

ANNEX 1 to ICANN NGPC PAPER NO. 2014.01.09.NGxx

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

6 January 2014

Text Superseded by Annex 1 to ICANN NGPC Resolution No. 2014.02.05.NG01: 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>

Resolved Items of GAC Advice

<p>15. [AFRICA] 2013-04-11- Obj-Africa (Beijing Communiqué §1.a.i.1)</p>	<p>The GAC advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the application for .africa (Application number 1-1165-42560)</p>	<p>1A</p>	<p>The NGPC accepted this advice on 4 June 2013. At the NGPC's direction, staff advised the applicant, DotConnectAfrica Trust (DCA Trust), that its application for .africa would not be approved.</p> <p>On 19 June 2013, DCA Trust submitted a reconsideration request to the Board Governance Committee ("BGC") requesting that the NGPC's 4 June 2013 action regarding DCA Trust's New gTLD application be reconsidered. On 13 August 2013, the NGPC adopted the BGC's recommendation to deny the reconsideration request because DCA Trust did not state proper grounds for reconsideration.</p> <p>http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-13aug13-en.htm#1.c</p> <p>DCA Trust filed an Independent Review Proceeding (IRP) in accordance with Article IV, section 3 of the ICANN Bylaws. The NGPC will be provided with updates as the matter progresses.</p>
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GAC Register #	GAC Advice		Update
16. [.GCC] 2013-04-11- Obj-GCC (Beijing Communiqué §1.a.i.2)	The GAC advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .gcc (application number: 1-1936-2101)	1A	The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) At the NGPC's direction, staff advised the applicant, GCCIX WLL, that its application for .gcc would not be approved.
17. [.THAI] (Durban Communiqué §1.1.a.i.2; Buenos Aires Communiqué §2.c)	<u>Durban</u> : The GAC advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .thai (application number 1-2112-4478) <u>Buenos Aires</u> : The GAC welcomes the Board's acceptance of its advice in the Durban Communiqué on the application for .thai.	1A	The NGPC adopted a resolution to accept this advice at its 10 September 2013 meeting. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) At the NGPC's direction, staff advised the applicant that its application for .thai would not be approved.
18. [.DATE] 2013-07-18 – date and persiangulf (Durban Communiqué §3.a.i)	The GAC has finalized its consideration of the following string, and does not object to it proceeding: .date (application number 1-1247-30301)	1A	The NGPC adopted a resolution to accept this advice at its 10 September 2013 meeting. ICANN will continue to process the application in accordance with the established procedures in the AGB.
19. [.PERSIAN GULF] 2013- 07-18 –date and persiangulf (Durban Communiqué §3.a.ii)	The GAC has finalized its consideration of the following string, and does not object to it proceeding: .persiangulf (application number 1-2128-55439)	1A	The NGPC adopted a resolution to accept this advice at its 10 September 2013 meeting. ICANN will continue to process the application in accordance with the established procedures in the AGB. The NGPC noted that community objections have been filed with the International Centre for Expertise of the ICC against .PERSIANGULF.

