2013-05-08 NGPC Notice.docx

Directors and Liaisons,

Attached below please find the Notice of the following New gTLD committee meeting:

8 May 2013 – NGPC Meeting at 13:00 UTC – This Committee meeting is estimated to last 90 minutes.

http://www.timeanddate.com/worldclock/fixedtime.html?msg=New+gTLD+Committee+Meeting&iso=20130508T13

Some other time zones:
8 May 2013 - 6:00 AM PDT Los Angeles
8 May 2013 – 3:00 PM CEST Brussels
8 May 2013 – 9:00 AM EDT Washington, D.C.

Agenda: 1) Plan for responding to GAC advice issued in Beijing.
**   2) AOB**

MATERIALS -- All Materials are available on Contact Information Redacted

, if you have trouble with access, please let us know and we will work with you to assure that you can use the BoardVantage Portal for this meeting.

If you have any questions, or we can be of assistance to you, please let us know.

If call information is required, it will be distributed separately

If you have any questions, or we can be of assistance to you, please let

us know.

John Jeffrey

General Counsel & Secretary, ICANN

John.Jeffrey@icann.org <John.Jeffrey@icann.org>

<mailto:John.Jeffrey@icann.org <mailto:John.Jeffrey@icann.org> >

Contact Information Redacted

2013-05-08-GAC Beijing Advice-NGPC .docx

NGPC Submission on GAC Beijing Advice

Table of Contents

I.   Overview

A. Overview of GAC Advice on New gTLDs in the Beijing Communiqué

The GAC advice from Beijing addressed: (1) the New gTLD Program, (2) the Registrar Accreditation Agreement, (3) Whois, (4) International Olympic Committee (IOC) and the Red Cross/Red Crescent Movement (RCRC), and (5) Public Interest Commitments Specifications. Two annexes to the Communiqué provide guidance on safeguards for new gTLDs and a series of questions related to the public interest commitments specifications. Key points from the Beijing GAC advice on new gTLDs include:

- The GAC has reached consensus against one of the applications for .africa and the application for .gcc;

- Some GAC members believe that .islam and .halal should not proceed due to religious and community sensitivities;

- Safeguard advice applying to broad categories of strings (see Annex I);

- A list of 12 strings where further GAC consideration may be warranted, including consideration at the Durban meeting;

- A request for a written briefing about the ability of an applicant to change the applied-for string in order to address concerns raised by a GAC member; and

- A request for permanent protection for IOC/RCRC names in the Registry Agreement prior to the delegation of any new gTLDs.

B. Requirements for Responding to GAC Advice, and Consultations with the GAC

Accompanying this paper is a separate summary of the requirements relating to responding to GAC advice and consulting with the GAC regarding the advice if necessary (in case the Board decides to take an action not consistent with GAC advice).

As many NGPC members will recall, this is not the first time that the role of GAC advice has been prominent during the course of the New gTLD Program. On 28 February and 1 March 2011, the GAC and the Board met in Brussels to identify the specific differences between the GAC Advice and the then-current implementation of the GNSO's policy recommendations on new gTLDs as embodied in the Applicant Guidebook.

ICANN prepared a series of briefing papers for consideration by the GAC, which outlined the background and history of specific issues and analyzed the remaining areas where there existed a difference between the Board's position and the GAC's position. The Board and the GAC worked with a "scorecard" to assist in the process of resolving the outstanding issues. After the Brussels meeting, a second version of the scorecard was produced describing many areas of accommodation and agreement and also indicating those areas where the Board did not adopt GAC advice; see <http://archive.icann.org/en/topics/new-

2

gtlds/board-notes-gac-scorecard-04mar11-en.pdf>. The Board-GAC consultation process continued at the ICANN meetings in San Francisco in March 2011, and the process culminated with the June 2011 Board approval of the Applicant Guidebook, which reflected a number of revisions resulting from the intensive collaboration between the GAC and the Board. A comprehensive record of the 2011 Board-GAC consultation process is posted at <http://newgtlds.icann.org/en/about/historical-documentation/board-gac-consultations>.

