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May 7, 2013

***Comment on the Government Advisory Committee (GAC) Advice
Within the Beijing Communiqué issued on April 11, 2013***

United TLD Holdco, Ltd. (“United TLD”) thanks ICANN for the opportunity to submit this comment in response to ICANN’s request for comments on Section IV.1.b and Annex I of the GAC’s Beijing Communiqué which refers to the GAC Advice on safeguards applicable to new generic top-level domain names (gTLDs).

Although the GAC’s Beijing Communiqué contains many statements and recommendations regarding new gTLDs, ICANN has solicited public comment only on Section IV.1.b. (Safeguard Advice for New gTLDs) and Annex I so United TLD shall confine its comments only to this particular section of the document.

General

Annex I begins with the general statement that “[t]he GAC considers that Safeguards should apply to broad categories of strings...in the current or future rounds, in all languages applied for.” While we understand the concept of dividing strings into categories, United TLD cautions ICANN not to create safeguards simply because a TLD may or may not fall into a particular broad category. Many strings have dual or different meanings to different users in different markets so they may not easily fall into categories. For example, a “fan”, in English, can mean a supporter of an idea, team, cause, or celebrity but it also refers to a product that circulates air for cooling. Categorizing strings for purposes of safeguards may be convenient but it may also unfairly prejudice applicants that have business models based on other intended meanings of strings.

Furthermore, ICANN should not consider requiring safeguards that will apply in future rounds at this time, since we do not fully understand the impact this round of new gTLDs will have on the marketplace. Consequently, ICANN should not burden future applicants with safeguards and restrictions when such restrictions may prove unnecessary and ineffective.

Finally, United TLD is in agreement with the GAC that any safeguards must be implemented in a manner that is fully respectful of human rights and fundamental freedoms, applicable laws, and not be discriminatory.

Safeguards 1-6

The GAC has advised that six general Safeguards should apply to all new gTLDs and be subject to contractual oversight: 1) WHOIS verification and checks; 2) Mitigating abusive activities; 3) Security checks; 4) Documentation (of WHOIS records and other reports); 5) Making and Handling Complaints; and 6) Consequences (for registrants who violated policies).

With respect to these six general Safeguards, United TLD wishes to highlight the fact that in each of its 26 applications for new gTLDs, United TLD expressly and pro-actively declared its intention to implement a version of each of these six safeguards. In addition, United TLD filed public interest commitments (PICs) for each of its 26 applications specifically committing to the implementation of these types of safeguards.

Despite our full commitment to these six Safeguards and our agreement that all registry operators should make similar commitments, United TLD warns ICANN that the GAC should not dictate the specific processes, procedures or requirements for implementing these safeguards. Registry operators should be able to develop their own methodology within ICANN policy guidelines and best practices for conducting the security checks, maintaining statistical reports and addressing violations of their terms of service. There is no single “best practice” for implementing these safeguards and registry operators should not be forced to adopt specific methods or processes for doing so. Innovation takes place when competition is allowed to develop different methodologies to address a problem. Therefore, United TLD agrees with GAC Advice related to these six Safeguards so long as registry operators are allowed to develop their own specific methodology and practices for implementation.

Category 1 Safeguards

In addition to the six general Safeguards applicable to all new gTLDs, the GAC has advised that five additional “Category 1” safeguards be implemented for strings linked to “Consumer Protection, Sensitive Strings, and Regulated Markets.” United TLD wishes to comment on each of these additional safeguards in turn:

1. *Registry Operators will include in their acceptable use policies, terms requiring registrants to comply with all applicable laws.* This safeguard seems to apply to all categories identified by the GAC. Historically, registry operators have implemented acceptable use policies that require compliance with laws and it is likely that most new registry operators will draft and enforce similar policies. Therefore, these safeguards can likely be implemented by registry operators.

2. *Registry operators will require registrars at the time of registration to notify registrants of this requirement.* This safeguard also seems to apply to all categories identified by the GAC

and seems adoptable given that registry operators will likely have acceptable use policies they wish registrants to follow.

3. *Registry Operators will require registrants who collect sensitive data to implement security measures commensurate with the offering of “those” services, as defined by applicable law and recognized industry standards.* Unfortunately, this safeguard is not specific enough and so applicants will be unable to respond with any concrete process to implement this safeguard. For example, “sensitive health and financial data” is not defined nor are any factors given to measure to determine “appropriate security measures commensurate with the offering of those services.” Furthermore, what are those “services” to which the advice refers and what are the applicable laws and recognized industry standards for those services? An applicant would need specific answers to these questions in order to understand what safeguards are specifically being recommended before being able to formulate any type of process to implement these safeguards. As a general principle United TLD believes applicable laws and recognized industry standards should be developed and implemented by appropriate legislative, law enforcement and industry expert bodies and should not be developed by the registry operator. As an applicant we are committed to working with law enforcement and authorized regulators and responding to their requests in a timely and efficient manner.

4. *Registry Operators will establish a working relationship with the relevant regulatory body including developing a strategy to mitigate abuse.* The difficulty with implementing this safeguard can be illustrated by using the .ENGINEER gTLD as an example. Although some types of engineers in some parts of the world are credentialed or licensed professionals, there are many forms of engineering that are not certified in any manner. For example, software engineers, by far, constitute the largest number of practicing engineers yet they practice their trade without any form of required certification. Additionally, many individuals, associations and businesses outside of the profession also identify with that term (students and teachers, for example and will want the opportunity to show their affinity for engineering-related subjects). In such cases, it would be inappropriate, and impossible, to find a “relevant regulatory body” with whom to establish a relationship related to the use of .ENGINEER. Additionally, what if the relevant regulatory body simply declined to work with a registry operator or does not respond to requests for collaboration? It is unclear how a registry operator is supposed to address that issue. It is for these reasons that United TLD believes applicants will be unable to fully comply with this advice and advises the Board not to require implementation of this safeguard.

