



Proposed New gTLD Program Committee Resolutions  
18 May 2013  
Meeting of the New gTLD Program Committee

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## **1. Consent Agenda:**

### **a. Approval of Minutes of New gTLD Program Committee Meeting of 26 March 2013, 5 April 2013 and 11 April 2013**

Resolved (2013.05.18.NGxx), the New gTLD Program Committee approves the minutes of the 26 March 2013, 5 April 2013 and 11 April 2013 Meetings of the New gTLD Program Committee.

### **b. BGC Recommendation on Reconsideration Request 13-1**

Whereas, Ummah's Digital, Ltd. ("Ummah") Reconsideration Request, Request 13-1, sought reconsideration of the staff conclusion that the Ummah gTLD application "is ineligible for further review under the New gTLD Program," which was based on the Support Applicant Review Panel (SARP) determination that Ummah's application did not meet the criteria for financial assistance.

Whereas, the BGC recommended that Reconsideration Request 13-1 be denied because Ummah has not stated proper grounds for reconsideration, and Ummah's stay request fails to satisfy the Bylaws' requirements for a stay.

Whereas, the BGC noted that "Ummah raises some interesting issues in its Request and suggests that the Board direct that the concerns raised in Ummah's Request be included in a review of the Applicant Support Program so that the design of future mechanisms to provide financial assistance and support in the New gTLD Program can benefit from the experiences within this first round."

Resolved (2013.05.18.XX), the New gTLD Program Committee adopts the recommendation of the BGC that Reconsideration Request 13-1 be denied on the basis that Ummah has not stated proper grounds for

reconsideration and that Ummah's stay request fails to satisfy the Bylaws' requirements for a stay.

Resolved (2013.05.18.XX), the Board directs the President and CEO to include the concerns raised in Ummah's Reconsideration Request in the review of the Applicant Support Program so that the design of future mechanisms to provide financial assistance and support in the New gTLD Program can benefit from the experiences within this first round.

***Rationale for Resolution 2013.05.18.NGxx***

In July 2009, as part of the comprehensive GNSO Improvements program, the ICANN Board approved the formal Charters of four new GNSO Stakeholder Groups (see ICANN Board Resolution 2009.30.07.09).

ICANN's Bylaws at the time Reconsideration Request 13-1 was filed, called for the Board Governance Committee to evaluate and make recommendations to the Board with respect to Reconsideration Requests. See Article IV, section 3 of the Bylaws. The New gTLD Program Committee, bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC's recommendation with respect to Reconsideration Request 13-1 and finds the analysis sound. The full BGC Recommendation, which includes the reasons for recommending that the Reconsideration Request be denied can be found at:

<http://www.icann.org/en/groups/board/governance/reconsideration>

Having a Reconsideration process set out in ICANN's Bylaws positively affects ICANN's transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN's policies, Bylaws and Articles of Incorporation.

To assure that ICANN continues to serve the global public interest by ensuring worldwide accessibility to the Internet and opportunities for

operating a registry, ICANN will include the issues raised in Ummah's Request in its review of the Program so that the design of future mechanisms to provide financial assistance and support in the New gTLD Program can benefit from the experiences within this first round.

Adopting the BGC's recommendation has no financial impact on ICANN and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function not requiring public comment.

**c. BGC Recommendation on Reconsideration Request  
13-2**

Whereas, Reconsideration Request 13-2, sought reconsideration of: (1) Staff and Board inaction on the consideration of Nameshop's letter of "appeal" sent after denial of Nameshop's change request to change its applied-for string in the New gTLD Program from .IDN to .INTERNET (the "Change Request"); and (ii) the decision of the Support Applicant Review Panel ("SARP") that Nameshop did not meet the criteria to be eligible for financial assistance under ICANN's Applicant Support Program.

Whereas, the BGC recommended that Reconsideration Request 13-2 be denied because Nameshop has not stated proper grounds for reconsideration.

Whereas, the BGC concluded that the Reconsideration Request 13-2 challenges: (i) an "appeal" process that does not exist; and (i) the substantive decisions taken within the New gTLD Program on a specific application, not the processes by which those decisions were taken and that the reconsideration process is not, and has never been, a tool for requestors to seek the reevaluation of decisions.

Resolved (2013.05.18.xx), the New gTLD Program Committee adopts the BGC's recommendation that Reconsideration Request 13-2 be denied on the basis that Nameshop has not stated proper ground for reconsideration.

***Rationale for Resolution 2013.05.18.NGxx***

ICANN's Bylaws at the time Reconsideration Request 13-2 was filed, called for the Board Governance Committee to evaluate and make recommendations to the Board with respect to Reconsideration Requests. See Article IV, section 3 of the Bylaws. The New gTLD Program Committee, bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC's recommendation with respect to Reconsideration Request 13-2 and finds the analysis sound. The full BGC Recommendation, which includes the reasons for recommending that the Reconsideration Request be denied can be found at:  
<http://www.icann.org/en/groups/board/governance/reconsideration>.

Having a Reconsideration process whereby set out in ICANN's Bylaws positively affects ICANN's transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN's policies, Bylaws and Articles of Incorporation.

