

# 2013-04-11 NGPC BrdNotice.docx

**Directors and Liaisons,**

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

**11 April 2013 – Meeting of the New gTLD Committee at 10:00 UTC (6:00 PM – 6:30 PM – Beijing time) – This Committee meeting is estimated to last 30 minutes. Location: Grand Hall B, 3<sup>rd</sup> Floor Convention Center**

**Some other time zones:**

**11 April 2013 - 3:00 AM PM PDT Los Angeles**

**11 April 2013 – 12:00 PM CEST Brussels**

**11 April 2013 – 6:00 AM EDT Washington, D.C.**

**<http://www.timeanddate.com/worldclock/fixetime.html?msg=ICANN+Board+Meeting&iso=20130411T10&p1=1440&ah=1>**

**Consent Agenda:**

- 1. Approval of Minutes of 1 February 2013**
- 2. Approval of Minutes of 2 February 2013**

**Main Agenda:**

- 1) Operational Readiness**
- 2) IGO Protection Issues**
- 3) Closed Generics**
- 4) New gTLD Agreements**
- 5) Any other business**

**MATERIALS -- All Materials are available on**

**, 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**

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# 2013-02-01-Minutes-NGPC.docx



**A Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held on 1 February 2013 at 5:00 pm local time in Los Angeles, California.**

**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.**

**ICANN Staff in attendance for all or part of the meeting: John Jeffrey, General Counsel and Secretary; Megan Bishop, Michelle Bright, Samantha Eisner, Dan Halloran, Karen Lentz, Denise Michel, Margie Milam, Cyrus Namazi, David Olive, Diane Schroeder, Amy Stathos, and Christine Willett.**

**This is a preliminary report the Meeting of the New gTLD Program Committee, which took place on 1 February 2013.**

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## **1. Consent Agenda:**

The Chair introduced the Consent Agenda, and called for a vote. George Sadowsky moved the resolution.

The New gTLD Program Committee took the following action:

### **a. Approval of Minutes of New gTLD Program Committee Meeting of January 10 2013**

Resolved (2013.02.01.NG01), the New gTLD Program Committee approves the minutes of the 10 January 2013 Meeting of the New gTLD Program Committee.

**All members of the New gTLD Program Committee approved of Resolution 2013.02.01.NG01. The Resolution carried.**

## **2. Main Agenda:**

### **a. Update on Addressing GAC Advice on Enforcing Applicants' Commitments**

The Committee received an update on the new format of Board briefing papers.

Chris Disspain then introduced the Committee to a discussion on a proposal of a mechanism to address the GAC advice on enforcement of applicant commitments contained in applications.

Samantha Eisner provided a summary of the recommendation, which is the development of a Public Interest Commitment (PIC) Specification, with three components. There is a mandatory component, which is the obligation to only use registrars under the 2013 Registrar Accreditation Agreement. This will achieve the objective of having new gTLD names rolling out with the protections that are included within the new RAA. The other items are optional. One is an option to designate elements from the applicant's application that will be incorporated into the agreement as commitments,

such as responses to question 18, or other places where business plans are set out on how the registry is expected to be run. The other is the option for the applicant to identify additional commitments that they are willing to make in the public interest, such as items that arise from conversations over GAC early warnings.

Chris provided the example of an application that contains a statement that names will only be issued to specific entities, such as those licensed to practice in a specific regulated industry. How will this statement become a commitment in the registry agreement? The PIC specification is a way for this to be incorporated. If the applicant does not provide that commitment in a PIC specification, then that may be a basis for GAC advice to issue against that application. Alternatively, there could be an application against which a GAC Early Warning has already been issued, and the applicant has had conversations with the governments issuing the warning. The applicant could use option three to provide commitments that would address the concerns previously raised.

Judith Vazquez noted that her prior experience with the application led her to conclusion that the plans stated in the application were binding.

Chris confirmed that this does not appear to be an understanding shared by all applicants. Chris noted that there could be some plans that aren't really capable of being a binding commitment; for example, if an applicant noted that it was intending to first focus its efforts in North America and then expand to service offerings in Europe in two-years' time, the change of those business plans is likely not something that would be seen as a change of a binding commitment. That is why it is important to allow the applicants to self-select the commitments.

Ray Plzak explained his understanding that the Committee was being requested to give approval to publish a document for comment. However, the discussion seems to be about the substance of the document, which is a different issue. Any discussion of the merits of the proposal at this time is not to be considered as approval of the proposal; the decision to accept the recommendation for posting will allow the proposal to move forward.



