Report of Public Comments

Title:	New gTLD Board Committee Consideration of GAC Safeguard Advice
Publication Date:	23 April 2013
Prepared By:	

Comment & Reply Period:		**Important Information Links**	
Open Date:	23 April 2013 & 15 May 2013	Announcement	
Close Date:	14 May 2013 & 4 June 2013	Public Comment Box	
Time (UTC):	23:59	View Comments Submitted	

Staff Contact:		**Email:**	

Section I: General Overview and Next Steps

This public comment period was opened to solicit input on how the New gTLD Board Committee should address GAC advice regarding safeguards applicable to broad categories of New gTLD strings.

On 11 April 2013, the Governmental Advisory Committee issued its Beijing Communiqué in which it provided advice on New gTLDs. The Board New gTLD Committee, acting on behalf of the full Board, will now consider how to address the GAC Advice. To help inform this process, the Committee has directed staff to solicit comment on how it should address one element of the advice: safeguards applicable to broad categories of New gTLD strings. Accordingly, ICANN seeks public input on how the Board New gTLD Committee should address section IV.1.b and Annex I of the GAC Beijing Communiqué.

The emphasis of Annex 1 is on broad categories of safeguard advice, which have been subdivided into the following areas: a) Safeguards Applicable to all New gTLDs, b) Category 1 – Consumer Protection, Sensitive Strings, and Regulated Markets, and c) Category 2 – Restricted Registration Policies.

Comments represent a broad spectrum of opinions including expressions of support, opposition, and concern over impact to the timing of the program. Comments were made, as requested, against the safeguards defined by Annex 1, but also across other elements of the Communiqué not subject to this comment period. These include a) Strings for Further GAC Consideration (IV.1.c), b) Community Support for Applications (IV.1.e), c) Singular and Plural Versions of the Same String as a TLD (IV.1.f), d) Protections for Intergovernmental Operations (IV.1.g), e) Registrar Accreditation Agreement (IV.2), f) International Olympic Committee and Red Cross/Red Crescent (IV.4), and g) Public Interest Commitments Specifications (IV.5).

Comments received in this forum will be provided to the Board New gTLD Committee for consideration.

Section II: Contributors

Report of Public Comments

ORGANIZATIONS AND GROUPS:

Name	Submitted by
Accent Media Limited (Accent Media)	Steve Machin
Accor	Nathalie Dreyfus, Dreyfus & associes
American Insurance Association (AIA)	Angela Gleason
American Insurance Association (AIA)	Angela Gleason
Artemis Internet, Inc. (Artemis Internet)	Alex Stamos
Association for Competitive Technology (ACT)	Jonathan Zuck
Association for Competitive Technology (ACT)	Jonathan Zuck
Association of American Publishers (AAP)	Allan Robert Adler
Association of European Trademark Owners (MARQUES)	Nick Wood
Association of National Advertisers (ANA)	Dan Jaffe
Associazione Italiana Editori (AIE)	Alfieri Lorenzon
At-Large Advisory Committee (ALAC)	Olivier MJ Crepin-Leblond
Australian Hotels Association (AHA)	Des Crowe
Big Room & Dot Eco	Trevor Bowden, Jacob Malthouse, Helio Mattar, Richard McLellan
Borsenverein des Deutschen Buchandels e.V. (Retail Booksellers Committee--Germany)	Kyrna Dreher
Brand Registry Group - in formation (BRG)	Phillip Sheppard
BREIN	Tim Kuik
BRS Media Inc. (BRS Media)	George T. Bundy
Bulgarian Association of Music Producers (BAMP-IFPI Bulgaria)	Ina Kileva
Business Constituency (BC)	Steve DelBianco
Coalition for Online Accountability (COA)	Steven J. Metalitz
Coalition for Online Accountability (COA)	Steven J Metalitz
Comcast/NBCUniversal	Meredith Baker
Comite interprofessionnel du vin de Champagne (CIVC)	Jean-Luc Barbier
Copyright Alliance	Terry Hart
CTIA-The Wireless Association (CTIA)	Michael F. Altschul

Report of Public Comments

Directors Guild of America, International Alliance of Theatrical Stage Employees and Screen Actors Guild-American Federation of Television and Radio Artists (DGA, IATSE, SAG-AFTRA)	Kathy Garmezy, Scott Harbinson, Jeffrey Bennett, Danielle S. Van Lier
Donuts Inc. (Donuts)	Jonathon Nevett
Dot Registry LLC (Dot Registry)	Shaul Jolles
Dot Registry LLC (Dot Registry)	Shaul Jolles
DotBERLIN	Dirk Krischenowski
dotBERLIN	Dirk Krischenowski
DotGreen	Annalisa Roger
dotHIV gemeinnuetziger e.V. (dotHIV)	Carolin Silbernagl
DotMusic	Constantine Roussos
DOTZON	Katrin Ohlmer
Entertainment Software Association (ESA)	Christian Genetski
European Federation for Medical Informatics (EFMI)	Patrick Weber
European Federation of Origin Wines (EFOW)	Ricardo Ricci Curbastro
Expedia Inc. (Expedia)	Jean-Phillippe Monod de Froideville
FairSearch.org (FairSearch)	Ben Hammer
Family Online Safety Institute (FOSI)	Stephen Balkam
Federation Internationale de Basketball (FIBA)	Patrick Baumann
Federazione Industria musicale italiana (FIMI)	Enzo Mazza
Federdoc	Ricardo Ricci Curbastro
Forum of Brazilian Hotel Operators (FOHB)	Raphael Paulino Gimenes
French Hospitality in Europe (FHE)	Julie Besse
French Publishers Association, Syndicat National de l'Edition (SNE)	Christine de Mazieres
General Electric Company	Kathryn Barrett Park
Google Inc. (Google)	Aparna Sridhar
GSMA	Anne Bouverot
Heath on the Net Foundation (HON.ch)	Celia Boyer
Home Box Office, Inc. and HBO Registry Services, Inc. (HBO)	Judy McCool
IFPI Greece	Irene Tsiliri
IFPI Sweden	Magnus Martensson
IFPI-Austrian Music Industry Association (IFPI Austria)	Franz Medwenitsch
Independent Film & Television Alliance (IFTA)	Jean M. Prewitt

Report of Public Comments

Indigo Books & Music Inc. (Indigo)	Kathleen Flynn
Insurance Council of Australia	Robert Whelan
Intellectual Property Constituency (IPC)	Claudio DiGangi
Interactive Software Federation of Europe (ISFE)	Simon Little
International AntiCounterfeiting Coalition (IACC)	J. Andrew Coombs
International Federation of Film Producers Association (FIAPF)	Benoit Ginisty
International Foundation for Online Responsibility (IFFOR)	Kieren McCarthy
International Medical Informatics Association (IMIA)	Dr. Peter J. Murray
International Organization for Standardization (ISO)	Rob Steele
International Publishers Association (IPA)	Jose Borghino
International Rugby Board (IRB)	Robert Brophy
International Society for Telemedicine and eHealth (ISfTeH)	S. Yunkap Kwankam,
International Trademark Association Internet Committee (INTA Internet Committee)	Claudio DiGangi
International Video Federation (IVF)	Michael Wilen
InternetNZ	Jordan Carter
Istituto Bruno Leoni (IBL)	Massimiliano Trovato
Japan Association of New Economy (JANE)	Naohiro Inaba
Kobo Inc. (Kobo)	Henry Ohab
Medicus Mundi International Network (MMIN)	Thomas Schwarz
Michelin	Nathalie Dreyfus, Dreyfus & associes
Minds + Machines	Antony Van Couvering
Motion Picture Association of America (MPAA)	Linda Kinney
Music Community Coalition	Victoria Sheckler, Recording Industry Association of America
Musiikkitouottajat--IFPI Finland ry (IFPI Finland)	Lauri Reichardt
National Appellation of Origin Wines and Brandy Producers Organization (CNAOC)	Bernard Farges
National Association of Real Estate Investment Trusts (NAREIT)	Victor Dristas
National Cable & Telecommunications Association (NCTA)	Jill Luckett
Neustar, Inc. (Neustar)	J. Beckwith Burr

Report of Public Comments

New gTLD Applicant Group (NTAG)	Krista Papac
News Corporation (News Corp.)	Janet O'Callaghan
NIC.br	Rubens Kuhl
Nice Computing SA (Nice Computing)	Patrick Weber
Non-Commercial Stakeholders Group (NCSG)	Robin Gross
Norwegian Publishers Association (NPA)	Matthias Lilleengen
Property Casualty Insurers Association of America (PCI)	David M. Golden
Rakuten, Inc. (Rakuten)	Maiko Morikawa
Registrar Stakeholder Group (RrSG)	James Bladel, GoDaddy
Registry Stakeholder Group (RySG)	Paul Diaz
RettighedsAlliancen (Danish Coalition of Right Holders)	Maria Fredenslund
Software and Information Industry Association (SIIA)	Keith Kupferschmid
Spanish Conference of Wine Governing Bodies (CECRV)	Jesus Mora Cayetano
SuperMonopolies.com	Dave Tyrer
Technology Policy Institute	Thomas Lenard
The Foundation for Network Initiatives (Smart Internet)	Irina Danelia
The Publishers Association Limited (The PA)	Richard Mollet
The Walt Disney Company (Disney)	Troy Dow
Time Inc. (Time)	Paul A. Lee
TLDDOT GmbH (TLDDOT)	Dirk Krischenowski
TLDDOT GmbH (TLDDOT)	Dirk Krischenowski
Tucows Inc. (Tucows)	Graeme Bunton
Turner Broadcasting System, Inc. (Turner)	Todd D. Williams
TV Sundram Iyengar & Sons Ltd. (TVS)	R. Jagannathan
Uniregistry Corp. (Uniregistry)	Bret Fausett
United States Telecom Association (USTelecom)	Kevin G. Rupy
United TLD HOLDCO LTD. (United TLD)	Statton Hammock
Valideus Ltd. (Valideus)	Brian Beckham
Verisign Inc. (Verisign)	Patrick Kane
Verizon Communications Inc. (Verizon)	Sarah B. Deutsch
VoxPopuli Registry	John Berard
Warner Bros. Entertainment (Warner Bros.)	Dale Nelson
World Medical Association, Inc. (WMA)	Otmar Kloiber

INDIVIDUALS:

Report of Public Comments

Name	Affiliation (if provided)
Andrew A. Adams (A. Adams)	Professor, Graduate School of Business Administration, Meiji University, Tokyo, Japan
Anne Aikman-Scalese (A. Aikman-Scalese)	Of Counsel, Lewis and Roca LLP
Dave Wrixon (D. Wrixon)	Carillioin
Frank Schilling (F. Schilling)	
George Malamoud (G. Malamoud)	
Jacqueline D. Lipton (J. Lipton)	Baker Botts Professor, University of Houston Law Center
Jay P. Kesan (J. Kesan) and Carol M. Hayes (C. Hayes)	University of Illinois at Urbana-Champaign
Mary Iqbal (M. Iqbal)	
Wendy Seltzer (W. Seltzer)	Member, NCSG

Section III: Summary of Comments
General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