Request 13-2 challenges an "appeal" process that does not exist, and challenges the substantive decisions taken in implementation of the New gTLD Program on a specific application and not the processes by which those decisions were taken. Reconsideration is not, and has never been, a tool for requestors to seek the reevaluation of substantive decisions. This is an essential time to recognize and advise the ICANN community that the Board is not a mechanism for direct, de novo appeal of staff (or evaluation panel) decisions with which the requester disagrees. Seeking such relief from the Board is, in itself, in contravention of established processes and policies within ICANN.

Adopting the BGC's recommendation has no financial impact on ICANN and will not negatively impact the security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function not requiring public comment.

## **2. Main Agenda:**

- a. GAC Advice – Discussion Paper**
- b. Info Paper on Dotted Domains (if time permits)**
- c. Info Paper on non-delegated TLDS (if time permits)**
- d. Info Paper on GNSO/ALAC Recommendation for New gTLD Program Metrics (if time permits)**
- e. AOB (if time permits)**

# 2013-05-18-01a-NGPC-Minutes of 2013-03-26.docx



**Note: On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of incorporation, Bylaws or ICANN’s Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD Program. The full scope of the Committee’s authority is set forth in its charter at <http://www.icann.org/en/groups/board/new-gTLD>.**

**A Special Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held telephonically on 26 March 2013 at 13:00 UTC.**

**Committee Chairman Cherine Chalaby promptly called the meeting to order.**

**In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO), Chris Disspain, Bill Graham, Olga Madruga-Forti, Erika Mann, George Sadowsky, Mike Silber, Judith Vazquez, and Kuo-Wei Wu. Gonzalo Navarro and Ray Plzak sent apologies.**

**Thomas Narten, IETF Liaison and Francisco da Silva, TLG Liaison, were in attendance as non-voting liaisons to the committee.**

**Heather Dryden, GAC Liaison, was in attendance as an invited observer.**

**ICANN Staff in attendance for all or part of the meeting: Akram Atallah, Chief Operating Officer; John Jeffrey, General Counsel and Secretary; Megan Bishop, Michelle Bright, Samantha Eisner, Dan Halloran, Karen Lentz, Amy Stathos, and Christine Willett.**



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The Chair introduced the meeting agenda.

### **1. Approval to Enter Agreement with IBM for Trademark Clearinghouse**

Due to a potential for conflict of interest, Thomas Narten was not present for the deliberation of this item.

The Chair noted that three of the four members of the Board’s Finance Committee, which are also on the New gTLD Program Committee, are in support the entering of the agreement from a financial standpoint. The Chair also noted that this was necessary to come to the New gTLD Program Committee because of ICANN’s disbursement and signing authority policy, as the amount of the contract requires Board approval.

Akram Atallah provided the Committee with an update on the development of the Trademark Clearinghouse as it has been divided into two functions, one to be performed by Deloitte and the other by IBM, which will perform the sunrise and claims work, and confirmed that after an initial exclusivity period, ICANN will have the right to bring in additional vendors. Akram provided detailed information regarding the negotiations and the costs for the work, as well as commitments regarding service level agreements and redundancies.

Erika Mann inquired as whether ICANN reached out to providers other than IBM.

Akram confirmed that a couple of years ago, there was a request for proposals, and responses were received from multiple parties.

Judith Vazquez inquired about what will happen after the conclusion of the five-year term fo the greement.

Akram confirmed that ICANN has the rights to the TMCH data, so the TMCH can continue operating even if it is determined that another company could be brought in. Of course, ICANN could also renew the contract with IBM. This is all speculation, but we have appropriate flexibility at the end of the contracting term.

Judith then inquired about the security fo the database and what will happen in the event of a DDOS attack.

Akram noted that the redundancy of servers across geographic location will provide capacity to mitigate against this possibility, though there could be the possibility that the database could be down for a period of time.

Olga Madruga-Forti asked for additional information about the rights in the data and the ability to switch providers, if necessary.

Akram confimed that the trademark holders retain the rights in their marks, and ICANN retains the rights in the database.

Chris Disspain then moved and Judith Vazquez seconded the following resolution:

Whereas, ICANN and IBM have negotiated in good faith the terms for a proposed statement of work for operation of the Sunrise and Trademark Claims services offered by the Trademark Clearinghouse.

Whereas, the New gTLD Program Committee has reviewed the terms of the proposed Statement of Work for ICANN.

Whereas, approval is required to commit ICANN funds in the amount of USD 4 million.

Whereas, execution of the agreement enables continuation of the technical build out to support these services for the New gTLD Program.

Resolved (2013.03.26.NG01), the New gTLD Program Committee authorizes the President and CEO to enter into the proposed agreement with IBM.

**Ten members of the Committee voted in favor of the Resolution. Two members of the Committee were unavailable to vote. The resolution carried.**

#### **Rationale for Resolution 2013.03.26.NG01**

The Trademark Clearinghouse is an essential part of the rights protection mechanisms within the New gTLD Program. Successful operation of the Sunrise and Trademark Claims services is an important component of the services offered by the Clearinghouse in order to assist in protecting the rights of third parties. Authorizing the President and CEO to enter into the agreement reinforces ICANN's accountability in meeting the commitments it has made regarding the ongoing operation, availability and continuity of the Clearinghouse.