C. Draft Scorecard for NGPC Response to Beijing GAC Advice

Draft superseded by new version

D. Public Comment Forum and Applicant Responses to GAC Advice

On 18 April 2013, ICANN posted the GAC advice and officially notified applicants of the advice, <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

On 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>.

The public comment forum on how the NGPC should address GAC advice regarding safeguards is open through 4 June 2013. Both the applicants' responses to the GAC advice and the comments received in the public comment forum will serve as important inputs to the NGPC's consideration of the GAC advice.

E. Items of GAC Advice Potentially Addressed Elsewhere

Some of the topics raised in the GAC advice have already been considered and addressed to an extent by ICANN in the development and implementation of the New gTLD Program. Work is underway on a detailed review of the GAC advice to determine which items are potentially addressed elsewhere. As one example, the GAC advised that ICANN should take into account the opinion of communities that are clearly impacted by new gTLD applications in contention. (GAC Advice §1.e). ICANN has already incorporated this concept in the Community Objection process (Module 3) and in Criterion 4 of the Community Priority Evaluation process (Module 4) in the Applicant Guidebook. Community Objections may be based on "substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted." Criterion 4 in the Community Priority Evaluation process accounts for "community support

and/or opposition to the application" in determining whether to award priority to a community application in a contention set.

Another area of GAC advice already addressed relates to the finalization of the 2013 RAA before any new gTLD contracts are approved. (GAC Advice §2). The new gTLD Registry Agreement, posted for public comment on 29 April 2013, requires all new gTLD registries to only use 2013 RAA registrars. The final draft of the 2013 RAA was posted for public comment on 22 April 2013, and will be finalized before any approved registry operators will sign the new gTLD Registry Agreement.

Other topics of GAC advice are already addressed by existing law. For example, the GAC advised that registry operators should require registrants to comply with all applicable laws including those relating to privacy, data collection, consumer protection, etc. Also the GAC advised that registries should require registrants to implement appropriate security measures (as defined by law) when collecting and maintaining sensitive health and financial data. (GAC Annex I, Items 2, 3 and 4.) It is axiomatic that registries and registrants must follow all applicable laws whether relating to privacy, data collection, or any other matter.

G. Next Steps

A draft action plan addressing the recommended actions and proposed timeline accompanies this paper.

II. ICANN Board-GAC Advice/Consultation Requirements

The ICANN Bylaws <http://www.icann.org/en/about/governance/bylaws-XI-2.1j> provide that:

The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

The New gTLD Applicant Guidebook <http://newgtlds.icann.org/en/applicants/agb> addresses the role of GAC advice in application evaluation and objection processes. Section 3.1 of the AGB provides that GAC advice may take one of the following forms:

I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.

II. The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.

The Guidebook also provides that:

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

6

The ICANN Board-GAC Recommendation Implementation Working Group (BGRI-WG) has developed a procedure for any consultations that might be needed if the Board determines to take an action that is not consistent with GAC advice. The procedure was approved by the BGRI-WG in Beijing and would be used for any consultation on this GAC advice. The procedure says that the consultation process should conclude within six months, but that the GAC and the Board can agree to a different timetable. The following is a copy of the full consultation process:

Process for Consultations between the ICANN Board of Directors ("Board") and the Governmental Advisory Committee ("GAC"), including those required pursuant to Article XI Section 2.1.j of the ICANN Bylaws

Proposed Process:

Step 1: Upon receipt of GAC advice (and prior to communicating its final decision), the Board will provide a written response to the GAC indicating:

- whether it has any questions or concerns regarding such advice;
- whether it would benefit from additional information regarding the basis for the GAC's advice;
- and a preliminary indication of whether the Board intends to take such advice into account.

The Board's response will be subject of an exchange between the Board and the GAC.