I. SAFEGUARDS APPLICABLE TO ALL NEW gTLDS

A. General Comments

1. Support

The Music Community Coalition supports the GAC Advice and the safeguards, which are particularly necessary for TLDs that target copyright dependent industries such as music. The key safeguards should be implemented, including the six safeguards on pages 7-8 of the GAC Advice, which will improve Whois accuracy and provide a means for enforcement against abusive registrations. To effectuate adoption of the safeguards, applicants should be given the opportunity to modify their applications to incorporate and/or refine the safeguards in their applications. This could be done via the Public Interest Specification process. _Music Community Coalition (14 May 2013); MPAA (14 May 2013)_

ICANN should adopt the recommendations of the GAC with respect to safeguards. The GAC safeguards are absolutely necessary to achieve the goals of the New gTLD Program while not harming

the interests of businesses and users. ICANN should heed the GAC advice, which provides a perspective not otherwise provided for in the ICANN process. Even if ICANN decides not to accept the safeguards for all new gTLD applications, ICANN should require them for all those strings listed in Category 1 of the GAC Advice, which is a good working list of the new gTLDs where consumers face higher risk of harm if safeguards are not in place. Strings relating to media are particularly susceptible to intellectual property violations, confusion, and abuse (e.g., .movie, .film, .book, .news, .game). *Warner Bros. (14 May 2013); HBO (14 May 2013); COA (14 May 2013 & 4 June 2013); BREIN (21 May 2013); FIMI (22 May 2013); IFPI Greece (22 May 2013); IFPI Sweden (24 May 2013); IFPI Finland (28 May 2013); IPA (29 May 2013); IFPI-Austria (29 May 2013); The PA (29 May 2013); SNE (3 June 2013); AIE (3 June 2013); SIIA (3 June 2013); Copyright Alliance (3 June 2013); DGA,IATSE, SAG-AFTRA (4 June 2013); IVF (4 June 2013); Danish Coalition of Right Holders (4 June 2013); BAMP-IFPI Bulgaria (4 June 2013); ISFE (4 June 2013); FIAPF (4 June 2013); Retail Booksellers Committee--Germany (4 June 2013); IFTA (4 June 2013); IACC (4 June 2013); ESA (4 June 2013); Disney (4 June 2013); IPC (4 June 2013); INTA Internet Committee (4 June 2013)*

Scores of comments ICANN has received to date from around the world reflect broad support for the GAC Advice. This support comes from diverse sectors as well as many new gTLD applicants. *COA (4 June 2013)*

ICANN should heed the GAC Advice, which relates to social policies that affect the entire community and attempts to balance the rights and interests of all stakeholders including those who do not have the resources to keep abreast of ICANN developments and participate in the process. *Rakuten (14 May 2013); JANE (14 May 2013); Kobo (14 May 2013); Indigo (14 May 2013); Comcast/NBCUniversal (14 May 2013); DotMusic (15 May 2013)*

The Board should adopt the GAC safeguards. They will reinforce existing processes for raising and addressing concerns in the new gTLD space, and they are narrowly tailored to support the program and fight potential harms such as cybersquatting and other infringement. There is no reason for ICANN not to adopt the safeguards, which, notwithstanding contrary claims, are not last minute; their timing should come as no surprise. They are a thoughtful response to the GAC's legitimate scalability concern about existing mechanisms given the larger than anticipated number of new gTLD applications. *Turner (14 May 2013); COA (14 May 2013); MPAA (14 May 2013); NCTA (14 May 2013); AAP (15 May 2013); BREIN (21 May 2013); FIMI (22 May 2013); IFPI Greece (22 May 2013); IFPI Sweden (24 May 2013); IFPI Finland (28 May 2013); IPA (29 May 2013); IFPI-Austria (29 May 2013); The PA (29 May 2013); NPA (31 May 2013); SNE (3 June 2013); AIE (3 June 2013); SIIA (3 June 2013); Copyright Alliance (3 June 2013); Time (3 June 3 2013); DGA,IATSE, SAG-AFTRA (4 June 2013); IVF (4 June 2013); ISFE (4 June 2013); FIAPF (4 June 2013); News Corp. (4 June 2013); Disney (4 June 2013)*

ICANN should implement the Annex 1 safeguards, require gTLD operators to agree contractually to implement the safeguards, and implement meaningful contractual oversight. If the ICANN Board were to ignore the safeguards, it would reduce safety in the online environment for consumers and businesses and significantly erode governmental support for ICANN's multi-stakeholder model. *AIA*

Report of Public Comments

(14 May 2013); USTelecom (14 May 2013); Insurance Council of Australia (14 May 2013)

ICANN should implement the GAC safeguards. The best prescription for a free, open, and innovative Internet is a well-considered self-regulatory approach by the ICANN community. The community should follow the GAC Advice as to safeguards and avoid forcing individual governments to enact regulatory schemes to address their concerns. Following the GAC Advice as to safeguards will also ensure consumer trust and confidence in the Internet as the new gTLDs launch. *A. Aikman-Scalese (4 June 2013)*

Verizon supports the six identified safeguards applicable to all gTLDs. *Verizon (4 June 2013)*

The BC generally supports the six safeguards advised for all new gTLDs. Many of them are already required of registrars under the final 2013 RAA. *BC (4 June 2013)*

The ALAC supports the intent of what is requested in the GAC safeguards. ALAC supports all of the safeguards in principle. It is regrettable that the GAC safeguards were not introduced by the GAC during the design of the New gTLD Program or much earlier in the implementation process. These additional requirements may jeopardize the success of new enterprises and create an uneven playing field between them and legacy gTLDs. Therefore, ALAC urges ICANN to do everything possible to lessen the impact of the liabilities on new registries including through the use of contractual tools. For many TLD classes cited, some of the safeguards are excessive. The ICANN Board should address the GAC's concerns with urgency to restore public confidence in the program while striving to re-establish certainty parameters for the new gTLD applicants. *ALAC (5 June 2013)*

The GAC safeguards are an effort to make the Internet safe and secure for its customers and the general public. It is time for registry operators to self-regulate more responsibly and to take positive steps to combat abusive behaviors. As intermediaries, registry operators enjoy broad safe harbors and immunities for third-party conduct; the time has come for them to do more to retain this status. *MARQUES (14 May 2013)*

IFFOR lends broad support to the GAC safeguard advice. IFFOR notes that with respect to GAC references to "applicable law," if the registry operator requires registrants under their TLD to agree to a specific set of policies and if the registry incorporates the ability to adopt or require registrants to follow industry best practices, then the tension between a fast-moving Internet world and slower moving national legislatures can be relieved. Essentially, registry best practices exceed jurisdictional limitations in many cases. *IFFOR (14 May 2013)*

United TLD agrees with the GAC that any safeguards must be implemented in a manner that is fully respectful of human rights, fundamental freedoms, and applicable laws, and is not discriminatory. *United TLD (7 May 2013)*

ICANN should reject the views of those new gTLD applicants who oppose the GAC Advice. The New

gTLD Program is not being carried out for the benefit of new gTLD applicants and their investors, and the possibility of imposing additional costs on these parties cannot be the determinative factor in ICANN's decision. The GAC is uniquely well situated to articulate the public interest concerns that must take precedence in this process and to recommend safeguards to protect them. A sound multistakeholder model would incorporate these recommendations within the process to the extent feasible. Insufficient attention to important public policy concerns is likely to harm the process and reduce the chances for long-term success. ICANN's response to the GAC Advice will largely determine whether the new gTLD launch will deliver benefits to the Internet community, or whether it will primarily enrich registries, registrars, resellers, and unscrupulous registrants. *COA (4 June 2013)*

Some who opposed the GAC Advice imply that the GAC has overstepped its role*.* This is clearly an attempt to censor the GAC's ability to enforce necessary regulations geared towards consumer safety and long-term integrity. The opposition of some applicants to the GAC Advice was unreasonable. We would agree with some who commented that the GAC Advice was not specific or stringent enough. *Dot Registry (*4 June 2013)

Implementation by Registry Operators
United TLD agrees with the GAC Advice related to the six safeguards so long as registry operators are allowed to develop their own specific methodologies and practices for implementation. The GAC should not dictate the specific processes, procedures, or requirements for implementing these safeguards. Registry operators should be able to develop their own methodology within ICANN policy guidelines and best practices. This approach will promote innovation and competition. *United TLD (7 May 2013)*

Registries should have some flexibility in how they implement the safeguards; however it is essential that ICANN maintain the ability to enforce these safeguards through its contracts with new gTLD registry operators. *Warner Bros. (14 May 2013); COA (4 June 2013)*

The six broadest safeguards are appropriate and can be instituted at the registry level without a damaging impact on new gTLD businesses, especially if the industry as a whole adopts them. *IFFOR (14 May 2013); Expedia (14 May 2013); Insurance Council of Australia (14 May 2013)*

2. Opposition

Undermines Multistakeholder Process for New gTLD Program
The last-minute timing and nature of the GAC advice shows that the GAC has been captured by special interests with no coherent principles on which to object. The current new gTLD application process contains significant mechanisms for objections. Groups with specific objections should use those pre-defined mechanisms to file objections to particular strings. When GAC Advice represents nothing more than an attempt to bypass ICANN's regular governance processes on behalf of special interests, then the Board's consideration should lead to a clear and unambiguous rejection of both the grounds and content of this Advice. *A. Adams (24 April 2013); J. Lipton (7 May 2013); Minds +*

Report of Public Comments

Machines (13 May 2013);

The GAC Advice is a threat not only to the implementation of the New gTLD Program but also to ICANN's status as a multistakeholder policy development institution. Unless this "advice" is rebuffed by the Board, ICANN undermines its Supporting Organizations, its PDP, and the Applicant Guidebook under which hundreds of companies filed for new domains. *NCSG (14 May 2013); NTAG (14 May 2013)*

Use of the GAC Objection procedure to create new, one-size-fits-all, across-the-board mandatory requirements at this late date in is fundamental tension with the ICANN multistakeholder model in general, and the bottom-up policy development principle in particular. *Neustar (14 May 2013); Donuts (15 May 2013); InternetNZ (15 May 2013)*

The safeguards are not in themselves bad ideas, but the concept that new policies can be formulated by the GAC without the participation of the GNSO would be a sea change in how ICANN operates and would threaten the multistakeholder model. The GAC Communiqué seems to regard ICANN's policy processes as having no weight or consequence. *Minds + Machines (13 May 2013); Donuts (15 May 2013)*

The New gTLD Board Committee should refute the GAC's broad categories of strings as nothing more than a weak shot at the principles of fairness, transparency, and non-discrimination. If the GAC's actual intent is to address these risks, ICANN and the GAC should do so within the multistakeholder model of ICANN governance. The GAC has provided no factual historical data to suggest that some words, terms, or "Sensitive Strings" must be more protected or safeguarded than others. The GAC appears to be creating "Bias Profiling" under a concept of dividing strings into categories for which there is no solid logical rationalization. One would expect safeguards to be uniformly applied across all TLDs, including all new gTLDs, legacy gTLDs and even the governments' own ccTLDs. Imposing these burdens exclusively on a haphazard list of new gTLDs would in no way specifically address consumer harm, nor would it be consistent with principles of openness and non-discrimination. *BRS Media (14 May 2013); Valideus (14 May 2013)*