5. *Registrants must be required by the Registry Operators to provide them a single point of contact for the notification of complaints or abuse.* This safeguard seems to apply to all categories identified by the GAC. The biggest challenge with this safeguard requirement is that,

historically, the registry operator does not engage in direct contact or communication with the registrants. Communications are almost exclusively between registrants and registrars who manage the customer relationship. Inserting the registry operator in that communication exchange will very likely result in unnecessary customer confusion. New registry operators will be very reluctant to implement this particular safeguard out of respect for the registrar-registrant business relationship that has been well-established since the earliest days of commercial internet use. However, United TLD wishes to point out that registry operators already have a point of contact for a registrant as a result of the accurate WHOIS data requirements appearing which are now more easily enforceable under the new Registrar Accreditation Agreement.

Additional Category 1 Safeguards

The GAC Advice also notes that “some of the above strings” may require further targeted safeguards to address specific risks and adds Safeguards No. 6, No. 7, and No. 8 to the five Category 1 Safeguards described above. Despite applicants’ uncertainty to whether these Safeguards apply directly to any specific TLDs, we wish to comment on the three additional Safeguards:

6. *Registry Operator must verify and validate the registrant’s authorizations, charters, licenses or other credentials for participation in this sector.*
7. *In case of doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents.*
8. *Registry Operator must conduct periodic post-registration checks to ensure registrants’ validity and compliance with the above requirements.*

United TLD believes the GAC Advice as articulated in these three additional Category 1 Safeguards should not be required to be implemented and therefore should be rejected for five reasons:

First, implementation of these Safeguards would go completely against the GAC’s own Principles Regarding New gTLDs, published in March 2007¹ which included this principle among others:

2.5. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency, and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the

¹ <http://archive.icann.org/en/topics/new-gtlds/gac-principles-regarding-new-gtlds-28mar07-en.pdf>

applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the process.

United TLD believes that the GAC Advice requiring implementation of these three additional Safeguards is equivalent to imposing “subsequent additional selection criteria” after the initiation of the evaluation process and therefore must be rejected.

Second, applicants, including United TLD, submitted their new gTLD applications believing that that they would be operating, managing and distributing generic TLDs. These three Safeguards completely change the nature of the new TLDs from being generic and widely available, to being “sponsored” TLDs restricted only to those individuals who must prove their status or credentials entitling them to register domain names with certain extensions. These three Safeguards are patently adverse to the core purpose of the new gTLD program and ICANN’s mission generally which is to promote consumer choice and competition. Adoption of these three additional Safeguards would have material adverse effect on nearly every applicant and therefore should not be required. It is also important to note that these GAC recommended safeguards might have a discriminatory effect on users in some developing nations whose governments do not have regulatory bodies or keep databases which a registrar could work with or task to verify certifications or credentials. The GAC Advice should not have the effect of putting developing countries at a disadvantage because they do not have infrastructures necessary to enable validation or verification.

Third, the GAC Advice related to the additional safeguards is not specific enough. The GAC does not identify which strings should be subject to these safeguards. Further, the GAC fails to identify the “specific risks” it refers to or which “clear and/or regulated entry requirements” it means. Without a great deal more specifics with respect to the strings being referenced, the harms being addressed, or the requirements being recommended, no applicant can implement these safeguards.

Fourth, the GAC Advice related to the additional safeguards is unworkable in practice. In Safeguard No. 6, for example, why would a registry operator verify and validate “charters” and “licenses” for the registration of a domain name in .ENGINEER (to use the earlier example), when the use of the domain name is not known. A registrant may use the domain as a landscape engineer or as a software engineer, where there is no license or charter to operate in that sector. This same example applies for Safeguard 7, where there may be multiple relevant authorities or NO relevant supervisory authorities with whom to consult. Finally, with respect to Safeguard 8, registry operators cannot conduct post-registration checks to insure registrants’ validity and compliance with the above requirements when the requirements are not tenable at the outset.

Finally, the spirit and actual letter of the GAC Advice related to these additional safeguards comes in a manner and form that is completely antithetical and contrary to ICANN's bottom-up, multi-stakeholder, consensus-driven policy development process. Because the proposed safeguards, if implemented, would effectively change how new gTLDs are managed, sold, distributed, registered, operated, and used in the marketplace, the GAC Advice is tantamount to making "top-down," dictatorial, non-consensus, policy which undermines the entire ICANN model. If ICANN chose to adopt any one of these three safeguards, ICANN itself would lose all legitimacy.

Category 2 – Restricted Registration Policies

In addition to Category 1 Safeguards, the GAC has also issued GAC Advice related to restricted registration policies.

United TLD believes that the domain name space should be operated in an open manner and that consumer choice and access is of paramount importance for the success of all new gTLDs. Any unduly burdensome restrictions on registrants or registrars should be avoided. Placing registration requirements or restrictions on some new gTLDs and not others will unfairly prejudice these new gTLDs when launched into the consumer marketplace.

Conclusion

United TLD respects ICANN's multi-stakeholder policy development process and the role that the GAC plays in this process. For the reasons given, however, United TLD urges the Board not to require new registry operators to implement Category 1 Safeguards, Nos. 3-8, and the Category 2 Safeguards.

United TLD Holdco, Ltd.