GAC Register #	GAC Advice		Update
20. [INDIANS and .RAM] 2013-07-18 – Indians and ram (Durban Communiqué §4.a.i)	The GAC advises the ICANN Board that the GAC has noted the concerns expressed by the Government of India not to proceed with the applications for .indians and .ram.	1A	The NGPC adopted a resolution to accept this advice at its 10 September 2013 meeting. The NGPC noted the concerns expressed in this advice.
21. [GEO NAMES] 2013-07-18 – GeoNames (Durban Communiqué §7.a.i)	The GAC recommends that ICANN collaborate with the GAC in refining, for future rounds, the Applicant Guidebook with regard to the protection of terms with national, cultural, geographic and religious significance, in accordance with the 2007 GAC Principles on New gTLDs.	1A	The NGPC adopted a resolution to accept this recommendation at its 10 September 2013 meeting. At that time, the NGPC noted that it stood ready to hear from the GAC regarding possible refinements, for future rounds, of the Applicant Guidebook with respect to the protection of terms with national, cultural, geographic and religious significance, in accordance with the 2007 GAC Principles on New gTLDs.
22. [DOTLESS DOMAINS] 2013-07-18 – Security and Stability (Durban Communiqué §8.a.i.)	The GAC shares the security and stability concerns expressed by the SSAC regarding Internal Name Certificates and Dotless Domains. The GAC requests the ICANN Board to provide a written briefing about how ICANN considers this SSAC advice with a view to implementation as soon as possible. The GAC believes that all such stability and security analysis should be made publicly available prior to the delegation of new gTLDs.	1A	<p>Prior to the delegation of any new gTLDs, the NGPC provided a written briefing to the GAC regarding how ICANN considers this SSAC advice with a view to implementation as soon as possible.</p> <p>On 7 October 2013, the NGPC approved an updated proposal, titled "New gTLD Collision Occurrence Management Plan," to mitigate the risks of potential name collisions caused by the introduction of new gTLDs. Additionally, on 21 November 2013, the ICANN Board adopted the NGPC recommendations: (1) the ICANN Board Risk Committee expressly reviews name collision matters and reports back to the Board, and continues to review and report at regular intervals; (2) the Board directs the ICANN President and CEO to develop a long-term plan to manage name collision at the root; and (3) the Board directs the ICANN President and CEO to work with the community to develop a long-term plan to retain and measure root-server data.</p>

GAC Register #	GAC Advice		Update
23. [SSAC ADVICE] 2013-07-18 – Security and Stability(Durban Communiqué §8.a.ii.a)	The GAC Advises the ICANN Board to: as a matter of urgency consider the recommendations contained in the SSAC Report on Dotless Domains (SAC053) and Internal Name Certificates (SAC057).	1A	The NGPC adopted a resolution to accept this advice at its 10 September 2013 meeting. The SSAC recommendations are being considered in the ongoing work on Dotless Domains and Internal Name Certificates.
24. [CONFLICT OF LAWS] 2013-07-18 – Registry/ Registrar Agreements (Durban Communiqué §9.a)	It was noted that there are provisions in the Registry Agreement and Registrar Accreditation Agreement that may conflict with applicable law in certain countries, in particular privacy and data retention, collection and processing law. The importance of having adequate procedures to avoid these conflicts was highlighted.	1A	At its 10 September 2013 meeting, the NGPC adopted a resolution acknowledge the GAC’s highlighting of the importance of having adequate procedures to avoid conflicts between provisions in the Registry Agreement and the Registrar Accreditation Agreement and applicable law in certain countries, in particular privacy and data retention, collection and processing law. At that time, the NGPC provided an update of the ongoing actions being taken to address the concerns highlighted.

GAC Register #	GAC Advice		Update
<p>25. [COMMUNITY APPS] 2013-04-11-CommunitySupport (Beijing Communiqué §1.e; Durban Communiqué §7.b)</p>	<p><u>Beijing</u>: The GAC advises the Board that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information.</p> <p><u>Durban</u>: The GAC reiterates 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. Therefore the GAC advises the ICANN Board to consider 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.</p>	1A	<p>In response to the Beijing Communiqué the NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting, and noted that Criterion 4 for the Community Priority Evaluation process takes into account "community support and/or opposition to the application" in determining whether to award priority to a community application in a contention set.</p> <p>In response to the Durban Communiqué the NGPC adopted a resolution to accept this advice at its 10 September 2013 meeting. The NGPC agreed 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. The NGPC noted 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.</p>
<p>26. [SINGULAR VS PLURAL] 2013-04-11-PluralStrings (Beijing Communiqué §1.f)</p>	<p>The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion. Therefore the GAC advises the Board to reconsider its decision to allow singular and plural versions of the same strings.</p>	1A	<p>The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting, and to consider singular and plural versions of the same strings. At its 25 June 2013 meeting, the NGPC considered whether to allow singular and plural versions of the same string, and adopted a resolution confirming that no changes were needed to the existing mechanisms in the Applicant Guidebook to address potential consumer confusion resulting from allowing singular and plural versions of the same string</p> <p><http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm#2.d>.</p>