Chris confirmed that the point of this discussion was to result in a decision on publication, but it seems important to understand the substance of what is being published. The decision will only be publication, and not on the merits of the recommendation.

Erika Mann asked for more information about the proposal and how “public interest commitment” is being defined. Erika noted that the “public interest” is not defined within ICANN, which is an issue that arises in the closed generic item as well.

Thomas Narten agreed with Erika, and stated his observation that the GAC’s concern did not seem to be about the public interest, but in the applicant’s adherence to their stated purposes for the TLD. The GAC seems to be concerned with contract enforcement, which is not really about the public interest.

The General Counsel and Secretary noted that the reason that the term “public interest” is being used is a means to show the importance of the need to bring the commitments into the agreement. It would be hard to demonstrate the import and meet the purpose of the discussion without those words. This is a significant issue, and the proposal is anticipated to have a positive impact.

Ray explained his understanding that ICANN is not trying to define the public interest in taking this action, rather that the action that is being taken is believed to be in the public interest. That is the explicit reason for taking this action.

Bill Graham confirmed that if the GAC advice is part of the impetus for doing this, the GAC advice is on public policy issues, which are issues related to the public interest. There does not seem to be a problem using the term in this way.

The President and CEO confirmed that this is the intent of the public interest commitment process, that they are commitments being made by the applicants in the public interest.

Judith confirmed that those applications of good intentions and business practice will embrace this process.

Olga Madruga-Forti inquired as to whether it is necessary to pick and choose among the statements in the application, or whether we could just have the applicants designate the entirety of their statements and representations as binding commitments? The application does not appear to be a business plan, but more akin to a regulatory filing. However, if the GAC supports the approach, then Olga confirmed that she can support it.

The General Counsel and Secretary explained that some of the statements in the applications were made in the short term or intended to be changeable as plans; they were not stated as obligations. The applicants did not fill out the application with the understanding that they were framing binding obligations, and they might have included language that was superfluous to those items that could be made into binding commitments. It could be too difficult a bar to set to have the full application be deemed a binding commitment. For example, it could be almost negligent to require an applicant to remain bound by a security plan developed in 2012 when standards will change and the plans need to evolve. We also see in the applications that the applicants approached them in different ways. Some took Judith's view that the application is full of binding commitments. Others provided loose business plans. This process will provide a way to determine what the actual commitments are.

The President and CEO confirmed that he initially agreed with Olga, but was persuaded when he considered, with the businesses that he has been involved with in the past, the types of plans set forth when the business is launching and how those plans often need to change as the business moves forward and you learn. Placing the applicants in a state where they are bound by all of their statements without flexibility would put everyone in an untenable situation. Here, many applicants are already aware, through the

GAC Early Warnings, that there are public interest concerns with their applications, and the PIC Specification process will allow them to come forward and address these issues without having to commit to every aspirational statement in an application.

Chris then moved to a discussion of the next steps. If the Committee approves, the PIC Specification idea will be put out for public comment. During that same time frame, the applicants will be requested to submit PIC Specifications, to keep the timelines in order and provide the GAC with an opportunity to see the PIC Specifications in advance of Beijing.

Ray confirmed that he would support the public comment posting of this process, as a proposed mechanism intended to address the GAC advice on this topic.

Ray Plzak then moved and George Sadowsky seconded the following resolution:

Whereas, applicants for new gTLDs identified certain purposes of the applied for gTLD and certain business plans that they intend to incorporate into the operation of their registry, but much of these plans are not currently anticipated to be incorporated as obligations into Registry Agreements.

Whereas, the GAC's Toronto Communiqué includes advice to ICANN that "it is necessary for all of these statements of commitment and objectives to be transformed into binding contractual commitments, subject to compliance oversight by ICANN."

Whereas the New gTLD Program Committee has devised a proposed mechanism to address the advice of the GAC.

Resolved (2013.02.01.NG02), the New gTLD Program Committee directs the President and CEO to seek public comment on a proposed mechanism to address the GAC advice on these additional applicant commitments.

**All members of the New gTLD Program Committee approved of Resolution 2013.02.01.NG01. The Resolution carried.**

***Rationale for Resolution 2013.02.01.NG02***

It is important to determine if it is possible to address the advice received from the GAC on this issue. Creating a mechanism through which applicants will make binding commitments to ICANN in alignment with their applications could serve to promote the transparency and accountability of all within the ICANN community. While work still remains in developing this mechanism, it is anticipated that the creation of these binding commitments will benefit the public interest.

The work called for in this resolution will require resources to complete, though it is not anticipated that this planning work will exceed budgeted resources. If properly implemented, the introduction of a mechanism to incorporate additional binding commitments could result in a positive benefit on the security, stability and resiliency of the DNS.

