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ICANN NEW gTLD PROGRAM COMMITTEE SUBMISSION NO. 2014.06.06.2a

TO: ICANN New gTLD Program Committee

TITLE: Reconsideration Requests Regarding .WINE and .VIN

PROPOSED ACTIONS: For Committee Consideration and Approval

EXECUTIVE SUMMARY:

The Requesters, which include representatives of the European Commission, the United Kingdom Government, the French Government, the Spanish Government, various GI Organizations,¹ the Italian Government, the Portuguese Government, the Luxembourg Government, and the Swiss Government,² (collectively the “Requesters”), filed thirteen Reconsideration Requests asking the Board (or here the NGPC) to reconsider of one or more of the NGPC Resolutions 2014.03.22.NG01, 2014.04.04.NG01, 2014.04.04.NG02, 2014.04.04.NG03, and 2014.04.04.NG04 (collectively the “Resolutions”), which relate to the applications for .WINE and .VIN. The Requesters claim that: (i) the Resolutions were based on information transmitted in violation of internal GAC Operating Principles; (ii) the Board failed to consider material information in passing the Resolutions; (iii) the Board relied on false or misleading information in passing the Resolutions; and (iv) the Board breached ICANN’s Bylaws with respect to the commission and consideration of external expert legal advice.

The BGC considered these Reconsideration Requests at its 29 April 2014 meeting and concluded that there is no evidence that the Board’s actions in adopting the Resolutions

¹ The National Appellation of Origin Wines and Brandy Producers (“CNAOC”), the Comité Interprofessionnel du Vin de Champagne (“CIVC”), the European Federation of Origin Wines (“EFOW”), the Bureau National Interprofessionnel du Cognac (“BNIC”), and the Conseil Interprofessionnel du Vin de Bordeaux (“CIVB”) shall be collectively referred to herein as the “GI Organizations.”

² The Requesters separately filed the following thirteen Reconsideration Requests: European Commission (Request 14-13), United Kingdom Government (Request 14-14), French Government (Requests 14-15 and 14-25), Spanish Government (Requests 14-16 and 14-17), GI Organizations (Requests 14-18 and 14-24), Italian Government (Requests 14-19 and 14-26), Portuguese Government (Request 14-20), Luxembourg Government (Request 14-21), and Swiss Government (Request 14-22). The BGC may consolidate the consideration of reconsideration requests “if the issues stated within are sufficiently similar.” (Reconsideration Request Form, Terms and Conditions; Bylaws, Art. IV, § 2.8.) Because the Requests involve the same general Board action or inaction and raise sufficiently similar issues, the Requests will be addressed in the same proceeding.

support reconsideration. Specifically, the BGC concluded that the Board: (i) properly considered GAC advice provided to the Board in accordance with the procedures set forth in ICANN's Bylaws and the gTLD Applicant Guidebook; (ii) did not fail to consider any material information in passing the Resolutions; (iii) did not rely on false or misleading information in passing the Resolutions; and (iv) did not breach ICANN's Bylaws with respect to the commission and consideration of external legal advice. The BGC further noted that although the Requesters are concerned that the delegation of .WINE and .VIN without the safeguards preferred by the Requesters will adversely impact the Requesters, at present this remains uncertain and is therefore insufficient to establish the necessary Bylaws-mandated criteria to support the Reconsideration Requests. The BGC recommended that the Reconsideration Requests be denied without further consideration. A summary of the BGC Recommendation is provided in the rationale below.

BOARD GOVERNANCE COMMITTEE RECOMMENDATION:

The BGC recommends that Requests 14-13, 14-14, 14-15, 14-16, 14-17, 14-18, 14-19, 14-20, 14-21, 14-22, 14-24, 14-25, and 14-26 be denied and that no further action be taken in response to the Requests. As set forth below and detailed in the Recommendation attached to the Reference Materials in support of this paper, the BGC determined that the Requesters have not stated proper grounds for reconsideration.

PROPOSED RESOLUTION:

Whereas, nine entities, which include representatives of the European Commission, the United Kingdom Government, the French Government, the Spanish Government, various GI Organizations (consisting of The National Appellation of Origin Wines and Brandy Producers, the Comité Interprofessionnel du Vin de Champagne, the European Federation of Origin Wines, the Bureau National Interprofessionnel du Cognac, and the Conseil Interprofessionnel du Vin de Bordeaux), the Italian Government, the Portuguese Government, the Luxembourg Government, and the Swiss Government, (collectively the "Requesters"), filed thirteen Reconsideration Requests (Requests 14-13, 14-14, 14-15, 14-16, 14-17, 14-18, 14-19, 14-20, 14-21, 14-22, 14-24, 14-25, and 14-26 (collectively the "Requests")) asking the New gTLD Program Committee ("NGPC") to reconsider of one or more of the NGPC

Resolutions 2014.03.22.NG01, 2014.04.04.NG01, 2014.04.04.NG02, 2014.04.04.NG03, and 2014.04.04.NG04.

Whereas, the Board of Governance Committee (“BGC”) considered the issues raised in the Requests.

Whereas, the BGC recommended that the Requests be denied because the Requesters have not stated proper grounds for reconsideration and the NGPC agrees.

Resolved (2014.06.06.XX), the NGPC adopts the BGC Recommendation on Reconsideration Requests 14-13, 14-14, 14-15, 14-16, 14-17, 14-18, 14-19, 14-20, 14-21, 14-22, 14-24, 14-25, and 14-26, which can be found at

<https://www.icann.org/en/groups/board/governance/reconsideration/14-13/recommendation-european-commission-et-al-14may14-en.pdf>.

PROPOSED RATIONALE:

I. Brief Summary

Afilias Limited, dot Wine Limited, and June Station, LLC applied for .WINE and are in a contention set. Holly Shadow, LLC applied for .VIN. The Requesters, various national governments and entities asserting the interests of grape growers and wine and spirit drink producers, request reconsideration of one or more New gTLD Program Committee (“NGPC”) resolutions: (1) 2014.03.22.NG01 (“22 March 2014 Resolution”); and (2) 2014.04.04.NG01, 2014.04.04.NG02, 2014.04.04.NG03, and 2014.04.04.NG04 (“4 April 2014 Resolutions”) (collectively, the “Resolutions”), which relate to the applications for .WINE and .VIN.

In the 22 March 2014 Resolution, the NGPC “accept[ed] the GAC advice identified in the GAC Register of Advice as 2013-09-09-wine and vin” and, consistent with that advice, directed “that the applications for .WINE and .VIN should proceed through the normal evaluation process.”³ As part of its deliberations, the NGPC considered, among many other

³ <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-22mar14-en htm#1.a>.

things, the independent analysis of French Law Professor Jérôme Passa (“Independent Legal Analysis”) on this legally complex and politically sensitive matter.