Entering into this agreement will have a fiscal impact on ICANN in the amount of USD 4 million at a maximum. This has been anticipated and is consistent with the budget for the New gTLD Program. The approval of this agreement is not expected to have any impact on the security, stability or resiliency of the DNS.

## **2. Protections for Names of IGOs**

Chris Disspain introduced the topic to the Committee, noting that ICANN has received advice from the GAC including a list of names and acronyms. Chris noted that there is a specific concern in reference to the acronyms, as they are acronyms used not just by IGOs but by other organizations as well. In

order to have a more robust conversation on this issue, Chris proposes that a more fulsome paper be developed that can be used as the basis for conversation among the Committee while at the Beijing meeting. This would also guide the Committee's conversation with the GAC on this topic. Chris confirmed that part of the discussion with the GAC would be a request to work with the Board to find a solution, while providing some protections while that discussion is ongoing.

Tarek Kamel noted his appreciation of the work in the GAC to develop the list, and noted that the issue of language for the protections is still be worked on. That's another area where the Board could benefit from clarification from the GAC.

The Chair asked Chris for clarification on when the Committee would have to take action on the temporary protections.

Chris noted what is more important at this point is not to take action that would trigger the Bylaws consultation requirement, as there is still the possibility that the Board and the GAC can work to address the Board's concerns regarding the list.

Olga Madruga-Forti thanked Chris and Tarek for their work to try to bring this issue to resolution. She also inquired about how to balance the expectations of new organizations or those that were unaware of the development of the list, after the fixed list is determined later this year. In addition, what are the potential balances for acronyms that are widely used.

Chris noted that one possibility could be protection of acronyms in relevant TLDs, though that has challenges of its own. Much of these considerations are still in the beginning stages.

Heather Dryden offered that the GAC is aware that there has to be room for discussion about actonyms and languages. However, any list of organizations would be final as to this round. Because of that, there is not a process for additions to the list in this round, though there could be some criteria developed that would facilitate a process and that would be

objective in nature. At this time, however, the list would be considered final and closed.

Chris agreed with Heather that ultimately there will have to be a lot more detail surrounding the list and dealing with future rounds and ongoing mechanisms.

Erika Mann inquired as to how many requests the GAC received for inclusion on the list.

Heather confirmed that the GAC was working closely with the IGOs, but does not have a list of all organizations that may have contacted a GAC representative or the IGOs.

The Chair confirmed that the next step on this was further discussion at the meeting in Beijing, to prepare for final decision in Durban in July.

### **3. “Closed” Generics**

Chris Disspain introduced the continuing work on the “closed” generic issue, noting that there will be further briefing to the Committee in the coming week for discussion in Beijing. The paper is expected to focus on those strings for which the applicant has indicated that the string is intended to be closed to registrars, and the requirements regarding requesting exemptions to the Code of Conduct. In addition, the paper is expected to refine the terminology for this subject.

The Chair asked about timing for consideration of this issue.

Chris noted that the Committee will need sufficient time to discuss this issue in Beijing, and possibly receive feedback on this issue during the public forum.

The Committee members agreed that further time in Beijing was necessary for this discussion.

The General Counsel and Secretary reminded the Committee that it is not advisable to rush towards a solution while at Beijing and take action prior to hearing the discussions that will occur in the community during the meeting.

Chris agreed, and suggested that the Committee identify additional time to discuss this issue after the Beijing meeting as well, to allow for time to consider all of the inputs received during the week.

Olga Madruga-Forti inquired about how to address strings that might raise this type of public interest concern but successfully pass Initial Evaluation.

Mike agreed with Olga's concern.

The General Counsel and Secretary noted that, at this point, if the Board decides to take action on the "closed" generic issue, there's not much difference between doing that prior to the release of the Initial Evaluation results or after. The important thing here is to continue communicating to the community regarding the components of the program that are still under discussion.

Chris agreed with the General Counsel and Secretary, and confirmed that this is an issue that likely impacts contractual negotiations, as opposed to initial evaluation.

Heather Dryden stated that the GAC is likely to provide advice to the Board in Beijing regarding sensitive and controversial strings, including "closed" generics.

The Chair confirmed that the Committee will set aside additional time in Beijing for a discussion on this issue, prior to the public forum.

#### **4. Update on Registrar Accreditation Agreement Negotiations and the Registry Agreement**

The President and CEO provided the Committee with an update on the work regarding the Registrar Accreditation Agreement negotiations and the status of the Registry Agreement. There is positive momentum on each of the agreements. On the RAA, the registrars have been very engaged. ON the Registry side, the comments, as well as conversations with applicants, have helped clarify where tough areas still remain, which is only three of the 29 areas posted for change.

The three areas of concern on the Registry Agreement are the Board-approved amendment process, the requirement that they use registrars on the 2013 RAA, and the requirement that they agree to implement the outcome of the next generation directory services expert working group. While all have been discussed, the Board-approved amendment clause is the most important to focus on.

On the amendment process, the focus has been on how do we bridle this sufficiently so that it does not circumvent the policy development process, nor allow it to be used loosely. A detailed process has been developed to include these types of protections, and the process will be limited to those amendments that are of a substantial and compelling public interest need.

A revision to the Registry Agreement will be posted prior to Beijing, so that ICANN can proceed towards contracting shortly after the Beijing meeting.

