



Proposed New gTLD Program Committee Resolutions
25 June 2013
Meeting of the New gTLD Program Committee

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1. Consent Agenda:

a. Approval of NGPC Meeting Minutes

Resolved (2013.06.25.NGxx), the Board approves the minutes of the 4 June 2013 New gTLD Program Committee Meeting.

2. Main Agenda:

a. Safeguards Applicable to all New gTLDs

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 (“Beijing Communiqué”);

Whereas, the Beijing Communiqué included six (6) elements of safeguard advice applicable to all new gTLDs, which are identified in the GAC Register of Advice as: (a) 2013-04-11-Safeguards-1, (b) 2013-04-11-Safeguards-2, (c) 2013-04-11-Safeguards-3, (d) 2013-04-11-Safeguards-4, (e) 2013-04-11-Safeguards-5, and (f) 2013-04-11-Safeguards-6 (collectively, the “Safeguards Applicable to All Strings”);

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

Whereas, the NGPC met on 8 and 18 May and 4, 11 and 18 June 2013 to consider a plan for responding to the GAC’s advice on the New gTLD Program, including the Safeguards Applicable to All Strings; Whereas, the NGPC met on 25 June 2013 to further discuss and consider its plan for responding the GAC’s advice in the Beijing Communiqué on the New gTLD Program;

Whereas, the NGPC has considered the public comments submitted during the public comment forum, and has determined that its position, as presented in Annex I attached to this Resolution, is consistent with the GAC's advice regarding Safeguards Applicable to All Strings;

Whereas, the NGPC proposes revisions to the final draft of the New gTLD Registry Agreement < <http://www.icann.org/en/news/public-comment/base-agreement-29apr13-en.htm>> as presented in Annex II attached to this Resolution to implement certain elements of the GAC advice regarding Safeguards Applicable to All Strings; and

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.06.25.NGxx), the NGPC adopts the "NGPC Proposal for Implementation of GAC Safeguards Applicable to All New gTLDs" (19 June 2013), attached as Annex I to this Resolution, to accept the GAC's advice regarding Safeguards Applicable to All Strings.

Resolved (2013.06.25.NGxx), the NGPC directs staff to make appropriate changes to the final draft of the New gTLD Registry Agreement, as presented in Annex II attached to this Resolution, to implement certain elements of the GAC advice regarding Safeguards Applicable to All Strings.

Rationale for Resolution 2013.06.25.NGxx

Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN Bylaws <http://www.icann.org/en/about/governance/bylaws#XI> permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new

policy development or revision to existing policies.” The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013. The ICANN Bylaws require the Board to take into account the GAC’s advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

What is the proposal being considered?

The NGPC is being asked to consider accepting a discrete grouping of the GAC advice as described in the attached “NGPC Proposal for Implementation of GAC Safeguards Applicable to All New gTLDs” (Annex I; 19 June 2013), which includes the six (6) items of safeguard advice from the Beijing Communiqué applicable to all new gTLDs. This advice is identified in the GAC Register of Advice as: (a) 2013-04-11-Safeguards-1, (b) 2013-04-11-Safeguards-2, (c) 2013-04-11-Safeguards-3, (d) 2013-04-11-Safeguards-4, (e) 2013-04-11-Safeguards-5, and (f) 2013-04-11-Safeguards-6 (collectively, the “Safeguards Applicable to All Strings”).

Which stakeholders or others were consulted?

On 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>. The public comment forum closed on 4 June 2013. The NGPC has considered the community’s comments in formulating its response to the GAC advice regarding Safeguards Applicable to All Strings. These comments also will serve as important inputs to the NGPC’s future consideration of the other elements of GAC advice not being considered at this time in the attached annexes.

What concerns or issues were raised by the community?

ICANN received several responses from the community during the course of the public comment forum on broad categories of GAC safeguard advice. Of comments regarding safeguards applicable to all new gTLDs, approximately 29% of unique commenters expressed opposition whereas approximately 71% expressed support. Regarding support, commenters expressed general agreement with the safeguards. Those expressing support also expressed concern over the method of implementation and that the GAC should not dictate the specific procedures for implementation. Supporters also indicated that some of these safeguards are already inherent in the 2013 RAA.

Opposing commenters expressed that the GAC advice should be limited to specific concerns related to specific strings in the context of their respective applications. Commenters also suggested that if the NGPC were to adopt the safeguards, they would impose significant duties and operation impacts on registry operators and that in all cases, the NGPC should ensure that safeguards are enforceable. A review of the comments has been provided to the NGPC under separate cover. The complete set of comments can be reviewed at: <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>.

What significant materials did the NGPC review?