After the NGPC approved the 22 March 2014 Resolution, in its Singapore Communiqué ICANN’s Governmental Advisory Committee (“GAC”) advised the Board that it believed that the NGPC had violated ICANN’s Bylaws, including Article XI-A, Section 1, Subsection 6, by failing to provide the GAC with the opportunity to comment on the Independent Legal Analysis before the NGPC accepted the GAC’s advice on the .WINE and .VIN applications. The GAC further advised that the Board “reconsider the matter” and that “applicants [for .WINE and .VIN] and interested parties [] be encouraged to continue their negotiations” with regard to additional safeguards for the proposed strings.⁴

On 4 April 2014, in response to the GAC’s Singapore Communiqué, the NGPC adopted the 4 April 2014 Resolutions, which stated that the NGPC: (1) “conclude[d] that there ha[d] been no process violation or error under the Bylaws” with respect to the 22 March 2014 Resolution; (2) “direct[ed] the President and CEO, or his designee, to not commence the contracting process for the applications for .WINE and .VIN for 60 days from the date of publication of these resolutions in order to provide additional time for the relevant impacted parties to negotiate, which they are encouraged to do;” and (3) “recommend[ed] that the full Board consider the larger implications of legally complex and politically sensitive issues such as those raised by GAC members.”⁵

On 8 April 2014, 9 April 2014, and 18 April 2014, the Requesters filed their Requests, seeking reconsideration of the Resolutions. Specifically, one or more of the Requesters claim that: (i) the Resolutions were based on information transmitted in violation of internal GAC Operating Principles; (ii) the Board failed to consider material information in passing the Resolutions; (iii) the Board relied on false or misleading information in passing the Resolutions; and (iv) the Board breached ICANN’s Bylaws with respect to the commission and consideration of external expert legal advice.

⁴ <https://gacweb.icann.org/download/attachments/27132037/Final%20Communique%20-%20Singapore%202014.pdf?version=1&modificationDate=1395925159241&api=v2>.

⁵ <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04apr14-en.htm>.

The BGC concluded that there is no evidence that the Board’s actions in adopting the Resolutions support reconsideration. Specifically, the BGC determined that the Board: (i) properly considered GAC advice provided to the Board in accordance with the procedures set forth in ICANN’s Bylaws and the gTLD Applicant Guidebook; (ii) did not fail to consider any material information in passing the Resolutions; (iii) did not rely on false or misleading information in passing the Resolutions; and (iv) did not breach ICANN’s Bylaws with respect to the commission and consideration of external legal advice. In addition, the BGC noted that although the Requesters are concerned that the delegation of .WINE and .VIN without the safeguards preferred by the Requesters will adversely impact the Requesters, at present this remains uncertain and is therefore insufficient to establish the necessary Bylaws-mandated criteria to support the Reconsideration Requests. Given this, the BGC recommended that the Requests be denied. The NGPC agrees.

II. Facts

A. Relevant Background Facts

Afilias Limited, dot Wine Limited, and June Station, LLC applied for .WINE and are in a contention set. Holly Shadow, LLC applied for .VIN (collectively, the “Applicants”).

On 11 April 2013, in its Beijing Communiqué, the GAC advised the Board not to proceed beyond initial evaluation on the .WINE and .VIN applications, noting that “further GAC consideration [of those strings] may be warranted.”

On 18 April 2013, ICANN posted the Beijing Communiqué and officially notified applicants of the advice, triggering the 21-day applicant response period pursuant to the Applicant Guidebook (“Guidebook”) Module 3.1.

From 23 April 2013 to 4 June 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings.

On 22 May 2013, ICANN published applicant responses to the GAC’s Beijing Communiqué, which included the Applicants’ responses to the GAC’s Advice regarding the .WINE and

.VIN applications.⁶

On 4 June 2013, the NGPC accepted the advice in the Beijing Communiqué.⁷

The National Appellation of Origin Wines and Brandy Producers (“CNAOC”), European Federation of Origin Wines (“EFOW”), the Comité Interprofessionel du Vin de Champagne (“CIVC”), the International Trade Policy Wine Institute, and the Organisation for an International Geographical Indications Network sent letters to the Board regarding their views on the delegation of .WINE and .VIN on 19 April 2013, 23 April 2013, 26 April 2013, 20 June 2013, and 9 July 2013, respectively.

On 18 July 2013, in its Durban Communiqué, the GAC advised the Board that it was continuing to consider the .WINE and .VIN applications, and that it needed an additional thirty days to conclude its consideration “due to the complexity of the matter.”⁸

The Napa Valley Vinters, the EFOW, and the Long Island Wine Council sent letters to the Board regarding their views on the delegation of .WINE and .VIN on 8 August 2013, 19 August 2013, and 29 August 2013, respectively.

On behalf of the GAC, the GAC Chair sent a letter dated 9 September 2013 (“9 September 2013 Letter”) to the Board advising that the GAC had “finalized its consideration of the strings .wine and .vin” and that “the applications should proceed through the normal evaluation process.”⁹ The letter stated that “[w]hile there is no GAC consensus advice on specific safeguards, it deserves to be noted that the crux of the matter relates to the handling of geographic indications, for which there is a range of views among the GAC membership,” and that “[t]here is no international agreement among governments about how to treat geographical indications and, as a consequence, no basis for an agreement in the GAC on

⁶ <http://newgtlds.icann.org/en/applicants/gac-advice/beijing46>.

⁷ <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm>.

⁸ <http://newgtlds.icann.org/en/applicants/gac-advice/durban47>.

⁹ <https://www.icann.org/en/news/correspondence/dryden-to-crocker-09sep13-en.pdf>. The date on the GAC advice letter from the GAC Chair indicates 9 September 2013, but it was not received until 11 September 2013. Because the final letter was not available until 11 September, it was not considered as part of the NGPC’s action on 10 September 2013.

safeguards that would offer additional protections.”¹⁰ Finally, the letter indicated that “[t]he GAC or its members may communicate further details to the Board as to the nature of the differences in views.”¹¹

On 10 September 2013, the NGPC accepted the advice in the Durban Communiqué concerning .WINE and .VIN (indicating that the GAC needed more time to consider the matters) and noted that it stood ready to hear the final advice from the GAC. Although the NGPC had not yet received the 9 September 2013 Letter, the NGPC did acknowledge that it had received an email from the GAC Chair on 10 September 2013 reiterating that the GAC had finalized its consideration of the strings. The NGPC stated that it would discuss both the 9 September 2013 Letter and 10 September 2013 email at a subsequent meeting.¹²

On 12 September 2013, the European Commission sent the Board a letter stating that, in its opinion, there had “not been any consensus decision overruling the advice given in Beijing [and] the advice provided at the GAC April meeting stands as long as there is no new consensus on the matter.” The European Commission also expressed its concern that “[t]he more general safeguards expressed in Annex 1 of the Beijing Communiqué are not specific enough to allow companies unrelated to the wine sector, and therefore not acquainted with the specificities of the global wine market and the importance of GIs, to run the two strings in a safe manner.”¹³

On 28 September 2013, the NGPC acknowledged receipt of the GAC advice in the 9 September 2013 Letter, and indicated that it “st[ood] ready to hear from GAC members as to the nature of the differences in views expressed in the advice while [it analyzed] the community input received on [the GAC’s] advice.”¹⁴ The NGPC directed staff to analyze the GAC advice and other community input, and to prepare an analysis and recommendation for

¹⁰ *Id.*

¹¹ *Id.*

¹² <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-10sep13-en.htm>. Although the letter from the GAC chair was dated 9 September 2013, it was not received by the Board until 11 September 2013. As a result, it was not considered as part of the NGPC’s action on 10 September 2013.

¹³ <http://www.icann.org/en/news/correspondence/kroes-to-chehade-crocker-12sep13-en.pdf>.