**b. Monthly Status Reporting**

No resolution taken.

Christine Willett provided the Committee with an update on the overall program activity and the status of the New gTLD Program, noting that the program is still on track to release the first initial evaluation results on March 23, with all initial evaluation results published by the end of August 2013. The time for applicants to respond to clarifying questions has been increased to four weeks, as many applicants were requesting additional time and there are many upcoming holidays around the world that could affect response time.

Christine also presented updates on key projects, including the Trademark Clearinghouse, the URS, the EBERO, and predelegation testing, noting the status of work.

The Chair noted that this is the type of reporting that must be regularized for the committee oversight, and Ray Plzak requested that information from the report, as appropriate, be provided to the full Board.

The Chair called the meeting to a close.

## **2013-02-02-Minutes-NGPC.docx**



**A Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held on 2 February 2013 at 5:00 pm local time in Los Angeles, California.**

**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.**

**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, Denise Michel, Margie Milam, Cyrus Namazi, David Olive, Diane Schroeder, Amy Stathos, and Christine Willett.**

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## **1. “Closed Generic” Top-Level Domains**

The Chair introduced the topic of “Closed Generic” TLDs, noting that this has been a topic of conversation in the community and in the Committee, and that it did not appear to be possible to craft a solution to the issue at this

time. The recommendation therefore is to take this issue out for public comment and to direct staff to produce additional research and analysis. The proposed resolution will help demonstrate that the Committee takes this issue seriously and is directing work that can advance the consideration of this issue.

Chris Disspain noted that one of the purposes of the work will be to try to put some boundary around what is meant by a “closed generic” TLD.

Ray Plzak asked if there was any benefit of discussing the vertical integration issue as part of the resolution.

Erika Mann commented that there has to be some caution to the terms used, as there are intellectual property and trademark laws and analogies that could be used. There has to be a clear idea of what we want to protect or prohibit. Erika also requested that staff provide a short summary on the principles of international law to help with further conversation on this topic.

Thomas Narten confirmed his understanding that part of what we’re trying to say is that there is not an explicit policy statement that can be identified from the past work on the development of the New gTLD Program.

The General Counsel and Secretary confirmed that even if this was considered within the GNSO work on this – which is one of the items that we will try to determine through the anticipated research – that there is not a clear policy statement on this issue. There could be an absence of policy that was the subject of GNSO discussions.

The Committee then reviewed the proposed resolution.

Ray stated his support of the resolution, and cautioned that the rationale will have to be carefully crafted.

Gonzalo Navarro noted his support for the resolution, and echoed Erika’s concern that the Committee has to be careful about the words used,



particularly to remove any suggestion that we are trying to modify trademark law, even if those are the words that have been used in the community discussions on those items.

The Committee then discussed some proposed line edits to the resolution.

Thomas asked if there had been any sort of preliminary review of what the impact of this work could be on the schedule, and what the timeline would be for committee review. Thomas also noted that the public comment as proposed is for 21 days, but really should be longer because we know the SOs will have trouble responding that fast, and we are likely to receive requests for extension. When public comment is sought, we have to make sure that we are framing the issue properly to get helpful responses.

Dan Halloran confirmed that the public comment posting would include background and context to frame the issue.

Amy Stathos explained that the 21 day comment period was proposed to allow for the Committee to review the outcomes of the comment period prior to the March 23 release of the first initial evaluation results, in the event any of those strings are impacted by this work.

After proposal from the President and CEO, the Committee agreed to extend the comment period to 30 days.

The Chair expressed his concern that the Committee may try to get too far into the details now and not focus on the need to have a clear time frame on taking further action on this issue. While this topic could have surfaced earlier, it is not incumbent on the Committee to determine if a substantive decision is necessary on this item before the Beijing meeting, as that will require additional meetings of the Committee after the comment period closes.

Margie Milam offered a suggestion that it is important to recognize the role of the GNSO in this, as the conversation is focusing on the GNSO's policy

recommendations and earlier discussion. This could be achieved, possibly, by requesting guidance from the GNSO on this topic.

Erika and Ray supported taking a decision on this issue prior to the Beijing meeting, but acting carefully in reviewing and considering all of the comments prior to decision.

The Chair confirmed that a meeting will be coordinated prior to the Beijing meeting for further consideration of this issue.

After a further review of the language of the proposed resolution, George Sadowsky moved and Olga Madruga-Forti seconded the following resolution:

Whereas, the New gTLD Program Committee has received correspondence from the community addressing “closed generic” TLDs and understands that members of the community term a “closed generic” TLD as a TLD string that is a generic term and is proposed to be operated by a participant exclusively for its own benefit.