For the RAA, it was posted for public comment to get the ball rolling towards closure. The remaining issues on the Registrar side are similar to the Registry agreement, including the amendment process. ICANN and the Registrar Negotiating Team are meeting twice a week, with a goal to bridge all gaps in the agreement by the time we get to Beijing.

Judith Vazquez thanked the President for his leadership on this issue and noted the need to communicate properly with the community if the Board does not have the opportunity to consider the agreements at one of the public meetings.

The President and CEO agreed with the statement that communication is key, and has been throughout this push of work on the contracts. We will keep communicating and keep listening.

Mike Silber questioned the propriety of having this issue raised before the Committee and not the full Board.

The General Counsel and President explained that while no action is being sought through this update, it is important for the Committee to understand the tether to the 2013 RAA and the New gTLD Program.

## **5. Any Other Business**

The President and CEO updated the Committee on the DNS summit being planned in New York City on 23 April 2013, where the work of taskforces arising out of the CEO Roundtables will be progressed, and, if available and appropriate, a signing ceremony will take place regarding the new Registrant Rights and Responsibilities document within the RAA.

Mike Silber cautioned that there should be broad access to the event, not a limited invitation list.

Chris Disspain provided an update to the Committee regarding the Public Interest Commitments (PICs) submitted by applicants, and requested an easily accessible list to facilitate review, and to understand who all has submitted PICs

The Chair then called the meeting to a close.



# 2013-05-18-01a-NGPC-Minutes of 2013-04-05.docx



**Note: On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of incorporation, Bylaws or ICANN’s Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD Program. The full scope of the Committee’s authority is set forth in its charter at <http://www.icann.org/en/groups/board/new-gTLD>.**

**A Special Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held in Beijing, China on 5 April 2013 at 8:00 pm local time.**

**Committee Chairman Cherine Chalaby promptly called the meeting to order.**

**In addition to the Chair the following Directors participated in all or part of the meeting: Chris Disspain, Bill Graham, Olga Madruga-Forti, Erika Mann, Gonzalo Navarro Ray Plzak George Sadowsky, Mike Silber, Judith Vazquez, and Kuo-Wei Wu. Fadi Chehadé (President and CEO) sent apologies.**

**Thomas Narten, IETF Liaison and Francisco da Silva, TLG Liaison, were in attendance as non-voting liaisons to the committee.**

**Heather Dryden, GAC Liaison, was in attendance as an invited observer.**

**ICANN Staff in attendance for all or part of the meeting: Akram Atallah, Chief Operating Officer; John Jeffrey, General Counsel and Secretary; Megan Bishop, Michelle Bright, Samantha Eisner, Dan Halloran, Karen Lentz, Cyrus Namazi, Amy Stathos, and Christine Willett.**

**This is a preliminary report the Meeting of the New gTLD Program Committee, which took place on 5 April 2013.**

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## **1. Committee Timeline/Workplan**

The Chair outlined the expected timeline for the New gTLD Program Committee’s work in Beijing, including the expectation that “closed” generics and reservation of names of IGOs will be discussed later in the week in Beijing. The Chair noted that on “closed” generics, the Committee could have a meeting before the end of April to make a decision. On the IGO names issue, the Chair confirmed that this will be discussed with the GAC at the Board/GAC meeting in Beijing, and then a decision could be taken by July in Durban.

## **2. “Closed” Generics**

Chris Disspain provided an update on the “closed” generic issue, noting that the term “exclusive use” is more descriptive of the issue. Chris noted that there is a possibility that the Board will be receiving advice from the GAC on restricted-use generics, so the conversation today will not focus much on that topic. Instead, Chris focused the discussion on the situations where an applicant applies for an exemption under the code of conduct, so that the Committee can understand what will happen.

Gonzalo Navarro noted that it is really important to get clear on the issues that are being addressed here, and appreciates Chris’ focus for the discussion. However, the Committee will need to be clear with the GAC on the issue, so that it is not about broader international issues with trademarks.

George Sadowsky requested further information on what is meant by “exclusive use.”

Chris explained that “exclusive use” is when an applicant has indicated that it intends to operate the string for its own sole use.

Dan Halloran provided some explanation regarding the criteria for getting an exemption to the Registry Operator Code of Conduct. Dan noted that after the first draft of the Code of Conduct was released for comment, there were comments received from some potential applicants that the Code of Conduct would constrain them, because they did not intend to have registrants. Therefore they should not need to have registrant protections built in, and should be able to get an exemption. As a result, ICANN proposed narrow grounds for exemption, when there are no registrants to protect, and all domains are registered to, maintained by, and used exclusively by the registry operator for exclusive use (criteria I). There is also criteria II, that the registry operator does not sell, distribute or transfer control or use of any of the registrations in the TLD to any third-party. Criteria III is if application of the Code of Conduct is not necessary to public the interest. If all are present, then ICANN may, in our reasonable discretion grant an exemption to the code of conduct, which is the five preceding provisions that control the registry. The exemption is from having to offer a level playing field to registrars.

Thomas Narten expressed concern that we are misusing the Code of Conduct, as it is the most convenient tool but not the right tool for the task. The harder problem needs to be solved first, which is how will this be addressed if the applicants don't seek and exemption to the Code of Conduct. The issue here isn't providing a level playing field to registrars; the issue is about the intention of the TLD operator and the names they intend to registrar and which names they don't intend to registrar.