As part of its deliberations, the NGPC reviewed the following significant materials and documents:

GAC Beijing Communiqué:

<http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf>

Public comments in response to broad categories of GAC safeguard advice: <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>

What factors did the Board find to be significant?

The Beijing Communiqué generated significant interest from the community and resulted in many comments. The NGPC considered the community comments, the GAC's advice transmitted in the Beijing Communiqué, and the procedures established in the AGB for addressing GAC advice to the New gTLD Program.

Are there positive or negative community impacts?

The adoption of the GAC advice as provided in the attached annexes will assist with resolving the GAC advice in manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

There are no foreseen fiscal impacts associated with the adoption of this resolution.

Are there any security, stability or resiliency issues relating to the DNS?

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

On 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>. The public comment forum closed on 4 June 2013.

b. Category 2 Safeguard Advice re Exclusive Registry Access

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 (“Beijing Communiqué”);

Whereas, the Beijing Communiqué included Category 2 safeguard advice, which is identified in the GAC Register of Advice as 2013-04-11-Safeguards-Categories-2 (the “Category 2 Safeguard Advice”);

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

Whereas, the NGPC met on 8 and 18 May and 4, 11 and 18 June 2013 to consider a plan for responding to the GAC’s advice on the New gTLD Program, including the Category 2 Safeguard Advice;

Whereas, the NGPC met on 25 June 2013 to further discuss and consider its plan for responding the GAC’s advice in the Beijing Communiqué on the New gTLD Program;

Whereas, the NGPC has considered the public comments submitted during the public comment forum, and proposes revisions to the final draft of the New gTLD Registry Agreement <<http://www.icann.org/en/news/public-comment/base-agreement-29apr13-en.htm>> as presented in Annex I attached to this Resolution

to implement the Category 2 Safeguard Advice for applicants not seeking to impose exclusive registry access; and

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.06.25.NGxx), the NGPC adopts the "Proposed PIC Spec Implementation of GAC Category 2 Safeguards" (20 June 2013), attached as Annex I to this Resolution, to accept and implement the GAC's Category 2 Safeguard Advice for applicants not seeking to impose exclusive registry access.

Resolved (2013.06.25.NGxx), the NGPC directs staff to make appropriate changes to the final draft of the New gTLD Registry Agreement, as presented in Annex I attached to this Resolution, to implement the GAC's Category 2 Safeguard Advice for applicants not seeking to impose exclusive registry access.

Resolved (2013.06.25.NGxx), the NGPC directs staff to defer moving forward with the contracting process for applicants seeking to impose exclusive registry access for "generic strings," pending a dialogue with the GAC to seek clarification regarding the appropriate definition of "public interest goal" for the purposes of determining whether exclusive registry access serves a public interest goal.

Rationale for Resolution 2013.06.25.NGxx

Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN Bylaws

<http://www.icann.org/en/about/governance/bylaws#XI>

permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its

Beijing Communiqué dated 11 April 2013. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

What is the proposal being considered?

The NGPC is being asked to consider accepting Category 2 safeguard advice identified in the GAC Register of Advice as 2013-04-11-Safeguards-Categories-2. For applicants not seeking to impose exclusive registry access, the NGPC is being asked to consider including a provision in the PIC Specification in the New gTLD Registry Agreement that would require TLDs to operate in a transparent manner consistent with general principles of openness and non-discrimination. Additionally, the proposed PIC Specification would include a provision to preclude registry operators from imposing eligibility criteria that limit registration of a generic string exclusively to a single person or entity and their "affiliates." The term "affiliate" is defined to mean a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise. [New gTLD Registry Agreement § 2.9(c) <http://newgtlds.icann.org/en/applicants/agb/base-agreement-specs-29apr13-en.pdf>]

For applicants seeking to impose exclusive registry access for “generic strings”, the NGPC is being asked to defer moving forward with the contracting process for these applicants, pending a dialogue with the GAC to seek clarification regarding the appropriate definition of “public interest goal” for purposes of determining whether exclusive registry access serves a public interest goal. The term “generic string” is defined in the PIC Specification to mean “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.”

To implement the advice in this way, the PIC Specification will define exclusive registry access as limiting registration of a generic string exclusively to a single person or entity and their affiliates (as defined above). All applicants would be required to respond by a specified date indicating whether (a) the applicant is prepared to accept the proposed PIC Specification that precludes exclusive registry access or (b) the applicant is unwilling to accept the proposed PIC Specification because the applicant intends to implement exclusive registry access.

Which stakeholders or others were consulted?

On 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>. The public comment forum closed on 4 June 2013. The NGPC has considered the community comments in formulating its response to the GAC’s Category 2 Safeguard Advice.

What concerns or issues were raised by the community?

