

Expedia comments to the New gTLD Board Committee on GAC advice

I. Restricted Registration Policies & Exclusive Access

GAC Advice – Category 2: Restricted Registration Policies

Expedia strongly supports GAC advice regarding this for gTLDs that intend to implement restrictions regarding which entities may register domain names under the gTLD, it is essential that such registration restrictions are sufficient to mitigate any potential risks associated with a particular gTLD string. However, such restrictions should not be discriminatory to industry sector participants and therefore they must be administered in a completely open and transparent manner. For example, all travel agents should be entitled to secure their trade mark as a domain name under the .hotel TLD. Similarly, transparency should be required for those gTLD strings that are representing a generic descriptive term, but are to be reserved for the exclusive use of the registry operator. In order to avoid consumer confusion it should be made abundantly clear that the gTLD is solely being used by the registry operator for their own exclusive use and that the restricted use is not against the public interest.

GAC Advice – Exclusive Access

Expedia is very concerned about the issue of gTLD strings that are representing a generic term, but are to be reserved for the exclusive use of the registry operator. As a result we strongly support the GAC Advice regarding the requirement that any operation of a generic term as a gTLD on the basis of exclusive access should only be permitted if it serves a public interest.

This is a huge issue. The proposed new gTLD extensions will change how Internet users search for and access information. For example, Internet users will come to expect that a TLD such as .insurance will have information relating to the insurance community at large, and that .law will have information specific to the legal community. As such, Internet users would expect such gTLDs to be governed by the corresponding regulated industry and to have content regulated by this industry. Any operation of gTLDs such as these for the exclusive use of registry operators could have a damaging effect on consumer protection and this would clearly not be in the public interest.

It was the understanding of many new gTLD applicants and observers that Specification 9 of the Registry Agreement (The Registry Code of Conduct) set out that any registry operator who wished to operate their gTLD on an exclusive access basis would have to demonstrate that doing so would not be against public interest in order to get an exemption from Specification 9. However, recent developments have revealed that this was not ICANN's intention and that any registry may seek to operate their gTLD on an exclusive access basis, irrespective of whether this serves public interest or not.



Expedia applauds the GAC for raising this important issue and re-iterating the importance of such exclusive access only being permitted if it serves a public interest.

Therefore, Expedia suggests that ICANN should elaborate on the criteria that a gTLD registry operator would have to fulfil in order to meet the public interest test for exemption from Specification 9. If there is no process in place for granting such an exemption, then ICANN should develop policy.

Expedia suggests that ICANN should

1. Use a community-driven process to **define the criteria used to determine what would be considered as serving the public interest**. Such criteria should consider consumer protection, promotion of competition online. For a registry operator to pass the public interest test, they must demonstrate that their exclusive plan offers public interest benefits that outweigh the registrant availability and consumer choice criteria.
2. ICANN should publish the **process by which registry operators would request such an exemption**, including public comment on their request. Process should also include a challenge mechanism of ICANN decision whether to grant the exemption request.
3. ICANN should require any applicant obtaining the exemption to **post their public interest commitments in the PIC Spec of their registry contract**, so that ICANN can enforce those commitments.
4. ICANN should describe the process by which Internet community can challenge an exclusive operator as to whether they are following their public interest commitments.

II. Safeguards

GAC Advice – Safeguards applicable to all New gTLDs

Expedia would like to express its strong support for the GAC advice issued regarding the safeguards that should be applicable to all new gTLDs.

As an online travel agent, Expedia notes that with the increased use of the Internet by consumers to access information about hotels and to make room reservations it is crucial that these measures are put in place to help reduce fraud and deception online which affects travellers and the travel industry, and indeed all Internet users and industries in general.

In particular the accuracy of WHOIS data is of utmost importance to enable all rights holders to take proper action against the registrants of domain names that infringe their rights or cause consumer confusion or harm. Security checks by the registry operator would also be a most welcome measure to help combat phishing, malware and all other forms of online



fraud. By placing responsibility on the registry operators of the new gTLDs to not only monitor both WHOIS accuracy and abusive uses of domain names under their respective gTLDs, but to implement a process for the suspension of such domain names is to be applauded as this will protect not only consumers and businesses, but all Internet users.

GAC Advice – Category 1: Consumer Protection, Sensitive Strings and Regulated Markets

We also support the GAC advice regarding the specific safeguards to put in place for Category 1 new gTLDs which consists of gTLD strings that are, due to the meaning of the string, likely to be implicitly trusted by consumers and Internet users.

As such, additional safeguards that can ensure the integrity and reliability of domain names registered under such gTLDs will help to protect consumers and to build trust in these new domain name spaces.

Likewise, any prospective registrants should be made aware of their responsibilities not only to consumer protection, but also to data protection especially where registrants would be conducting online activities that would involve collecting sensitive financial or personal data, such as credit cards, dates of birth etc. Any measures that can be taken to ensure that robust protections are in place to safeguard consumer and Internet users are to be broadly welcomed.

As such, Expedia endorses the requirement that registry operators of gTLDs that are clearly associated with regulated market/industry sectors work closely with the regulatory bodies who oversee these sectors. As the GAC have correctly pointed out, cooperation with such regulatory bodies would greatly assist registry operators in verifying and validating the bona fides of registrants of domain names under gTLDs that are clearly associated with regulated market/industry sectors.

With regard to the non-exhaustive list of suggested strings that are included in Category 1, Expedia would respectfully suggest that all travel industry TLDs be included, such as .hotel, .hotels, .hoteis and .hoteles. We note that the strings .reise and .reisen, meaning “travel” and “travels” in German, are already included in this list and thus we believe that it is entirely appropriate to include strings related to the regulated hotel industry in order to protect consumers. These gTLD’s already create consumer expectation and trust which makes it essential that there is close cooperation between the relevant regulatory bodies and the gTLD registry operators.

III. Comment on Singular and Plural Versions

Expedia would also like to take this opportunity to express its support for the GAC Advice regarding singular and plural versions of the same new gTLD string. It is clear that by allowing the singular and plural versions of the same term to exist in the domain name system that there will be a huge risk for consumer confusion. Even worse is the potential for deliberate bad faith actions on the part of third parties seeking to capitalise on the existence of the singular and plural form of a gTLD string.

It also creates an issue for future new gTLD application rounds. It is not too difficult to imagine a situation whereby a new gTLD becomes hugely successful only to have its success capitalised upon in a future application round by another applicant applying for the singular or plural version of the same string. This could not only cause consumer confusion, but lead to the collapse of a gTLD registry as its brand is diluted.

Even more worryingly this puts additional burden upon brand owners around the world who will be forced to defend their brands to an additional 24 gTLD strings that really should not be in existence due to their confusing similarity with their singular or plural version.

We believe that ICANN will be facing serious issues going forward by permitting singular and plural versions of the same strings to co-exist in the domain name system.

Section 2.2.1.1 of the New gTLD Applicant Guidebook which discusses String Similarity Reviews:

This review involves a preliminary comparison of each applied-for gTLD string against existing TLDs, Reserved Names [...] and other applied-for strings. The objective of this review is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings. Note: In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

By allowing singular and plural versions of the same gTLD strings to co-exist ICANN runs the very real risk of causing user confusion and loss of confidence in the DNS.

Expedia, therefore, supports the GAC Advice to reconsider the decision to allow singular and plural version of the same strings to be delegated and strongly urges ICANN to follow this advice.