Chris agreed with Thomas, and stated that there really appeared to be only two ways forward at this time: (1) look at the Code of Conduct and acknowledge that it is an imperfect solution with little to do if applicants go around it; or (2) change the program, though the program is far down the road. The other alternative is to do nothing to address this issue. Chris agreed that taking action regarding the Code of Conduct would have to be

accompanied by an acknowledgement that it is an imperfect solution, but noting that the Board is not happy with the situation.

Ray Plzak supported Thomas' comment, and addressed George's concern with regards to exclusive use. Ray urged the Committee to think about it in terms of obtaining the right o benefit of the exclusive use of a particular TLD, the corollary of which is that the holder is denying all others the right to derive benefit from the use of the name.

Gonzalo commented that the whole issue for the IP industry is that one particular company will have the opportunity to use a generic term exclusively, and that could raise questions about promoting competition on the Internet.

Chris stated his understanding, that the concern is not with an applicant seeking to limit a TLD to only qualified registrants, and to put in requirements that the registrars must follow in order to verify the validity of the registrants. That is fine. But if that same generic term will only be used by the applicant, without anyone else eligible to register/use the names, that is the concern here.

Olga Madruga-Forti agreed with how Chris framed the issue.

Judith Vazquez offered that the question is actually simpler; it's a yes or no question – do we or do we not allow an application to be closed to a registrant that believes it can benefit from it?

Chris disagreed that it is that simple of a question.

Thomas supported Judith's statement. There is a spectrum from opening a TLD all the way through to exclusivity, while there could be some areas where an operator would open it up to a few people. Exclusivity is almost too black and white, because it remains a judgment call who is allowed to register a second-level domain name. On closed generics, the concern is the operator will be saying no when they should be saying yes.

Chris asked Thomas for clarification on where he recommends this to go.

Thomas noted that to some extent, the Board should just do nothing. This is a classic example of a judgment call that was carefully avoided during the GNSO PDP on this. There are a lot of pragmatic questions that come up around this.

Ray noted that even some of the limitations that could make sense on who can register a second-level domain name could be seen as too limiting. How is the Board supposed to make a judgment as to the scope of the name and the proposed limitation?

Chris responded that this is the exact issue that has been part of why coming to clarity on this topic is challenging. That is why “exclusive use” is a clearer term than “closed” generics, though others may not be comfortable with it. The objections arose because of issues with applications, not because of hypothetical situations.

George responded to Thomas’ suggestion that the GNSO did not address this issue; they didn’t say that they were for it or against it. But the GNSO was dominated at that time by people with commercial interests in the program being developed. It is the Board, not the GNSO, which is charged to act in the public interest in approving and implementing policy.

Olga noted that the concept of “exclusivity” is an improvement, because it focuses on the applicant intent with the name. There may be other issues, as Ray suggested, regarding the relationship between the applicant and others that wish to register names. Therefore it is important to see who is the TLD exclusive to? Is it limited to a single entity, or to subsidiaries and affiliates, or those that they have contractual relationship with? That could be a lot different than a TLD for the use of a community, even if the community is rather limited in scope.

Heather Dryden confirmed that the GAC intends to provide safeguard language regarding the “closed” generic or exclusive use category of names.

Chris noted that this is a good place to stop the discussion, as it will be wise to wait to see what advice comes out of the GAC on this topic prior to having further in-depth conversation.

The Chair confirmed that the next steps would be agreed upon after the receipt of the GAC advice.

### **3. Functional Audit of New gTLD Program**

The Chair introduced the topic regarding performance of a functional audit of the New gTLD Program. There has been some nervousness in the community as the Program proceeds through implementation, and some questioning of whether ICANN is ready. Are we ready to contract and delegate? Should we bring in an expert now to help assess our readiness? The practice has been waiting for issues to hit a fever pitch in the community prior to solving, and some have raised the concern of whether there are additional items that will arise that could be uncovered in an audit.

Ray Plzak started by reciting the adage that when you're up to your neck in alligators, it's hard to remember your mission was to drain the swamp. That is the position that many see ICANN in today. And ICANN is both fighting the alligators and working to clear the swamp. It may be the case that it is time to sit down and take a look at the processes and look for the unintended consequences that could still arise, and deal with those in a timely fashion. There's a sense that we do not know fully what we are dealing with.

Thomas Narten expressed general support for Ray's position, citing the example of root scaling. Though we have the ability to slow down delegation if the introductions come too fast, we have not yet sat down and wrote up a plan for how we would address the issue if it arises. To whom would someone report the concern? What process should be followed?

George Sadowsky seconded the comments made already, and cited the issues raised in VeriSign's recent letter. There could be things that may cause problems, but have not been fully evaluated. The question is, have

we lowered the level of risk in the Program to an acceptable level, and are equipped with sufficient policies and resources to address unanticipated events when they occur?

The Chair responded to some of the points made. To the question of do we know all the issues, even if we know all of the issues we cannot respond to each one; it's unrealistic. Otherwise, our work would never be done. Some say unless an issue is seen as serious by the community, it does not need to be dealt with now. On the topic of the audit, who would perform that? This is the job of a CEO with his management team. Would we take the time now to educate a third party while staff is at the 11<sup>th</sup> hour of delivering the program? Do we want to delay the Program for a month to have an outside readiness assessment done, when we've already planned for a measured, staged introduction of new TLDs?