ICANN received several responses from the community during the course of the public comment forum on broad categories of GAC safeguard advice. Of a limited number of comments specific to the

Category 2, Restricted Access safeguards, approximately 60% expressed support versus approximately 40% expressing concern or opposition. Supporting comments generally agreed that, for certain strings, restricted access is warranted. Opposing comments generally indicated that this is unanticipated and wholly new policy without justification and that these strings would be unfairly prejudiced in the consumer marketplace. Of the comments specific to the Category 2, Exclusive Access safeguards, approximately 86% expressed support versus approximately 14% expressing concern or opposition. Supporting comments indicated that exclusive registry access should “serve a public purpose.” Others indicated that “closed generics” should not be allowed at all. Opposing commenters generally expressed concern that this is new and unanticipated policy, contrary to the bottom-up process. They also indicated that the concept of public interest is vague and not adequately defined.

The complete set of public comments can be reviewed at:

<http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>.

What significant materials did the NGPC review?

As part of its deliberations, the NGPC reviewed the following significant materials and documents:

GAC Beijing Communiqué:

<http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf>

Public comments in response to broad categories of GAC safeguard advice: <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>

What factors did the Board find to be significant?

The Beijing Communiqué generated significant interest from the community and stimulated many comments. The NGPC considered

the community comments, the GAC's advice transmitted in the Beijing Communiqué, and the procedures established in the AGB for addressing GAC advice to the New gTLD Program.

Are there positive or negative community impacts?

The adoption of the GAC advice as provided in the attached Annex will assist with resolving the GAC advice in a manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible. However, applicants seeking to impose exclusive registry access would not be able to progress to the contracting process at this time if the NGPC adopts the proposed Resolution. Those applicants would be on hold pending the outcome of the dialogue with the GAC.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

There are no foreseen fiscal impacts associated with the adoption of this resolution.

Are there any security, stability or resiliency issues relating to the DNS?

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

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

[advice-23apr13- en.htm](#). The public comment forum closed on 4 June 2013.

c. Singular & Plural Versions of the Same String as a TLD

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 (“Beijing Communiqué”);
Whereas, the NGPC met on 8 and 18 May and 4 and 11 June 2013, to consider a plan for responding to the GAC’s advice on the New gTLD Program, transmitted to the Board through its Beijing Communiqué;
Whereas, on 4 June 2013, the NGPC took action accepting GAC advice identified in the GAC Register of Advice as “2013-04-11-PluralStrings” and agreed to consider whether to allow singular and plural versions of the same string;

Whereas, the NGPC met on 11 June 2013 to consider the GAC Beijing advice regarding singular and plural versions of the same string; and
Whereas, after careful consideration of the issues, review of the comments raised by the community, the process documents of the expert review panels, and deliberations by the NGPC, the NGPC has determined that no changes to the ABG are needed to address potential consumer confusion specifically resulting from allowing singular and plural versions of the same strings;

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board’s authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.06.25.NGxx), the NGPC has determined that no changes are needed to the existing mechanisms in the Applicant Guidebook to address potential consumer confusion resulting from allowing singular and plural versions of the same string.

Rationale for Resolution 2013.06.25.NGxx

Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN Bylaws (<http://www.icann.org/en/about/governance/bylaws#XI>) permit the GAC to “put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.” The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013. The ICANN Bylaws require the Board to take into account the GAC’s advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

In its Beijing Communiqué, the GAC advised the Board that due to potential consumer confusion, the Board should “reconsider its decision to allow singular and plural version of the same strings.” On 4 June 2013, the NGPC accepted the GAC’s advice to consider this issue. The NGPC met on 11 June 2013 to discuss this advice, and to consider whether any changes are needed to the New gTLD Program to address singular and plural versions of the same string.

What is the proposal being considered?

The NGPC is considering whether any changes are needed to the New gTLD Program (i.e. the Applicant Guidebook) as a result of the NGPC considering whether to allow singular and plural versions of the same strings as requested by the GAC in its Beijing Communiqué.

Which stakeholders or others were consulted?

On 18 April 2013, ICANN posted the GAC advice and officially notified applicants of the advice, <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1 <<http://newgtlds.icann.org/en/applicants/gac-advice-responses>>. The NGPC considered the applicant responses in considering this issue. To note, a handful of unique applicants, representing nearly 400 application responses, addressed this piece of GAC advice. Most were against changing the existing policy but with one identified in support of the GAC's concern. The supporting applicant has filed a string confusion objection. Those not supporting the GAC's concern indicated this topic was agreed as part of the AGB and is addressed in the evaluation processes. The full summary of applicant responses can be reviewed at: <<http://newgtlds.icann.org/en/applicants/gac-advice-responses>>.

What concerns or issues were raised by the community?