¹⁴ <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-28sep13-en.pdf>.

the NGPC meeting in Buenos Aires, scheduled for November 2013.

On 7 November 2013, the European Commission again sent the Board a letter, stating that its concerns regarding the delegation of .WINE and .VIN would remain “until an agreement is reached between applicants and rights holders and a solution is commonly presented to ICANN by both parties as an example of good cooperation.”¹⁵ On 15 November 2013, the Organization of American States sent the Board a letter regarding its concerns with respect to GI safeguards for .WINE and .VIN.¹⁶

On 19 November 2013, ICANN facilitated a dialogue between the applicant for .VIN and the affected non-governmental parties.

On 20 November 2013, in its Buenos Aires Communiqué, the GAC stated that:

Some members are of the view, after prolonged and careful consideration, that the existing safeguards outlined in the GAC’s Beijing Communiqué and implemented by the ICANN Board are appropriate and sufficient to deal with the potential for misuse of the .wine and .vin new gTLDs Other members consider that delegation of .wine and .vin strings should remain on hold until either sufficient additional safeguards to protect GIs are put into place in these strings to protect the consumers and businesses that rely on such GIs; or common ground has been reached for the worldwide protection of GIs via international fora and wide array of major trade agreements.¹⁷

The GAC further advised that the Board “may wish to seek a clear understanding of the legally complex and politically sensitive background on this matter in order to consider the appropriate next steps in the process of delegating the two strings. GAC members may wish to write to the Board to further elaborate their views.”¹⁸

On 17 December 2013, the Australian Government sent a letter to the Board stating that it “consider[ed] that existing international and national arrangements concerning the appropriate

¹⁵ <http://www.icann.org/en/news/correspondence/kroes-to-icann-board-07nov13-en.pdf>.

¹⁶ <http://www.icann.org/en/news/correspondence/baptista-to-crocker-15nov13-en.pdf>.

¹⁷ <http://newgtlds.icann.org/en/applicants/gac-advice/buenosaires48>.

¹⁸ *Id.*

use of GIs are sufficient to allow the delegation of .wine and .vin.”¹⁹

On 30 January 2014, the United States Government sent a letter to the Board stating that in its view, “the existing safeguards developed by the GAC and accepted by the ICANN Board provide sufficient protections to mitigate against possible abuses in domain name registrations at the second level of .wine and .vin.”²⁰

On 3 February 2014, the European Union Member States, Norway, and Switzerland, sent the Board a letter recommending that the delegation of .WINE and .VIN be put on hold until “bilateral negotiations between GI right holders and applicants reach a successful outcome.”²¹

On 5 February 2014, the NGPC announced that it had “commissioned an analysis of the legally complex and politically sensitive background of the [.WINE and .VIN strings] in the context of the GAC advice in order to consider the appropriate next steps of delegating .WINE and .VIN.”²² The analysis, which was to be performed by Jérôme Passa, a French law professor, was expected to be completed in time for consideration by the NGPC at ICANN’s March 2014 meeting in Singapore.

On 19 March 2014, the European Parliament sent the Board a letter supporting the views expressed in the EU Member States’ letter of 3 February 2014.²³

On 22 March 2014, at the Singapore meeting, the NGPC adopted Resolution 2014.03.22.NG01, accepting the GAC advice identified in the 9 September 2013 Letter from the GAC Chair and directing ICANN staff to proceed with the normal evaluation process for the .WINE and .VIN applications.²⁴

On 26 March 2014, the European Commission, the European Union Member States, Norway, and Switzerland sent the Board a letter expressing the view that there had been a number of

¹⁹ <http://www.icann.org/en/news/correspondence/maurer-to-crocker-17dec13-en.pdf>.

²⁰ <http://www.icann.org/en/news/correspondence/strickling-to-crocker-30jan14-en>.

²¹ <http://www.icann.org/en/news/correspondence/steneberg-to-crocker-et-al-03feb14-en>.

²² <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf>.

²³ <http://www.icann.org/en/news/correspondence/schulz-to-crocker-et-al-19mar14-en.pdf>.

²⁴ <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-22mar14-en.htm#1.a>.

process violations and procedural errors with respect to the 22 March 2014 Resolution.²⁵

On 27 March 2014, in its Singapore Communiqué, the GAC stated that:

The GAC notes the NGPC Resolution 2014.03.22.NG01 concerning .wine and .vin as well as its rationale. In the final deliberation of the Board there appears to be at least one process violation and procedural error, including in relation to Bylaws Article XI-A, Section 1 subsection 6 which states:

6. Opportunity to Comment. The Governmental Advisory Committee, in addition to the Supporting Organizations and other Advisory Committees, shall have an opportunity to comment upon any external advice received prior to any decision by the Board.

The GAC therefore advises:

That the Board reconsider the matter before delegating these strings. The GAC needs to consider the above elements more fully. In the meantime concerned GAC members believe the applicants and interested parties should be encouraged to continue their negotiations with a view to reach an agreement on the matter.²⁶

On 1 April 2014, the Consorzio Vino Chianti Classico sent a letter to the Board expressing its concerns that the delegation of the .WINE and .VIN gTLDs “may negatively impact our organisation’s ability to protect against fraudulent use of Wine related Geographical Indications (“GI”s) and the wine regions we represent.”²⁷ The Consorzio Vino Chianti Classico asked ICANN and the GAC to either “grant adequate protection to all wine growing regions including GIs...or withdraw the .WINE and .VIN extensions.”²⁸

On 2 April 2014, the Board received letters from the Rioja Governing Council,²⁹ the

²⁵ <http://www.icann.org/en/news/correspondence/steneberg-to-icann-board-26mar14-en.pdf>.

²⁶ <https://gacweb.icann.org/download/attachments/27132037/Final%20Communique%20-%20Singapore%202014.pdf?version=1&modificationDate=1395925159241&api=v2>.

²⁷ <http://www.icann.org/en/news/correspondence/zingarelli-to-chalaby-et-al-01apr14-en.pdf>.

²⁸ *Id.* at 2.

²⁹ <http://www.icann.org/en/news/correspondence/lapuente-to-icann-board-et-al-02apr14-en>.

European Union and its Member States, Norway, and Switzerland;³⁰ and CIVC³¹ regarding the delegation of the .WINE and .WIN gTLDs and the 22 March 2014 Resolution.

On 3 April 2014, the Board received letters from the Napa Valley Vintners,³² the Long Island Wine Council,³³ and the Instituto dos Vinhos do Douro e Porto³⁴ regarding the delegation of the .WINE and .VIN gTLDs and the 22 March 2014 Resolution.

On 4 April 2014, the NGPC adopted Resolutions 2014.04.04.NG01, 2014.04.04.NG02, 2014.04.04.NG03, and 2014.04.04.NG04, wherein the NGPC: (1) “accept[ed] the GAC advice identified in the Singapore Communiqué as it relates to the applications for .WINE and .VIN;” (2) “conclude[d] that there has been no process violation or error under the Bylaws” with respect to the 22 March 2014 Resolution; (3) “direct[ed] the President and CEO, or his designee, to not commence the contracting process for the applications for .WINE and .VIN for 60 days from the date of publication of these resolutions in order to provide additional time for the relevant impacted parties to negotiate, which they are encouraged to do;” and (4) “recommend[ed] that the full Board consider the larger implications of legally complex and politically sensitive issues such as those raised by GAC members, including whether ICANN is the proper venue in which to resolve these issues, or whether there are venues or forums better suited to address concerns such as those raised by GAC members in relation to the .WINE and .VIN applications.”³⁵

Following the adoption of the 4 April 2014 Resolutions, the Chairman of the Board sent a letter to the GAC Chair explaining the actions taken by the NGPC.³⁶

On 7 April 2014, the Santa Barbara Vintners sent a letter to the Board expressing their concerns regarding the delegation of the .WINE and .VIN gTLDs without additional

³⁰ <http://www.icann.org/en/news/correspondence/steneberg-to-icann-board-02apr14-en>.