Step 2: In the event that the Board determines, through a preliminary or interim recommendation or decision, to take an action that is not consistent with GAC advice, the ensuing consultations will be considered "Bylaws Consultations". The Board will provide written notice to the GAC (the "Board Notice") stating, in reasonable detail, the GAC advice the Board determines not to follow, and the reasons why such GAC advice may not be followed. The GAC will be afforded a reasonable period of time to review the Board's Notice and explanation, and to assess whether there are additional elements of GAC advice that it believes have been rejected by the Board.

Step 3: As soon as possible after the Board Notice is issued (or within such time as otherwise agreed), the Chair of the GAC and the Chair of the Board will confer as to an appropriate time and agenda for a meeting between the GAC and the Board (the "Bylaws Consultation"). It is intended that all issues related to the meeting are identified and agreed upon between the GAC and Board prior to the consultation.

Step 4: Within a timeline agreed to by the GAC Chair and Board Chair, the GAC and/or the Board may prepare written documents setting forth their respective positions on the intended Board action for presentation at the Bylaws Consultation. Subject to the agreement to publish documents, such documents should be communicated and will be

7

published at least two (2) weeks prior to the Bylaws Consultation meeting. Where practicable, all communications and notices provided by the Board or GAC shall be posted to ICANN's website. In addition, a written transcript of the Bylaws Consultation meeting shall be posted to ICANN's website.

Step 5: During the Bylaws Consultation meeting, the GAC and the Board will each seek, in good faith and in a timely and efficient manner, to find a mutually acceptable solution to the conflict between the possible Board action and the GAC advice, including by proposing compromise positions with respect to the intended Board action, if feasible and appropriate.

Step 6: After the conclusion of the Bylaws Consultation, the Board will determine whether to reaffirm or reverse the intended Board action, or take mitigating action.

If the Board determines to reverse the intended Board action or take mitigating action based on GAC advice and the outcome of the Bylaws Consultation, the Board may as appropriate: (i) implement any compromise action proposed by or agreed with the GAC during the Bylaws Consultation, in either case without further GAC consultation; or (ii) formally reverse the Board's preliminary or interim decision. The Board's final determination will be communicated to the GAC, providing the GAC an opportunity to comment and/or to raise other issues raised anew by the Board's decision and therefore not addressed in the consultation.

As a general rule, the Bylaws Consultation process should conclude within six months. The GAC and the Board can agree to a different time limit when necessary, taking into account the complexity of the issue and the scope of difference between the GAC and the Board's positions. Either the GAC or Board may initiate a request for expansion of the six-month time limit by providing a written request that sets out a new time-frame for completion and indicating the basis for the request.

Step 7: If the Board determines to take final action in contravention of GAC advice, then the Board will issue a final decision, stating the reasons why the GAC advice was not followed, as required in Article XI section 2.1.k of the ICANN Bylaws. The Board's final decision and explanation will be posted on ICANN's site. *(*NOTE: The Board is being presented with proposed Bylaws changes that require 2/3 of the members of the Board that are eligible to vote on the issue to support any final action in contravention of GAC advice.)*

8

Pages 13/38 through 32/38 removed from document. A current version of the GAC Scorecard is publicly available at: http://www.icann.org/en/groups/board/documents/new-gtld-resolution-annex-1-04jun13-en.pdf

IV.   Beijing GAC Advice Action Plan

This document reflects the Action Plan anticipated addressing GAC Advice presented in the Beijing GAC Communiqué.