GAC Register #	GAC Advice		Update
27. [2013 RAA] 2013-04-11-RAA (Beijing Communiqué §2)	The GAC advises the ICANN Board that the 2013 Registrar Accreditation Agreement should be finalized before any new gTLD contracts are approved.	1A	The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting. The ICANN Board approved the 2013 RAA on 27 June 2013, and the NGPC approved the New gTLD Registry Agreement shortly thereafter (i.e. 2 July 2013).
28. [WHOIS] 2013-04-11-WHOIS (Beijing Communiqué §3)	The GAC urges the ICANN Board to ensure that the GAC Principles Regarding gTLD WHOIS Services, approved in 2007, are duly taken into account by the recently established Directory Services Expert Working Group.	1A	The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting, and noted that staff confirmed that the GAC Principles have been shared with the Expert Working Group.
29. [IOC/RCRC NAMES] 2013-04-11-IOCRC (Beijing Communiqué §4)	The GAC advises the ICANN Board to amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.	1A	<p>The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting. The New gTLD Registry Agreement adopted by the NGPC on 2 July 2013 included protection for an indefinite duration for IOC/RCRC names. Specification 5 of the approved Registry Agreement included a list of names (provided by the IOC and RCRC Movement) that "shall be withheld from registration or allocated to Registry Operator at the second level within the TLD."</p> <p>This protection was added pursuant to a NGPC resolution to maintain these protections "until such time as a policy is adopted that may require further action" (204.11.26.NG03). The resolution recognized the GNSO's initiation of an expedited PDP. The GNSO Council recently approved recommendations from the expedited PDP on the protections for the identifiers of IGO and INGO identifiers. The recommendations will be forwarded to the ICANN Board for further consideration at the close of the public comment period.</p>

GAC Register #	GAC Advice		Update
30. [SAFEGUA RDS APPLICABLE TO ALL GTLDS] 2013-04-11- Safeguards - 1 (Beijing Communiqué Annex I, Item 1)	The GAC advises that the following six safeguards should apply to all new gTLDs and be subject to contractual oversight: (1) WHOIS verification and checks, (2) mitigating abusive activity, (3) security checks, (4) documentation, (5) making and handling complaints, and (6) consequences. (Refer to the GAC Register of Advice for the full text of each Safeguards Applicable to All New gTLDs.)	N/A	On 25 June 2013, the NGPC adopted a resolution accepting a proposal for implementation of the GAC safeguards applicable to all new gTLDs. In some cases, ICANN, instead of registry operators, would implement the safeguard. The NGPC also approved some changes to the New gTLD Registry Agreement to implement certain elements of the safeguard advice. The changes are reflected in the New gTLD Registry Agreement approved by the NGPC on 2 July 2013.

ICANN NGPC PAPER NO. 2014.01.09.NG1a

TITLE: GAC Advice (Beijing, Durban, Buenos Aires):
Updates

PROPOSED ACTION: For Information

EXECUTIVE SUMMARY:

The attached Annex 1 provides a status update on the actions taken by the NGPC to address the GAC's advice issued in Beijing and Durban. The update includes the items of advice that have been resolved by the NGPC, in addition to the remaining open items of advice. Over the past several months, the NGPC has taken several actions to respond to the advice in the Beijing Communiqué and the Durban Communiqué, including:

- Adopting a Scorecard of 1As on 4 June 2013 in response to non-safeguard advice in the Beijing Communiqué.
- Adopting a resolution on 25 June 2013 on the safeguards applicable to all strings, and Category 2 Exclusive Registry Access.
- Adopting another iteration of the Scorecard on 28 September 2013 in response to remaining advice of GAC advice in the Durban Communiqué and the Beijing Communiqué.
- Notifying the GAC that the NGPC intends to accept the GAC's Beijing Communiqué advice concerning Category 1 Safeguards, and presenting documents that describe how ICANN intends to implement the advice.

