



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Cooperation
The Director

Brussels,
DG CNECT/ D1/AG/vm

Board of Directors of ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA
USA

Subject: **Interim position of the European Commission concerning the applications for new generic Top-Level Domains**

Following the public announcement of the full list of applications for new generic Top-Level Domains (gTLD) as part of the new gTLD programme managed by the Internet Corporation for Assigned Names and Numbers (ICANN) the European Commission (the Commission) has proceeded to an internal assessment of all applications.

In light of the broad diversity of such applications, the assessment, coordinated by the Directorate-General for Communication Networks, Content and Technology (DG CONNECT), which represents the Commission in the Governmental Advisory Committee (GAC) of ICANN, has involved a number of different Directorates-General within the Commission.

For clarity, this assessment focused on matters which are under either exclusive or shared competence of the European Union (EU) and did not extend to matters which are clearly under the national competence of the Member States of the European Union.

This letter is meant to provide the first conclusions of such assessment.

The Commission has identified a number of new gTLD applications which could possibly raise issues of compatibility with the existing legislation (the *acquis*) and/or with policy positions and objectives of the European Union. A non-exhaustive list of the domain names which have been found to possibly raise such issues is provided in Annex 1 to this letter.

Notwithstanding this interim conclusion, **at this point in time the Commission is of the opinion that issuing Early Warnings is not warranted**. Accordingly, this letter **shall not be considered** in any way or form as representing an "Early Warning" to the applicants of the new gTLDs included in Annex 1, or to any other new gTLD applicant.

I would like to point out that:

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1. The fact that a particular new gTLD is included in the non-exhaustive list provided in Annex 1 does not *per se* mean that the European Commission conclusively claims that such a new gTLD is in violation of the *acquis* or of policy positions and objectives of the EU.

The presence of a new gTLD in the list is rather a signal that further discussions with the relevant applicant are necessary. In some cases, such discussions are already on-going. In general, we invite all the applicants to perform the necessary due diligence and assess whether engaging the European Commission, for matter which fall under EU exclusive or shared competence, is necessary. The Commission stands ready to provide clarifications to applicants which will contact it, via its representatives on the GAC.

2. Generally speaking, all new gTLD applications should properly take into account the "GAC Principles regarding new gTLDs" of 2007,¹ as well as the more specific concerns expressed by a number of GAC members, *inter alia* in the Communiqué of the GAC of 17 October 2012.²
3. It was disappointing to see so few applications for new gTLDs coming from developing countries. This is clearly an area where ICANN needs to re-focus its efforts.
4. The position outlined in this letter is without prejudice to any further action that the Commission might decide to undertake in order to safeguard the rights and interests of the European Union and of its citizens. For the sake of clarity, the Commission does not consider itself legally bound to the processes, including the means of recourse, outlined in the new gTLD Applicant Guidebook and/or adopted by ICANN, unless a legal agreement between the latter and the Commission exists.

I remain available for any further clarifications that might be necessary.



Linda Corugedo Steneberg

Cc: All applicants of the new gTLD programme of ICANN
Members and Observers of the Governmental Advisory Committee of ICANN

¹ See https://gacweb.icann.org/download/attachments/1540128/gTLD_principles_0.pdf?version=1&modificationDate=1312358178000 and Annex 2.

² See https://gacweb.icann.org/download/attachments/4817665/FINAL_Toronto_Communique_20121017.pdf?version=1&modificationDate=1350746371000 and Annex 2 (section IV.1).

Annex 1

New gTLD	ID(s)
.adult	1-1107-2377
.baby	1-1054-95858
.baby	1-1352-18081
.baby	1-1417-16218
.baby	1-1156-50969
.baby	1-927-8340
.baby	1-1216-75929
.bank	1-1053-59307 1-1035-13873
.bio	1-1000-94806
.clinic	1-1392-58392
.clinique	1-1962-86087
.discount	1-1431-6328 1-856-55254
.doctor	1-2026-56939 1-1430-52453 1-1060-13366
.eco	1-1710-92415 1-1434-1370 1-1039-91823 1-912-59314
.education	1-1435-73490
.eus	1-1293-15788
.finance	1-1454-18725
.financial	1-1453-71764
.free	1-1465-93738 1-1316-21923 1-1141-1851 1-1039-66889 1-845-38175
.gratis	1-1481-2922 1-845-42772