The GAC recommendations in the Annex 1 safeguards and categories should be rejected by ICANN. They are too late in the process. The attempt at categorization of strings to which the GAC would apply safeguards is unworkable since many strings will have more than one semantic meaning; one cannot assume that all domains within a string refer to the category to which the GAC has taken issue. In addition, the GAC does not deal with conflict of laws. Any one standard for safeguards does not exist. Bringing more clarity to the issue of conflict of laws is the most important contribution the GAC could make to Internet governance. The transparent, multistakeholder process, which has brought the gTLD program this far, should be allowed to continue unimpeded. *Tucows (14 May 2013)*

String Categorization
ICANN is cautioned not to create safeguards simply because a TLD may or may not fall into a

particular broad category. Strings can have dual or different meanings to different users in different markets so they may not easily fall into categories. Categorizing strings for purposes of safeguards may be convenient but it may also unfairly prejudice applicants that have business models based on other intended meanings of strings. *United TLD (7 May 2013)*

The concept of gTLD "categories" and category specific requirements was extensively discussed and rejected during the deliberations that led to the Applicant Guidebook under the terms of which applicants developed their business plans and submitted their TLD applications. *RrSG (15 May 2013)*

GAC Advice is Vague and Unworkable
While stating laudable aspirational goals, the GAC Advice relies on vague, imprecise, hard-to-define terms for imposing restrictions on new gTLDs that are impossible to reduce to concrete and workable rules in practice (e.g., "openness," "generic," "public interest goal"). The concerns raised in the GAC Advice seem like a solution in search of a problem. The new gTLD expansion should be given the opportunity to develop organically so that new registries can innovate, subject to the constraints of national laws and the objection procedures set out in existing ICANN guidelines. *J. Lipton (7 May 2013); NCSG (14 May 2013); IBL (14 May 2013)*

While the GAC Communiqué addresses several issues which should rightly concern everyone in the community, it does so in an unsystematic and confusing way, without enunciation of the principles supporting its pronouncements, without reference to ongoing efforts in the GNSO and in contradiction to the GAC's previously stated positions. The ICANN Board should communicate to the GAC that decisions without adequate explanations or rationales are not acceptable (e.g., the GAC needs to explain the discrepancy between its written position that applicants must be fully aware of all the rules before applications could be accepted, and the Beijing Communiqué in which new policies are proposed). New policies must be initiated by the GNSO. *Minds + Machines (13 May 2013); RySG (22 May 20130*

Respect for Applicable Laws--Unnecessary as a "Safeguard"
It is not clear that this provision needs to be or can be meaningfully implemented by ICANN as a particular new safeguard within the system. It goes without saying that registries and registrars are subject to national laws as well as to provisions set out in the new gTLD Registry Agreement requiring compliance with national laws. As with existing domain name spaces, domestic courts and legislatures will govern acceptable online conduct in new gTLD spaces in terms of compliance with national law, and there is no need for any new preemptive regulation by ICANN. *J. Lipton (7 May 2013); Uniregistry (14 May 2013)*

Creates Uncertainty
With this approach, the GAC appears to be attempting to create a general veto power or at least to exercise an unjustifiable level of control and pre-emptive regulation over any new gTLD application without having to go through the established objection process. This will chill innovation and lead to wasted resources. *J. Lipton (7 May 2013); Valideus (14 May 2013); Accent Media (14 May 2013)*

Report of Public Comments

The GAC safeguards proposal introduces uncertainty into a business process; it comes very late and is so broad that it risks slaying the better at the altar of the best. It may undermine existing models of trust. An increasingly uncertain TLD process adds cost and is both inefficient and destabilizing. *BRG (14 May 2013); IBL (14 May 2013)*

Outside Scope of ICANN Authority
The GAC Advice is in opposition to ICANN's Bylaws and calls for actions by ICANN, which are outside the scope of ICANN's responsibilities. ICANN should not attempt to create regulations or standards that are better enacted by national or local governments. *M. Iqbal (14 May 2013); IBL (14 May 2013)*

ICANN should minimize its regulatory role and hew closely to the technical functions involved in administering the DNS--this has been and should continue to be ICANN's essential mission. *Technology Policy Institute (14 May 2013)*

GAC Role
The role of the GAC at this stage, as outlined in the Applicant Guidebook, is to address *individual strings,* not provide advice on the program as a whole. The GAC, along with all members of the community, had many chances to provide holistic suggestions as the New gTLD Program was being developed. The GAC Advice should have been limited to specific concerns related to specific strings and should have provided the Board with recommendations as to how to handle those strings. Instead, the GAC provided overarching advice that it seeks to apply to all new gTLD applicants. At this stage, the GAC's general advice threatens to undermine and circumvent ICANN's multistakeholder Policy Development Process. *Google (14 May 2013)*; *Neustar (14 May 2013); RySG (22 May 2013)*

At this stage in the new gTLD process, the GAC's role, as outlined by the Applicant Guidebook, is to provide targeted advice toward specific applications with concrete recommendations as to how the Board should consider such advice. *NTAG (14 May 2013); Donuts (15 May 2013)*

It would be inappropriate at this stage for the GAC to use the GAC Advice process to suggest that ICANN make material changes in registry operations and contractual obligations. RySG is extremely concerned about the GAC's use of the Advice process to call for significant, across-the-board changes applicable to all applicants. *RySG (22 May 2013)*

Some elements of the GAC Advice seem to go beyond the GAC's mandate within the multistakeholder model of ICANN and thus must be dealt with in the proper Policy Development Processes of this model. *dotBERLIN (14 May 2013); DOTZON (14 May 2013)*

NTAG notes the complete lack of transparency regarding the GAC deliberations and its resulting advice. This is especially concerning because transparency is paramount in ICANN's multistakeholder model. Because the GAC Advice seeks to add layers onto existing policies in the Applicant Guidebook, it is all the more important to allow applicants the ability to understand the drivers behind the advice.

NTAG (14 May 2013)

The timing of the GAC Advice is extremely unfortunate. The GAC was closely involved in designing the current framework and had ample opportunity to voice its opinions. At this point in time, any change of direction would be detrimental to the interests of all parties. *IBL (14 May 2013)*

Safeguards and other advice that are intended to apply to all TLDs should be enacted through the Policy Development Process. A consensus policy adopting such safeguards would allow them to apply not only to this new gTLD round but also to incumbent registries as well as future applicants. *Google (14 May 2013); dotHIV (14 May 2013); InternetNZ (15 May 2013)*

Some members of the IPC believe that the proposed safeguards cannot be considered GAC Advice as contemplated in the Applicant Guidebook because they are not directed at particular applications. They believe that consideration of the Safeguards should occur through a Bylaws-prescribed policy development process. *IPC (4 June 2013)*

ICANN should not adopt the GAC's recommendations for safeguarding the new gTLDs. The GAC would impose significant duties on registry operators. The GAC is proposing a regime that circumvents established public policy positions that service providers should not be responsible for the activities of third-party users. While we do not support the GAC's proposal, which would place virtually all responsibility for policing cyber risks on registry operators, this proposal does indicate that further collaboration between ICANN and national law enforcement agencies may be both desired and appreciated. *J. Kesan and C. Hayes (14 May 2013)*

While Neustar appreciates and shares the concerns underlying much of the GAC Advice, the safeguards were not required to meet the criteria set forth in the Applicant Guidebook. Many of the issues are appropriately addressed in the draft 2013 RAA and/or are the subject of ongoing policy development work. In addition, both the draft 2013 RAA and the draft Registry Agreement for new gTLDs contain various processes for considering changes of this sort. *Neustar (14 May 2013)*

Intermediary liability
The GAC has inappropriately proposed speech regulations through the intermediaries of registries. *W. Seltzer (15 May 2013)*

Registry-Registrar Relationship
Significant elements of the GAC Advice would fundamentally change the registry-registrar relationship by making registries directly responsible for enforcing registrar compliance with ICANN policy. This is of heightened concern with respect to "truly generic" TLDs. *Neustar (14 May 2013)*

The operational impact of implementing the suggested changes would be far reaching and would fundamentally change the relationship between registries, registrars, and registrants. Many of the GAC's concerns are addressed in the 2013 Registrar Accreditation Agreement, which is based in no

little part on input from the GAC. Any far-reaching changes to these relationships must be considered through a bottom-up process with community input. *RrSG (15 May 2013); RySG (22 May 2013)*

3. Process and Timing

The *GAC Principles on New gTLDs* were not sufficiently considered by ICANN prior to its adoption of the GNSO policy recommendations on new gTLDs. Since that time the GAC has regularly engaged with the Board to address its original public policy concerns, as identified in the *GAC Principles,* for a safe and orderly introduction of new gTLDs. The need for the GAC to propose the safeguards it has is symptomatic of ICANN's inadequate consideration of the GAC's previous advice, and the recommendations of several of its GNSO constituencies. *INTA Internet Committee (4 June 2013)*

The Board should not allow a delay in the new gTLD program to result from the consultation between the Board and the GAC as required by the ICANN bylaws. *Minds + Machines (13 May 2013); Accent Media (14 May 2013); Donuts (15 May 2013)*

The GAC Advice should not hold up the New gTLD Program and its delegation of applications, but could provide guidance for ICANN's post-delegation compliance undertakings and ongoing policy work. *BRG (14 May 2013); MARQUES (14 May 2013); IFFOR (14 May 2013); Valideus (14 May 2013)*

The GAC principles overarching the safeguards can be accomplished within the framework of the existing Applicant Guidebook, the current RAA, and the Registry Agreement. It does not appear that any changes to the New gTLD Program would need to be implemented. ICANN should take GAC Advice where immediately possible and not let the details of the Annex 1 safeguards delay the new gTLD program. Further study and consultation should happen only as necessary, but this should not slow down or delay the progress of launching some new gTLDs free from further discussions. *DotGreen (14 May 2013)*

MARQUES supports the GAC safeguards but they should be implemented only after receiving requisite ICANN community support and should not hold up the New gTLD Program. *MARQUES (14 May 2013); dotHIV (14 May 2013)*

To minimize any unnecessary delay, ICANN should immediately begin a dialogue with the GAC to clarify the best way to implement the GAC Advice, and then work with applicants and the community to integrate key Advice elements into the contractual framework for new gTLD registries. *COA (14 May 2013); BREIN (21 May 2013); FIMI (22 May 2013); IFPI Greece (22 May 2013); IFPI Finland (28 May 2013); IFPI-Austria (29 May 2013); SNE (3 June 2013); Time (3 June 2013); IVF (4 June 2013); Disney (4 June 2103)*

Applicant commitments to implement the safeguards may be best achieved through the PIC Specification process. This would allow applicants to tailor the means of implementation to best accommodate their particular circumstances or business models, and might result in less delay of

ultimate delegation since only applicants that are ultimately successful in the evaluation, objection, and pre-delegation testing phases would have to devote the time and resources to craft PIC Specifications. There would need to be a process for ICANN review of and public comment on the proposed PIC Specifications drafted by applicants for insertion into the Registry Agreement in order to assure that these self-customized PICs did in fact fulfill the requirements outlined by the GAC. *COA (14 May 2013)*