Whereas, ICANN implemented the Generic Names Supporting Organization (GNSO) policy recommendations on the “Introduction of New Generic Top-Level Domains”, and within those policy recommendations there is no specific policy regarding “closed generic” top-level domains (TLDs).

Whereas, members of the community have expressed concerns regarding applications for “closed generic” TLDs.

Whereas, the New gTLD Program Committee considers that it is important to understand all views and potential ramifications relating to ‘closed generic’ TLDs.

Resolved (2013.02.02.NG01), the New gTLD Program Committee directs the President and CEO to open a 30-day public comment forum on this topic, which should include a call for identification of proposed objective criteria to classify applied-for TLDs as “closed generic” TLDs.

Resolved (2013.02.02.NG02), the New gTLD Program Committee directs the President and CEO to, concurrently with the opening of the public comment forum, request the GNSO to provide guidance on the issue of “closed generic” TLDs if the GNSO wishes to provide such guidance. Guidance on this issue is requested to be provided by the close of the public comment forum.

Resolved (2013.02.02.NG03), the New gTLD Program Committee directs the President and CEO to:

1. Summarize and analyze all comments submitted in the public comment forum.
2. Review materials supporting the policy development process resulting in the GNSO policy recommendations on the Introduction of New Generic Top-Level Domains and provide analysis of any discussions relating to the limitations on potential new gTLDs.
3. Analyze the feasibility of objectively classifying applied for TLDs as “closed generic” TLDs.
4. Provide an analysis as to whether the public interest and principles of international law are served by adopting a clear approach regarding ‘closed generic’ gTLDs.
5. Provide a report to the New gTLD Program Committee informed by the comments received and analysis conducted, including alternatives to addressing this issue.

**All members of the New gTLD Program Committee voted in favor of Resolutions 2013.02.02.NG01, 2013.02.02.NG01 and 2013.02.02.NG03. The Resolutions carried.**

**Rationale for Resolutions 2013.02.02.NG01 – 2013.02.02.NG03**

**Why is the New gTLD Program Committee is addressing the issue now?**

ICANN has received numerous requests for clarification in this area, including recent correspondence expressing concerns about “closed generic” applications.

**What are the proposals being considered?**

Various proposals have been raised to the Committee’s attention in correspondence, including rejection of certain applications, adoption of new requirements regarding TLD registration policies, and suggested criteria for applying or exempting registries from the Code of Conduct in the Registry Agreement. The Committee believes that a full analysis and discussion are necessary to inform any actions to be taken on this issue.

**What Stakeholders or others were consulted?**

The resolution initiates a public comment period to enable stakeholder consultation and consideration of relevant information and analysis, including a request for guidance from the GNSO.

**What concerns or issues were raised by the community?**

Recent correspondence has expressed concerns about the potential impact on competition and consumer choice, as well as phrasing the issue in terms of potential impact on the public interest.

**What significant materials did the New gTLD Program Committee review?**

The Committee reviewed all recent correspondence on this issue, as well as current provisions in the Applicant Guidebook, including the gTLD Registry Agreement.

**What factors did the New gTLD Program Committee find to be significant?**

The Committee considered it important to understand all views and potential ramifications relating to “closed generic” TLDs. Some in the community have urged the Board/New gTLD Program Committee to issue direction in regard to these applications to address their stated concerns. Taking action (such as the potential incorporation of a requirement to reject certain applications, or adoption of new requirements regarding TLD

registration policies) that changes the fundamental provisions and criteria in the Applicant Guidebook must be balanced very carefully.

**Are there Positive or Negative Community Impacts?**

The resolution initiates a public comment period, and is intended to allow the Committee to examine and consider possible positive and negative community effects of the issue, and the extent of such effects. The resolution also invites guidance from the GNSO, as well as comprehensive research and analysis to better understand any broader effects of future action on this issue.

**Are there fiscal impacts/ramifications on ICANN (Strategic Plan, Operating Plan, Budget); the community; and/or the public as a result of taking this action?**

The analysis called for in the resolution will be conducted as part of budgeted work functions. No significant fiscal impacts are foreseen. The inputs are being requested on a short time frame to allow for minimal impact on operational planning/timelines.

**Are there any Security, Stability or Resiliency issues relating to the DNS as a result of taking this action?**

The Committee is not currently aware of any security, stability, or resiliency issues relating to the DNS as a result of this action.

The Chair called the meeting to a close.