.green	1-1255-2257 1-1039-46343 1-884-75541 1-868-24661
.health	1-1684-6394 1-1489-82287 1-1178-3236 1-868-3442
.healthcare	1-1492-32589
.hiv	1-971-90747
.kid	1-1141-94472
.kids	1-1316-67680
.kids	1-1309-46695
.organic	1-868-66930
.pharmacy	1-1040-55064
.safety	1-1007-20096
.sale	1-1984-65341 1-1617-57149 1-1235-38087 1-1110-17668 1-855-27044
.security	1-2058-59499 1-1625-43519 1-1027-69486
.sex	1-1106-79501
.sexy	1-855-58140

GAC PRINCIPLES REGARDING NEW gTLDs

Presented by the Governmental Advisory Committee
March 28, 2007

1. Preamble

- 1.1 The purpose of this document is to identify a set of general public policy principles related to the introduction, delegation and operation of new generic top level domains (gTLDs). They are intended to inform the ICANN Board of the views of the GAC regarding public policy issues concerning new gTLDs and to respond to the provisions of the World Summit on the Information Society (WSIS) process, in particular “the need for further development of, and strengthened cooperation among, stakeholders for public policies for generic top-level domains (gTLDs)”¹ and those related to the management of Internet resources and enunciated in the Geneva and Tunis phases of the WSIS.
- 1.2 These principles shall not prejudice the application of the principle of national sovereignty. The GAC has previously adopted the general principle that the Internet naming system is a public resource in the sense that its functions must be administered in the public or common interest. The WSIS Declaration of December 2003 also states that “policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues.”²
- 1.3 A gTLD is a top level domain which is not based on the ISO 3166 two-letter country code list³. For the purposes and scope of this document, new gTLDs are defined as any gTLDs added to the Top Level Domain name space after the date of the adoption of these principles by the GAC.
- 1.4 In setting out the following principles, the GAC recalls ICANN’s stated core values as set out in its by-laws:

a. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.

b. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN’s activities to those matters within ICANN’s mission requiring or significantly benefiting from global coordination.

c. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.

¹ See paragraph 64 of the WSIS Tunis Agenda, at <http://www.itu.int/wsis/docs2/tunis/off/6rev1.html>

² See paragraph 49.a) of the WSIS Geneva declaration at <http://www.itu.int/wsis/docs/geneva/official/dop.html>

³ See: <http://www.icann.org/general/glossary.htm#G>

d. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

e. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.

f. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

g. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.

h. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

i. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.

j. Remaining accountable to the Internet community through mechanisms that enhance ICANN’s effectiveness.

k. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments’ or public authorities’ recommendations.

2. Public Policy Aspects related to new gTLDs

When considering the introduction, delegation and operation of new gTLDs, the following public policy principles need to be respected:

Introduction of new gTLDs

- 2.1 New gTLDs should respect:
 - a) The provisions of the Universal Declaration of Human Rights⁴ which seek to affirm “fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women”.
 - b) The sensitivities regarding terms with national, cultural, geographic and religious significance.
- 2.2 ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.

⁴ See <http://www.un.org/Overview/rights.html>

- 2.3 The process for introducing new gTLDs must make proper allowance for prior third party rights, in particular trademark rights as well as rights in the names and acronyms of inter-governmental organizations (IGOs).

- 2.4 In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains no two letter gTLDs should be introduced.

Delegation of new gTLDs

- 2.5 The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against standard and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.
- 2.6 It is important that the selection process for new gTLDs ensures the security, reliability, global interoperability and stability of the Domain Name System (DNS) and promotes competition, consumer choice, geographical and service-provider diversity.
- 2.7 Applicant registries for new gTLDs should pledge to:
 - a) Adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD.
 - b) Ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.
- 2.8 Applicants should publicly document any support they claim to enjoy from specific communities.
- 2.9 Applicants should identify how they will limit the need for defensive registrations and minimise cyber-squatting that can result from bad-faith registrations and other abuses of the registration system

Operation of new gTLDs

- 2.10 A new gTLD operator/registry should undertake to implement practices that ensure an appropriate level of security and stability both for the TLD itself and for the DNS as a whole, including the development of best practices to ensure the accuracy, integrity and validity of registry information.
- 2.11 ICANN and a new gTLD operator/registry should establish clear continuity plans for maintaining the resolution of names in the DNS in the event of registry failure.

These plans should be established in coordination with any contingency measures adopted for ICANN as a whole.