The global public interest in a sound new gTLD launch that protects consumer interests and increases competition and choice must prevail over a rigid timetable for launch at the earliest possible date. While the impatience of many gTLD applicants may be understandable, the interests of the public at large, as articulated by government representatives through the GAC, must weigh more heavily in the balance. *Time (3 June 2013); ACT (4 June 2013)*

ICANN needs to thoroughly consider the issues raised in the public comment period for the GAC Advice. ICANN must fix the problems the GAC has identified *before* moving forward with the gTLD rollout. *ANA (14 May 2013); USTelecom (14 May 2013); Comcast/NBCUniversal (14 May 2013)*

Combined Approach
The Board should request an Issue Report on the topics covered by the GAC's proposed safeguards applicable to all TLDs in order to initiate a Policy Development Process relating to those safeguards. Since a consensus policy on these safeguards would be binding on all registry operators, the Board should not delay the approval and delegation of new gTLDs while the PDP is pending. *Google (14 May 2013); NTAG (14 May 2013); Donuts (15 May 2013)*

For cases where specific concerns have been raised (e.g. category concerns, string similarity), the Board should consider using final Board approval, in conjunction with Public Interest Commitments, as a way to address concerns associated with a particular string. This would allow the vast majority of strings to be delegated while applicants and the community can move toward the resolution of any outstanding issues. In all cases the Board should ensure that safeguards are enforceable and targeted at those gTLDs where it is likely that consumers will expect an enhanced degree of trust. *Google (14 May 2013)*

Case-by-Case Approach
With due consideration for the recent conclusion of the 18-month RAA negotiations, and of issues raised in RySG's comments, and recognizing that in actuality much of the GAC Advice is accommodated in the RAA, RySG recommends handling, on a case-by-case basis, issues regarding specific strings that raise legal and sensitive issues. It is important to keep in mind that some of the Advice if implemented as suggested by the GAC may significantly increase operating costs and require applicants to reassess financial forecasts and overall business plans, i.e. requiring material changes in applications after they have already been submitted. *RySG (22 May 2013)*

Phased Process

Report of Public Comments

The GAC Advice implicates various registry applications differently. Work is already underway on addressing some of the issues raised in the Safeguards. Therefore, the following process is recommended (see INTA Internet Committee comments text for suggested application of this process to specific proposed GAC safeguards):

(1) ICANN should identify those elements in the safeguards that would significantly diminish on-going effectiveness if the registry were to launch without the safeguard in place, and undertake to finalize those policies and implement them before launch (or before finalization of the RA or RAA, as applicable). If possible, where such a safeguard impacts an identifiable portion of registry applications, ICANN should endeavor to delay only the specific applications implicated by particular safeguards.

(2) ICANN should create placeholders in the Registry Agreement, as appropriate, explicitly to incorporate the remaining safeguards, so that when they are developed, their implementation will not require execution of replacement registry agreements.

(3) ICANN should allow each applicant to revise, where needed, their application(s) to self-identify (through PICs or otherwise) proper implementation of the safeguards that will later become binding through contract. Since some applicants have already anticipated the need for safeguards and built them into their applications, not all applicants would need to revise their pending applications. For applications remaining to be evaluated, evaluators should consider the extent to which applicants have proposed implementation of the safeguards, and conceivably prompt them to consider amendments to implement the safeguards.

This proposed process is designed to minimize disruption to the preparations for contracting and delegation of new gTLDs, particularly those less likely to implicate the issues raised by the GAC. It would be preferable to have these safeguards apply to all registries, including those where the benefit appears to be negligible, rather than not to have them apply to any registries. *INTA Internet Committee (4 June 2013)*

Standardized Implementation
ICANN staff should identify which GAC safeguards are part of the RAA required of all registrars. Those that are enforced as part of the RAA should not be imposed on registries except for circumstances where a registrar fails to comply with the RAA. The PIC mechanism in the Registry Agreement can be used by applicants to add their commitments to implement the GAC safeguards, which bind them contractually and facilitate ICANN enforcement. It would be best for ICANN to develop standardized implementation specifications for common GAC safeguards so that registries can voluntarily adopt them as part of their PICs. *BC (4 June 2013)*

Publication of Applicant Response
The GAC Advice does not clarify if applicant's response to the GAC Advice will be published (applicant

response to Early Warning was not published). Please clarify this point. *dotBERLIN (23 April 2013)*

Execution of GAC Advice Before Contention Resolution
The GAC Advice should be executed before any contention resolution occurs. Otherwise an applicant might succeed in the contention but be thrown out because of GAC Advice later in the process. This timing would not make sense and potentially create a .xxx-like legal situation. See proposal diagram attached to comments. It is also noted that applicants who have not been able to determine issues of privacy, consumer protection and other issues more than 12 months after filing their application raise serious concerns about whether they are the appropriate entity to operate a TLD. *TLDDOT (24 April 2013; TLDDOT (3 June 2013)*

Future Rounds
ICANN should not consider requiring safeguards that will apply in future rounds at this time, since we do not fully understand the impact this round of new gTLDs will have on the marketplace. ICANN should not burden future applicants with safeguards and restrictions when such restrictions may prove unnecessary and ineffective. *United TLD (7 May 2013)*

Competitive Disadvantage.
The GAC Advice has created a competitive disadvantage for applicants who have, from the start, committed to responsible policies that others in their contention set now have a third chance to get right. The ICANN Board should endorse and approve those who have gotten it right from the start and reject those that clearly from the start made no effort to comply. *Vox Populi (14 May 2013)*

4. Additional Issues

Guidance on Applicable Law
The scope of applicable law is not well understood by most registrants. ICANN's Legal Department should provide guidance so that all stakeholders can be informed about the scope of laws that would apply to a registrant's activity. *BC (4 June 2013)*

Compliance with applicable law is a standard term in most contracts, and it should not be a surprise that any company, including registrants, who are taking on the role of operating a registry, should be required to be familiar with the applicable laws of the jurisdictions in which they will be doing business. *Verizon (4 June 2013)*

Closed Brand gTLDs
It is unclear whether the six safeguards are necessary for closed brand gTLDs, which may be better off using a separate form of registry agreement that accounts for the fact that the general public will not be able to register second-level domain names. *GE (13 May 2013)*

Some safeguards may be inapplicable to some new gTLD applications, e.g. a .brand application in which the brand owner will be the only registrant and may not need to check Whois data on

registrations. A prompt and expeditious dialogue between ICANN and GAC should clarify these points. *Warner Bros. (14 May 2013); HBO (14 May 2013); Turner (14 May 2013); COA (14 May 2013); INTA Internet Committee (4 June 2013)*

To the extent justified, such limited exemptions would likely reduce attendant workload and costs within ICANN's contractual compliance team and avoid diverting resources from dealing with compliance of those registries where there is a genuine benefit to imposing the safeguards. *INTA Internet Committee (4 June 2013)*

Open and all Generic gTLDs
GE greatly supports the six safeguards for any open and all generic gTLDs. To the extent that there is not a separate .BRAND registry agreement, GE would be open to such safeguards being subject to contractual oversight within the general registry agreement. *GE (13 May 2013)*

B. Six Safeguards

1. Whois Verification and Checks

Support
Most measures of improvement to Whois accuracy are possible and would bring a higher degree of trust in the DNS. Safeguards should be uniformly applied to all gTLDs, both new and pre-existent. Imposing burdens only on new gTLDs might hinder program objectives such as increasing competition and consumer choice. *NIC.br (9 May 2013)*

GE commends ICANN's progress on requiring registrars to verify registrant identity and ensure the accuracy of data they collect. GE's position is that privacy and proxy services for Whois should not be allowed at all. ICANN should undertake a full review of these services to ensure that privacy and speech concerns can be addressed, but that law enforcement officials and trademark owners are able to immediately contact registrants and take immediate action to protect intellectual property rights and the public at large. *GE (13 May 2013)*

ANA supports the GAC's recommended Whois improvements. ICANN must ensure that a fully vetted Whois system is in place, so that consumers and brandholders are not vulnerable to an explosion in phishing, cybersquatting, typosquatting and other cybercrimes. The system must be easy to use, with verifiable information, and have mechanisms for corrective action, where necessary. *ANA (14 May 2013)*

Donuts is in favor of implementing this safeguard provided that this is done within an appropriate community discussion framework separate from the New gTLD Program so that delegations are not delayed. *Donuts (15 May 2013)*

Opposition

Report of Public Comments

Notwithstanding clearly relevant ongoing Policy Development Process work focused on detailed obligations for registrars with respect to verification and validation of Whois data, the GAC is now calling for a prescriptive, one-size-fits-all registry-led approach to a complex problem. The GAC Advice would require registries to undertake costly, labor-intensive manual reviews of Whois data samples and duplicate ICANN's existing Whois referral process. The cost of these requirements is unknown and any impact they might have on Whois accuracy is entirely speculative. *Neustar (14 May 2013)*

The GAC Advice does not seem to take into account or reflect changes made in this area or the ongoing work of the Experts Group and Policy Development Process. *RySG (22 May 2013)*

NCSG is concerned about increasing efforts by the GAC to make Whois an Internet identity card with a "real-name" registration policy similar to the failed attempt in South Korea. *NCSG (14 May 2013)*

This paragraph should be rejected as inconsistent with expectations of privacy and anonymity. *W. Seltzer (15 May 2013)*

Comment
If the GAC believes that registry operators should conduct these checks, then the Registry Agreement could be amended to address this duty. New registries and ICANN must convene a working group to specifically identify consistent criteria for conducting these checks. Verisign comments provide a criteria chart that the working group should consider. *Verisign (31 May 2013)*

The term "statistically significant" needs to be carefully defined so as to set clear expectations and eliminate misunderstanding in implementation. *ALAC (4 June 2013)*

2. Mitigating Abusive Activity

Support
Donuts is in favor of implementing this safeguard provided that this is done within an appropriate community discussion framework separate from the New gTLD Program so that delegations are not delayed. *Donuts (15 May 2013)*

Opposition
Presumably the GAC has made this recommendation because it intends to obligate registries to play a role in enforcing the terms and conditions of the registrar-registrant agreement, to which the registries are not even a party. But to the contrary, cross-sector responses driven by subject matter experts in relevant organizations, revealing best practices, are more appropriate ways to tackle abuses and far more likely to produce effective ways to combat them. *Neustar (14 May 2013)*

RySG has supported and agreed to specific obligations for cooperating with law enforcement in the new gTLD Registry Agreement. This provision raises concern that the GAC intends for registries, which do not have relationships with registrants in most cases, to be required to determine what law applies

regarding particular conduct and whether or not a registrant is in compliance with that law. This would create significant new obligations and increase legal liability for registries as well as compliance costs. In addition, given different national approaches to legal requirements it may prove to be either not implementable in practice or contradictory among jurisdictions. *RySG (22 May 2013)*

Making registry operators the judges of whether registrants are engaged in "abuses" substitutes the registry operator's judgment for that of courts and judicial procedures, leaving registrants' speech interests at risk. Registrants should have the right to reliable, neutral termination of registered domain names and no suspension or termination of registration without due, disclosed process, and no censorship of domain name use content or communications through registrars or registries. *W. Seltzer (15 May 2013)*

Comment
This Advice could be implemented through the Registry Agreement to require registry operators to pass through these terms to registrars and to registrants. Each prohibited activity should be defined in the Registry Agreement with sufficient specificity to ensure consistent enforcement by registrars and registries for all new gTLDs. *Verisign (31 May 2013)*