Additionally, Annex 1 includes new items of advice issued by the GAC in its Buenos Aires Communiqué (dated 20 November 2013) and the NGPC's proposed response for each item. 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. To be considered by the NGPC, applicant responses are required to be

submitted no later than 6 January 2013. ICANN will publish applicant responses and provide them to the NGPC for consideration as the NGPC moves forward with addressing the GAC advice.

To note, on 15 January 2014 ICANN's right to implement certain changes under the Supplement to the Registry Agreement expires. Recall that all applicants entering into the Registry Agreement also signed the Supplement to the Registry Agreement, which gave ICANN the right to modify or amend certain sections of the Registry Agreement without the consent of the applicant/registry operator. For example, the Registry Agreement could be modified pursuant to the Supplement to address TMCH requirements, public interest commitments applicable to all TLDs, and GAC advice. After 15 January 2014, amendments and modifications to Registry Agreements that have already been executed will need to follow the procedure established in Section 7.6 of the Registry Agreement.

This paper is provided for informational purposes, and the NGPC may consider taking action at subsequent meetings to address the remaining GAC advice.

Signature Block:

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Date Noted: 6 January 2014

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ICANN NGPC PAPER NO. 2014.01.09.NG2a

TITLE: Extension of Initial Protections of IGO Identifiers

PROPOSED ACTION: For Resolution

EXECUTIVE SUMMARY:

In the Buenos Aires Communiqué, the GAC advised the ICANN Board that the GAC, together with IGOs, remained committed to continuing the dialogue with NGPC on finalizing the modalities for permanent protection of IGO acronyms at the second level. While the parties continue to work through the implementation issues, the GAC advised that advised that “[i]nitial protections for IGO acronyms should remain in place until the dialogue between the NGPC, the IGOs and the GAC ensuring the implementation of this protection is completed.”

On 17 July 2013, the NGPC adopted a resolution requiring registry operators to continue to implement temporary protections for the precise IGO names and acronyms on the “IGO List” posted as [Annex 1](#) to Resolution 2013.07.02NG03 – 2013.07.02.NG06 until the first meeting of the NGPC following the ICANN 48 Meeting in Buenos Aires or until the NGPC makes a further determination on the GAC Advice regarding IGO protections, whichever is earlier. The NGPC is being asked to consider extending the temporary protections while the parties continue to work through implementation issues of the GAC advice.

STAFF RECOMMENDATION:

Staff recommends the NGPC adopt a resolution confirming that appropriate initial protection for the IGO identifiers will continue to be provided as presented in the New gTLD Registry Agreement while the parties continue to actively work through outstanding implementation issues.

PROPOSED RESOLUTION:

Whereas, the GAC advised the ICANN Board in the Buenos Aires Communiqué that it remained committed to continuing the dialogue with the NGPC on finalizing the modalities for permanent protection of IGO acronyms at the second level, and advised that initial protections for IGO acronyms should remain in place until the dialogue between the NGPC, the IGOs are completed.

Whereas, the New gTLD Program Committee (NGPC) is responsible for considering the IGO GAC Advice 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.

Whereas, on 17 July 2013, the NGPC approved Resolutions 2013.07.17.NG01-2013.07.17.NG03 requiring registry operators to continue to implement temporary protections for the precise IGO names and acronyms on the "IGO List" posted as [Annex 1](#) to Resolution 2013.07.02NG03 – 2013.07.02.NG06 until the first meeting of the NGPC following the ICANN 48 Meeting in Buenos Aires or until the NGPC makes a further determination on the GAC Advice regarding IGO protections, whichever is earlier.

Whereas, the GAC, NGPC, ICANN staff and community continue to actively work through outstanding implementation issues, the NGPC thinks it is prudent to further extend the initial protections for the IGO identifiers.

Resolved (2013.12.xx.NGxx), the NGPC confirms that appropriate preventative initial protection for the IGO identifiers will continue to be provided as presented in the New gTLD Registry Agreement adopted on 2 July 2013 while the GAC, NGPC, ICANN staff and community continue to actively work through outstanding implementation issues.

