Tucows' Comments to the New gTLD Board Committee's Consideration of GAC Safeguard Advice

Toronto, May 14th, 2013

Dear New gTLD Board Committee,

First, we at Tucows think it's worth thanking the ICANN board for this opportunity to comment on the GAC Beijing communiqué. It encourages recognition that the GAC is a peer in the ICANN multi-stakeholder process. An important peer, but a peer nonetheless. It bodes well for the future.

As with any new, and in this case unique, relationship, there are a number of challenges presented by the GAC communiqué. We would like to reinforce and amplify certain points that we feel are most important.

Timing: The gTLD program began in 2005, with the first applicant guidebook coming out in 2008. Now, five years later, the GAC is finding itself deeply concerned not just with specific strings, but whole categories of strings. Businesses (from GAC constituent countries no less) have to this point put a lot of energy, time and money into their soon to be launched registries. Furthermore, they did this in good faith in an open and transparent multi-stakeholder process. The GAC's window of opportunity here has passed.

In saying this we do acknowledge that the members of the GAC have put forward huge effort to create this communiqué and not only applaud that effort, but feel it was VERY important for the future of the relationship between nation-states and the Internet.

Categorization & Safeguards: The attempt at the categorization of strings to which the GAC would apply safeguards is folly. First, as many have and many more will continue to point out, a multitude of the strings have more than one semantic meaning; one can't assume that all domains within a string will be referring to the category to which the GAC has taken issue. To apply safeguards to these broad categories that will clearly encompass other meanings is to deliberately ignore the consequences and will stifle usage and innovation.

Interestingly, the GAC is proposing restrictions upon the new gTLDs which have not been imposed on their own ccTLDs. If they wish to enforce the regulation of content, then perhaps they ought to try it in their own backyards first. In addition, the GAC does not deal with the issue of conflict of laws. Any one standard for safeguards simply does not exist. Bringing more clarity to the issue of conflict of laws is, in our view, the most important contribution the GAC could make to Internet governance.

Public Interest: It appears as though the GAC is suggesting there is an applicable global public interest being served in their recommendations. Public interest is almost vague enough to be meaningless, but even where consensus can be found, it varies greatly by region. For example, the increased requirements around registrant data in the new RAA may be for the public interest somewhere, but they may also contravene European privacy law. Which is to say, the public interest is different within each of the GAC members, and justifying what amounts to content regulation for a global community via public interest is dubious.

While we encourage this dialogue with the GAC, their recommendations specifically around the Communiqué Annex I safeguards and categories ought to be rejected by the ICANN board. They are too late, too much and designed for neither a specific public interest, nor a general one. The transparent, multi stakeholder process that has brought the gTLD program this far should be allowed to continue unimpeded.

With all of that said, we applaud this effort and sincerely hope that the GAC and its members can hear the appreciation in our comments and the encouragement to continue to more deeply integrate with the multi-stakeholder model.

Relationships take time and trust. They must flow two ways. This will be harder for national governments to deal with than any other stakeholder in the ICANN process.

Regards,

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