Erika Mann noted that the President and CEO and his team could probably answer these questions best. A short audit could be acceptable now, but there will be sufficient time afterwards to evaluate and capture the concerns noted. But if the goal is to gain a complete and comprehensive understanding today through a functional audit, Erika stated that she would not be in favor of that. There could be small points, such as those Thomas raised, but a not a comprehensive overview at this time

Ray agreed with Erika's points, and responded to George's comment that we will never identify all of the issues. This will have to become a continuous process of trying to identify issues in advance, but you will never catch all of them, particularly the corner cases. But once the issues are identified, this should be an iterative process. There are things, as Thomas noted, that we seem to have been sitting on, so there is an inventory that we can start with. We could even look through Board resolutions and find where there are incomplete actions of the Board that still remain. While the sources are there, this has to be an ongoing process to move forward, and we have to be capable of identifying issues that we hadn't anticipated before. It would have to be short, but it has to be iterative. It could be on an as-necessary basis, but we have to identify some way to implement a regular process.



The Committee needs to discuss how to organize this, the length of the process, and other aspects.

George asked the President and CEO how he feels about the potential for unintended consequences, as he has the view from the inside.

The Chair clarified that this conversation is no way a criticism of staff that have the full support of the Committee. It is, in fact, the good relationship between management and the Committee that allows this conversation to move forward.

The President and CEO thanked the Board for their inquiry and concern as to the state of the Program. We are now in the last mile, and frequently in the last mile is when panic and concern is raised. For those on the ground level, there are things that are apparent to us that aren't always clear to those at the 30,000 foot view that the Board has. For example, the hours of work to close an issue are not visible, so there will always remain the gap between what is visible to the Board and where things actually are, which is normal. However, when words such as "crises" are used, it's important to know the top crises that are being identified, because that is a big word. If the crises can be identified, the President and CEO confirmed that he would provide information for how those are being addressed. As to performing an audit when systems are ready to launch, it's not the right time. It sends a very strange message to the community and to the staff. The audit comes after the systems are online so we see how we can improve. The President and CEO also confirmed that there are no fixed dates; the April 23<sup>rd</sup> event that has been discussed does not have to be a date for signing if contracts are not ready. Nothing is being forced to a deadline.

There are already guidelines and timelines. The programs are moving forward. Some of the potential risks that have been identified in the community, such as the trademark clearinghouse, don't seem real. For example, we don't need to audit IBM to see if they can run a database, which is the service they are going to provide.

Companies are finally starting to line up towards launch, looking for distribution channels, planning, counting on the timelines that have been set forward. While a date can still slip, it is no longer at risk of slipping for a period of years. We will act with security and stability at the top of our priorities, and will be deliberate in how we operate. We know how to coordinate among root server operators, and together need to remain loosely coordinated.

The President and CEO concluded that he is supportive of an audit, immediately after launch. It can be an ongoing process. But before we get to that, the crises must be identified.

Ray reiterated that the focus of his conversation is that we have to pay attention. If it's best to do that by declaring the day the audit will start, post launch, that's fine. But it has to be done and it should be in planning now.

The President and CEO agreed with Ray. The Guidebook hasn't been finalized for long, and systems were being built along with it. But we have a remarkable team that delivering in an agile manner, where not everything has to be buttoned up before they start. The community demanded this agile path, so that we do not have more years of delay. It's also important to recall that ICANN is in control of the systems and can slow them if necessary after the launch; we have the controls if things go wrong. We will move forward only when the work is done, and the work is being done to plan. But we are moving forward.

The Chair thanked the President and CEO for confirming that there is not a drop date. This is a clear and reassuring message.

Olga Madruga-Forti supported the idea of an audit, but that it should occur after the systems have launched. Staff should not lose valuable time and effort now in order to support an audit. Both the staff and the Committee have proved to be agile when issues arise.

Erika commented that the Committee honors the work that all on the team are doing, and the conversation is not about criticism. The conversation is

simply asking if there's anything that can be done quickly to capture some items that may be outstanding. It is not a deeper issue than that. There is natural concern because this is pioneering work, and caution is important. But on the whole the staff work is honored.

George noted that it is important for the President and CEO to communicate to the community that this does not all start on April 23<sup>rd</sup>, as there seems to be different understanding in the community.

Akram Atallah addressed Thomas to let him know that there has been benchmarking work done regarding the root servers, which has been shared with the RSSLAC, which provides ability to monitor the root for any possible degradation.

The President and CEO reiterated his request for identification of crises from the Committee.

The Chair noted that the real concern seems to be that there are a lot of issues that are converging now, which gives the impression that there is still a lot to do. However, there is not a particular crisis.

Ray confirmed that though definition of crisis may differ among people, the really important factor is that the Committee has to go out of crisis management mode and into a different form of oversight. In terms of crises, there do not appear to be any showstoppers for the entire program.

The Chair challenged that the Committee is always in issue resolution mode. And we learn that some issues have been identified years before and we keep going back to try to resolve them in different ways.