³¹ <http://www.icann.org/en/news/correspondence/barbier-to-icann-board-02apr14-en.pdf>.

³² <https://www.icann.org/en/news/correspondence/reiff-to-crocker-03apr14-en>.

³³ <https://www.icann.org/en/news/correspondence/bate-to-icann-board-03apr14-en>.

³⁴ <https://www.icann.org/en/news/correspondence/cabral-to-icann-board-03apr14-en>.

³⁵ <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04apr14-en.htm>.

³⁶ <https://www.icann.org/en/news/correspondence/crocker-to-dryden-04apr14-en.pdf>.

safeguards.³⁷

On 8 April 2014, the European Commission, the British Government, the French Government, the Spanish Government, and the GI organizations filed, respectively, Reconsideration Requests 14-13, 14-14, 14-15, 14-16, and 14-18, requesting reconsideration of the 22 March 2014 Resolution. That same day, the Spanish Government filed Reconsideration Request 14-17, requesting reconsideration of the 4 April 2014 Resolutions. On 9 April 2014, the Italian Government, the Portuguese Government, and the Luxembourg Government filed, respectively, Reconsideration Requests 14-19, 14-20, and 14-21, requesting reconsideration of the 22 March 2014 Resolution. On 18 April 2014, the Swiss Government, the GI Organizations, the French Government, and the Italian Government filed, respectively, Reconsideration Requests 14-22, 14-23, 14-24, and 14-25, requesting reconsideration of the 4 April 2014 Resolutions.

On 18 April 2014, the EFOW sent a letter to the Board stating that it had “invit[ed] the three [.WINE/.VIN] applicants to a meeting in Brussels under the auspices of the European Commission on 15 and 16 May,” that its “objective [was] to strike a deal before the end of the 60 day period” and that it “believe[d] that there is room for a mutually satisfactory agreement which would set out adequate safeguards.”³⁸

On 30 April 2014, the New Zealand Government sent a letter to the Board expressing its position on the .WINE and .VIN applications, noting that it “has no problem with the recommendation from the New gTLD Program Committee (NGPC) that .wine and .vin be delegated without further restrictions.”³⁹

On 5 May 2014, the EFOW sent a letter to the Board stating that it was “actively following up on the [4 April 2014 Resolutions] which invite[] ‘the relevant impacted parties to negotiate, which they are encouraged to do.’” The EFOW detailed the progress it had made in its attempts to schedule meetings with the Applicants. It concluded that it believed “that there is room for a mutually satisfactory agreement which would set out adequate safeguards” and

³⁷ <https://www.icann.org/en/news/correspondence/mclaughlin-to-icann-board-et-al-07apr14-en.pdf>.

³⁸ <https://www.icann.org/en/news/correspondence/curbastro-to-hickson-18apr14-en.pdf>.

³⁹ <https://www.icann.org/en/news/correspondence/parkes-to-crocker-30apr14-en>.

that it invited the Board and other interested ICANN parties to “assist [] these multi-stakeholder[] negotiations in order to ensure a high level of transparency and accountability.”⁴⁰

On 8 May 2014, the Australian Government sent a letter to the Board “reiterat[ing] [its] view that the existing safeguards that ICANN has agreed to for all new gTLDs are appropriate and sufficient to deal with the potential for misuse of terms relating to GIs in these domains.”

On 21 May 2014, the United States Department of Commerce sent a letter to the Board reaffirming its position on the .WINE and .VIN applications previously communicated to the Board on 30 January 2014.⁴¹ On that same day, United States Congressman Mike Thompson sent a letter to the Chair of the ICANN Board expressing his position on the delegation of the .WINE and .VIN gTLDs.⁴²

B. Requester’s Claims

The Requesters seek reconsideration of one or more of the Resolutions. Specifically, in aggregate, the Requesters contend that the NGPC:

1. Improperly issued the Resolutions based on information submitted by the GAC Chair in violation of GAC Operating Principle 47.⁴³
2. Breached Article VI, Section 9 of ICANN’s Bylaws because the GAC Chair, who is a non-voting liaison on the NGPC, failed to inform the GAC of the Board’s pending vote on the 22 March 2014 Resolution.⁴⁴
3. Failed to consider material correspondence, including letters sent by the

⁴⁰ <http://www.icann.org/en/news/correspondence/curbastro-to-sahel-beccalli-05may14-en.pdf>

⁴¹ <https://www.icann.org/en/news/correspondence/strickling-to-crocker-21may14-en>.

⁴² <https://www.icann.org/resources/correspondence/thompson-to-crocker-2014-05-21-en>.

⁴³ See Request 14-13, §§ 3, 6, 8, Pgs. 1-2, 6-7, 12-13; Request 14-15, § 8, 9-10; Request 14-16, § 8, Pgs. 9-10; Request 14-18, § 8, Pg. 11; Request 14-19, § 3, 6, 8, Pgs. 1-2, 7, 12; Request 14-20, § 8, Pgs. 5-6; Request 14-21, §§ 3, 6, 8, Pgs. 2, 7, 12-13; Request 14-22, § 8, Pgs. 4-5, Pgs. 5-6; Request 14-24, § 8, Pg. 13; Request 14-25, § 8, Pg. 11, Request 14-26, § 8, Pg. 6.

⁴⁴ See Request 14-13, § 6, Pg. 10; Request 14-14, § 3, Pg. 2; Request 14-18, § 6, Pg. 9; Request 14-19, § 6, Pgs. 9-10; Request 14-21, § 6, Pg. 10.

European Union and various stakeholders, in passing one or more of the Resolutions.⁴⁵

4. With respect to Professor Jérôme Passa's Independent Legal Analysis:⁴⁶
 - a. Violated Article XI-A of ICANN's Bylaws;
 - b. Breached the Bylaws principles of fairness, transparency, and openness;
 - c. Failed to consider material information contained in the Independent Legal Analysis; and
 - d. Relied on false and inaccurate information.
5. Failed to consider material information, namely the GAC's Singapore Communiqué, in passing the 4 April 2014 Resolutions and imposing a 60-day deadline on negotiations between the Applicants and stakeholders regarding additional safeguards for .WINE and .VIN.⁴⁷

III. Issues

The issues are whether the Board:

1. Relied on false or misleading information in basing the 22 March 2014 Resolution on information submitted by the GAC Chair that the

⁴⁵ See Request 14-13, § 8, Pgs. 11-12; Request 14-14, § 3, Pg. 2; Request 14-15, § 8, Pgs. 6-8; Request 14-16, § 8, Pgs. 7-9; Request 14-17, § 8, Pgs. 7-8; Request 14-18, § 8, Pgs. 10-11; Request 14-19, § 8, Pg. 11; § , Pgs; Request 14-20, § 8, Pgs. 6-9; Request 14-21, § 8, Pgs. 11-12; Request 14-22, § 8, Pgs. 3-4, 8; Request 14-24, § 8, Pg. 12; Request 14-26, § 8, Pg. 5.