3. Security checks

Support
Donuts is in favor of implementing this safeguard for sensitive strings, provided that this is done within an appropriate community discussion framework separate from the New gTLD Program so that delegations are not delayed. *Donuts (15 May 2013)*

Opposition
Despite the clear focus on this issue in the 2013 RAA, the GAC's Advice creates a completely new, unanticipated cost--and associated legal liability on registrars and registrants--on new gTLD applicants. *Neustar (14 May 2013)*

Mandating this provision could impose material, unanticipated costs and associated legal liability on many new gTLD operators that is not contemplated in the Applicant Guidebook. These issues had been examined by the GNSO Registration Abuse Working Group and further work is ongoing in the Joint DNS Security and Stability Analysis Working Group, where the question of whether certain issues are within or beyond ICANN's technical coordination role is being examined. *RySG (22 May 2013)*

Comment
This Advice imposes a new duty on registry operators that will require changes to the Registry Agreement but only after careful study by a working group and only in a manner consistent with existing protections provided by legal precedent. Verisign comments discuss two possible options for the community to consider. *Verisign (31 May 2013)*

4. Documentation

<u>Support</u>
The Board should accept the GAC recommendation and forward it to the currently operating Whois working group for consideration. *Donuts (15 May 2013)*

<u>Opposition</u>
The GAC seeks to impose heavy administrative obligations and costs on registries of new gTLDs in terms of its proposed safeguards. Such requirements have not been imposed on existing registries in existing domain name spaces. At this stage of the New gTLD Program, imposition of these requirements will go a long way toward chilling innovation online, burdening those who would otherwise provide commercially valuable spaces for innovation. *J. Lipton (7 May 2013); Technology Policy Institute (14 May 2013)*

With regard to Whois, this function is more appropriately directed to registrars. This Advice will be fulfilled by the 2013 RAA. Regarding security threats, this part of the Advice requires further examination. The Advice appears to pertain to malicious use of domain names within a TLD rather than assessment of the registry applicant/operator, which was not addressed in the GNSO policy. RySG has concerns about sharing reports about security threats because they often involve sensitive information. Misinterpretation and misuse of such data might compromise security. *RySG (22 May 2013)*

<u>Comment</u>
This Advice will require modifications to the Registry Agreement. Based on the intended use of these reports, the appropriate data may include a range of statistical metrics, from basic numbers of inaccurate Whois records or security threats over time, to more comprehensive information that would include statistics about types of inaccuracies or threats, and actions taken by registrars and the registry operator. The working groups convened by ICANN to deliberate on the Whois and security checks should include this requirement as part of their charter. *Verisign (31 May 2013)*

5. Making and Handling Complaints

<u>Opposition</u>
ICANN has a web-based process for complaints about non-responsive registrars. It makes little sense to create two different systems. *Neustar (14 May 2013); RySG (22 May 2013)*

The community-developed RPMs being implemented provide a means to complaints and investigation, so this Advice would likely be a duplication of already approved processes. *RySG (22 May 2013)*

Report of Public Comments

Comment

This should be discussed in the Whois working group. *Donuts (15 May 2013)*

This requires modifications to the Registry Agreement that detail the specific mechanism to be used by registry operators to implement this advice. Verisign comments describe segregating and defining the appropriate processes for each type of complaint. *Verisign (31 May 2013)*

6. Consequences

Opposition
Whois issues and Abuse Contact information are addressed directly in the new 2013 RAA. It does not make sense to create potentially conflicting enforcement models. Also, this approach creates significant liability to registrants with whom registries do not have direct relationships in most cases. Also, ICANN has a web-based process for complaints about non-responsive registrars. It makes little sense to create two different systems. *Neustar (14 May 2013); RySG (22 May 2013)*

Comment
This should be discussed in the Whois working group. *Donuts (15 May 2013)*

ICANN should convene a working group that includes legal experts to study and make recommendations regarding any suspension and deletion policy. Such a policy must be appropriately tailored and ensure that risks are appropriately allocated between ICANN, the registry operator, the registrar, and registrants. Verisign comments outline some considerations for the working group discussion. *Verisign (31 May 2013)*

Standard Procedures for Suspension of Domains
ICANN should develop standard procedures for suspension of domains as required in safeguards 3 and 6. The goal is to ensure that registries suspending a domain name would not violate registrants' due process protections under applicable law. Suspensions might need to be expedited in certain cases (e.g. fraud or abuse, critical infrastructure situations). *BC (4 June 2013)*

II. SAFEGUARDS APPLICABLE TO PARTICULAR CATEGORIES OF NEW gTLDS

A. Category 1 – Consumer Protection, Sensitive Strings, and Regulated Markets

1. Support--General

GE supports the eight safeguards for regulated or professional sectors, with the added provision that safeguard #1 be amended to add adherence with intellectual property laws to a registry's "acceptable use policy." *GE (13 May 2013)*

While there can be reasoned debate within the ICANN community over how to identify and define the

domains contained in the GAC's "Category 1" designation, it is more than reasonable that a definition be established and that new gTLDs meeting that definition be subject to stricter requirements. *Comcast/NBCUniversal (14 May 2013)*

SuperMonopolies.com supports the regulation of sensitive strings such as those about children, finance, health, charity, and education by relevant global groups of associations. *SuperMonopolies.com (14 May 2013)*

Sensitive gTLDs must have safeguards. *dotBERLIN (14 May 2013); Smart Internet (14 May 2013); DotMusic (15 May 2013); FOSI (3 June 2013); Disney (4 June 2013)*

The same rules and legal frameworks that apply for the use of particular strings targeting regulated sectors in the offline world must also apply in the online world. *TLDDOT (3 June 2013)*

The five additional safeguards identified by the GAC for "Sensitive Strings" should also be required. *COA (14 May 2013); Expedia (14 May 2013); BC (4 June 2013); ESA (4 June 2013)*

The additional safeguards represent a best-faith effort on the part of the GAC to identify future public policy issues. It is not possible for all the permutations and combinations of possibilities and strings to be fully addressed and the GAC safeguard advice should be seen in this light. *IFFOR (14 May 2013)*

Google generally supports the GAC's advice as it pertains to consumer protection, sensitive strings, and regulated markets. However some of the category 1 string-specific safeguards may be unclear or overly burdensome for some of the specific strings or sub-groupings. In some cases it may not be necessary to apply the full range of category 1 safeguards. See Google comments text for analysis chart. *Google (14 May 2013)*

For strings that convey a specific credential or that consumers are likely to trust to provide specific content or experiences, the Board may reasonably require applicants to enter into Public Interest Commitments that provide the consumers with added protection. However, the Board should avoid extending safeguards where the likelihood of consumer reliance or confusion is low. *Google (14 May 2013)*

2. Opposition--General

ICANN should reject the GAC Advice on "Consumer Protection, Sensitive Strings, and Regulated Markets" because it is untimely, ill-conceived, overbroad, and too vague to implement. The list of strings to which the GAC Advice purports to apply is "non-exhaustive," leaving in question which TLDs not specifically named might be subject to the Advice. The list of strings is internally inconsistent, many times placing generic words (e.g. "SAVE") in the same categories as highly regulated industries (e.g. "BANK"). *Uniregistry (14 May 2013)*

The GAC Advice cannot be implemented without an objective standard against which the specific use

proposed can be measured. See Neustar comments and attached chart for analysis of this issue regarding a sample of 30 strings (e.g., why is "dance" on the list, but "hiphop" is not?) This puts ICANN in a very difficult position and creates issues of fairness and predictable treatment of new gTLD applications. *Neustar (14 May 2013); Donuts (15 May 2013); RySG (22 May 2013)*

It is incredible that the GAC proposes to make registrars and registries authoritative licensing validation entities for 200 jurisdictions and an innumerable number of sectors and professions. This is not feasible. Ex post enforcement of law is a more feasible and freedom-respecting method of safeguarding concerns about fraud and consumer protection. If service providers or websites are using names, which fraudulently imply some kind of legal status, it is not that difficult for local or international law enforcement to stop them from doing so. But the legality or illegality of uses cannot be determined in advance. It is not a good idea to make the global name registry system responsible for policing the world's professions and sector regulations on an ex ante basis. *NCSG (14 May 2013)*

Many of the strings in Annex I were not included in the "Early Warnings" published in late 2012, which would have provided applicants an opportunity to better understand and perhaps address concerns. Many of the strings are generic terms, which may be sensitive or regulated in a single or a few jurisdictions, but it is not appropriate to limit their use in other jurisdictions. Registries and registrars are currently and will continue to be obligated to comply with appropriate local law and regulations. In some instances the safeguards are related to the content of websites, which is outside the scope of ICANN's remit. Finally, voluntary choice of registry policy is more appropriate than a top-down decision by ICANN at this late stage in the process. *RrSG (15 May 2013)*

The non-exhaustive list of TLDs is over-reaching, and the use of "non-exhaustive" creates uncertainty. *ALAC (4 June 2013)*

3. Category 1: Safeguards 1-8

(1) & (2) Support: Acceptable Use Policies--Applicable Law and Notice to Registrants by Registrars. These seem to apply to all categories identified by the GAC and can likely be implemented by registry operators. Registry operators historically have implemented acceptable use policies that require compliance with laws and will likely have policies that they wish registrants to follow. *United TLD (7 May 2013)*

Recommendation 2 should be considered for inclusion in the recommendations for all gTLDs. *Donuts (15 May 2013)*

ALAC supports 1 -2 as reasonable. *ALAC (4 June 2013)*

(1) & (2) Opposition
Uniregistry already has proposed Abusive Use policies related to certain kinds of technical abuse and unlawful acts (in response to Question 28). The GAC's very vague suggested advice risks diminishing the importance of, and indeed undermining, the specific items in the Uniregistry abuse policy.