Chris Disspain agreed with the Chair that the Committee is in issue resolution mode, and that is where the Committee should stay. Sometimes the issue is resolved by doing nothing, but issue resolution is important. For example, on closed generics, we are taking the time to have the conversation; that is not crisis management mode. But the term crisis is used by others when they are pressed to make decisions and when

something actually has to be dealt with. That is not a bad thing here that we are pressing the community for action and offering solutions.

Thomas noted that the root scaling issue, the concern raised was more of process, and he will continue the issue offline.

Mike Silber expressed his frustration with the communication from the staff to the Committee, and that the community seems to get better information than the Committee. The Committee has to pull information from webinar reports, while the Committee receives letters and other inputs without analysis. That leads to issues being perceived as crises.

The President and CEO noted that the Committee does receive robust presentations from the staff, but acknowledged that there is a lot going on and things are moving very fast. The Committee communication structure is not developed with enough frequency or analysis to share all that seems to be requested. As a solution, he offered to provide weekly updates to the Committee, in single page form, to provide better information.

The Chair thanked the President and CEO for his suggestion, and then raised the issue of the circulation of letter to the Committee, which the Chair was providing for information sharing.

Mike suggested that accompanying the update is a communication analysis on the correspondence that has come in, with some links if available and analysis. This would be far more useful than the receipt of individual letters.

The President and CEO also offered that some of the Committee could attend a weekly internal operational review meeting, to hear about what is working and not working, listening to the staff reports. The Committee members may even have items to add. Though the Committee has an oversight role, this would be a way to involve the Committee in the last mile.

George commented that the offer to attend the meetings is good, as the lack of information is what leads to a sense of unease. The concern is about

what we know, and what we don't know, and sometimes that is hard to predict. George noted that the issues of the highest concern are the technical issues, such as those the SSAC highlights.

Ray suggested that maybe an RSS feed could be set up for those who wish to find more information. There are better alternatives than having information pushed out to the Committee without analysis. On the operational review meetings, Ray noted that the Committee had one big operational review session prior to reverting back to the issues management. So if attendance at these meetings will bring the Committee back to the oversight role, or prepared briefings, those have to continue once they are started. Ray thanked the President and CEO for all of his work and the ability to have this conversation.

Christine Willett offered some responses to the requests. The letters that are forwarded to the Committee are those that the team is trying to understand whether action is needed. A majority of the letters are posted as correspondence and will be included on a MyICANN feed. For items that are application specific, those are dealt with a bit differently. The weekly reporting is a good idea, to get more frequent communication to the Committee.

The President and CEO confirmed that communications with the Committee would be reviewed after the program is fully launched.

Mike requested a summary of the weekly meetings for those who cannot attend. He also thanked the President and the CEO for the openness and willingness to extend the invite in the first place.

The Chair summarized the conversation: (1) there is no drop date timeline, though the program will happen in 2013; (2) and audit will happen, but not now when it will be disruptive; (3) a weekly report will be generated for the Committee; (4) and the Chair will stop the circulation of letters to the Committee and will be made available to the Committee through other means.

The Chair called the meeting to a close.

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A Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held in Beijing, China on 11 April 2013 at 6:00 pm local time. A transcript of the meeting is publicly posted at <http://beijing46.icann.org/node/37481>.

Committee Chairman Cherine Chalaby promptly called the meeting to order.

In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO), Chris Disspain, Bill Graham, Olga Madruga-Forti, Erika Mann, Gonzalo Navarro Ray Plzak George Sadowsky, Mike Silber, Judith Vazquez, and Kuo-Wei Wu.

Thomas Narten, IETF Liaison and Francisco da Silva, TLG Liaison, were in attendance as non-voting liaisons to the committee.

Heather Dryden, GAC Liaison, was in attendance as an invited observer.

This is a preliminary report the Meeting of the New gTLD Program Committee, which took place on 11 April 2013.

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## **1. Main Agenda:**

The Chair opened the meeting and briefly reviewed the agenda.

### **a. Approval of NGPC Meeting Minutes**

Ray Plzak moved and George Sadowsky seconded the following resolution:

Resolved (2013.04.11.01), the NGPC approves the minutes of the 1 February 2013 and 2 February 2013 NGPC Meetings.

**All members of the New gTLD Program Committee approved of Resolution 2013.04.11.01. The Resolution carried.**

### **b. New gTLD Program Readiness**

The Chair read a brief statement into the record regarding the readiness of the New gTLD Program:

The New gTLD Program Committee performs oversight of the readiness of the New gTLD Program. In that regard, the cCommittee met twice in Beijing with the ICANN CEO and his management team.

The Committee is satisfied with progress to date and is fully supportive of the CEO and his management team.

The Committee and the CEO agreed upon the following five points:

First: whilst the New gTLD Program Committee understands the importance of certainty, it has agreed with the CEO that there should be no artificially fixed deadlines. Therefore, progress will continue without undue delays. But the timing and the rate of each step in the program will proceed in a controlled and measured manner.

Second: The security, stability, and resilience of the root server system is paramount and will not be jeopardized.

Third: The known risks to the program have been and will continue to be mitigated.

Fourth: ICANN staff is and will continue to be prepared to act swiftly if or when anticipated problems occur.

Fifth: The ICANN community will be given time to comment on the RAA and the RA agreements consistent with ICANN's multistakeholder model and commitment to accountability and transparency. Thank you.