- 2.12 ICANN should continue to ensure that registrants and registrars in new gTLDs have access to an independent appeals process in relation to registry decisions related to pricing changes, renewal procedures, service levels, or the unilateral and significant change of contract conditions.
- 2.13 ICANN should ensure that any material changes to the new gTLD operations, policies or contract obligations be made in an open and transparent manner allowing for adequate public comment.
- 2.14 The GAC WHOIS principles are relevant to new gTLDs.

3. Implementation of these Public Policy Principles

- 3.1 The GAC recalls Article XI, section 2, no. 1 h) of the ICANN Bylaws, which state that the ICANN Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues. Insofar, therefore, as these principles provide guidance on GAC views on the implementation of new gTLDs, they are not intended to substitute for the normal requirement for the ICANN Board to notify the GAC of any proposals for new gTLDs which raise public policy issues.
- 3.2 ICANN should consult the GAC, as appropriate, regarding any questions pertaining to the interpretation of these principles.
- 3.3 If individual GAC members or other governments express formal concerns about any issues related to new gTLDs, the ICANN Board should fully consider those concerns and clearly explain how it will address them.
- 3.4 The evaluation procedures and criteria for introduction, delegation and operation of new TLDs should be developed and implemented with the participation of all stakeholders.

N.B. The public policy priorities for GAC members in relation to the introduction of Internationalised Domain Name TLDs (IDN TLDs) will be addressed separately by the GAC.



Governmental Advisory Committee

Toronto, Canada – 17 October 2012

GAC Communiqué – Toronto, Canada¹

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Toronto, Canada during the week of 13 October 2012. Fifty (50) GAC Members attended the meetings and three (3) Observers. The GAC expresses warm thanks to the local host, the Canadian Internet Registration Authority (CIRA) for their support.

A successful High Level Meeting of governments was held on 15 October, 2012, on the margins of the Toronto meetings centred around the theme of “Preserving and Improving the Multistakeholder Model”.

II. Internal Matters

1. The GAC welcomes the Cayman Islands, the Federated States of Micronesia, and Tuvalu as members of the GAC.
2. The GAC welcomes the New Partnership for Africa’s Development (NEPAD Agency), the Organisation of American States (OAS) and the World Health Organization as Observers to the GAC.
3. Peter Nettlefold from Australia, Thomas Schneider from Switzerland, and Tracy Hackshaw from Trinidad & Tobago were elected to the positions of Vice Chairs. Heather Dryden from Canada was re-elected to the position of GAC Chair. The decision is effective from the end of the first meeting of 2013. The GAC thanks Alice Munyua from Kenya, Choon Sai Lim from Singapore, and Maria Häll from Sweden for

¹ To access previous GAC advice, whether on the same or other topics, past GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings> and older GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Meetings+Archive>.

their service in their capacity as Vice Chairs and for their outstanding contribution to the work of the GAC.

4. The GAC has agreed to implement a process leading to the establishment of an independent Secretariat at the Beijing meeting.
5. The GAC noted that the South African government was not consulted with regards to the planned ICANN meeting in Durban, South Africa in July 2013.

III. Inter-constituency Activities

1. The GAC met with the country code Names Supporting Organisation and received updates on: the activities of the Framework of Interpretation Working Group; the progress on the Internationalised Domain Names Policy Development Process; the study group on the use of country and territory names; and a presentation from the Netherlands and SIDN regarding their cooperative efforts to implement DNSSEC in the Netherlands.
2. The Board – GAC Recommendation Implementation Working Group (BGRI – WG) met to discuss further developments on the ATRT recommendations relating to the GAC, namely recommendations 11, 12, and 13. In the context of GAC Early Engagement, the BGRI-WG had a good exchange on ways to inform the GAC early of issues pertaining to public policy. The GAC intends to continue this discussion intersessionally with more focus on how GAC input may be sought and considered early within the PDP.
3. The GAC received an update from the Security and Stability Advisory Committee on their activities and reports related to the WHOIS Review Team Recommendations, dotless domains, and DNS blocking at the top level.

The GAC warmly thanks the ccNSO and the SSAC, as well as all those among the ICANN community who have contributed to the dialogue with the GAC in Toronto.

