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ICANN NGPC PAPER NO. 2014.02.05.NG2b

TITLE: **Remaining Items from Beijing, Durban and Buenos Aires GAC Advice: Updates and Actions**

PROPOSED ACTION: **For Resolution**

EXECUTIVE SUMMARY:

The GAC delivered advice on the New gTLD Program in its Beijing Communiqué issued 11 April 2013, and its Durban Communiqué issued 18 July 2013, and its Buenos Aires Communiqué issued 20 November 2013. Over the past several months, the NGPC developed and adopted a series of scorecards to respond to the GAC's advice. At this time, the NGPC is being asked to consider adopting another iteration of the scorecard to continue to resolve the remaining items from the Beijing and Durban GAC advice, and to address the new items of GAC advice in the Buenos Aires Communiqué.

The scorecard provides updates on the NGPC's progress, and where appropriate, includes actions to be undertaken to continue to make progress on resolving the open items of GAC advice. If adopted, the scorecard will among other things resolve the GAC's Category 1 Safeguard advice in the Beijing Communiqué consistent with the framework proposed by the NGPC to the GAC in its 29 October 2013 letter to the GAC, but taking into account additional advice in the Buenos Aires Communiqué on .DOCTOR. <<http://www.icann.org/en/news/correspondence/crocker-to-dryden-3-29oct13-en>>.

Consistent with the Applicant Guidebook, ICANN has notified relevant applicants of strings named in the Buenos Aires Communiqué of the GAC advice, and has provided at least 21 days for those applicants to submit responses to the NGPC for consideration. The applicants submitted comments by 6 January 2013, which are publically available for review on the New gTLD microsite <<http://newgtlds.icann.org/en/applicants/gac-advice/buenosaires48>>. A summary of the applicant responses is included in the Reference Materials to this paper.

With the adoption of this scorecard, only a handful of GAC advice items would remain for the NGPC to resolve over the coming months, including GAC advice on .WINE, .VIN, .AMAZON, .SPA, .ISLAM, .HALAL, and the strings listed in the Category 2 Safeguard advice where the applicants indicated their intent to operate as an exclusive access registry. The NGPC may consider additional iterations of the scorecard at subsequent meetings as it continues to address the remaining items of GAC advice.

STAFF RECOMMENDATION:

Staff recommends the NGPC adopt the scorecard to address open items from Beijing, Durban and Buenos Aires GAC advice as presented in the attached scorecard so that additional new gTLD applications are able to continue to move forward as soon as possible.

PROPOSED RESOLUTION:

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

Whereas, the GAC met during the ICANN 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, the GAC met during the ICANN 48 meeting in Buenos Aires and issued a Communiqué on 20 November 2013 ("Buenos Aires Communiqué").

Whereas, the NGPC adopted scorecards to respond to certain items of the GAC's advice in the Beijing Communiqué and the Durban Communiqué, which were adopted on 4 June 2013, 10 September 2013, and 28 September 2013.

Whereas, the NGPC has developed another iteration of the scorecard to respond to certain remaining items of GAC advice in the Beijing Communiqué and the Durban Communiqué, and new advice in the Buenos Aires Communiqué.

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

Resolved (2014.02.05.NGxx), the NGPC adopts the “GAC Advice (Beijing, Durban, Buenos Aires): Actions and Updates” (28 January 2014), attached as Annex 1 to this Resolution, in response to open items of Beijing, Durban and Buenos Aires GAC advice as presented in the scorecard.

PROPOSED RATIONALE:

Article XI, Section 2.1 of the ICANN Bylaws

<http://www.icann.org/en/about/governance/bylaws-XI> permit the GAC to “put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.” The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013, its Durban Communiqué dated 18 July 2013, and its Buenos Aires Communiqué dated 20 November 2013. The ICANN Bylaws require the Board to take into account the GAC’s advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The NGPC has previously addressed items of the GAC’s Beijing and Durban advice, but there are some items that the NGPC continues to work through. Additionally, the GAC issued new advice in its Buenos Aires Communiqué that relates to the New gTLD Program. The NGPC is being asked to consider accepting some of the remaining open items of the Beijing and Durban GAC advice, and new items of Buenos Aires advice as described in the attached scorecard dated 28 January 2014.

