment. Following the public comment period, ICANN analyzed the feedback and published the RPM Requirements for incorporation into the Registry Agreement in September 2013. ICANN has continued to publicize and educate on these requirements, including a webinar in November 2013 and publication of an FAQ, as well as responding to questions received from applicants via the Customer Service Center.

Requesting an Approved Launch Program

The RPM Requirements provide that a registry may submit requests to offer launch programs that would not otherwise be permitted under the requirements. Such requests carry a presumption of approval when either: (a) the proposed launch program was clearly specified in detail in the application and no concerns have been raised concerning the program, or (b) a launch program has been approved previously for similar circumstances. However, ICANN reserves the right to consider any request on a case-by-case basis.

Attachment C

For additional clarity, a set of review guidelines have been published (see <http://newgtlds.icann.org/en/about/trademark-clearinghouse/launch-application-guidelines-19dec13-en.pdf>). This includes the set of factors that are balanced by ICANN when reviewing requests submitted under the process.

Some registries have submitted requests for Approved Launch Programs; these are currently under consideration by ICANN. Any Approved Launch Programs will be posted along with the relevant Registry Agreements on ICANN's website.

Approved Geo Launch Program

In addition to the above, the RPM Requirements provide that, if applicants should work with intellectual property stakeholders to develop and propose a program that could apply to all "geoTLDs," this could be incorporated into the RPM Requirements where appropriate. If guidelines for such a program were agreed on, this could streamline the process by obviating a number of individual requests. If no such program is developed, registries may continue to submit individual requests as described above.

Qualified Launch Program

In addition to the above, the requirements provide that a process may be developed to permit allocation of up to 100 names pre-Sunrise for the purposes of promoting the TLD. This would be available to any new gTLD registry operator. ICANN has worked to develop a Qualified Launch Program and expects to post a draft for public comment shortly. If no general program is developed, registries may continue to submit individual requests under the Approved Launch Program process above.

References

- + Public Comment period on RPM Requirements: <http://www.icann.org/en/news/public-comment/rpm-requirements-06aug13-en.htm>
- + RPM Requirements: <http://newgtlds.icann.org/en/about/trademark-clearinghouse/rpm-requirements-30sep13-en.pdf>
- + Webinar 6 November 2013: <http://newgtlds.icann.org/en/announcements-and-media/webinars>
- + Answers to Frequently Asked Questions: <http://newgtlds.icann.org/en/about/trademark-clearinghouse/rpm-requirements-faqs-12nov13-en.pdf>

Attachment C

- + Process for Approved Launch Programs:
<http://newgtlds.icann.org/en/announcements-and-media/announcement-12nov13-en>
- + Approved Launch Program Review Guidelines:
<http://newgtlds.icann.org/en/about/trademark-clearinghouse/launch-application-guidelines-19dec13-en.pdf>

Attachment D

GAC Briefing Regarding Public Policy Implications of Auctions 10 February 2014

In its Buenos Aires Communiqué, the GAC requested a written briefing on “the public policy implications of holding auctions to resolve string contention (including community applications).” This briefing is being provided to the GAC to supply additional background on this topic.

An ICANN facilitated auction is a last resort for resolving String Contention Sets, as described in Section 4.3 of the Applicant Guidebook (AGB). As part of the development of the AGB, in August 2008 ICANN commissioned a study presenting the economic case for auctions as a tiebreaking mechanism for resolving String Contention Sets. The study, entitled “Economic Case for Auctions in New gTLDs,” includes discussion of some public policy implications of using auctions to resolve String Contention Sets. The study suggests that auctions “accomplish the goal of allocative efficiency: putting scarce resources into the hands of those who value them the most,” which tends to create greater social value. Also, the study notes that “alternative mechanisms such as comparative evaluations and lotteries inherently have much more severe limitations and defects....”

The study was subject to community scrutiny and feedback during a public comment period, and the community comments included discussion of the public policy implications of using auctions. Some of the key public policy implications of using auctions include: transparency and objectivity and efficiency in both the allocation of resource and the process for allocating the resource. A more detailed discussion of these public policy considerations can be reviewed in the “Economic Case for Auctions in New gTLDs”, which is available at:

<http://archive.icann.org/en/topics/economic-case-auctions-08aug08-en.pdf>