



Comments of the Entertainment Software Association

Re: GAC Safeguard Advice

June 4, 2013

The Entertainment Software Association ("ESA") would like to thank the ICANN Board's New gTLD Program Committee for providing the public with this opportunity to provide views on the Governmental Advisory Committee's ("GAC") advice regarding safeguards applicable to new gTLD strings.¹ The ESA is the U.S. association dedicated to serving the business and public affairs needs of the leading publishers of interactive games for video game consoles, personal computers, handheld devices and the Internet. As the representative of an industry whose product and service offerings rely heavily on online functionality, we have closely monitored developments related to ICANN's rollout of the new gTLD program.

We write today to support the earlier submitted comments of the Coalition for Online Accountability ("COA"), an organization of which we are a member.² We strongly agree with the COA that incorporation of the GAC's advice is consistent with ICANN's stated mission of "ensuring the security and stability of the domain name system."³ The GAC's six proposed safeguards would greatly reduce the risk of abusive domain registrations by requiring those seeking to administer new gTLDs to:

1. Conduct WHOIS verification and checks;
2. Adopt responsible terms of use;
3. Perform periodic security checks;
4. Maintain statistical reports;
5. Establish a complaint mechanism; and
6. Impose penalties on registrants that provide false WHOIS information or otherwise operate their domain in breach of applicable law.

Given the common sense nature of these safeguards, it is unsurprising that similar requirements have already been incorporated into the revised Registrar Accreditation Agreement and that a number of applicants have included such features in their gTLD applications.⁴

¹ See ICANN, New gTLD Board Committee Consideration of GAC Safeguard Advice, <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>.

² See, Comments of Coalition for Online Accountability Re: GAC Advice re Safeguards on New gTLDs, <http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/pdfv6ohrW6pBc.pdf>.

³ See, ICANN, New Generic Top-Level Domains, <http://newgtlds.icann.org/en/about/program>.

⁴ ESA supports the voluntary adoption of GAC's proposed safeguards by applicants for new gTLDs. However, we remain concerned about the potential anti-competitive effects of accrediting applicants wishing to operate certain gTLDs in a closed manner. The mere adoption of GAC's proposed safeguards, whether by ICANN or individual gTLD applicants, will not address such concerns.

Although we agree with the GAC that the six aforementioned safeguards should apply to virtually all new gTLDs,⁵ we believe they are particularly vital for gTLDs targeted at sectors dependent on copyright protection. For the copyright and entertainment industries, there is a heightened risk that bad actors may seek to operate sites dedicated to the distribution of infringing content from such gTLD strings, and our experience suggests that individuals operating such sites will seek to register affiliated domains using falsified information to evade enforcement efforts.⁶ Given this heightened risk of abusive domain registrations, it is imperative that ICANN require operators of new gTLDs associated with copyright sectors implement the six safeguards.

Finally, we also urge ICANN to accept the GAC's advice regarding application of five additional safeguards to "sensitive strings," including those that reference particular forms of intellectual property.⁷ As the GAC notes, such gTLD strings are likely to "invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm."⁸ Therefore, in addition to the six safeguards discussed earlier, it is prudent to require that operators of gTLDs containing sensitive strings:

1. Adopt an acceptable use policy that requires compliance with all applicable laws;
2. Require registrars to notify all domain registrants of the acceptable use policy;
3. Require that registrants maintain reasonable and appropriate security measures
4. Commit to working with the relevant regulatory, or industry self-regulatory, bodies [to] develop a strategy to mitigate risks of fraudulent and illegal activities; and
5. Require registrants to identify and maintain a single point of contact for processing complaints related to registration abuse.

Thank you for considering the views of the ESA.

Respectfully submitted,



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⁵ We concur with the COA that requiring implementation of the six safeguards by single registrant, closed ".brand" registries may be unnecessary and that ICANN should initiate a dialogue with GAC to clarify how the GAC Advice should be applied to such registries.

⁶ In an effort to drive traffic to their site, it is also common for bad actors to register domains that incorporate particular trademarks in a misleading and infringing manner.

⁷ See GAC Communiqué – Beijing, People's Republic of China, Annex 1 at 7-8 (April 11, 2013).

⁸ *Id.*