In September 2007, the GNSO issued a set of recommendations (approved by the ICANN Board in June 2008) to implement a process to allow for the introduction of new gTLDs. These include a recommendation that new gTLD strings must not be confusingly similar to an existing top-level domain or a reserved name. The GNSO constituency groups lodged comments during that time, and these comments were considered as part of the approval of the Program. The NGPC considered these community comments as part of its deliberations.

More recently, ICANN posted the GAC's Beijing Communiqué and officially notified applicants of the advice, <<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>> triggering the 21-day applicant response period pursuant to the AGB Module 3.1. Multiple members

of the ICANN and New gTLD applicant communities have raised concerns to the ICANN Board regarding the GAC's advice regarding singular and plural versions of the same string. Some of the concerns raised by the community are as follows:

- Allowing singular and plural versions of the same string amounts to a “serious flaw” in the Program, and the Program should not rely on the self-interest of others to file objections to avoid string confusion.
- The independent panels have ruled and it would not be appropriate for either ICANN or the Board to overturn these decisions. The findings of the independent string similarity review panel should not be upset, absent a finding of misconduct.
- The Board approved the evaluation process, which included independent assessment of each application against AGB criteria, appropriately away from the interests of those with stakes in the outcome.
- ICANN should not change course on this issue, as it would open the door to one stakeholder group undoing independently arrived-at results because it disagrees with the outcome.

The concerns raised by the community highlight the difficulty of the issue and the tension that exists between minimizing user confusion while encouraging creativity, expression and competition. The NGPC weighed these comments during its deliberations on the issue.

What significant materials did the NGPC review?

The NGPC reviewed and considered the following significant materials as part of its consideration of the issue:

- GAC Beijing Communiqué:
<http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf>
- Applicant responses to GAC advice:
<http://newgtlds.icann.org/en/applicants/gac-advice-responses>

- String Similarity Contention Sets
<<http://www.icann.org/en/news/announcements/announcement-26feb13-en.htm>>

What factors did the NGPC find to be significant?

The NGPC considered several significant factors during its deliberations about whether to allow singular and plural version of the same strings. The NGPC had to balance the competing interests of each factor to arrive at a decision. The following are among the factors the NGPC found to be significant:

- The NGPC considered whether it was appropriate to reject the work of the expert review panel and apply its own judgment to a determination of what rises to the level of probable user confusion. The NGPC considered whether the evaluation process would be undermined if it were to exert its own non-expert opinion and override the determination of the expert panel. It also considered whether taking an action to make program changes would cause a ripple effect and re-open the decisions of all expert panels.

The NGPC considered that the objective of the string similarity review in the AGB is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings. In the AGB, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone. During the policy development and implementation design phases of the New gTLD Program, aural and conceptual string similarities were considered. These types of similarity were discussed at length, yet ultimately not agreed to be used as a basis for the analysis of the string similarity panels’ consideration because on balance, this could have unanticipated results in limiting the expansion of the DNS as well as the reach and utility of the Internet. However, the grounds for string confusion objections

include all types of similarity, including visual, aural, or similarity of meaning. All new gTLD applicants had standing to file a string confusion objection against another application.

- The NGPC considered the objective function of the string similarity algorithm in the AGB (§ 2.2.1.1.2) and the results it produced. SWORD assisted ICANN with the creation of an algorithm that helped automate the process for objectively assessing similarity among proposed and existing TLD strings. Various patent and trademark offices throughout the world use SWORD's verbal search algorithms. The String Similarity Panel was informed in part by the algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs and reserved names. The score provided one objective measure for consideration by the panel, as part of the process of identifying strings likely to result in user confusion. However, this score was only indicative and the panel's final determination was based on careful review and analysis. A full consideration of potential consumer confusion issues is built into the procedures that have been applied in the analysis of the strings.
- The NGPC reflected on existing string similarity in the DNS and considered the positive and negative impacts. The NGPC observed that numerous examples of similar strings, including singulars and plurals exist within the DNS at the second level. Many of these are not registered to or operated by the same registrant. There are thousands of examples including:

auto.com

autos.com

car.com

cars.com

new.com

news.com

store.com

stores.com

- The NGPC considered the process used by the panel of experts from InterConnect Communications working in conjunction with the University College London to perform a visual similarity review to prevent used confusion and loss of confidence in the DNS resulting from the delegation of similar strings. The panel made its assessments using the standard defined in the Applicant Guidebook: String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion. This panel utilized its independent expertise, including in linguistics, to perform the review against the criteria in the Applicant Guidebook. ICANN did not provide any instructions to the panel outside of the criteria specified in the Applicant Guidebook, including any pre-judgment of whether singular or plural versions of strings should be considered visually similar.
- The NGPC considered whether there were alternative methods to address potential user confusion if singular and plural versions of the same string are allowed to proceed. The NGPC discussed the String Confusion Objection mechanism in the AGB, and noted that string confusion objections are not limited to visual similarity, but may include any type of similarity, including visual, aural, or similarity of meaning. The DRSP panels reviewing string confusion objections use the following standard for assessing string confusion, as specified in the Applicant Guidebook: String confusion exists where a string so nearly resembles another that it is likely to deceive or cause

confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that *the string brings another string to mind, is insufficient to find a likelihood of confusion*. The NGPC took note of the fact that in the case of a successful string confusion objection, either the application would not proceed (for an objection by an existing gTLD operator) or an existing contention set would be modified to include the application subject to the objection (for an objection by another gTLD applicant).

- The NGPC took note of the objections filed during the objection period, which closed on 13 March 2013. All new gTLD applicants had standing to file a string confusion objection against another application. By the end of the objection period, a total of 67 string confusion objections were filed (see <http://newgtlds.icann.org/en/program-status/odr/filings>). Based on staff analysis, there were a total of 26 singular/plural applied-for, English language strings. The strings in these pairs had a total of 21 string similarity objections filed against them.

Are there positive or negative community impacts?

The string similarity review is the implementation of the GNSO's policy recommendation 2: "Strings must not be confusingly similar to an existing top-level domain or a Reserved Name." As noted above, the objective of the string similarity review is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings. A full consideration of potential consumer confusion issues is built into the procedures that have been applied in the analysis of the strings. The adoption of the proposed resolution will assist with continuing to resolve the GAC advice in manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

There are no foreseen fiscal impacts associated with the adoption of this resolution.

Are there any security, stability or resiliency issues relating to the DNS?

The security, stability and resiliency issues relating to the DNS were considered when the AGB was adopted. The NGPC's decision does not propose any changes to the existing program in the AGB, and thus there are no additional foreseen issues related to the security, stability or resiliency of the DNS.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

ICANN posted the GAC advice and officially notified applicants of the advice on 18 April 2013

<<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>>. This triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. No additional public comment is required as the NGPC's action does not propose any policy or program changes to the New gTLD Program.

d. IGO Protection

Resolution Not Considered

Resolution Not Considered

Resolution Not Considered

Rationale for Resolution 2013.06.25.NGxx

Rationale Not Considered

**e. ALAC Statement on TMCH/Variants – no resolution
being taken**

f. AOB

**2013-06-25-01a-NGPC Minutes of 2013-06-04
revised.docx**



New gTLD Program Committee – Minutes
04 June 2013
Regular Meeting of the New gTLD Program Committee

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 Regular Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held telephonically on 4 June 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: Chris Disspain, Bill Graham, Olga Madruga-Forti, Ray Plzak, George Sadowsky, Mike Silber, Judith Vazquez, and Gonzalo Navarro.

~~Erika Mann, Francisco da Silva (TLG Liaison), and Kuo-Wei Wu sent apologies.~~

Thomas Narten, IETF Liaison ~~and Heather Dryden, GAC Liaison~~ was in attendance as a non-voting liaison to the Committee. Heather Dryden was in attendance as an observer to the Committee.

~~Erika Mann, Francisco da Silva (TLG Liaison), and Kuo-Wei Wu sent apologies.~~

~~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, Allen Grogan, Dan Halloran, Jamie Hedlund, Liz Le, Karen Lentz, Cyrus Namazi, Erika Randall, Amy Stathos, and Christine Willett.

These are the Minutes of the Meeting of the New gTLD Program Committee, which took place on 04 June 2013.

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1. GAC Advice Items

The Chair introduced the item on the main agenda regarding responding the GAC advice issued in the Beijing Communiqué. The Chair briefly outlined the proposed course of action for the meeting. The Chair noted that the Committee received a letter from ALAC, which will be placed on the agenda for discussion at the next meeting.

At the request of the meeting shepherd, Chris Disspain, Jamie Hedlund walked the Committee through each of the items on the proposed “NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué [\(4 June 2013\)](#),” [\(the “1A Scorecard”\)](#), which is Annex 1 of the proposed resolution [and attached to the minutes for reference](#).

The Committee discussed accepting the GAC advice regarding application number 1-1165-42560 for .AFRICA and application number 1-1936-2101 for .GCC. Olga Madruga-Forti inquired whether the applicants would be permitted to withdraw their applications within a certain amount of time if the Committee accepted the GAC advice. After further discussion of the appropriate language to include in the [1A scorecard-Scorecard](#) and consultation with the General Counsel, the Committee agreed that the [1A scorecard-Scorecard](#) should indicate that the applicants may withdraw or

may wish to seek relief via ICANN’s accountability mechanisms, subject to the appropriate standing and procedural requirements.