Report of Public Comments

Uniregistry (14 May 2013)

Significant legal and practical concerns arise if the effect of the GAC Advice is to require operators of traditional, unrestricted registries to determine what "applicable law" is in any given situation, and then to evaluate a particular registrant's conduct in light of that law. *Neustar (14 May 2013); RySG (22 May 2013)*

Registries should not be put in investigative or law enforcement roles. *Donuts (15 May 2013)*

(1) & (2) Comment
ICANN should convene a working group to study how, if at all, registry, registrar, and registration agreements should be amended to address this advice. *Verisign (31 May 2013)*

(3) Support-- Sensitive Health and Financial Data
A form of this requirement could be passed down after community discussion to determine its correct wording. *Donuts (14 May 2013)*

Notice would need to be provided in the registrant terms of service describing the laws and industry standards applicable to the TLD. BC would not support requiring registries to monitor security practices within each registrant's website and data operations. BC supports a responsible approach taken in response to safeguard 3, which become part of the contractual terms and conditions. *BC (4 June 2013)*

ALAC supports 3 as reasonable. *ALAC (4 June 2013)*

(3) Opposition
This safeguard is not specific enough, so a response on a concrete process for implementation is not possible. As a general principle, applicable laws and recognized industry standards should be developed and implemented by appropriate legislative, law enforcement, and industry expert bodies and should not be developed by the Registry Operator. *United TLD (7 May 2013)*

This provision is too vague ("reasonable and appropriate") to provide any meaningful advice or warning to registrants or to place meaningful restrictions on the way that a registrant operates. *Uniregistry (14 May 2013)*

In most situations it is unreasonable to expect registry operators to pass judgment on what law applies to a registrant's conduct and whether or not that conduct is consistent with applicable law. *Neustar 14 May 2013); RySG (22 May 2013)*

(3) Comment
ICANN must identify with specificity what constitutes sensitive health and financial data and should provide guidance to registry operators to ensure this advice can be implemented. ICANN should ensure that any new security measures are implemented fairly and consistently through its

agreements with registrars and registries. *Verisign (31 May 2013)*

4) Support: Working Relationship with Regulatory Body

For copyright dependent sectors represented in the Intellectual Property list of strings, safeguard #4 means that registries should at least provide seats for relevant industry groups at the table where policies to mitigate the risks of infringement are developed and their implementation overseen. *COA (14 May 2013); BREIN (21 May 2013)*

Safeguard 4 will promote self-regulatory best practices that will improve consumer disclosure and protection. *BC (4 June 2013)*

ALAC supports 4 as reasonable. *ALAC (4 June 2013)*

(4) Opposition
This safeguard is too unclear to be capable of practical implementation and it should not be required. For example, for a term such as .ENGINEER, which applies to a range of individuals, businesses and associations and has segments which are both licensed and unlicensed, it would be inappropriate and impossible to find a "relevant regulatory body" with whom to establish a "working relationship." *United TLD (7 May 2013); dotBERLIN (14 May 2013); Uniregistry (14 May 2013); Valideus (14 May 2013)*

(4) Comment
ICANN should ensure that registry operators are provided names of specific regulatory and industry self-regulatory bodies that apply to each category and should modify applicable registry agreements accordingly to account for this new requirement. *Verisign (31 May 2013)*

While this is generally a good idea, it raises contract enforcement questions --e.g., who determines what industry self-regulation organizations are "relevant" to a particular string? This seems like something that could be dealt with as part of an applicant's PICs. *Neustar (14 May 2013)*

This raises impracticality questions--this recommendation needs to be appropriately scaled. Also, some bodies might not be responsive to collaboration. *Donuts (15 May 2013)*

This requirement should be implemented on a case-by-case basis. It is not always clear even within one jurisdiction which body is the competent regulatory agency, let alone on a global basis. *RySG (22 May 2013)*

(5) Opposition: Single Point of Contact From Registrants for Notification of Complaints or Abuse
This safeguard seems to apply to all categories identified by the GAC. Registry operators will be very reluctant to implement this particular safeguard out of respect for the registrar-registrant business relationship that has been well established since the earliest days of commercial Internet use. Registry

Report of Public Comments

operators already have a point of contact for a registrant as a result of the accurate Whois data requirements appearing which are now more easily enforceable under the new Registrar Accreditation Agreement. *United TLD (7 May 2013); Uniregistry (14 May 2013)*

For unrestricted TLDs, the appropriate way to implement this safeguard would be via registrars and the RAA, which ICANN would then enforce. The Advice assumes that registrants are businesses, ignores the purpose of the Whois contact information, and does not acknowledge the existing standards, such as RFC 2142 that mandates abuse@domain as the standard point of contact for "inappropriate public behavior." *RySG (22 May 2013)*

The 2013 RAA incorporates the substance of this GAC request. *Neustar (14 May 2013)*

This recommendation can be discussed in the Whois working group. *Donuts (15 May 2013)*

ALAC believes #5 is excessive particularly for many TLD classes cited. *ALAC (4 June 2013)*

(5) Comment
The RAA and Registry Agreement require abuse points of contact. ICANN should discuss this requirement with the GAC to ensure these existing obligations satisfy the GAC Advice. *Verisign (31 May 2013)*

(6), (7), (8) Opposition: Additional Category 1 Safeguards
The GAC Advice as articulated in these three additional safeguards should not be required and should be rejected. Implementation would go against the GAC's own principles (see especially 2.5, March 2007) regarding new gTLDs. Implementation of these three additional safeguards is equivalent to imposing "subsequent additional selection criteria" after the initiation of the evaluation process. These provisions would change the nature of new gTLDs from being generic and widely available to being "sponsored" TLDs restricted to only those TLDs that can prove their status or credentials. They would potentially discriminate against users in developing nations whose governments do not have regulatory bodies or keep databases, which a registrar could work with to verify credentials. The safeguards are also not specific enough--e.g., it does not identify which strings should be subject to these safeguards--and they are unworkable in practice. Finally, the GAC Advice on these safeguards is antithetical to the bottom-up, multistakeholder, consensus-driven Policy Development Process. *United TLD (7 May 2014)*; *RrSG (15 May 2013)*

These recommendations are highly problematic, placing material duties on registries that were rejected in the Applicant Guidebook process. They restrict registry operations in a way that might be unworkable in many cases. Restricting registrations to one subset of registrants would be a monumental shift in the program, previously rejected and relied upon by applicants. They change the registration experience of the end user from having the ability to register a name now to getting it granted only after permission is secured from one of potentially thousands of bodies with interests in regulating speech and content. They may violate data protection and privacy laws in multiple jurisdictions. They would require the cooperation of governments and other authorities as well as

credentialing bodies to secure private identity data and provide it to registrars. Finally, they are not a "remediation available in the Guidebook" and should not be adopted or considered by the Board. *Donuts (15 May 2013)*

In these additional safeguards the GAC seems to assume that all registry operators have a contractual relationship with registrants. That is not the case, especially for unrestricted TLDs. It is registrars who would normally have the authority to implement these three safeguards. To do so would require, preferably, community policy consultation, or special RAA addendums, or Registry/Registrar addendums for applicable strings. Another serious concern is that not all strings are identified (i.e., "non-exhaustive" list) so it is not clear which applicants are impacted by this advice. In addition, the requirement imposed on registrants within these TLDs that they "conduct their activities in the interests of the consumers they serve" remains a potential concern. *RySG (22 May 2013)*

The Advice may be appropriate for specific applications, but that will depend in each case on the particulars. The GAC here has created general policy based on the overly broad and simplistic assertion that all of these strings relate to market sectors that have clear and/or regulated entry requirements. *Neustar (14 May 2013)*

The terms of these provisions are too vague. Requirements for authorization and credentials and verification and re-verification by registries are justifiable for a limited set of TLDs. However, taken in the context of 180+ category TLDs, such controls would put these new registries at a significant competitive disadvantage to competing domain alternatives and would exercise control that is virtually unheard of in other forms of media. *ALAC (4 June 2013)*

(6), (7), (8) Comment
The 6, 7, and 8 safeguards should be implemented on a case-by-case basis as applicable via added registry agreement specifications. It seems likely that applicants of such gTLDs have already included such requirements in their registration procedures. There is precedent for implementing these kinds of requirements at the registry level in existing gTLDs (e.g. .jobs, .pro, etc.). *Verisign (31 May 2013)*

Safeguards 6, 7 and 8 are appropriate where the TLD creates a reasonable expectation in the mind of the average Internet user that registrants in that TLD are bona fide members of a regulated industry or profession. The responsibility of TLD operators could be guided by Internet user expectations and government oversight. ICANN should develop a list of TLDs in these categories where the string itself implies that it hosts domains mainly for regulated entities and/or licensed professionals, which could be reviewed by the GAC for possible suggested additions. Registries needing to validate registrants could insert a validation process in their PICs and ICANN would then be responsible for compliance enforcement. Advisory Boards set up by registries of such strings and consisting of a balanced group of regulators, established trade groups, consumer representatives would be beneficial to establishing policies for registrant eligibility and for transparent operations. *BC (4 June 2013)*

Appending the phrase "and common industry/professional standards" to the Category 1 provision

text would provide for those situations where national law may not have kept pace with Internet growth and development, or where it is still evolving. *BC (4 June 2013)*

Initial verification and validation of registrants may be done by registrars. In certain industry sectors, the expertise to provide this validation would come from experts within the sector. Initial verification and any additional consultation should take place within the supervisory authority for the jurisdiction in which the Registrant is domiciled. *BC (4 June 2013)*

4. Category 1--Non-Exhaustive List of Strings

Children

FOSI is excited about the possibility of new gTLDs increasing the number of websites for children, but believes ICANN should utilize safeguards to reduce the risk of abusive registrations particularly around sites that will be accessed by kids. *FOSI (3 June 2013); Disney (4 June 2013)*

Environmental

Big Room and Dot Eco agree with the GAC that ICANN must ensure that registries of environment-related gTLDs require registrants to agree to compliance with applicable laws, to undertake validation and to agree to periodic post-registration checks that ensure the validity of relevant authorizations and other credentials. *Big Room & Dot Eco (13 May 2013)*

Health and Fitness

<u>.HEALTH</u>
.HEALTH should be managed as a global asset, and its governance should be based on broad-based, multistakeholder consensus. The ICANN Board should note the concerns of the health community, GAC, ALAC, and the Independent Objector, and should not proceed beyond Initial Evaluation of the, HEALTH string, including its Chinese variant. The ICANN Board should postpone the attribution of .HEALTH until such time as following broad-based consultation of the health community, including public and private sectors, adequate baseline conditions for its operation are elaborated, and their implementation and observance can be ensured. *MMI (12 May 2013); IMIA (13 May 2013); HON.ch (13 May 2013); WMA (13 May 2013);SuperMonopolies.com (14 May 2013); ISfTeH (14 May 2013); Nice Computing (14 May 2013); EFMI (14 May 2013)*

A procedure is needed for reconsideration and removal of strings from category 1. It is of utmost importance that this does not delay the overall program and the delegation of individual strings. DotHIV was erroneously included in the "health and fitness" category even though it will not operate in the health and fitness subcategory and will not offer medical or fitness services of any kind. Rather, dotHIV is a charity with a mission to raise both awareness of and funding for the global fight against

AIDs. *dotHIV (14 May 2013)*

Financial

.REIT
Support for GAC Advice
NAREIT agrees with the GAC Advice that the .REIT new gTLD string must be protected. *NAREIT (14 May 2013)*

ICANN should adopt requirements for generic-term TLDs that will enhance the safety of conducting financial transactions in the Internet marketplace. *PCI (14 May 2013)*

INSURANCE
Support for GAC Advice
The risk of harm being done to the public interest means that some strings should not be permitted as new gTLDs no matter the level of safeguards applied. We have particular issues with the need for a registry operator to appropriately manage industry views, have the required stability and longevity, while also operating fairly and transparently when allocating second level domain names. Inequity exists where a registry may limit applications within particular jurisdictions. Therefore, the following strings should be declined due to the risk of potential inappropriate domain allocation: .insurance, .autoinsurance, .carinsurance, .insure and .travelersinsurance. *Insurance Council of Australia (14 May 2013)*

Opposition to GAC Advice
The GAC mistakenly included .travelersinsurance in the list of financial-related gTLD strings that require heightened safeguards. This string (note the "rs" in travelers) is a brand-related gTLD and not a generic string associated with a single type of insurance product. Consumers are abundantly aware that .travelersinsurance is a brand name associated with a company (Travelers) that sells numerous types of insurance products. *AIA (4 June 2013)*