	Item	Resp.	Start Date	Compl. Date	Status
1	New gTLD staff published GAC Communiqué and notified applicants of 21-day GAC Advice Response Period	New gTLD Staff		18 April	Complete
2	Applicants 21 day response period to GAC Advice	Applicants	19 April	10 May	In progress
3	Staff published GAC Communiqué to solicit input on how the New gTLD Board Committee should address GAC advice regarding safeguards applicable to broad categories of New gTLD strings	Staff		23 April	Complete
4	Public comment period on GAC Advice re: Safeguards	Public	23 April	4 June	In Progress
5	New gTLD Staff collect and summarize applicant responses to GAC Advice	New gTLD Staff	11 May	31 May	Not Started
6	Staff to analyze and summarize public comments on GAC Advice re: Safeguards	Staff	5 June	12 June	Not Started
7	Board to review and consider both Applicant responses to GAC Advice and Public Comments on GAC Advice re: Safeguards	Board	13 June	20 June	Not Started

V.   Beijing GAC Advice re String Similarity Review

Section 1(f) of the GAC Beijing Communiqué included the following advice to the Board regarding singular and plural versions of an applied-for string:

> *The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion.*
>
> *Therefore **the GAC advises the ICANN Board** to:*
>
> *i.   Reconsider its decision to allow singular and plural versions of the same strings.*

As per the Applicant Guidebook, the String Similarity review that occurs in Initial Evaluation is a visual similarity check to prevent user confusion and loss of confidence in the DNS resulting from delegation of similar strings. The String Similarity Panel makes its assessments using the standard defined in the Applicant Guidebook: *String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.*

The determination of visual similarity was made by a panel of experts from InterConnect Communications working in conjunction with the University College London. This panel utilized its independent expertise, including in linguistics, to perform the review against the criteria in the Applicant Guidebook. ICANN did not provide any instructions to the panel outside of the criteria specified in the Applicant Guidebook, including any pre-judgment of whether singular or plural versions of strings should be considered visually similar.

The Applicant Guidebook provides for a mechanism to dispute the results of the expert panel, string confusion objections. The grounds for string confusion objections include all types of similarity, including visual, aural, or similarity of meaning. All new gTLD applicants have standing to file a string confusion objection against another application. As of the end of the objection period on 13 March 2013, a total of 67 string confusion objections were filed (see http://newgtlds.icann.org/en/program-status/odr/filings). These objections are currently being processed by The International Centre for Dispute Resolution. If a string confusion objection is upheld, the result will be an updated contention set, which will be resolved according to the contention resolution procedures.

Notwithstanding the above, the Board may wish to consider the issue of potential confusion between singular and plural strings.

30

VI.   GAC Beijing Advice re Changing Applied-for String

Section 1(d) of the GAC Beijing Communiqué included the following advice to the Board:

> ### d. The GAC requests:
>
> i.   *A written briefing about the ability of an applicant to change the string applied for in order to address concerns raised by a GAC Member and to identify a mutually acceptable solution.*

Allowing an applicant to change the applied-for string at this stage of the Program is problematic for many reasons.

The applied-for string is the cornerstone upon which the entire application is built. Aside from correcting a typo/administrative error, a change in a string name is likely to impact business models. In the best case scenario, a change in a string name with no changes to the business model of the application will cause a re-evaluation of that string by the DNS Stability, String Similarity, and Geographic Names panels. In the worse case scenario where a change in the string name is accompanied by a change in the business model, a re-evaluation by all of these panels and Financial, Technical panels would be required as well.

As the work of all of these panels has for the most part been completed, re-evaluation by these panels has huge cost, timing, and resource implications. From a resource perspective, as the majority of the work is completed, the panels have significantly ramped down and resources have moved on to other projects. It would require time and ramp up the appropriate resources again to perform the work, and there's no guarantee that the previously trained resources would be available. There is also the question of which party will absorb the additional cost incurred for the re-evaluation? ICANN or the applicant?

A re-evaluation would also mean delays to the Program. For those applicants who were not subjected to GAC Advice and do not need to change their applications, they could be unfairly disadvantaged if the delay impacts the Program as a whole.

There are other practical implications if ICANN were to proceed to allow applicants to change their strings for reasons other than typo/administrative errors. Based on fairness, other applicants would likely request the ability to change their strings as well, which would exacerbate the resourcing and delay issue. Moreover, ICANN has already rejected one applicant's request to make such a change on the basis that the applicant failed to meet the criteria for the change request process. Allowing applicants to change strings at this time would require the development of a new set of criteria for the process, which imposes even further delay and subjectivity into the change request evaluation.