The Committee discussed its proposed response on the GAC advice regarding the .HALAL and .ISLAM strings, and decided to accept the advice. The Committee agreed that its response should note that it stands ready to enter into a dialogue with the GAC. The Chair questioned whether the Committee needed to write a formal letter to the GAC transmitting this response. Heather Dryden suggested that this was not necessary. The proposed response informs the GAC that the Committee looks forward to liaising with the GAC as to how such dialogue should be conducted.

Olga Madruga-Forti raised a concern about acting on GAC advice that is non-consensus advice. Chris provided a brief history of the genesis of the language in the Applicant Guidebook (AGB) regarding GAC advice where the GAC expresses concerns—citing to the experience with the application for the .XXX string where there were number of governments who had concerns. The provision in the AGB provides governments who have deep concerns on certain strings (even if not a GAC consensus) a mechanism to have a dialogue with the Committee about its concerns.

Jamie commented that staff looked into the issue and determined that pursuant to AGB Section 3.1.2, it does not make a difference whether the concerns are raised by the entire GAC or a few members; the Committee is expected to enter into a dialogue to understand the scope of the concerns.

The Committee engaged in discussions regarding accepting the GAC’s advice on the list of strings that it advised should not proceed beyond initial evaluation. Thomas questioned whether the proposed response was too open-ended. Chris confirmed that the Committee’s proposed response is crafted to indicate that it will not proceed beyond initial evaluation and any dispute resolution until the Committee hears back from the GAC.

The Committee also discussed the proposed response on the GAC’s advice regarding singular and plural strings. Bill Graham and the Chair suggested text edits to the ~~1A scorecard~~ [Scorecard](#) to make it clear that the NGPC is

accepting the advice to consider the issue of singular and plural strings. Mike Silber agreed that the response should be that the Committee will consider whether to allow single and plural versions of the same string.

The Committee decided that its response to the GAC’s advice regarding protections for IGO names and acronyms was more appropriate to be sent in a letter and not within the ~~1A scorecard~~Scorecard. Jamie confirmed that the letter would be sent out under separate cover to the GAC.

The Committee agreed to accept the GAC’s advice to finalize the RAA before approving any new gTLD contracts, and to advise the expert working group to take into account the GAC principles regarding WHOIS. After a review of the briefing materials, the Committee also agreed to accept the advice regarding protections for the IOC/RCRC names.

Jamie noted that the Committee was provided responses to the Annex II questions raised by the GAC in its Beijing Communiqué. The Committee agreed that it would transmit the responses to the GAC. Jamie also noted that the advice from the GAC requesting a written briefing on the ability to change strings was not included in the ~~1A scorecard~~Scorecard because it will be a separate briefing paper to the GAC.

Ray Plzak inquired whether the formulation of the responses to the GAC should reference the “Committee accepts this advice,” or the “Board accepts this advice.” The General Counsel responded that a whereas clause would be added to the proposed resolution to indicate that the Committee has the Board’s authority to act on the GAC advice. George Sadowsky raised the issue that the 1A Scorecard being adopted by the Committee should be clearly labeled and identified so that it clear to the Committee and to the community which version of the 1A Scorecard is the final version adopted. The Chair, along with Chris and Ray concurred with this point and suggested that the 1A Scorecard be given a document number or other identifying information to give as much specificity as possible. The General Counsel read the proposed resolution as revised.

The Committee then took the following action:

**a. Consideration of Non-Safeguard Advice in the GAC’s
Beijing Communiqué**

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 (“Beijing Communiqué”);

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

Whereas, the NGPC met on 8 May 2013 to consider a plan for responding to the GAC’s advice on the New gTLD Program, transmitted to the Board through its Beijing Communiqué;

Whereas, the NGPC met on 18 May 2013 to further discuss and consider its plan for responding the GAC’s advice in the Beijing Communiqué on the New gTLD Program;

Whereas, the NGPC has considered the applicant responses submitted during the 21- day applicant response period, and the NGPC has identified nine (9) items of advice in the attached scorecard where its position is consistent with the GAC’s advice in the Beijing Communiqué.

Whereas, the NGPC developed a scorecard to respond to the GAC’s advice in the Beijing Communiqué similar to the one used during the GAC and Board meetings in Brussels on 28 February and 1 March 2011, and has identified where the NGPC’s position is consistent with GAC advice, noting those as “1A” items.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.06.04.NG01), the NGPC adopts the “NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué” (4 June 2013), attached as Annex 1 to this Resolution, in response to the items of GAC advice in the Beijing Communiqué as presented in the scorecard.