IV. GAC Advice to the Board²

1. GAC Member Early Warnings

The GAC acknowledges that the new gTLD program provides mechanisms to address a range of risks and identified concerns. The Applicant Guidebook also provides a specific role for the GAC to provide early warnings and advice on new gTLD applications that raise public policy issues. In this context, and in light of the full range of received applications, individual GAC members are considering whether the existing mechanisms provided in the Guidebook are sufficient to address the identified issues in all instances. In the interest of sharing information with the community, and in advance of individual GAC members issuing any early warnings on specific applications, the GAC notes that individual GAC members are considering a range of specific issues including:

- Consumer protection
- Strings that are linked to regulated market sectors, such as the financial, health and charity sectors
- Competition issues
- Strings that have broad or multiple uses or meanings, and where one entity is seeking exclusive use
- Religious terms where the applicant has no, or limited, support from the relevant religious organisations or the religious community
- Minimising the need for defensive registrations
- Protection of geographic names
- Intellectual property rights particularly in relation to strings aimed at the distribution of music, video and other digital material
- The relationship between new gTLD applications and all applicable legislation

The GAC looks forward to discussing these issues with the ICANN community, and expects to finalise GAC advice on gTLD applications following the ICANN meeting in April 2013. As part of this work, some GAC members may initiate direct dialogue with applicants, including through the early warning process. The GAC confirms that it will forward early warnings from GAC members on 20 November 2012, and encourages a collaborative and cooperative approach to addressing any issues identified in those early warnings.

The statements and commitments detailed in individual gTLD applications are a critical input to the GAC's work in this area.

² To track the history and progress of GAC Advice to the Board, please visit the GAC Advice Online Register available at: <https://gacweb.icann.org/display/GACADV/GAC+Advice>

The GAC requests written briefing from the ICANN Board on:

- the extent to which applicants will be able to modify their applications as a result of early warnings.
- how ICANN will ensure that any commitments made by applicants, in their applications or as a result of any subsequent changes, will be overseen and enforced by ICANN.

The GAC advises the ICANN Board:

- 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.
- The GAC expects that applicants would not be penalised where the standard provisions of a contract are amended in order to meet specific obligations entered into in order to meet governmental concerns.

The GAC encourages ICANN to continue its work to promote awareness of the new gTLD program, and looks forward to further engagement with the community on these issues as the program progresses.

Any advice and action by the GAC or by one or more of its members are entirely without prejudice to any other investigative, enforcement or other actions that a GAC member might wish to undertake, pursuant to applicable law.

2. Protections for Intergovernmental Organisations

While the GAC continues its deliberations on the protection of the names and acronyms of Intergovernmental Organizations (IGOs) against inappropriate third-party registration:

The GAC advises the ICANN Board that:

- in the public interest, implementation of such protection at the second level must be accomplished prior to the delegation of any new gTLDs, and in future rounds of gTLDs, at the second and top level.

The GAC believes that the current criteria for registration under the .int top level domain, which are cited in the Applicant Guidebook as a basis for an IGO to file a legal rights objection, provide a starting basis for protecting IGO names and acronyms in all new gTLDs.

Building on these criteria, the GAC and IGOs will collaborate to develop a list of the names and acronyms of IGOs that should be protected. Pending further work with ICANN on specific implementation measures for this initiative, the GAC believes this

list of IGOs should be approved for interim protection through a moratorium against third-party registration prior to the delegation of any new gTLDs.

3. International Olympic Committee and Red Cross/Red Crescent

The GAC welcomes the ICANN Board's Resolution on 13 September 2012, and agrees with the Board that protection for the second level should be in place before the delegation of the first new gTLDs.

The GAC notes the GNSO's Drafting Team has recently posted a set of recommendations, which state that an expedited policy development process (PDP) is required.

The GAC will seek clarification from the GNSO as to its rationale for initiating a PDP. In light of the legal basis for advancing protections for the IOC/Red Cross Names at the top and second levels, which include coverage under international legal instruments and under national laws in multiple jurisdictions, the GAC considers its advice on the matter to fall into the category of implementation rather than policy development. The GAC requests the opportunity to understand the views of the Board in this regard.

4. Prioritization Drawing Proposal

The GAC welcomes the presentation of the proposal made by ICANN staff to have a prioritization drawing in early December 2012 regarding the new gTLDs. Previous GAC advice on competition and fairness remains valid in this instance given the stated exception in the Drawing Proposal paper proposed by ICANN for the IDN applications being prioritized in the global public interest. Noting this, there were expressions from some GAC members that there are other ways of taking into account global public interest and international outreach. Some members consider that geographic name gTLDs approved by the relevant government authority, community names and applications from developing countries should likewise be prioritized.

V. Next Meeting

The GAC is considering holding an intersessional meeting as needed.

The GAC will meet during the period of the 46th ICANN meeting in Beijing, People's Republic of China.