



**Comment on Proposal for the
Use of Mandatory Policy
Advisory Boards for
Regulated Industry Sector
and Consumer-Trust-
Sensitive New gTLD Strings**

Status: FINAL

Version: 1

16-May-2014

Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC). The BC's comments arise from the perspective of Business users and registrants, as defined in our Charter¹:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

On 21-March-2014, the *Proposal for the Use of Mandatory Policy Advisory Boards for Regulated Industry Sector and Consumer-Trust-Sensitive New gTLD Strings* was posted for public comment.

BC Comments

The BC has long held the position that the rules and structure for new gTLDs must fulfill ICANN's responsibility to minimize dangers to the public, including the ability of "bad actors" to perpetrate fraud and abuse from domains that the public may mistakenly believe are controlled by legitimate entities. This potential for abuse is particularly acute at new gTLD strings that implicate regulated professions and industries and that the public may assume are restricted to authentic registrants possessing requisite credentials.

Communications evidencing the BC's emphasis on consumer protection at new gTLDs include:

- On February 21, 2012 the BC sent a comment letter² to ICANN's Board Chairman and President & CEO noting that "fraud prevention has been a centerpiece of the new gTLD debate" and suggesting that ICANN enforce applicant commitments through their inclusion in Registry Agreements. We also noted that, "Governments and stakeholders who support ICANN's role will also hold ICANN to its promises to maximize global benefits and minimize harms to registrants and users." That consideration takes on added urgency now that a global debate has commenced on the future of internet governance and ICANN's role within it.
- In a March 2013 comment letter³ we expressed enthusiastic support for the addition of Specification 11 to the new Registry Agreement for Public Interest Commitments (PICs). However, we noted that Sections 2 and 3 of Specification 11, providing a means by which applicants could list enforceable commitments and statements of intent, remained voluntary and that only a small minority of applicants had elected to make such commitments.
- In a June 2013 comment letter⁴ in regard to the Governmental Advisory Committee's (GAC's) proposed safeguards for new gTLDs contained in its April Beijing Communique, the BC stated, "the BC believes that **working consultation with relevant regulatory and industry bodies,**

¹ Business Constituency Charter, at <http://www.bizconst.org/charter.htm>.

² <http://www.bizconst.org/Positions-Statements/BC%20request%20for%20implementation%20improvements.pdf>

³ <http://www.bizconst.org/Positions-Statements/BC%20Comment%20on%20new%20gTLD%20Registry%20Agreement%20FINAL.pdf>

⁴ [http://www.bizconst.org/Positions-Statements/BC%20Comment%20on%20GAC%20Advice%20for%20new%20gTLDs%20FINAL\[4\].pdf](http://www.bizconst.org/Positions-Statements/BC%20Comment%20on%20GAC%20Advice%20for%20new%20gTLDs%20FINAL[4].pdf)

especially for the purpose of jointly developing harm mitigation strategies, will promote self-regulatory best practices that will improve consumer disclosure and protection". (Emphasis added)

While ICANN has taken steps to improve consumer protections at new gTLDs, we continue to have concerns regarding their adequacy. The New gTLD Program Committee (NGPC) finally took action on the GAC's Category 1 Safeguards request through a Resolution adopted on February 5, 2013⁵. Annex 2⁶ of that Resolution contains the NGPC's proposed approach to resolving the GAC's concerns and protecting the general public against illicit activities based in new gTLDs related to regulated sectors.

Several things are noteworthy about this NGPC action:

- The majority of the strings originally identified by the GAC are relegated to a category requiring only three minimal safeguards, not the full scope of eight safeguards. The reason for the differentiation between similar strings is unclear and unexplained.
- Registry operators are required to include various safeguard requirements in their Registry-Registrar Agreements, but have no ongoing obligations to actively monitor and enforce such provisions.
- Registry operators are, for those gTLDs subject to the full panoply of safeguards, required to "clear a pathway" for working relationships with regulators and self-regulatory bodies in order to develop risk-mitigation strategies aimed at fraudulent and illegal other activities – but are not required to develop such relationships with other expert stakeholders.
- Finally, registries for the full safeguards gTLDs are only required to include a provision in their Registry-Registrar Agreements that require registrars to obtain "a representation" from registrants that they possess any necessary authorizations, charters, licenses, or other credentials for participation in the sector associated with the gTLD string.

That last, diminished requirement was strongly criticized in a February 4th, 2014 letter⁷ sent to ICANN Board Chairman Stephen Crocker by U.S. Assistant Secretary for Communications and Information Lawrence Strickling. Secretary Strickling emphasized that "the concept of representation is different from the affirmative obligation for the registry operator to verify or validate the credentials of domain names registrants that indicate participation in certain professional and regulated sectors, as the GAC requested".

The GAC has likewise continued to raise questions in this area. The GAC Communiqué⁸ issued at the conclusion of the recent Singapore ICANN meeting requests extensive clarification of the NGPC's

⁵ <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-05feb14-en.htm>

⁶ <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-2-05feb14-en.pdf>

⁷ <http://bit.ly/LQUAnC>

⁸

https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore_20140327%5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2

implementation of the GAC Beijing advice in regard to the potential creation of a separate base registry agreement; consideration of “other measures to prevent consumer fraud and deception that could occur through false representations”; and asks how ICANN would prevent those registrants lacking proper credentials from doing business with the public.

In particular, the GAC asked whether the NGPC had “considered the greater risks of fraud and deception that will occur as a result of failing to implement the GAC’s” validation and verification requirements; the requirement to consult with relevant authorities regarding doubtful credentials; and the requirement to conduct periodic post-registration checks regarding registrants’ continued possession of valid credentials and conduct of business in the interests of consumers. The GAC also sought to ascertain whether the PIC Dispute Resolution Process (PICDRP) would be the sole remedy available to regulators and self-regulators to rectify fraudulent registrations in strings representing regulated sectors.

BC Position

The BC remains concerned that the safeguards adopted to date for strings associated with regulated industries and professions may fall short and that such strings remain susceptible to fraud and abuse by potential registrants who wish enrich themselves at the expense of the general public. The GAC and the NTIA have raised serious concerns regarding the NGPC’s proposed implementation of Category 1 safeguards. It also remains uncertain whether PICs will provide effective safeguards, given a registry’s ability to amend or revoke its PICs and the lengthy, expensive, and adversarial process required to enforce PICs by the limited class of parties able to bring enforcement actions.

Within that context, the BC believes that the Policy Advisory Board (PAB) Model should continue to be actively explored as a potential means of protecting the public interest in a manner that encourages the active involvement of and consultation with regulators, self-regulatory bodies, and other expert parties to establish adequate registry policies including registrant eligibility criteria. This could help to reduce the enforcement burden on national consumer protection authorities and on ICANN’s own compliance staff while enhancing consumer protections. Further development of the PIC Model should be regarded as implementation of existing policies underlying the new gTLD program.

Ron Andruff led drafting of these comments, which were approved in accordance with the BC Charter.