Education

.UNIVERSITY
Support for GAC Advice
Not taking into account GAC Advice or the questions raised would drive towards solution (1)--"As is" acceptance of the only domain received and launch in a few months with possibility for anyone to launch domains in it with no regulation or compliance with rules of this community except copyright; confusion is more than possible. Other solutions are:
(2) Reject the current proposal, which opens the possibility for a community project.
(3) Evolution of the .university project (including recommendations from the GAC Advice) to incorporate answers and solutions to these comments; only possible if such evolutions are mandatory and enforced. *G. Malamoud (24 April 2013); SuperMonopolies.com (14 May 2013)*

Report of Public Comments

Intellectual Property

<u>Support for GAC Advice</u>
MARQUES appreciates the GAC's recognition that certain strings target sectors that face persistent intellectual property abuse. *MARQUES (14 May 2013)*

<u>.TVS</u>
<u>Opposition to GAC Advice</u>
TVS requests that the GAC reconsider its decision to designate the TVS string as an intellectual property sensitive string. A cursory reading of the TVS application should have revealed that it was not a multi-media centric TLD along the likes of .MOVIE, .VIDEO, etc. but is a brand centric gTLD primarily focused within the automotive industry. It is difficult to reconcile inclusion of TVS in this category, while .PICTURES, .PIC, .STREAM and .COUNTRY (targeted to country music) are not included. While the GAC has designated these lists as non-exhaustive, TVS hopes that the GAC will re-evaluate these lists and make appropriate changes in connection with any further advice that it provides. *TVS (14 May 2013)*

Corporate Identifiers

<u>Support for GAC Advice</u>
Dot Registry supports implementation of the GAC safeguards whose benefits outweigh their costs. Applying the safeguards will ensure that the Internet serves the user and strengthens the value proposition of these strings, creating integrity and confidence for end users. These particular extensions are directly associated with business entity registration types and represent a clearly defined community in the United States. ICANN should issue these strings under community designations, which is the only way to provide the necessary securities and enforcement mechanisms to protect the U.S. registered business community. *Dot Registry (13 May 2013 & 4 June 2013)*

Inherently Governmental Functions

<u>Cyberbullying</u>
<u>Support for GAC Advice</u>
GE agrees with the GAC Advice regarding certain extensions and minimizing the risk of cyberbullying and harassment. GE expresses significant worries that some of those gTLDs (as well as others) have been or will be applied to essentially extort money from brand owners. Nearly every company will attempt to defensively register its brands in those spaces similar to the case of .xxx. ICANN should develop policies to discourage registries from operating in a way that serves no public interest beyond taking money from companies looking to protect their own brands. *GE (13 May 2013)*

<u>Comment</u>
This advice may be appropriate for some applications and not others (e.g., .sucks application contemplates operating the TLD as a venue for product and service reviews). *Neustar (14 May 2013)*

This Advice should be implemented on a case-by-case basis as appropriate via added registry agreement specifications. *Verisign (31 May 2013)*

Other

.SECURE

The Board should add .SECURE to the non-exhaustive list of strings, under Category 1, that should apply the GAC Safeguards. *Artemis Internet (7 May 2013)*

TRAVEL

All travel industry TLDs should be included, such as .hotel, .hoteis, etc. The TLDs .reise and .reisen, meaning "travel" and "travels" in German, are already included in the list. It is appropriate to include strings related to the regulated hotel industry to protect consumers. *Expedia (14 May 2013)*

.VIN and .WINE

The strings .wine and .vin should be included in the Annex I Safeguards on New gTLDs; only their inclusion will allow for an adequate respect of GI wines IPRs as established by Article 23 of the WTO TRIPS agreement on trade-related aspects of IPRs and guarantee consumer protection. ICANN should develop a procedure that ensures that GI names cannot be reserved by third parties and enables organizations responsible for the protection of GIs to oppose the reservation of a domain name that consists of or contains the name of a GI (e.g. alternative dispute resolution (ADR)). *EFOW (26 April 2013); CNAOC (30 April 2013); CIVC (3 May 2013); Federdoc (9 May 2013); CECRV (14 May 2013)*

B. Category 2--Restricted Registration Policies

1. Restricted Access

a. Support

The GAC Advice advocates the important concept of restricted access for strings tied to regulated or professional sectors such as insurance. *PCI (14 May 2013); Insurance Council of Australia (14 May 2013)*

COA strongly agrees with the GAC Advice endorsing the possibility of restrictive registration policies for the sensitive strings mentioned in Category 1 of the GAC Advice *COA (14 May 2013); DotMusic (15 May 2013)*

Google agrees with the GAC that for some TLDs it may be appropriate to restrict registrations in a manner appropriate to the risks of the TLD. *Google (14 May 2013); Expedia (14 May 2013)*

b. Opposition

Report of Public Comments

The GAC's assertion of a "general rule" to the effect that the gTLD domain space should facilitate open registration is entirely new and wholly unanticipated policy that is in conflict with the new gTLD policy itself. The new gTLD policy clearly permits applications for closed use of generic strings. Prescriptive rules on gTLD types were deliberately avoided in order to promote innovation and to let market forces determine the variety of new TLDs. The "Community Preference" procedure is designed to address public policy concerns. There are also built-in competitive safeguards, which allow competitors to object to applications on a variety of grounds. There is no justification for reversing the conclusions reached during ICANN's Policy Development Process and introducing an entirely new policy based on general and speculative concerns about competition that are not backed by competition theory or economics. *Neustar (14 May 2013)*

The RySG is not aware of any such "general rule" on "open manner" operation--to the contrary, restricted TLDs have been in existence from the beginning of the DNS. The RySG generally agrees, however, that the registration restrictions should be appropriate for the types of risks associated with the TLDs. *RySG (22 May 2013)*

The domain name space should be operated in an open manner and consumer choice and access are paramount for success of all new gTLDs. Any unduly burdensome restrictions on registrants or registrars should be avoided. Placing registration requirements or restrictions on some new gTLDs and not others will unfairly prejudice these new gTLDs when launched into the consumer marketplace. *United TLD (7 May 2013); Donuts (15 May 2013)*

c. Comment

Transparency and equivalent access requirements are common to the domain registration industry so such requirements should be added to registry agreements on a case-by-case basis. For other parts of this safeguard there should be a joint GAC/GNSO group formed to identify risks associated with specific strings and what types of restrictions might cause undue advantage, while taking into consideration business models that offer options like premium names or auctions. *Verisign (31 May 2013)*

2. Exclusive Access

a. Support

GE supports the GAC advice. GE's position is that closed generics should not be allowed, the caveat to that being that the disqualification should be limited to purely generic terms and not top-level domains clearly referring to a company (including where a trademark is combined with a geographic identifier, an industry identifier, or a corporate identifier such as "company" or "inc"). *GE (13 May 2013)*

Report of Public Comments

The GAC correctly states that exclusive registry access for generic-term TLDs should "serve a public purpose." *PCI (14 May 2013); AIA (14 May 2013); Expedia (14 May 2013); Insurance Council of Australia (14 May 2013); DotMusic (15 May 2013); AAP (15 May 2013); IPA (29 May 2013); AIE (3 June 2013); BC (4 June 2013); Retail Booksellers Committee-Germany (4 June 2013); CTIA (4 June 2013); ACT (4 June 2013); ALAC (4 June 2013)*

The public interest goal requirement as stated is too general and requires greater specificity for enforceability. *ALAC (4 June 2013)*

The New gTLD Board Committee should add relevant meaning to the "public interest" concept by applying the GNSO rationales regarding the promotion of competition, consumer choice, market differentiation, and geographical and service provider diversity as standards for such affirmative objective showings and findings. *AAP (15 May 2013)*

An expedited Policy Development Process with respect to operating these strings in the "public interest" should be undertaken by the community. The Policy Development Process should analyze the process and timing of PICs as well as enforcing those commitments via the draft PIC DRP. There is an urgent need for the ICANN Board, in cooperation with the community, to develop a method for real time participation by the GAC in the Policy Development Process. There is apparently a working group dedicated to this, but an interim solution is needed. *A. Aikman-Scalese (4 June 2013) Verizon (4 June 2013)*

BC suggests options for ways to implement this Safeguard -- e.g. Australia remediation approach, or, add safeguards that would convert a "closed" gTLD into a "managed" TLD. ICANN should also clarify the process for obtaining exemptions from the Registry Code of Conduct. See BC and Verizon comments for suggested options. *BC (4 June 2013); Verizon (4 June 2013)*

It is not sufficient for a closed registry simply to seek an exemption from the Registry Code of Conduct based on the number of domain names it may choose to register for itself in the closed space. It is important that the public interest goal be interpreted in the broadest possible manner to ensure competition and avoid consumer confusion. *Verizon (4 June 2013)*

Accor supports the GAC in its approach insofar as it aims to avoid establishing monopolies and to protect consumer interests. These safeguards are all the more important when certain applicants have chosen to apply for closed control of a generic term designating a particular industry while they are in fact already engaged in the conduct of business activities in that industry. The main risk is that delegation of a generic term matching an economic sector to one single player will lead to a monopoly by excluding direct and indirect competitors. Major stakeholders have expressed opposition to these closed generic gTLD applications. Accor urges ICANN to implement the GAC Advice safeguards and to forbid any "closed generic" gTLD application for a generic term. *Accor (13 May 2013); FHE (13 May 2013); FOHB (14 May 2013); ACT (14 May 2013 & 4 June 2013); AHA (16 May 2013); IPA (29 May 2013); AIE (3 June 2013); Retail Booksellers Committee--Germany (4 June 2013)*

Closed generic TLDs should not be allowed. *SuperMonopolies.com (14 May 2013); GSMA (14 May 2013; Rakuten (14 May 2013); JANE (14 May 2013); Kobo (14 May 2013); FairSearch.org (14 May 2013); Indigo (14 May 2013); GSMA (14 May 2013); Michelin (15 May 2013); The PA (29 May 2013); CTIA (4 June 2013)*

b. Opposition

This represents entirely new and unanticipated policy, and in many cases is in direct tension with the Advice on category 1 strings, where the GAC has called for specific limits on registration at the second level. The Community Preference policy was intended to address public interest issues arising in connection with certain generic strings, and it should be implemented in a manner that protects such interests. *Neustar (14 May 2013); RySG (22 May 2013)*

Requiring applicants to demonstrate some additional public interest goal in this context would reverse the deliberate choices made by the ICANN community in its bottom-up process and impose new evaluation criteria in violation of the GAC's New gTLD principle that requires ICANN to evaluate applicants "against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process." *RySG (22 May 2013)*

Policy issues on "closed generic" TLDs should be resolved through the multistakeholder process, not unilaterally by the GAC. *NCSG (14 May 2013)*

A public interest standard is vague and difficult to define and therefore is susceptible to being applied in an arbitrary manner. Valuable innovations are likely to be blocked if ICANN attaches a public interest requirement to exclusive access registries. *Technology Policy Institute (14 May 2013)*

The concept of the "public interest" is almost vague enough to be meaningless, but even where consensus can be found it varies greatly by region. *Tucows (14 May 2013)*

Because the determination of whether a string is truly "generic" is unclear, and because the GAC did not adequately define what would constitute a public interest, at this time ICANN should not adopt the GAC's recommendation that the exclusivity of closed gTLDs should serve a public interest. *J. Kesan and C. Hayes (14 May 2013)*

