

**June 4, 2013**

**Comments of Independent Film & Television Alliance**

**Re: GAC Advice re Safeguards on New gTLDs**

The Independent Film & Television Alliance (IFTA) joins the broad spectrum of creative sector organizations, including the Coalition for Online Accountability, in urging ICANN to accept key elements of the New gTLD Safeguard Advice from ICANN's Governmental Advisory Committee (GAC).

**I. About IFTA**

Based in Los Angeles, IFTA is the global trade association of the independent motion picture and television industry. Our nonprofit organization represents more than 140 Member Companies in 21 countries consisting of the world's foremost independent production and distribution companies, the majority of which are small to medium-sized U.S.-based businesses that include sales agents, television companies and institutions engaged in film finance.<sup>1</sup>

**II. ICANN Should Accept the Governmental Advisory Committee's Advice Regarding New gTLDs**

The GAC Advice should be incorporated into the new gTLD program. By implementing the GAC's Advice, there is a greater likelihood of expanding competition and enhancing consumer choice with respect to authorized content delivered online, which will assist in achieving the overall objective of the new gTLD program. The Safeguards are not overly burdensome or unnecessarily restrictive and, on the contrary, allow for a fair and efficient process in preventing abuses. As such, ICANN should accept the GAC's Advice regarding New gTLDs.

Parties engaged in the creation, production and dissemination of creative works are especially vulnerable to online theft and copyright infringement and the Safeguards specified in the GAC's Advice are essential for their continued ability to create content and distribute it to consumers via online platforms. To that end, ICANN should collaborate with the GAC to resolve ambiguities in the Advice as well as work with applicants and the community to assimilate key elements of the Advice into the remaining stages of the new gTLD process.

**III. IFTA Supports the GAC's List of "Safeguards Applicable to all New gTLDs"**

IFTA encourages ICANN to implement the GAC's six recommended Safeguards to all new gTLDs as they will be extremely helpful in providing transparency as well as deterring

---

<sup>1</sup> A list of IFTA Member Companies is available online at: [www.ifta-online.org](http://www.ifta-online.org).

fraudulent and infringing practices online. Such deterrence is especially valuable to those industries who depend on copyright and online distribution for their livelihood, which includes the independent film industry and IFTA Members. The common practice for independents is to secure financing and distribution for each project on a territory-by-territory basis by means of licensing deals with local distributors around the globe. After assessing the value of a project (*i.e.*, projected gross receipts across all distribution media based upon factors such as script, director, writer or key cast; subject matter or genre; estimated production budget; projected season and year of release), local distributors enter into license agreements, also referred to as pre-sale commitments, with the producer, which provide guaranteed minimum license fees to be paid upon delivery of the completed product in order to secure exclusive distribution rights in a particular territory before production. Once enough minimum guarantees are secured through local distributors, those license agreements are collateralized by financial institutions which loan production funds to support the project. In exchange, these financial institutions typically retain the underlying copyright assignment of an audiovisual work until the production loan is repaid in full.

For this process to work, local distributors must be confident they will receive a return on their investment. However, copyright infringement severely undercuts a film or television program's economic expectations, reducing the advance minimum guarantees and effectively limiting the funds available to independent producers to finance their productions. Legitimate distributors cannot compete with those engaging in online theft who offer content for free or nearly free. Increasingly, IFTA Members realize this impact of online theft in individual business negotiations. Local distributors often cite online theft, even for product that is not yet released in a particular market, as a reason to pay reduced license fees or to decline to distribute a film at all. Therefore, not only does online theft directly undercut anticipated revenue from the distribution of a particular project, but it also impacts the ability of independent producers to secure financing for future productions.

The "Safeguards Applicable to All New gTLDs" are vital to IFTA Members as well as other industry sectors that are dependent on copyright protection and transparency regarding registrants because the Safeguards may drastically reduce the risk of abusive registrations in all gTLDs, thereby decreasing the overall volume of online theft and infringement. IFTA endorsed similar safeguards approximately one year ago in a memorandum filed by the Coalition for Online Accountability, and urged ICANN, GAC and all relevant new gTLD applicants to apply them (See Memorandum Re Proposed Enhanced Safeguards for New gTLDs Targeting Creative Sectors, dated March 6, 2012). Many of those proposed safeguards are included in the GAC's Advice.

The GAC's Safeguards require registrants to provide more information to registry operators and to adhere to terms of use which prohibit, among other things, online theft, trademark or copyright infringement, and counterfeiting. Such requirements allow for the detection and remedy of violations, which will significantly contribute to reducing the viability of copyright infringing websites.

In addition, registrants are likely anticipating the implementation of the Safeguards because similar features are already included in the revised Registrar Accreditation Agreement

(RAA). For example, the RAA contains some requirements to verify Whois data and to enforce terms of use against illegal activity by registrants that infringe the rights of others. In addition, numerous new gTLD applicants have already committed themselves to abiding by terms of service which are similar to the Safeguards set forth in the GAC's Advice and have reserved the right to suspend or delete registrations that are used for prohibited purposes. As such, many new gTLD applicants have already addressed the Safeguards in their applications, which demonstrates the ease of incorporating such Safeguards into the new gTLD program.

The Safeguards are critical for those TLDs which are at higher risk of abuse that harms consumers or the rights of others, including applications targeted at sectors dependent on copyright protection and, therefore, meaningful steps to address these risks should be mandatory. However, even if they are not required for all new gTLDs, at the very least they should be required for those listed as "sensitive strings" designated in Category 1 of Annex 1 within the GAC Advice.

Furthermore, IFTA encourages the ICANN Board to establish working relationships with the relevant regulatory bodies in an effort to establish strategies for decreasing fraudulent and other illegal activities.

#### **IV. Conclusion**

The lifeblood of independent producers and distributors is their intellectual property rights and their ability to secure financing to produce the film, to license exclusively for worldwide distribution, and to protect and enforce the exclusive rights to their works. As such, IFTA wholeheartedly supports the GAC's Advice regarding "Safeguards on New gTLDs" so that the use of new gTLDs in sectors that are dependent on copyright protection is less likely to foster havens for copyright infringement or other online abuse.

Thank you for your consideration.

**Respectfully submitted on June 4, 2013**

INDEPENDENT FILM & TELEVISION ALLIANCE



Jean M. Prewitt, President & CEO  
10850 Wilshire Blvd., 9<sup>th</sup> Floor  
Los Angeles, CA 90024-4321