⁴⁶ See Request 14-13, § 6, Pgs. 8-10, 13-16; Request 14-14, § 3, Pg. 2; Request 14-15, § 8, Pgs. 11-16; Request 14-16, § 8, Pgs. 10-18; Request 14-17, § 8, Pgs. 8-11; Request 14-18, § 8, Pgs. 11-13; Request 14-19, § 6, Pgs. 8-9; Request 14-20, § 6, Pgs. 4-5; Request 14-21, § 6, Pgs. 8-10; Request 14-22, § 8, Pgs. 5-8; Request 14-24, § 8, Pgs. 13-16); Request 14-25, § 8, Pgs. 12-14; Request 14-26, § 8, Pgs. 6-9.

⁴⁷ See Request 14-17, §§ 6, 8, Pgs. 2-3, 7-8; Request 14-22, §§ 6, 8, Pgs. 2, 8; Request 14-24, § 8, Pgs. 8-10; Request 14-25, § 6, Pgs. 7-9; Request 14-26, § 8, Pg. 5.

Requesters suggest was sent in violation of GAC Operating Principle 47.

2. Breached Article VI, Section 9 of ICANN's Bylaws because, the Requesters state that the GAC Chair, who is a non-voting liaison on the NGPC, failed to inform the GAC of the Board's 22 March 2014 Resolution.
3. Failed to consider material correspondence in passing the Resolutions.
4. Violated Article XI-A of ICANN's Bylaws with respect to the NGPC's solicitation of and reliance on the Independent Legal Analysis.
5. Breached the Bylaws principles of fairness, transparency, and openness with respect to the NGPC's solicitation of and reliance on the Independent Legal Analysis.
6. Failed to consider material information with respect to the Independent Legal Analysis.
7. Relied on false or misleading information with respect to the Independent Legal Analysis.
8. Failed to consider material information, namely the GAC's Singapore Communiqué, in passing the 4 April 2014 Resolutions and imposing a 60-day deadline on negotiations between Applicants and stakeholders regarding additional safeguards for .WINE and .VIN.

IV. The Relevant Standards for Evaluating Reconsideration Requests

ICANN's Bylaws call for the BGC to evaluate and make recommendations to the Board with respect to Reconsideration Requests. *See* Article IV, Section 2 of the Bylaws. The NGPC, bestowed with the powers of the Board in this instance, has reviewed and thoroughly

considered the BGC Recommendation on Requests 14-13, 14-14, 14-15, 14-16, 14-17, 14-18, 14-19, 14-20, 14-21, 14-22, 14-24, 14-25, and 14-26 and finds the analysis sound.⁴⁸

V. Analysis and Rationale

A. The Requesters' Suggestion that the Resolutions Were Based on Information Transmitted in Violation of GAC Operating Principle 47 Does Not Support Reconsideration.

The BGC concluded, and the NGPC agrees, that the Requesters have not sufficiently demonstrated that the Board relied on false or inaccurate information in adopting the Resolutions. The Requesters suggest that the Resolutions were “partly based on ... the GAC Chair letter to the ICANN Board dated 9 September 2013 as part of the GAC advice on .VIN and .WINE” and that “such materials are inaccurate, false and/or misleading.” (Request 14-24, § 8, Pgs. 12-13; Request 14-15, § 8, Pgs. 9-10; Request 14-20, § 8, Pgs. 5-6.) The Requesters claim that the GAC Chair’s 9 September 2013 letter “was sent to the ICANN Board without being circulated to GAC members first,” and that the letter was not, in fact, supported by a consensus of the GAC. (Request 14-24, § 8, Pgs. 12-13; Request 14-13, § 6, Pg. 7.) The Requesters further claim that the GAC Chair’s action in sending the 9 September 2013 Letter violated GAC Operating Principle 47, which provides that “[t]he GAC works on the basis of seeking consensus among its membership. . . . Where consensus is not possible, the Chair shall convey the full range of views expressed by members to the ICANN Board.” The Requesters state that because the 9 September 2013 Letter was sent in violation of GAC’s Operating Principles and did not accurately reflect the GAC’s consensus advice, it was misleading and should not have been considered by the Board. (Request 14-13, § 8, Pg. 12-13.) The BGC concluded that the Requesters’ assertions relating to GAC Operating Principle 47 do not support reconsideration.

Section 2.1.i. of Article XI of the Bylaws provides that the GAC “may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending

⁴⁸ Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval, positively affects ICANN’s transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN’s policies, Bylaws, and Articles of Incorporation.

action or new policy development or revision to existing policies.” (*Id.* at § 2.1.i.) Module 3.1 of the Guidebook sets forth the parameters in which GAC Advice was to be given under the New gTLD Program. The GAC has specifically articulated what constitutes such GAC Advice:

GAC members have worked on the basis that any explicit advice, in any written form, constitutes the kind of advice foreseen in the [ICANN] Bylaws. In practice, the GAC produces various kinds of written advice for communication to the Board, including:

- 1) letters signed by the GAC Chair on behalf of the GAC;
- 2) communiqués and submissions endorsed by the GAC at face-to-face meetings and inter-sessionally;
- 3) overarching ‘principles’ documents, typically developed over successive face-to-face GAC meetings; and
- 4) ‘issues’ documents, including interim issues documents.⁴⁹

Pursuant to GAC Operating Principle 46, “[a]dvice from the GAC to the ICANN Board shall be communicated through the Chair.”⁵⁰

The BGC noted that the 9 September 2013 Letter setting forth the GAC’s advice on .WINE and .VIN constituted written advice in the form of a letter signed by the GAC Chair on behalf of the GAC. Further, the 9 September 2013 Letter was submitted to ICANN in accordance with the procedure governing the transmission of GAC Advice as set forth in the Guidebook. The BGC concluded that as the 9 September Letter was provided as GAC advice, ICANN was required, under applicable Guidebook provisions and under ICANN’s Bylaws, to consider it. (Guidebook, § 3.1; Bylaws, Art. XI, § 2.1.j.)

With respect to the Requesters’ concerns that the 9 September 2013 Letter did not convey the full range of views expressed by the GAC members, the BGC noted that 9 September 2013 Letter conveyed the varying views expressed by GAC members were set forth in the letter. Further, the 9 September 2013 Letter stated that “[t]he GAC or its members may communicate further details to the Board as to the nature of the differences in views.”⁵¹

⁴⁹ <https://gacweb.icann.org/display/GACADV/GAC+Advice> (emphasis added).

⁵⁰ <https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles>.

⁵¹ *Id.*

Notably, various GAC Members, including the European Commission, the European Union Member States, Norway, and Switzerland, submitted their views on .WINE and .VIN following the 9 September 2013 Letter.⁵² And, as is discussed further below, the NGPC considered this correspondence in connection with the issuance of the Resolutions.

B. The Requesters' Suggestion that the GAC Chair Should Have Informed GAC Members of the ICANN Board's 22 March 2014 Resolution Does Not Involve Board Action Subject to Reconsideration.