As part of its consideration of the GAC advice, ICANN posted the GAC advice and officially notified applicants of the advice, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The Beijing GAC advice was posted on 18 April 2013 <<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>>, the Durban GAC advice was posted on 1 August 2013 <<http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>>, and the Buenos Aires GAC advice was posted on 11 December 2013. The complete set of applicant responses are provided at: <<http://newgtlds.icann.org/en/applicants/gac-advice/>>.

In addition, on 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address Beijing GAC advice regarding safeguards applicable to broad categories of new gTLD strings <<http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>>. The NGPC has considered the applicant responses in addition to the community feedback on how ICANN could implement the GAC's safeguard advice in the Beijing Communiqué in formulating its response to the remaining items of GAC advice.

As part of the applicant responses, several of the applicants who were subject to GAC Category 1 Safeguard Advice have indicated that they support the NGPC's proposed implementation plan, dated 29 October 2013, and voiced their willingness to comply with the safeguards proposed in the plan. On the other hand, an applicant noted that the NGPC's plan to respond to the GAC's Category 1 Safeguard advice is a "step back from what the GAC has asked for" with regard to certain strings. Others contended that their applied-for string should not be listed among the Category 1 Safeguard strings. Some of the applicants for the .doctor string noted that the NGPC should not accept the new GAC advice on .doctor because the term "doctor" is not used exclusively in connection with medical services and to re-categorize the string as relating to a highly regulated sector is unfair and unjust.

With respect to the Category 2 Safeguards, some applicants urged ICANN to ensure that any Public Interest Commitments or application changes based on safeguards for

applications in contention sets are “bindingly implemented and monitored after being approved as a Change Request.” Additionally, some applicants indicated their support for the GAC advice protections for inter-governmental organization acronyms, protection of Red Cross/Red Crescent names, and special launch programs for geographic and community TLDs.

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

- GAC Beijing Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2
- GAC Durban Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2
- GAC Buenos Aires Communiqué:
https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2
- Letter from H. Dryden to S. Crocker dated 11 September 2013 re: .vin and .wine:
https://gacweb.icann.org/download/attachments/27132037/Letter%20from%20GAC%20Chair%20to%20ICANN%20Board_20130909.pdf?version=1&modificationDate=1379026679000&api=v2
- Applicant responses to GAC advice: <http://newgtlds.icann.org/en/applicants/gac-advice/>
- Applicant Guidebook, Module 3:
<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>

In adopting its response to remaining items of Beijing and Durban GAC advice, and the new Buenos Aires advice, the NGPC considered the applicant comments submitted, the GAC's advice transmitted in the Communiqués, and the procedures established in the AGB and the ICANN Bylaws. The adoption of the GAC advice as provided in the attached scorecard will assist with resolving the GAC advice in manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

There are no foreseen fiscal impacts associated with the adoption of this resolution, but fiscal impacts of the possible solutions discussed will be further analysed if adopted. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS.

As part of ICANN's organizational administrative function, ICANN posted the Buenos Aires GAC advice and officially notified applicants of the advice on 11 December 2013. The Durban Communiqué and the Beijing Communiqué were posted on 18 April 2013 and 1 August 2013, respectively. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

Signature Block:

Submitted by: Jamie Hedlund

Position: Advisor to the President

Date Noted: 28 January 2014

Email: jamie.hedlund@icann.org

ANNEX 1 to ICANN NGPC RESOLUTION NO. 2014.02.05.NG2b

GAC Advice (Beijing, Durban, Buenos Aires): Actions and Updates

Text Superseded by Annex 1 to ICANN NGPC Resolution No. 2014.02.05.NG01: <http://www.icann.org/en/groups/board/documents/r/en.pdf>

Text Superseded by Annex 1 to ICANN NGPC Resolution No. 2014.02.05.NG01: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf>

Text Superseded by Annex 1 to ICANN NGPC Resolution No. 2014.02.05.NG01: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf>

ICANN NGPC PAPER NO. 2014.02.05.NG2c

TITLE: **Assignment of Registry Agreements and Registry Transition Process**

PROPOSED ACTION: **For Information**

Now that New gTLD Registry Agreements are being signed, ICANN is receiving requests to approve assignments of New gTLD Registry Agreements. Some NGPC members requested a briefing on the procedure for approving assignments and a briefing on the details behind the requests for assignment submitted thus far. The purpose of this paper is to help the NGPC understand better the sale/transition of newly created registries and ICANN's process for approving assignments.