Status Quo--Open and Closed Generic TLDs
MARQUES reiterates its earlier-stated position that the status quo as set out in the Applicant Guidebook should apply so that both open and closed generics should continue to be allowed in this first application round but both should be subject to significant scrutiny after launch by ICANN to ensure that the interests of rights owners and consumers are protected. *MARQUES (14 May 2013)*

c. Comment

ICANN should discuss this advice with the GAC to ensure that the "public interest" standard is defined and consistently applied. *Verisign (31 May 2013)*

III. GAC ADVICE--OTHER ISSUES

A. Strings for Further GAC Consideration (GAC Advice IV.1.c)

1. Support

.WINE
EFOW supports the GAC position concerning .wine and .vin. ICANN must take into account the opinions of professional organizations and governments. Further examination by the GAC is required at the ICANN July meeting. Given the prejudice that these two strings may cause to the intellectual property rights of Geographical Indication (GI) wines, ICANN must not proceed beyond Initial Evaluation with the four applications it has received. *EFOW (26 April 2013); CNAOC (30 April 2013); CIVC (3 May 2013); Federdoc (9 May 2013); CECRV (14 May 2013)*

2. Opposition

Lack of clarity and harm to businesses
The GAC provides no clear rubric for the treatment of specific strings it has identified as requiring further consideration in IV.1.c.i. Several business entities have expended significant resources in developing brands and applying for corresponding gTLDs in good faith under existing guidelines. It would be unfair to veto their efforts at this stage when no specific harm has been articulated by the GAC regarding the possibility of granting their applications. There are procedures in place--including under national laws--to deal with conflicts between a trademark and other interests. *J. Lipton (7 May 2013); J. Kesan and C. Hayes (14 May 2013); Valideus (14 May 2013); RrSG (15 May 2013)*

The GAC must issue its advice in a timely manner. If it is unable to do so at or before the Durban meeting, then ICANN must allow these applications to proceed. *RrSG (15 May 2013)*

Uncertainty
ICANN should adhere to the carefully negotiated lists of prohibited strings in the Applicant Guidebook and reject the new GAC Advice in this specific area because it will undermine the multistakeholder governance experiment and ICANN's credibility. It will erode the confidence of global businesses that are future contracted parties, who relied in good faith on the GAC-agreed Applicant Guidebook. Following the GAC Advice in this area would upset global trademark norms and expose current and future applicants to limitless uncertainty. It would give individual governments a veto power over applications, creating new law through the auspices of ICANN. This exceeds the intended powers of the GAC. *MARQUES (14 May 2013); Valideus (14 May 2013)*

The GAC Advice for strings that "should not proceed beyond Initial Evaluation" includes names that fall outside of the definition of geographic names in the Applicant Guidebook. Given that the complaining governments themselves permit and protect non-confusing commercial use of identical strings, the names cannot be fairly said to conflict with national law or raise cultural or religious sensitivities. In addition, the Applicant Guidebook provides for review by the Independent Objector. Use of the GAC objection process in those cases raises issues of fundamental fairness, transparency and predictability. *Neustar (14 May 2013); RySG (22 May 2013)*

Section IV.1.c raises a concern about the designation of certain strings, which already exist as protected trademarks in the relevant countries, which strongly suggests that their source-indicating function can co-exist with their geographic meaning. The principle regarding "closed generics" that ICANN should allow strings that identically match the applicant's trademark for the same or related goods or services to be provided in connection with the proposed TLD, regardless of whether or not those TLDs are also ordinary dictionary terms should apply equally to trademarks that are also geographic names (provided they do not appear on a reserved list). *INTA Internet Committee (4 June 2013)*

B. Community Support for Applications (IV.1.e)

1. Support

dotBERLIN welcomes and strongly supports this provision. *dotBERLIN (14 May 2013); FIBA (14 May 2013); IRB (14 May 2013); IRB (14 May 2013); PCI (14 May 2013); DOTZON (14 May 2013); DotMusic (15 May 2013); CTIA (4 June 2013)*

2. Comment

Board Action Not Required
Google notes that prioritization of applications that represent a well-defined community has already been incorporated into the New gTLD program and should not require further consideration or action by the Board. *Google (14 May 2013)*

C. Singular and Plural Versions of the Same String as TLD (IV.1.f)

1. Support

GE strongly agrees that ICANN should rethink permitting singular and plurals of the same strings. There is significant possibility for consumer confusion and for drastically higher costs for affected trademark owners (e.g. for sunrise registrations, defensive registrations, cybersquatting and other malicious actions by third parties). *GE (13 May 2013) ; ANA (14 March 2013); Expedia (14 May 2013); DotMusic (15 May 2013)*

Not allowing singular and plural versions avoids an issue for future rounds where a hugely successful new gTLD has it success capitalized upon in a future round by another applicant applying for the singular or plural version of the same string. This could cause consumer confusion and lead to the collapse of a gTLD registry as its brand is diluted. *Expedia (14 May 2013)*

While we support the idea of permitting synonymous gTLDs (e.g. .find and .search), prohibiting the registration of the plural form of the same word as the GAC suggests provides a good boundary. *J. Kesan and C. Hayes (14 May 2013)*

The Board may consider limiting delegation of singular and plural forms to a single string. If the Board elects to take this course, it should provide a clear mechanism for decontention between singular and plural forms, and limit the application of this principle to situations where confusion between the strings is probable. *Google (14 May 2013)*

2. Opposition

The GAC's suggestion that ICANN "rethink" permitting singular and plurals of similar gTLDs could hobble ICANN in fulfilling its job to be visionary and to build a foundation that will serve the Internet's users far into the future. ICANN needs to lay farsighted groundwork for the possibility of 20,000-30,000 gTLDs in 20 years and other major changes. Limiting singular and plurals would marginalize the utility of naming spectrum and the success of the entire New gTLD Program, and limit competition in pricing. *F. Schilling (25 April 2013); SuperMonopolies.com (14 May 2013)*

An attempt by the GAC to impose a one size fits all litmus test without a proper legal analysis based on established international law could lead to unintended consequences. *TVS (14 May 2013)*

D. Protections for Intergovernmental Organizations (IV.1.g)

1. Opposition

In the GAC's 22 March 2013 letter to the ICANN Board, the GAC advises that IGO acronyms should not be registered by third parties without IGO consent. ISO has strong concerns with the GAC proposal and firmly opposes any block of the acronym "ISO." To implement a block on the term "ISO" (requiring its release be permitted by the International Sugar Organization) disregards the longstanding rights and important mission of the International Organization for Standardization and would be unacceptable. ISO requests that ICANN reject the GAC's 22 March 2013 proposal and instead support a balanced approach that allows both INGOs and IGOs to benefit from special protections on the basis of objective and non-discriminatory conditions that meaningfully balance coexisting rights and legitimate uses. *ISO (13 May 2013)*

2. Comment

The ICANN Board should ensure that any interim solution regarding protections for IGOs is compatible with the work of the ongoing IGO-INGO PDP. *Google (14 May 2013)*

In considering the GAC Advice on protections for IGOs, ICANN must consider the effects of its actions on both the private sector and the government sector, whose interests can sometimes be in conflict. *J. Kesan and C. Hayes (14 May 2013)*

E. Registrar Accreditation Agreement (RAA) (IV.2)

1. Support

GE agrees that the 2013 RAA should be finalized before any new gTLD contracts are approved at least as to open registries. GE also supports the recent Registry Agreement amendment that new gTLD operators are required to use only those registrars that have signed the 2013 RAA. *GE (13 May 2013); ANA (14 May 2013)*

2. Comment

Board Action Not Required. Use of the 2013 RAA has already been incorporated into the New gTLD Program and should not require further consideration or action by the Board. *Google (14 May 2013)*

F. International Olympic Committee and Red Cross/Red Crescent (IV.4)

Board Action Not Required. Google notes that protection of Red Cross and IOC names has already been incorporated into the New gTLD Program and should not require further consideration or action by the Board. *Google (14 May 2013)*

G. Public Interest Commitments Specifications (Annex II)

The GAC has listed various questions regarding PICs. GE believes that each of these questions is important and should be properly studied and evaluated by ICANN. Many of the GAC's questions are equally relevant to applications for which PICs were not submitted. *GE (13 May 2013); ANA (14 May 2013)*

ALAC urges the ICANN Board to ensure that the questions posed by the GAC, as well as those concerns identified by ALAC comments on the PIC DRP are addressed urgently, and that clarification on the enforceability of the PIC be relayed clearly and comprehensively to the ICANN community by the time of the ICANN meeting in Durban. *ALAC (4 June 2013)*

IV. NEW gTLD PROGRAM--OTHER ISSUES

Report of Public Comments

DNS Security and Stability

ICANN is struggling to balance competing interests--urgency felt by applicants to secure earliest possible delegation, against the need for responsible resolution of the security and stability concerns raised by the Board's Stability and Security Advisory Committee (SSAC). ICANN is at serious risk of putting more weight on the former at the expense of the latter. The GAC needs to understand that Verisign strongly recommends that the following actions must occur as a matter of urgency and the highest priority before delegation:

1) In-depth analysis of instrumentation across the entire root server system in order to understand consumption of all applied-for strings across a reasonable timeline to account for caching and other DNS ecosystem effects, focusing on accuracy of results and dealing with the entire set of queries associated with applied-for strings, not simply the ones that see the largest query volumes. *Verisign (31 May 2013)*

2) An early warning system must be made operational before delegation. Such a system must enable detection of various stresses on the system and implement the instrumentation noted above in order to understand how the root query characteristics change over time. *Verisign (31 May 2013)*

3) A policy framework is needed in order to codify a method for braking or throttling new delegations (if and when these issues occur) either in the DNS or in dependent systems that provides some consideration as to when removing an impacting string from the root will occur. *Verisign (31 May 2013)*

4) Before any new gTLD is delegated each new string needs to undergo an appropriate assessment so that first-order risks are understood and determined to be acceptable before moving forward. *Verisign (31 May 2013)*

5) Initially, an ephemeral root delegation should occur for each new string with short but increasing lifetimes. Lower TTL values for DNS resource records associated with new strings will permit problematic high-impact delegations to be removed from the root as quickly as possible and the impact to be assessed before the delegation persists in the zone, as impacted parties will need time to adjust their infrastructure and systems in order to remediate problems that arise. *Verisign (31 May 2013)*

6) These steps should be in conjunction with the deployment of a well-publicized hotline and electronic communications medium staffed by well-trained experts to accept and assess newly identified risks as delegations proceed. This will enable the most prudent introduction of new gTLDs into the DNS and broader Internet ecosystem. *Verisign (31 May 2013)*

Risk of Abuse--Visually Identical Strings in Audibly Identical gTLDs

Nothing has been done to ensure that applicants from "audibly Identical Strings" which have slipped through Initial Evaluation are contractually constrained to ensure that the integrity and stability of the Internet is not put at risk because registries subsequently decide to profiteer by selling "visually identical strings" in "audibly identical gTLDs." Such gTLDs should have been allowed only on the understanding and clear contractual obligation to bundle the strings to the same registrant. *D. Wrixon (24 April 2013)*

Report of Public Comments