31

Due to the serious nature of a string name change, to-date, ICANN has rejected one request for a string name change and approved 4 string name changes to correct typos/administrative errors.

Approvals:

- 1-1165-42560: Approved request to correct a spelling error (.DotAfrica) to the correct spelling of (.Africa)
- 1-928-31367: Approved request to correct a spelling error (.kerrylogisitics) to the correct spelling of (.kerrylogistics)
- 1-1254-29622: Approved request to correct a spelling mistake (.קוֹם) to the correct spelling of (.קוּם)
- 1-910-25137: Approved request to correct the appropriate form of the IDN transliteration for (.ORG) from (. 机构体制) to (.组织机构)

Rejection:

- 1-1873-71868: Rejected request to change the applied-for string from (.IDN) to (.INTERNET)

Each of these string name changes was submitted shortly after the close of the application window and had no significant impact on the evaluation schedules.

In summary, allowing one string change would lead to calls to extend the same treatment to all applications. Providing such would essentially mean that the completed application reviews, and in some cases, published results, would be nullified and processing of applications would need to start over again.

32

VII.   Beijing GAC Advice re INGO Protections

Section IV of the GAC Beijing Communiqué included the following advice to the Board regarding protections in the New gTLD Program for IOC/Red Cross names at the second level:

> 4. **International Olympic Committee and Red Cross /Red Crescent**
>
> Consistent with its previous communications, **the GAC advises the ICANN Board to:**
>
> > a.   amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.

Specification 5, Section 5 of the proposed Registry Agreement requires registry operators to restrict second-level registration of certain IOC/Red Cross and Red Crescent Movement names. This provision implements previous Board resolutions, including the most recent NGPC resolution to maintain these protections "until such time as a policy is adopted that may require further action" (2012.11.26.NG03). The NGPC resolution recognized the GNSO's initiation of an expedited PDP "to develop policy recommendations to protect the names and acronyms of IGOs and certain INGOs – including the RCRC and IOC, in all gTLDs." The resolution, as well as the Board's response to the GAC's Toronto Communiqué, confirmed that the creation (or maintenance) of protections to apply to all gTLDs is an appropriate topic for policy development within the GNSO.

Privileged & Confidential

Until such time as the GNSO approves recommendations in the PDP and the Board adopts those recommendations, the Board's resolutions on the protection of IOC/RC names remain in place. During the pendency of the PDP, it would be premature for the Board to take any further action at this point (i.e., there's nothing for the Board to act on).

As it formulates its proposed recommendations, the GNSO Working Group is expected to take into account the advice previously given by the GAC on this issue. If and when any policy recommendations by the PDP WG/GNSO emerge, the ICANN Board will once again be obligated under the ICANN bylaws to take GAC advice into account in deciding whether or not to adopt the policy recommendations.

VIII. Draft Request for IGO Protections Dialog

Heather Dryden
Chair, Governmental Advisory Committee

Re: Protections for Intergovernmental Organizations

Dear Heather,

In the Beijing GAC Communiqué, the GAC reiterated previous advice that "appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch." In response to a number of issues raised by the Board, the GAC noted that it is "mindful of outstanding implementation issues" and that it is committed to "actively working with IGOs, the Board, and ICANN Staff to find a workable and timely way forward."

The Board thanks the GAC for its willingness to engage on this issue. Toward this end, we would like to propose that the GAC and a small number of Board New gTLD Program Committee members and ICANN staff begin a dialogue on the outstanding implementation issues raised by the Board. If the GAC is agreeable to this proposal, ICANN staff would be happy to coordinate logistical details with the GAC Secretariat.

Thank you again for providing advice and input to the Board. We look forward to your response.

Best regards,

Steve Crocker,
Chair, ICANN Board

34