The Requesters suggest that the GAC Chair's failure to (i) inform the GAC of her presence at relevant NGPC meetings and (ii) inform the GAC of the Board's 22 March 2014 Resolution before it was made public support reconsideration. The BGC concluded, and the NGPC agrees, that the Requesters' suggestions do not support reconsideration because the Requesters are challenging the conduct of the GAC Chair, not an action or inaction of the ICANN Board or ICANN staff. The BGC further noted that to the extent that the Requesters are challenging the action of the GAC Chair in her capacity as a non-voting liaison to the Board, it should be noted that no individual voting Board member or non-voting liaison speaks or acts for the Board.⁵³

C. The Board Did Not Fail to Consider Material Correspondence in Passing the Resolutions.

The BGC concluded, and the NGPC agrees, that the NGPC did not fail to consider any material information in passing the Resolutions. The Requesters state that the Board failed to consider material information in passing the Resolutions, including letters sent by the European Union, governmental organizations, and other stakeholders. (*See, e.g.*, Request 14-15, § 8, Pgs. 7-8; Request 14-17, § 8, Pgs. 7-8.) Specifically, the Requesters suggest that the Board failed to consider the following correspondence:

⁵² *See, e.g.*, <https://www.icann.org/en/news/correspondence/steneberg-to-crocker-et-al-03feb14-en.pdf>, <https://www.icann.org/en/news/correspondence/kroes-to-icann-board-07nov13-en.pdf>

⁵³ Further, nothing in the Bylaws requires the GAC Chair to inform the GAC of her presence at NGPC meetings or otherwise report on resolutions passed by the NGPC. The Bylaws allow the non-voting liaisons the discretion to use materials provided to them for purposes of consulting with their respective committee or organization. However, the non-voting liaisons are not required to do so. (Bylaws, Art. VI, § 9.5.)

- 23 April 2013 Letter from the EFOW
- 26 April 2013 Letter from the CIVC
- 20 June 2013 Letter from the International Trade Policy Wine Institute
- 9 July 2013 Letter from the Organisation for an International Geographical Indications Network
- 8 August 2013 Letter from the Napa Valley Vinters
- 19 August 2013 Letter from the EFOW
- 29 August 2013 Letter from the Long Island Wine Council
- 12 September 2013 Letter from the European Commission
- 7 November 2013 Letter from the European Commission
- 15 November 2013 Letter from the Organization of American States
- 3 February 2014 Letter from EU Member States, Norway, and Switzerland
- 19 March 2014 Letter from the European Parliament
- 26 March 2014 Letter from the European Commission
- 2 April 2014 Letter from the Rioja Governing Council

The BGC determined that the Requesters' statements are unsupported.

First, the NGPC considered all the correspondence cited by the Requesters in its deliberation on the Resolutions. As to the 22 March 2014 Resolution, the NGPC has confirmed that it did consider these correspondence in the approved Minutes and Rationale for that resolution.⁵⁴ As to the 4 April 2014 Resolutions, in its Preliminary Report of the Meeting of the New

⁵⁴ <http://www.icann.org/en/groups/board/documents/minutes-new-gtld-22mar14-en htm#1.a>.

gTLD Program Committee, which took place on 3-4 April 2014, the NGPC clearly stated that “the NGPC acknowledges the correspondence received on .WINE and .VIN since the ICANN Singapore meeting, including,” among others, the 19 March 2014 Letter from the European Parliament and the 26 March 2014 Letter from the European Commission cited by the Requesters.⁵⁵ The list provided by the NGPC was intended to be a representative, and not exhaustive, list of the correspondence considered by the NGPC. The NGPC did consider all of the correspondence cited by the Requesters in its deliberation on the 4 April 2014 Resolutions and has likewise confirmed that in the approved Minutes and Rationale for that resolution.⁵⁶

Further, the BGC noted that even if the NGPC had not considered each individual letter cited by the Requesters, the NGPC specifically considered the range of views expressed in those letters throughout its consideration of the GAC advice relating to the .WINE and .VIN applications. (See Preliminary Report of the 22 March 2014 Meeting of the NGPC; Preliminary Report of the 3-4 April 2014 Meeting of the NGPC.)

With respect to the claim set forth in Request 14-16 that the Board failed to consider two letters sent by the European Commission to the GAC on 29 July 2013 and 19 September 2013, the BGC noted that these letters, however, were *not* sent to ICANN. Instead, both were addressed and sent only to members of the GAC. Article IV, Section 2.2.b. of the Bylaws states that reconsideration is not proper if “the party submitting the request could have submitted, but did not submit, the information for the Board’s consideration at the time of action or refusal to act.” (Bylaws, Art. IV, §2.2.b.) As such, though the letters were not considered in connection with the Resolutions, the NGPC was neither aware of the existence of the letters nor had it been provided the letters by the Requesters.

⁵⁵ <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04apr14-en.htm>.

⁵⁶ <http://www.icann.org/en/groups/board/documents/minutes-new-gtld-04apr14-en-htm#1.a>.

D. The Commission and Consideration of the Independent Legal Analysis of Professor Jérôme Passa Does Not Support Reconsideration.

1. Article XI-A of the Bylaws Does Not Apply Because the Board Did Not Solicit Professor Passa’s Advice in Connection with the Cited Provision of the Bylaws.

The BGC concluded, and the NGPC agrees, that the Board did not violate Article XI-A, Subsections 1.3 and 1.6 of the ICANN Bylaws. The Requesters claim that the Board violated Article XI-A, Subsections 1.3 and 1.6 by: (1) failing to consult with the GAC prior to seeking advice from Professor Passa; and (2) not giving the GAC an opportunity to comment on Professor Passa’s advice.⁵⁷ The BGC noted that Article XI-A of the Bylaws applies to external expert advice sought for the purpose of “allow[ing] the policy-development process within ICANN to take advantage of existing expertise that resides in the public or private sector but outside of ICANN.” (Bylaws, Art. XI-A, § 1.1.) As Professor Passa’s Independent Legal Analysis was not sought pursuant to Article XI-A of the Bylaws, the BGC finds that this suggestion by the Requesters does not support reconsideration.⁵⁸

The BGC noted that Professor Passa’s opinion was obtained as part of the implementation of the New gTLD Program, and specifically pursuant to Module 3.1 of the Guidebook. Because the NGPC’s action in obtaining Professor Passa’s was not sought pursuant to Article XI-A of the Bylaws, the NGPC was not obligated to provide the GAC with the opportunity to comment on Professor Passa’s retention or expert opinion before the NGPC acted on the GAC advice relating to .WINE and .VIN. Module 3.1 provides, in pertinent part:

⁵⁷ Subsection 1.3(b) of Article XI-A provides that “[i]n the event that the Board determines . . . that external advice should be sought concerning one or more issues of public policy, the Board shall, as appropriate, consult with [GAC] regarding the appropriate source from which to seek the advice and the arrangements, including definition of scope and process, for requesting and obtaining that advice.

Subsection 1.6 of Article XI-A provides that “[t]he [GAC], in addition to the Supporting Organizations and other Advisory Committees, shall have an opportunity to comment upon any external advice received prior to any decision by the Board.”