Resolved (2013.12.xx.NGxx), the NGPC determines that pursuant to Specification 5 in the New gTLD Registry Agreement adopted on 2 July 2013, registry operators will continue to implement temporary protections for the precise IGO names and acronyms on the "IGOList" posted as [Annex 1](#) to Resolution 2013.07.02NG03 – 2013.07.02.NG06

until the NGPC makes a further determination on the GAC advice regarding protections for IGO identifiers.

PROPOSED RATIONALE:

Article XI, Section 2.1 of the ICANN Bylaws

<http://www.icann.org/en/about/governance/bylaws#XI> permits 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 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 policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

In the Buenos Aires Communiqué, the GAC issued additional advice regarding protections for IGO identifiers. The NGPC is being asked to consider extending the initial temporary protections afforded to IGOs in July 2013 as the parties continue to work through implementing the GAC advice.

On 2 July 2013, the NGPC directed that temporary protections for the IGO names and acronyms previously identified by the GAC on its "IGO List dated 22/03/2013," which was attached as [Annex 1](#) the NGPC's 2 July 2013 resolutions, so that the GAC and the NGPC would have time to work out outstanding implementation issues. These initial protections were extended again on 17 July 2013 until the first meeting of the NGPC following the ICANN Meeting in Buenos Aires, Argentina, unless the NGPC and the GAC were able to resolve the issues and the NGPC passed a resolution on the GAC advice earlier than the ICANN Meeting in Buenos Aires. The NGPC agrees that it is important that those temporary protections remain in place as it continues to

consider the GAC's advice on protections for IGOs as presented in the Buenos Aires Communiqué.

The Resolution under consideration would extend the temporary protections for IGO identifiers as provided in the New gTLD Registry Agreement. As part of its consideration of this resolution, the NGPC takes note that on 29 April 2013, ICANN initiated a public comment forum to solicit input on the proposed final draft of the New gTLD Registry Agreement <<http://www.icann.org/en/news/public-comment/base-agreement-29apr13-en.htm>>. The public comment forum closed on 11 June 2013. ICANN received several responses from the community during the course of the public comment forum on the proposed final draft of the New gTLD Registry Agreement; however, none of the responses specifically relates to the provisions in the New gTLD Registry Agreement to provide protections for IGO identifiers. <<http://forum.icann.org/lists/comments-base-agreement-29apr13/>>.

Additionally, the NGPC takes note that the GNSO Policy Development Process Working Group tasked with addressing the issue of protecting the identifiers of certain IGOs and International Non-Governmental Organizations ("INGOs") delivered its [Final Report](#) to the GNSO Council on 10 November 2013. The Working Groups consensus recommendations in the Final Report were adopted unanimously by the GNSO Council on 20 November 2013. As required by the ICANN Bylaws, public notice of the policies under consideration as well as an opportunity to comment on their adoption, prior to their consideration by the ICANN Board has been initiated. The public comment period is scheduled to close on 8 January 2014 <<http://www.icann.org/en/news/public-comment/igo-ingo-recommendations-27nov13-en.htm>>.

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

- GAC Buenos Aires Communiqué:
https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2

- GNSO PDP Working Group Final Report on Protection of IGO and INGO Identifiers in all gTLDs: <<http://gns0.icann.org/en/issues/igo-ingo-final-10nov13-en.pdf>>

The NGPC's response to the GAC advice will assist with resolving the GAC advice in manner that permits the New gTLD Program to continue to move forward, while being mindful of the ongoing efforts to work through the outstanding implementation issues.

There are no foreseen fiscal impacts associated with the adoption of this resolution, and approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS. This is not a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment.

Signature Block:

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Position: Advisor to the President

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ICANN NEW gTLD PROGRAM COMMITTEE SUBMISSION NO. 2014.01.09.2b

TO: ICANN New gTLD Program Committee

TITLE: Reconsideration Request 13-12

PROPOSED ACTIONS: For Committee Consideration and Approval

EXECUTIVE SUMMARY:

In Reconsideration Request 13-12, Tencent asked the Board (or here the NGPC) to reconsider ICANN's acceptance of the Expert Determinations in favor of Sina's objections to Tencent's applications for .微博 (the Chinese characters for "microblogging") and .WEIBO. The BCG considered Request 13-12 and concluded that Tencent has not stated proper grounds for reconsideration. The BGC recommended to the NGPC that the Request be denied without further consideration. For a summary of the BGC recommendation, please see rationale below.

