

Reconsideration Request

**Union of Orthodox Jewish Congregations of
America, *et al.***

Annex S

Letter from Stephen D. Crocker, Chairman, ICANN
Board of Directors to Heather Dryden, Chair,
Governmental Advisory Committee (10 Feb. 2014)



The Internet Corporation for Assigned Names and Numbers

10 February 2014

Heather Dryden
Chair, Governmental Advisory Committee

Re: NGPC Meeting of 5 February 2014

Dear Heather:

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

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

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

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

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

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



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

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

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

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

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

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

Attachment A: How strings are identified as being generic

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

Attachment C: Proposed launch program for special cases

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



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

Best regards,

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

Stephen D. Crocker, Chair
ICANN Board of Directors

Attachment A

GAC Briefing Regarding Generic Strings

10 February 2014

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

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

Generic String Defined

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

Applicant Outreach

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

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

Attachment A

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

Attachment B

GAC Briefing Regarding Restricted Access Registries

10 February 2014

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

In the Beijing Communiqué, the GAC originally advised that:

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

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

Analysis of the Advice

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

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

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

Attachment B

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

Implementation of the Advice

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

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

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

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

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

Attachment C

GAC Briefing Regarding TLD Launch Programs 10 February 2014

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

Special Launch Program for Geographic and Community TLDs

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

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

a. The GAC Advises the ICANN Board:

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

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

Rights Protection in the New gTLD Program

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

Registry Agreement

Attachment C

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

Developing the RPM Requirements

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

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

Requesting an Approved Launch Program

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

Attachment C

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

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

Approved Geo Launch Program

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

Qualified Launch Program

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

References

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

Attachment C

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

Attachment D

GAC Briefing Regarding Public Policy Implications of Auctions 10 February 2014

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

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

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

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

Reconsideration Request

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America, *et al.***

Annex T

Letter from Lawrence E. Stricking, Assistant
Secretary for Communications and Information,
United States Department of Commerce to Dr.
Stephen D. Crocker, Chairman, ICANN Board of
Directors, (4 Feb. 2014)



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Communications
and Information
Washington, D.C. 20230

FEB 04 2014

Dr. Stephen D. Crocker
Chairman of the Board
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Dear Dr. Crocker:

I am writing to express the appreciation of the United States for the work that the Internet Corporation for Assigned Names and Numbers (ICANN) has done to respond to the Advice of the Governmental Advisory Committee (GAC) on new generic top level domain names (gTLDs), as set forth primarily in the Beijing Communiqué. The New gTLD Program Committee's (NGPC) efforts to take the GAC advice and address it via actionable provisions in new gTLD Registry Agreements is a good example of governments having a meaningful voice inside ICANN. However, as can be the case when translating GAC Advice to contractual provisions, the NGPC made adjustments to the GAC Advice that the United States believes could cause enforcement problems and as such merit further discussion. The National Telecommunications and Information Administration (NTIA), on behalf of the United States, is planning on raising these concerns for discussion at the March GAC meeting in Singapore and requests that ICANN take this fact into account before moving forward with applications for strings impacted by the relevant portions of GAC advice, as described below.

The NGPC has changed the GAC-conveyed concept of "verification and validation" to "representation" in Category 1 Safeguard #6, 7, and 8 to be sensitive to the diversity of regulatory schemes around the world and assure that discrimination does not inadvertently result. However, the concept of "representation" is different from the affirmative obligation for the registry operator to verify or validate the credentials of domain name registrants that indicate participation in certain professional or regulated sectors, as the GAC requested. While noting the NGPC rationale, we continue to believe that there are a handful of the strings associated closely with industries that are highly regulated at local, national and global levels that may raise certain consumer expectations and thus warrant the higher standard reflected in Safeguards #6, 7, and 8, as proposed by the GAC. Cognizant of the various business models presented in competing applications, we think this issue should be addressed regardless of the registry operators selected.

With respect to Category 1 Safeguard #3, the GAC advice points to recognized industry standards, in addition to applicable law, as a guide for registry operators managing strings representing professional and regulated sectors that collect sensitive health and financial data. The NGPC, however, highlighted concerns regarding requiring adherence to recognized industry standards given the number of sectors implicated by the GAC advice in this category. NTIA recognizes that implementation through contractual requirements in general terms could be challenging, but believes the GAC clearly intended for ICANN to require contracted parties to adhere to relevant recognized industry standards, in particular when it comes to protecting sensitive financial and health data. In certain instances, the industry standard may be the most relevant governing standard consistent with the broader multistakeholder model. Accordingly,

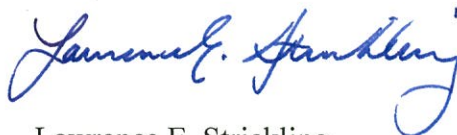
the United States will raise this issue at the March GAC meeting for further discussion and action.

We also want to reiterate our belief that it is important that gTLD registry operators using restricted registrations policies, other than brand and certain other gTLDs, avoid granting undue preference to any particular party or subjecting potential registrants to any undue disadvantage. We recognize that Sections C and D of Specification 11 attempt to address these concerns and will look forward to the NGPC's answer to the GAC's related question on this issue from the Buenos Aires meeting. Stakeholders have raised concerns with us about the lack of clarity on the status of this issue regarding a number of applications for generic terms, some of which were included in the non-exhaustive list in the GAC Beijing Communique (e.g., .weather) and some that were not (e.g., .kosher).

Lastly, a shared understanding of contract enforcement systems is crucial as the new gTLD program moves into the next phase. The Registry Agreement indicates that ICANN would either handle enforcement itself or via a new Public Interest Commitment Dispute Resolution Process (PICDRP).¹ ICANN needs to provide clarity around when the PICDRP comes into play versus when ICANN can act directly to resolve disputes. We are evaluating the final PICDRP process, published on ICANN's website December 19, 2013. As a preliminary matter, we have questions related to the timeliness of the processes which we calculate from beginning to end may take almost three months. In the case of criminal activity (e.g., botnet case) this time frame may be too long. Also, given that the standard for filing a complaint is harm, ICANN should clarify that governments could file based on their role in representing the public. In addition, we also do not see a specific opportunity for a complainant to provide subsequent information if the first attempt to register a concern is incomplete because of administrative or clerical reasons. ICANN should also provide all stakeholders more information on the selection process for the PICDRP Standing Panel.

In closing, I would like to once again acknowledge the work of ICANN and the general commitment, in particular of the NGPC, to treat seriously the GAC advice on new gTLDs. As mentioned above, NTIA will be raising the issues detailed in this letter at the GAC meeting in Singapore with the goal of getting speedy resolution on outstanding items. In addition, we will recommend that cross community discussion begin in earnest on how the safeguards that are being applied to new gTLDs can be applied to existing gTLDs.

Sincerely,



Lawrence E. Strickling

¹ Specification 11, Public Interest Commitments, ¶¶ 2 and 3, Base Registry Agreement updated January 9, 2014.