⁵⁸ Subsection 1.5 of Article XI-1 provides that “[e]xternal advice pursuant to this Section shall be provided in written form. Such advice is advisory and not binding, and is intended to augment the information available to the Board or other ICANN body in carrying out its responsibilities.” The Requesters argue that the use of the word “responsibilities” indicates that Article XI-A, Section 1 applies to expert advice sought for purposes other than aiding the policy-development process. (Request 14-13, § 3, Pg. 3.) However, the provisions of Subsection 1.5 are explicitly limited to advice sought “pursuant to this Section.”

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board *may consult with independent experts*, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

(Guidebook, § 3.1) (emphasis added). Under this provision, the Board has the discretion to seek independent expert opinion on the issues raised in the GAC's Advice. This provision does not state that the Board must consult with the GAC after independent consultation has been obtained before a decision can be taken.

2. The Scope of the Issues Considered by Professor Passa Does Not Support Reconsideration.

With respect to the Requesters' claim that the scope of Professor Passa's analysis is intentionally limited thereby failing to provide the necessary insights for the NGPC to respond adequately to the GAC's requests, the BGC further concluded, and the NGPC agrees, that the claim does not support reconsideration. The BGC determined that the Requesters do not claim that Professor Passa failed to analyze and appropriately consider the questions and issues posed to him by the ICANN Board. Rather, the Requesters object to the scope of Professor Passa's assignment. That is not a basis for reconsideration. As noted above, Module 3.1 of the Guidebook provides that the ICANN Board, in its discretion, "may consult with independent experts." That the Board may also define the scope of its consultation with independent experts is equally encompassed by this provision.

3. The Board Did Not Fail to Consider Material Information with Respect to the Independent Legal Analysis.

The BGC concluded, and the NGPC agrees, that the Requesters' claim that the Board failed to consider certain material findings in the Independent Legal Analysis is unsupported. In support of their claim that certain key points in the advice provided by Professor Passa were

“completely ignored by the NGPC”,⁵⁹ the Requesters state that the NGPC failed to quote or otherwise mention these specific points in the Rationale for the Resolutions. The BGC noted that contrary to the Requesters’ claim, the NGPC did consider the Independent Legal Analysis. The 22 March 2014 Resolution specifically states that the NGPC considered the Independent Legal Analysis as part of its deliberations on the GAC’s advice.⁶⁰ That the NGPC did not recite or quote every sentence of the Independent Legal Analysis does not mean that the NGPC did not consider the entire report. The Requesters cite no provision in the Guidebook, the Bylaws, or otherwise requiring the NGPC to quote the report in its entirety.

4. The Requesters’ Disagreement with the Conclusions of the Independent Legal Analysis is Not a Basis for Reconsideration.

The BGC determined, and the NGPC agrees, that the Requesters’ substantive disagreement with Professor Passa’s legal opinion is not a basis for reconsideration. The Requesters suggest that parts of the Independent Legal Analysis are “severely wrong” insofar as Professor Passa relies on Article 22, rather than Article 23, of the TRIPS agreement in support of his finding that “a geographical indication does not enjoy absolute or automatic protection against any use of an identical or similar name by a third party.” (Request 14-15, § 8, Pgs. 14-15.) The BGC noted that the Requesters do not suggest that Professor Passa relied on false or inaccurate material information. Instead, the Requesters disagree with Professor Passa’s process and ultimate expert legal opinion. This is not a proper basis for reconsideration.

E. Permitting Additional Time for Impacted Parties to Negotiate is Not Properly the Subject of a Request for Reconsideration.

The Requesters challenge the Board’s 4 April 2014 Resolution insofar as it directed the President and CEO to not commence the contracting process for .WINE and .VIN for 60 days to “provide additional time for the relevant impacted parties to negotiate,” which the Requesters claim was contrary to GAC advice.⁶¹ The BGC concluded, and the NGPC agrees,

⁵⁹ Request 14-13, § 8, Pg. 14.

⁶⁰ <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-03-22-en#/1.a>.

⁶¹ <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04apr14-en.htm>.

that the Requesters have not stated a proper ground for reconsideration pursuant to Article IV, Section 2.2 of the Bylaws. (*See* Bylaws, Art. IV, § 2.2.) The Requesters' disagreement with the Board's decision to include a 60 day window in which the impacted parties were encouraged to negotiate is not a proper basis for reconsideration.

F. The Requests Are Premature.

The BGC noted, and the NGPC agrees, that the Requests are premature because the adverse impact that the Requesters cite is speculative at present and is insufficient to support reconsideration.⁶² To establish standing to bring a reconsideration request under ICANN's Bylaws, each Requester must demonstrate that it has been "adversely affected" by the Resolutions at issue in the Requests. (Bylaws, Art. IV, § 2.2.) The Requesters here have not met this burden because any "adverse affect" claimed by the Requesters presupposes that .WINE and .VIN have already been delegated without the safeguards preferred by the Requesters. However, at this point neither .WINE nor .VIN has been delegated. Indeed, the NGPC, in its 4 April 2014 Resolutions, specifically "direct[ed] the President and CEO, or his designee, to not commence the contracting process for the applications for .WINE and .VIN for 60 days from the date of publication of these resolutions in order to provide additional time for the relevant impacted parties to negotiate, which they are encouraged to do."⁶³

VI. Decision

The NGPC had the opportunity to consider all of the materials submitted by or on behalf of the Requesters or that otherwise relate to the Requests. The NGPC also notes that it has had the opportunity to consider all the correspondence submitted to the Board to date regarding the .WINE and .VIN applications. Following consideration of all relevant information

⁶² Requesters also object to language in the 4 April Resolutions recommending that "the full Board consider the larger implications of legally complex and politically sensitive issues such as those raised by GAC members, including whether ICANN is the proper venue in which to resolve these issues, or whether there are venues or forums better suited to address concerns such as those raised by GAC members in relation to the .WINE and .VIN applications." (Request 14-17, § 6, Pg. 3; Request 14-24, § 6, Pg. 10; Request 14-25, § 6, Pg. 10; Request 14-26, § 6, Pg. 3.) However, Requesters do not explain how this recommendation is properly the subject of a reconsideration request under ICANN's Bylaws. Instead, it appears that the Requesters simply disagree with the recommendation, but Requesters' substantive disagreement with the recommendation does not constitute a basis for reconsideration.

⁶³ <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04apr14-en.htm>

provided, the NGPC reviewed and has adopted the BGC's Recommendation on the Requests, which shall be deemed a part of this Rationale and the full text of which can be found at <https://www.icann.org/en/groups/board/governance/reconsideration/14-13/recommendation-european-commission-et-al-14may14-en.pdf> and is attached to the Reference Materials to the NGPC Submission on this matter.

Adopting the BGC's recommendation has no financial impact on ICANN and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

Submitted By: Amy A. Stathos, Deputy General Counsel
Dated Noted: 1 June 2014
Email: amy.stathos@icann.org

ICANN NGPC PAPER NO. 2014.06.06.2b

TITLE: **GAC Advice regarding Community Views -
.HEALTH and health-related TLDs**

PROPOSED ACTION: **For Discussion**

EXECUTIVE SUMMARY:

At this time, the ICANN Board New gTLD Program Committee (NGPC) is considering whether the recent community input received on the .HEALTH and health-related strings should be reviewed in the context of the GAC advice, accepted by the NGPC, to take better account of community views and improving outcomes for communities, within the existing framework, independent of whether those communities have utilized ICANN's formal community processes to date.