### **c. IGO Protection Issues**

Chris Disspain read a statement into the record similar to the comment that he made at the GAC/Board meeting earlier in the week:

There are some misunderstandings flying around, the first one is a misunderstanding the Board has protected the acronym “IOC.” That is not correct. The Board has not protected that. There's also a misunderstanding that the resolution of the IGOs we made on the 26th of November already says that we will protect names and acronyms. That is not correct. And I read the relevant part of the resolution to the GAC.

In respect to the GAC's advice, the advice in respect to names is problematic because of the square brackets around the number of languages the protection would be given in and the lack of any information as to a review process.

In respect to the advice on acronyms, this is extremely problematic. There are a number of reasons set out in our letter to the GAC which followed their advice. There has been discussion about reserving the acronyms but allowing the relevant IGO to give consent to a registration in a TLD.

From a principled point of view, this would mean, as an example, that the Church of England would require the approval of the Council of Europe to register COE.church.

I think the other examples I used were that the Canadian government would require the consent of the Andean community to register CAN dot

something. The international standards organization, an organization with which ICANN has a fairly close understanding, would require the consent of the International Sugar Organization in order to register ISO dot something.

Even if, in principle, this is what the GAC intended by their advice, from an implementation point of view, this is extremely problematic. Questions include: who at each IGO would give consent? How long would an IGO have to give consent? Would no reply equal consent? What criteria would be used for consent? Who would draft those criteria? Would the criteria for consent be the same for each IGO, or would consent be given at the whim of each IGO?

The Board believes that all of these issues may make it extremely difficult, if not impossible, to accept the GAC's advice as-is. Rather than reject the advice, we seek acknowledgment from the GAC in its Communiqué that there are issues that need to be worked through and an agreement that the GAC, board, and staff will work through those issues with a deadline for formal resolution in Durban.

Now, the GAC's Communiqué arrived a couple hours ago. There is wording in there about the IGOs. And my first reading of it seems to say that there is acknowledgment and that they will work with us. So that's good. I guess we'll consider the advice over the next little while and then respond to that and decide what the next steps are. So that's where we are with that.

#### **d. Closed Generics**

Olga Madruga-Forti read a statement into the record regarding the issue of exclusive use, or “closed generic” top level domains:

Given community expressions of concern on the topic of exclusive use N gTLDs, for as some refer to them, closed generics, on February 2nd, 2013, the Committee passed a resolution requesting the CEO and staff to open a public comment forum on exclusive use N gTLD applications. In the course of those deliberations, the Committee noted that the expressions of concern from members of the community raised such issues as exclusive use gTLDs

should be reserved only for those strings in which the applicant possesses established intellectual property rights. Generic words belong to all people.

Closed generic or exclusive use strings could cause significant consumer and Internet user confusion. Exclusive use N gTLDs could have significant impact on competition, consumer choice, and the public interest.

On February 5th, 2013, ICANN opened a 30-day public comment period on this topic. Over 260 comments were received. The majority of the comments largely echoed the expressions of concern.

The Committee also sought GNSO guidance on the issue. And on March 7th, 2013, the GNSO Council responded noting that, given the relatively short time frame, it was not possible to provide guidance on the issue with due consideration. Nevertheless, the Council encouraged the GNSO members to share their views through their relevant public comment forum.

The Committee is now actively considering the public comments received and staff analysis. Today, as Bruce Tonkin referenced earlier, the GAC has published important advice to the board on this topic. The Committee will analyze in detail and take into consideration this advice. The Committee understands that the advice may raise public policy implications and appreciates very much the GAC work on the matter.

The Committee anticipates concluding its deliberations on exclusive use N gTLDs before the end of April. However, should a decision still be pending at that time, we will inform and communicate of an indicative timeline. The Committee realizes and recognizes the importance of understanding all views and potential ramifications relating to exclusive use N gTLDs.

#### **e. New gTLD Agreements**

The President and CEO provided an update on the status of the New gTLD Registry Agreement and the 2013 Registrar Accreditation Agreement, noting that both are to be posted for public comment as soon as they are available, which should be in the coming weeks. Once the agreements are posted, they will follow the regular 21-day comment/21-day reply period.

In addition, work is already underway to determine how the operational side can be sped up, such as allowing registry applicants to proceed to predelegation testing prior to contract signing. The President and CEO stated his commitment to this issue and having the program remain agile. On the registrar side, just as registrars will have to add operational processes to meet the new requirements, so will ICANN, and this work will proceed. We will keep doing this work in parallel as we can.

It is necessary to take the time to review these agreements and allow community voices to be heard in this process.

The Chair then opened the floor for additional comment.

Erika Mann requested that that the Committee work with staff on timetables for resolution of the multiple issues before the Committee.

The Chair confirmed that the Committee will be meeting within the next two weeks to start considering the GAC advice issues, and then a timeline will proceed from that.

Erika also requested an analysis of the GAC advice received, topic by topic, to give some groundwork for the Committee.

The Chair then called the meeting to a close.

The Committee then had a brief discussion regarding planning and timelines prior to the ICANN meeting in Durban, South Africa, including addressing the GAC advice released during the Beijing meeting.

The Chair then called the meeting to a close.