BOARD GOVERNANCE COMMITTEE RECOMMENDATION:

The BGC recommends that Request 13-12 be denied and that no further action be taken in response to the Request. As set forth below and detailed in the Recommendation attached to the Reference Materials in support of this paper, the BGC determined that Tencent has not stated proper grounds for reconsideration.

PROPOSED RESOLUTION:

Whereas, Tencent Holdings Limited's ("Tencent") Reconsideration Request 13-12, sought reconsideration of the Expert Determinations on the objection of Sina Corporation ("Sina") to Tencent's applications for .微博 and .WEIBO.

Whereas, Request 13-12 challenges the staff's acceptance of the 30 August 2013 Expert Determinations in favor of Sina's objection to Tencent's applications for .微博 and .WEIBO.

Whereas, the Board of Governance Committee (“BGC”) considered the issues raised in Request 13-12.

Whereas, the BGC recommended that Request 13-12 be denied because Tencent has not stated proper grounds for reconsideration and the New gTLD Program Committee (“NGPC”) agrees.

Whereas, in addition to all of the materials submitted with the Request, the NGPC reviewed and considered the material that was submitted by Tencent after the BGC issued its Recommendation on Request 13-12 and concluded that said material does not change the Recommendation of the BGC.

Resolved (2014.01.09.XX), the NGPC adopts the BGC Recommendation on Reconsideration Request 13-12, which can be found at

<http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-tencent-29oct13-en.pdf>.

PROPOSED RATIONALE:

I. Brief Summary

Both the Requester Tencent and Sina applied for the same two strings - 微博 (the Chinese characters for “microblogging”) and .WEIBO. Sina won its Legal Rights Objection (“LRO”) against Sina’s applications for these two strings. The Requester claims: (i) that the LRO Panel applied a higher standard of review than what is set forth in the Applicant Guidebook, which Tencent suggests created an elevated standard of review; (ii).that ICANN’s acceptance of the DRSP’s decision is contrary to ICANN’s mandate to act transparently and fairly; and (iii) that ICANN failed to provide guidance to the DRSP panels regarding the burden of proof. As a result, the Requester asks the Board (or here the NGPC) to reconsider ICANN’s acceptance of the Expert Determinations in favor of Sina. In the alternative, Requester asks ICANN to “provide applicants of inconsistent and erroneous DRSP panel determinations,

such as Tencent, with an avenue for redress that is consistent with ICANN’s mandate to act with fairness.” (*Id.*)

The BGC concluded that: (i) there is no indication that the Expert Panel applied the wrong LRO standard; (ii) nothing supports the claim that ICANN acted in contradiction of its mandate to act transparently and fairly; and (iii) there is no identified policy or process requiring any further guidance to the DRSP panels on the burden of proof. In sum, there is no evidence to support the conclusion that ICANN’s actions violated any established policy or process. Therefore, the BGC has Recommended that Request 13-13 be denied. The NGPC agrees.

II. Facts

A. Background Facts

Request 13-12 involves ICANN’s acceptance of an Expert Determination on two strings -- .微博 and .WEIBO. Both Sina and Tencent applied for the same two strings. Sina filed a legal rights objection (LRO) to Tencent’s applications claiming that Tencent’s applications violated Sina’s legal rights. An expert panel deemed Sina the prevailing party, meaning that Sina “won” its objections, and Tencent “lost”. Specifically, the Panel reviewed Sina’s standing to object to Tencent’s Applications and determined that Sina had a basis to object as the rights holder in the 微博 mark. Applying the standards for an LRO as defined in Section 3.5.2 of the Applicant Guidebook, the Panel concluded that Tencent’s Applications unjustifiably impair the distinctive character of the Sina’s 微博 mark.

Tencent then filed Request 13-12, asking for reconsideration of the objection proceedings. Tencent is seeking reconsideration of staff’s acceptance of the LRO Panel’s determination, which ICANN has previously stated can be considered a staff action for the purposes of the Reconsideration process.