Rationale for Resolution 2013.06.04.NG01

Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN Bylaws <http://www.icann.org/en/about/governance/bylaws#XI> permit the GAC to “put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.” The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013. The ICANN Bylaws require the Board to take into account the GAC’s advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

What is the proposal being considered?

The NGPC is being asked to consider accepting a discrete grouping of the GAC advice as described in the attached “NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué (4 June 2013)” (the “1A Scorecard”), which includes nine (9) items of non- safeguard advice from the Beijing Communiqué as listed in the GAC Register of Advice. These items are those for which the NGPC has a position that is consistent with the GAC’s advice.

Which stakeholders or others were consulted?

On 18 April 2013, ICANN posted the GAC advice and officially notified applicants of the advice, <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1 <http://newgtlds.icann.org/en/applicants/gac-advice-responses>. The NGPC has considered the applicant responses in formulating its response to the GAC advice as applicable.

To note, on 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>. The public comment forum on how the NGPC should address GAC advice regarding safeguards is open through 4 June 2013. These comments will serve as important inputs to the NGPC's future consideration of the other elements of GAC advice not being considered at this time in the [attached-1A scorecardScorecard](#).

What concerns or issues were raised by the community?

As part of the 21-day applicant response period, ICANN received 383 applicant response documents representing 745 unique applications. Twenty-three responses were withdrawn and eleven were submitted after the deadline. Applicants appear to generally support the spirit of the GAC advice. The responses expressed concerns that the advice was too broad in its reach and did not take into account individual applications. Some applicant responses expressed concern that some elements of the advice seem to circumvent the bottom-up, multi-stakeholder model, while others proposed that the NGPC reject specific elements of the advice. A review of the comments has been provided to the NGPC under separate cover. The complete set of applicant responses can be reviewed at: <http://newgtlds.icann.org/en/applicants/gac-advice-responses>.

What significant materials did the Board review?

As part of its deliberations, the NGPC reviewed the following materials and documents:

- GAC Beijing Communiqué:

<http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf>

- Applicant responses to GAC advice:

<http://newgtlds.icann.org/en/applicants/gac-advice-responses>

- Applicant Guidebook, Module 3:

<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>

- The NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué (4 June 2013)

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Available as Annex 1 to the Resolution

What factors did the Board find to be significant?

The Beijing Communiqué generated significant interest from applicants and resulted in many comments. The NGPC considered the applicant comments, the GAC's advice transmitted in the Beijing Communiqué, and the procedures established in the AGB.

Are there positive or negative community impacts?

The adoption of the GAC advice as provided in the attached-1A scorecard-Scorecard will assist with resolving the GAC advice in

manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

There are no foreseen fiscal impacts associated with the adoption of this resolution.

Are there any security, stability or resiliency issues relating to the DNS?

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS.

Is this either a defined policy process within ICANN’s Supporting Organizations or ICANN’s Organizational Administrative Function decision requiring public comment or not requiring public comment?

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

The Chair took a roll call vote. All members of the Committee voted in favor of Resolution 2013.06.04.NG01. The Resolution carried.

Chris noted that the Committee’s communications should be clear that the action taken is not the sum total of the 1As and that there could be additional iterations of the ~~1A scorecard~~ ~~Scorecard~~ ~~scorecard~~ to address the other advice. Heather commented that it should be communicated to the GAC that this resolution is not related to the safeguard advice.

The Chair then called the meeting to a close.

2013-06-25-01a-NGPC Minutes Annex 1.pdf

ANNEX 1 to NGPC Resolution No. 2013.06.04.NG01

NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué

4 June 2013

This document contains the NGPC's response to the GAC Beijing Communiqué issued 11 April 2013 <<http://www.icann.org/en/news/correspondence/gac-to-board-11apr13-en>> for the non-safeguard advice items in the GAC Register of Advice where the NGPC has adopted a score of "1A" to indicate that its position is consistent with the GAC advice as described in the Scorecard. Refer to the GAC Register of Advice for the full text of each item of advice in the GAC Beijing Communiqué <<https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>>.

GAC Register #	Summary of GAC Advice		NGPC Response
1. 2013-04-11-Obj-Africa (Communiqué §1.a.i.1)	The GAC Advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .africa (Application number 1-1165-42560)	1A	The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) The NGPC directs staff that pursuant to the GAC advice and Section 3.1 of the Applicant Guidebook, Application number 1-1165-42560 for .africa will not be approved. In accordance with the AGB the applicant may withdraw (pursuant to AGB § 1.5.1) or seek relief according to ICANN's accountability mechanisms (see ICANN Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.
2. 2013-04-11-Obj-GCC (Communiqué §1.a.i.2)	The GAC Advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .gcc (application number: 1-1936-2101)	1A	The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) The NGPC directs staff that pursuant to the GAC advice and Section 3.1 of the Applicant Guidebook, Application number 1-1936-2101 for .gcc will not be approved. In accordance with the AGB the applicant may withdraw (pursuant to AGB § 1.5.1) or seek relief according to ICANN's accountability mechanisms (see ICANN Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.

