

June 4, 2014

New gTLD Board Committee

**Re: ACT Reply to Comments Regarding New gTLD Board Committee
Consideration of GAC Safeguard Advice**

I submit the following comments on behalf of the Association for Competitive Technology (“ACT”) in reply to comments submitted by numerous organizations and persons regarding the GAC Safeguard Advice.

GAC Advice Furthers ICANN Objectives

The goals of the new TLD program have gained some specificity through the Affirmation of Commitments and subsequent board resolutions. Specifically, the new GTL program will be judged on whether it led to an increase in consumer trust, consumer choice and competition in the TLD space. The Safeguards suggested by the GAC serve to further these goals by providing clear and simple guidelines.

APP has become a recognized industry term and evokes specific consumer expectations and it stands to reason that Google would want to meet those expectations with an .APP TLD. ACT further understands the desire of applicants to move expeditiously through the process but consumer trust, and choice must be prioritized over speed. Despite the modifications to recent .APP gTLD applications, there remain many open questions about how the string is to be run. The suggested Safeguards are designed to clarify applications which are ambiguous and opened-ended. While speeding up the process is an understandable goal, time taken now to clarify and strengthen the process will pay more dividends.

The .APP gTLD is a Sensitive String

Piracy of intellectual property (“IP”) has been and remains a serious problem for app developers. As a digital good, apps are particularly susceptible to IP infringement, and as a \$25 billion dollar industry,¹ piracy is attractive and lucrative. The Safeguards proposed by GAC will provide important protection for app developers and ensure that the .APP gTLD will not provide a haven for infringers.

¹ Jessica E. Lessin and Spencer E. Ante, “Apps Rocket Toward \$25 Billion In Sales” WALL STREET JOURNAL (March 4, 2013) *available at* <http://online.wsj.com/article/SB10001424127887323293704578334401534217878.html>.

These Safeguards not only protect the app market but consumers as well. Apps invoke a level of implied trust from consumers who use apps to monitor their financial information, evaluate health, communicate with colleagues, friends, and family, store important information, and even entertain. Pirated content and counterfeit apps using the .APP gTLD, “carr[ies] higher levels of risk associated with consumer harm.”

The .APP gTLD is a Generic Term

App is a generic term “associated with a wide variety of applications, including mobile applications, web- and browser-based applications, cloud hosted applications and even desktop applications.”² Like other generic terms, it is important that registry access should serve a public interest goal for gTLD strings, since it represents an entire industry. Allowing one participant in an industry to run the .APP gTLD in an anti-competitive and monopolist manner risks undermining the success the app industry has enjoyed.

The GAC Safeguards clarify the type of protections which are necessary for generic word TLDs, to ensure that these strings serve to protect and promote the industry they define.

Conclusion

ACT understands the importance of the process and how much the .APP gTLD can do to promote our industry. However, the GAC Safeguards raise important considerations that we urge this body to fully evaluate and adopt before granting the .APP gTLD. Taking the time to properly evaluate the applications will serve to improve the TLD process going forward.

Sincerely,

Jonathan Zuck

² Google Letter to Christine Willett, pg. 4 (April 6, 2013).