B. Requester’s Claims

Tencent primarily based its Request on the argument that the LRO Panel should have applied (but did not apply) the general standard for LRO objections set forth in Section 3.5.2 of the Applicant Guidebook, which Tencent suggests created some sort of elevated standard for reviewing trademark-based objections.

III. Issues

The Request calls into consideration: (1) whether the Expert Panel failed to follow ICANN guidelines suggested in the Applicant Guidebook (“Guidebook”) for determining an LRO (2) whether ICANN’s acceptance of the LRO Panel’s Determinations is contrary to ICANN’s mandate to act transparently and fairly; and (3) whether ICANN’s alleged failure to provide guidance to the Panel regarding burden of proof supports reconsideration.

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 Request 13-12 and finds the analysis sound.¹ As noted in the BGC’s Recommendation, the Reconsideration process should not ask the BGC, or the NGPC, to substantively review the LRO Panel’s determination, but only to determine if any policy or process violation occurred in the consideration of the Objection.

V. Analysis and Rationale

The BGC found that none of the Requester’s claims support reconsideration.

First, the BGC concluded that the Requester failed to provide any evidence demonstrating that the Expert Panel failed to comply with the Guidebook. The BGC agreed with the Requester that Section 3.5.2 of the Guidebook sets out the following general standard for LRO objections:

¹ 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.

[A] DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector's registered or unregistered trademark or service mark ("mark") or IGO name or acronym ... or unjustifiably impairs the distinctive character or the reputation of the objector's mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector's mark or IGO name or acronym.

The BGC noted, however, that the Requester failed to recognize the remainder of the LRO standards set forth in the Guidebook that the Panel did evaluate. The Guidebook lists eight non-exclusive factors that an LRO panel should consider when determining whether an objector has satisfied the general Section 3.5.2 standard (*i.e.*, whether an applied for gTLD "takes unfair advantage of," "unjustifiably impairs" or "creates an impermissible likelihood of confusion between" another's trademark).

The BGC noted that the Panel *did* apply the eight non-exclusive factors to Sina's LRO and determined that the factors supported Sina's Objection. (Determination, Pages 5-8.)

Therefore, the BGC determined that "Tencent has not established that the Panel 'failed to follow ICANN guidelines' for assessing LROs." As a result, no process violation was stated, and the BGC recommended that the Reconsideration be denied.

Second, the BGC concluded that the Requester provides no evidence to support its claim that ICANN's acceptance of the LRO Panel determination is contrary to ICANN policy or process. The BGC noted that the requirement that ICANN accepts expert determinations as advice to ICANN was developed out of years of community discussion. If ICANN were to follow ignore the Expert Determination – particularly where there is no violation of policy or process – ICANN would be endorsing a violation of the Guidebook.

The Requester claims that ICANN's "failure to provide a mechanism for redress for erroneous and inconsistent" expert determinations is contrary to ICANN's mandate to act with fairness, and the result is that Tencent (and other applicants) are prevented from challenging these alleged erroneous and inconsistent decisions. The BGC determined that ICANN's purported inaction in implementing a process that does not exist does not demonstrate a violation of any ICANN policy or process that supports reconsideration.

Third, the BGC determined that the Requester failed to provide any factual support for its claim that ICANN “failed to explicitly define the Objector’s burden of proof for the Expert panels, *e.g.*, Preponderance of the Evidence, Clear and Convincing Evidence, *etc.*” The Requester suggests this resulted in different panelists using different standards for the Objector’s burden of proof. The BGC noted that the Requester also failed to identify the burden of proof used in its objection proceeding or what it claims the proper burden of proof should have been. Further, the Requester did not suggest that the processes set out for hearing LROs was not followed. In short, the Requester does not identify any established policy or process that required ICANN to take such action beyond what ICANN actually did – make clear in the Guidebook that the “objector bears the burden of proof in each case.”