This paper is provided for information purposes; no action is recommended at this time.

Requests for a change in the contracting party of a Registry Agreement with ICANN are treated as Registry Transition Process requests. The Registry Transition Process is a process (<http://www.icann.org/en/resources/registries/transition-processes>) designed to address changes in the contracted party of a registry and was developed in conjunction with the anticipated introduction of new gTLDs as a model for the transition of a gTLD from one registry to another. As stated in the Registry Transition Process, the goal is to transition a gTLD in a secure, stable and reliable manner; while minimizing the impact on registrants and gTLD users, and providing transparency to the parties involved in the transition.

Under the Registry Transition Process, when a registry requests that ICANN assign its Registry Agreement to a prospective successor, ICANN assesses the situation from gathered facts, conversations with the current registry, and government or public authority (if applicable), and an analysis of the assignor's Registry Agreement. The assessment focuses on the following questions:

- Would there be a change in an entity providing any of the Back-End Registry functions?
- Does the TLD target a specific community that must be consulted?

- Is this gTLD a geographic name or was government support required at the time of the application?)
- Are there any restrictions in the Registry Agreement that might affect a transition?

ICANN also performs a risk assessment of the gTLD, current registry, and Back-End Registry Operator (if there is a change in that respect). If approved, ICANN secures a written Assignment Agreement signed by both the assignor and assignee.

During the development of the new gTLD program, a number of community members commented that the process for approving assignments needs to be reasonably streamlined so that business transactions are not unduly delayed or hampered by ICANN's assignment approval process timeline. Under the 2013 Registry Agreement approved by the NGPC, ICANN agreed that from the time a Registry Operator submits a request for approval of assignment, ICANN has thirty (30) days to request any additional information that ICANN may require to evaluate the requested assignment. Generally, if ICANN fails to expressly provide or withhold its consent to any assignment within thirty (30) calendar days of ICANN's receipt of notice of such transaction from Registry Operator, ICANN is deemed to have consented to such transaction. However, if ICANN requests additional information from Registry Operator within that thirty (30) days, the period for ICANN to expressly provide or withhold its consent to assignment is extended to thirty (30) calendar days following ICANN's receipt of all requested written information regarding such transaction.

To date, ICANN has received and approved two requests for assignment of New gTLD Registry Agreements. The approved assignment requests were for the TLDs .futbol and .reviews. In both cases, the assignor was a Donuts affiliate (Atomic Falls LLC and Extra Cover, LLC, respectively) and in both cases the proposed assignee was United TLD Holdco. In both cases, after the initial request for approval of the assignment was submitted, ICANN requested that additional information be provided to assist ICANN in evaluating and assessing the proposed assignments taking into account the standards set forth in the Registry Transition Process.

In its evaluation and assessment of the proposed assignments, ICANN considered the following facts, among others:

- There was no change in the entity providing Back End Registry Functions
- Neither involved a community application
- Neither involved a geographic TLD or required government support at the time of the application
- There were no special restrictions in the applicable Registry Agreement regarding assignment
- The proposed assignee, United TLD Holdco, was an applicant for several other New gTLDs and had recently and successfully completed ICANN's rigorous New gTLD Application evaluation process and screening
- Under the proposed assignment, United TLD Holdco agreed to assume all obligations of the assignors under the agreements; there were no proposed changes to public interest commitments or any other provisions of the Registry Agreements

Applying the standards set forth in the Registry Transition Process, ICANN approved both assignments and secured written Assignment Agreements signed by both the assignor and assignee. The Assignment Agreements are publicly posted on the ICANN website.

ICANN will continue to process any future requests in accordance with the Registry Transition Process, and as appropriate will advise the NGPC of any matters that may require NGPC action.

Signature Block:

Submitted by: Cyrus Namazi

Position: Vice President, GDD Domain Name Services

Date Noted: 17 January 2014

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