GAC Register #	Summary of GAC Advice		NGPC Response
3. 2103-04-11- Religious Terms (Communiqué §1.a.ii)	The GAC Advises the Board that with regard to Module 3.1 part II of the Applicant Guidebook, the GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.	1A	<p>The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that there are concerns about a particular application 'dot-example,' the ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns."</p> <p>Pursuant to Section 3.1.ii of the AGB, the NGPC stands ready to enter into dialogue with the GAC on this matter. We look forward to liaising with the GAC as to how such dialogue should be conducted.</p> <p>(Note a community objection has been filed with the International Centre for Expertise of the ICC against .ISLAM and .HALAL. Because formal objections have been filed, these applications cannot move to the contracting phase until the objections are resolved.)</p>

GAC Register #	Summary of GAC Advice		NGPC Response
4. 2013-04-11-gTLDStrings (Communiqué §1.c)	In addition to this safeguard advice, the GAC has identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban. Consequently, the GAC advises the ICANN Board to not proceed beyond Initial Evaluation with the following strings : .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .date, .spa, .yun, .thai, .zulu, .wine, .vin	1A	<p>The NGPC accepts this advice. The AGB provides that "GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process)" (AGB § 3.1). At this time, ICANN will not proceed beyond initial evaluation of these identified strings. In other words, ICANN will allow evaluation and dispute resolution processes to go forward, but will not enter into registry agreements with applicants for the identified strings for now.</p> <p>(Note: community objections have been filed with the International Centre for Expertise of the ICC against .PERSIANGULF, .AMAZON, and .PATAGONIA. The application for .ZULU was withdrawn.)</p>
5. 2013-04-11-CommunitySupport (Communiqué §1.e)	The GAC advises the Board that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information.	1A	The NGPC accepts this advice. Criterion 4 for the Community Priority Evaluation process takes into account "community support and/or opposition to the application" in determining whether to award priority to a community application in a contention set. (Note however that if a contention set is not resolved by the applicants or through a community priority evaluation then ICANN will utilize an auction as the objective method for resolving the contention.)

GAC Register #	Summary of GAC Advice		NGPC Response
6. 2013-04-11-PluralStrings (Communiqué §1.f)	The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion. Therefore the GAC advises the Board to reconsider its decision to allow singular and plural versions of the same strings.	1A	The NGPC accepts this advice and will consider whether to allow singular and plural versions of the same string.
7. 2013-04-11-RAA (Communiqué §2)	The GAC advises the ICANN Board that the 2013 Registrar Accreditation Agreement should be finalized before any new gTLD contracts are approved.	1A	The NGPC accepts this advice. The final draft of the RAA was posted for public comment on 22 April 2013. The new gTLD Registry Agreement was posted for public comment on 29 April 2013, and it requires all new gTLD registries to only use 2013 RAA registrars. The public comment reply period for the 2013 RAA closes on 4 June 2013. The NGPC intends to consider the 2013 RAA shortly thereafter.
8. 2013-04-11-WHOIS (Communiqué §3)	The GAC urges the ICANN Board to ensure that the GAC Principles Regarding gTLD WHOIS Services, approved in 2007, are duly taken into account by the recently established Directory Services Expert Working Group.	1A	The NGPC accepts this advice. The NGPC notes that staff has confirmed that the GAC Principles have been shared with the Expert Working Group.

GAC Register #	Summary of GAC Advice		NGPC Response
9. 2013-04-11-IOCRC (Communiqué §4)	The GAC advises the ICANN Board to amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.	1A	<p>The NGPC accepts the GAC advice. The proposed final version of the Registry Agreement posted for public comment on 29 April 2013 includes protection for an indefinite duration for IOC/RCRC names. Specification 5 of this version of the Registry Agreement includes a list of names (provided by the IOC and RCRC Movement) that "shall be withheld from registration or allocated to Registry Operator at the second level within the TLD."</p> <p>This protection was added pursuant to a NGPC resolution to maintain these protections "until such time as a policy is adopted that may require further action" (204.11.26.NG03). The resolution recognized the GNSO's initiation of an expedited PDP. Until such time as the GNSO approves recommendations in the PDP and the Board adopts them, the NGPC's resolutions protecting IOC/RCRC names will remain in place. Should the GNSO submit any recommendations on this topic, the NGPC will confer with the GAC prior to taking action on any such recommendations.</p>