VI. Decision

The NGPC had the opportunity to consider all of the materials submitted by or on behalf of the Requester that relate to Request 13-12, as well as materials submitted by or on behalf of the applicant. The NGPC also notes that the Requester submitted a letter with attachments to the NGPC after the BGC issued its Recommendation. (*See* Attachment H to Reference Materials.) The letter and attachments have since been reviewed and the NGPC has determined that these materials do not alter the BGC’s Recommendation or the rationale contained in that Recommendation.

Following consideration of all relevant information provided, the NGPC reviewed and has adopted the BGC’s Recommendation on Request 13-12, the full text of which can be found at <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-tencent-29oct13-en.pdf> and is attached to the Reference Materials to the NGPC Submission on this matter. The BGC’s Recommendation on Reconsideration Request 13-12 shall also be deemed a part of this Rationale.

In terms of timing of the BGC’s Recommendation, we note that Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a Reconsideration Request within thirty days following receipt of the request, unless practical. *See* Article IV, Section 2.16 of the Bylaws. To satisfy the thirty-day deadline, the BGC would have to have acted by 14 October 2013. Due to the volume of

Reconsideration Requests received within recent weeks, the first practical opportunity for the BGC to take action on this Request was on 29 October 2013; it was impractical for the BGC to consider the Request sooner. Upon making that determination, staff notified the requestor of the BGC's anticipated timing for the review of Request 13-12. Further, due to the volume of Reconsideration Requests and other pending issues before the NGPC, as well as scheduling conflicts due to the ICANN public meeting in Buenos Aires in November 2013 and the holiday schedule, the first practical opportunity for the NGPC to consider this Request was on 9 January 2014.

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: 5 January 2014
Email: amy.stathos@icann.org

ICANN NEW gTLD PROGRAM COMMITTEE SUBMISSION NO. 2014-01-09-2c

TO: ICANN New gTLD Program Committee

TITLE: Reconsideration Request 13-13

PROPOSED ACTIONS: For Committee Consideration and Approval

EXECUTIVE SUMMARY:

In Reconsideration Request 13-13, Christopher Barron (“Barron”) asked the Board (or here the NGPC) to reconsider the International Centre for Expertise of the International Chamber of Commerce’s (“ICC”) decision to dismiss GOProud, Inc.’s community objection to the .GAY gTLD. The BGC considered Request 13-13 and concluded that Barron has not stated proper grounds for reconsideration. The BGC recommended to the NGPC that the Request be denied without further consideration. For a summary of the BGC recommendation, please see rationale below.

BOARD GOVERNANCE COMMITTEE RECOMMENDATION:

The BGC recommends that Request 13-13 be denied and that no further action be taken in response to the Request. As set forth below and detailed in the Recommendation attached to the Reference Materials in support of this paper, the BGC determined that Barron has not stated proper grounds for reconsideration.

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

Rationale Not Considered

New gTLD Program Committee Members,

Attached below please find the Notice of the following New gTLD Program Committee Meeting:

9 January 2014 – NGPC Meeting at 20:00:00 UTC. This Committee meeting is estimated to last 2 hours.

<http://www.timeanddate.com/worldclock/fixetime.html?msg=New+gTLD+Program+Committee+Meeting&iso=20140109T12&p1=137&ah=2>

Some other helpful time zones:

9 January 2014 – 12:00 p.m. PST Los Angeles, CA

9 January 2014 – 3:00 p.m. EST Washington, D.C.

9 January 2014 – 9:00 p.m. CEST Brussels

Consent Agenda

- Approval of Minutes

Main Agenda

- GAC Advice Update
- Reconsideration Request 13-12, Tencent Holdings Limited
- (T) Reconsideration Request 13-13, Christopher Barron/GOProud
- AOB

Note: Per the Chairman, additional items may be added to the agenda and will be shared with the Committee by 6 January 2014.

MATERIALS for this meeting will be found at:

Contact Information Redacted

If you have trouble with access, please let us know and we will work with you to assure that you can use the BoardVantage Portal for this meeting.

If you have any questions, or we can be of assistance to you, please let us know.

If call information is required, it will be distributed separately

If you have any questions, or we can be of assistance to you, please let us know.

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