In its Durban Communiqué, the GAC reiterated its advice from the Beijing Communiqué regarding preferential treatment for all applications which have demonstrable community support, while noting community concerns over the high costs for pursuing a Community Objection process as well as over the high threshold for passing Community Priority Evaluation. At that time, the GAC advised the Board to “[c]onsider to take better account of community views, and improve outcomes for communities, within the existing framework, independent of whether those communities have utilized ICANN's formal community processes to date.”

In the GAC-NGPC Scorecard adopted on 10 September 2013, the NGPC accepted the GAC's advice and decided to “consider taking better account of community views and improving outcomes for communities, within the existing framework, independent of whether those communities have utilized ICANN's formal community processes to date.” In accepting the advice, the NGPC acknowledged that “in general it may not be possible to improve any outcomes for communities beyond what may result from the utilization of the AGB's community processes while at the same time remaining within the existing framework.”

In the Singapore Communiqué issued 27 March 2014, the GAC reiterated its advice from the Beijing and Durban Communiqués regarding preferential treatment for all applications which have demonstrable community support. The GAC advised “ICANN to continue to protect the public interest and improve outcomes for communities, and to work with the applicants in an open and transparent manner in an effort to assist those communities.” The GAC also noted that “a range of issues relating to community applications will need to be dealt with in future rounds.”

Over the past few months, the NGPC has received correspondence from member organizations of the International Medical Informatics Association (IMIA), in addition to other health-related organizations including the European Federation of Medical Information, the World Medical Association, Inc. and Medicus Mundi International Network to name a few. The correspondence generally requests that the Board delay the allocation of .HEALTH and other health-related TLDs until adequate safeguards are in place. (The Reference Materials include links to the correspondence received on the topic.) For example, the member organizations of the IMIA note that Beijing GAC advice proposes generic safeguards for Category 1 strings (of which health-related TLDs are included), but that the GAC recognizes that “further targeted safeguards” may be required to address specific risks.

The International Society for Telemedicine & eHealth (ISfTeH) asserts that “.health is one of the ten most opposed new gTLDs. Concerns have been expressed through public comments, early warnings, and objections by the Independent Objector as well as the At-Large Advisory Committee.” The ISfTeH suggests that such concerns should be taken into account given the GAC’s advice in the Beijing Communiqué that in cases where “a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information.” The World Medical Association, Inc. (WMA) asserts that “the proposed safeguards are insufficient and the Public Interest Commitments cannot be monitored or enforced by the national public

health and other regulatory bodies expected to do so.” The WMA recommends that the auction of the .HEALTH string not go forward.

STAFF RECOMMENDATION:

This paper is provided for further discussion by the NGPC. Staff recommends that no additional action is needed by the NGPC. As discussed in the 10 September 2013 Scorecard, it may not be possible to improve any outcomes for communities beyond what may result from the utilization of the AGB’s community processes while at the same time remaining within the existing framework. The applications for .HEALTH and other health-related strings were the subject of several processes established in the New gTLD Applicant Guidebook (AGB) to address similar concerns raised in the correspondence referenced above. For example, the AGB provides the authority for the Independent Objector to file objections against applications. The Independent Objector does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet. The Independent Objector filed objections against the various applications for .HEALTH and .HEALTHCARE and in each instance, the applicant prevailed. The expert determination of the objection panel recognized that “ICANN can and will impose several layers of responsibilities, including intellectual property safeguards and public policy considerations” on the applicable registry operators. And this is the case. The New gTLD Registry Agreement includes various mandatory safeguards that the registry operator of the .HEALTH and .HEALTHCARE TLD will be contractually obligated to uphold.

Signature Block:

Submitted by: Christine Willett

Position: Vice President, gTLD Operations

Date Noted: 23 April 2014

Email: christine.willett@icann.org

ICANN NGPC PAPER NO. 2014.06.06.2d

TITLE: Possible Review Mechanism for Perceived Inconsistent String Confusion Objection Expert Determinations

PROPOSED ACTION: For Resolution

EXECUTIVE SUMMARY:

At its 5 February 2014 meeting, the ICANN Board New gTLD Program Committee (NGPC) took action to direct the ICANN President and CEO, or his designee, to initiate a public comment period on framework principles of a potential review mechanism to address perceived inconsistent String Confusion Objection Expert Determinations (the “SCO Review Mechanism”). If adopted, the Review Mechanism would constitute a change to the Objection process set forth in the New gTLD Applicant Guidebook.

The public comment period on the proposed SCO Review Mechanism closed on 3 April 2014, and a summary of the comments has been publicly posted <<https://www.icann.org/en/system/files/files/report-comments-sco-framework-principles-24apr14-en.pdf>>. Thirty-five comments were submitted during the public comment forum. The NGPC has considered and thoroughly discussed this matter on more than one occasion, and after careful consideration of all of the public comments received, the NGPC noted that the public comments do not clearly advocate one position over another, but highlight concerns and competing interests that require careful consideration.

At its 29 April 2014 meeting the NGPC asked staff to prepare a resolution in line with the NGPC’s thinking on whether to adopt the proposed Review Mechanism, and the issue raised in the public comment forum about whether, if a review mechanism for Expert Determinations is adopted, should it be available more broadly to address other perceived inconsistent or unreasonable Expert Determinations (e.g., Expert Determinations from the Community and Limited Public Objections processes).

STAFF RECOMMENDATION:

All things considered, including the public comments, the provisions in the Applicant Guidebook, and the NGPC's thinking on the matter, staff recommends that for this round of the New gTLD Program, no further review mechanism for Expert Determinations be adopted.

PROPOSED RESOLUTION:

Resolution Not Considered

Resolution Not Considered

PROPOSED RATIONALE:

Rationale Not Considered

Rationale Not Considered

Rationale Not Considered

Rationale Not Considered

Rationale Not Considered

Signature Block:

Submitted by: Amy Stathos

Position: Deputy General Counsel

Date Noted: 30 May 2014

Email: amy.stathos@icann.org

ICANN NGPC INFO PAPER NO. 2014.06.06.2e

Overview – JAS report on name collision

Note: Info Paper is in the form of brief overview chart below

<p>What is the Issue?</p> <p>Following the Board New gTLD Program Committee direction from 7 October 2013 to implement the New gTLD Collision Occurrence Management Plan, ICANN contracted JAS to develop a Name Collision Occurrence Management Framework. After putting a first version of the document to public comment, JAS has provided a draft final report incorporating the input received.</p>	<p>Why is it Important?</p> <p>In order to ensure a secure and stable delegation of new TLDs ICANN has committed to implement the New gTLD Collision Occurrence Management Plan, of which the Name Collision Occurrence Management Framework is a key element.</p>
<p>Who is the Decision-maker? Who is the Shepherd?</p> <p>There is no decision requested at this point; this is an informational paper. The staff leads on this issue are Akram Atallah, Cyrus Namazi, and Francisco Arias.</p>	<p>Next Steps?</p> <ol style="list-style-type: none">1. JAS to publish their final report in the next week.2. Based on public input, the JAS report, SSAC advice (if available), ICANN will propose actions for the Board New gTLD Program Committee consideration in London.

Pages 40/55 – 55/55 removed. Agenda items concerning BGC Recommendations on Reconsideration Request 13-9, Amazon EU S.á.r.l. and Reconsideration Request 13-10, Commercial Connect, LLC not considered.