



June 3, 2013

Via electronic mail

Mr. Cherine Chelaby
Chair, New gTLD Program Committee
ICANN Board of Directors
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA

Re: Comments on GAC Advice regarding safeguards for new gTLDs

Dear Mr. Chelaby:

The undersigned Guilds and Unions thank the ICANN Board's gTLD Program Committee for this opportunity to comment on the Governmental Advisory Committee's (GAC) advice regarding "Safeguards on New gTLDs." Our members, who occupy a unique position at the intersection of technological innovation and content creation, recognize both the creative opportunities and potential risks of new gTLDs. Because the GAC's proposed safeguards appropriately balance these opportunities and risks, we encourage ICANN to adopt the safeguards in their entirety.

Collectively, our Guilds and Unions represent hundreds of thousands of actors, directors, craftspeople, technicians, musicians and others whose creativity is at the heart of the American entertainment industry. Their innovative work is recognized and consumed around the world and represents our country's greatest export. Our members rely on a thriving entertainment industry for residuals and royalties – deferred compensation based on the continuing use of the creative works in downstream markets throughout a work's lifetime – as an important source of income, as well as funding for their pension and health plans, particularly in difficult economic times. For example, residuals represent 58% of annual earnings for most middle-income actors and more than 70% of the DGA Pension Plan's annual funding. The downstream revenues on which our members rely come from exploitation that includes foreign distribution, DVD sales, reuse on cable or premium pay television, and, perhaps most applicable here, various forms of legal Internet distribution. In fact, 75% of motion picture revenues come from markets after the initial theatrical release, and more than 50% of scripted television revenues are generated after the first run. To the extent gTLDs facilitate Internet theft and undermine this downstream revenue, they present a very real threat to our members' livelihoods.

Because our members make their living through the creation and distribution of creative content, we evaluate technology issues like gTLDs with an eye to both the creative opportunities they present and the harm they may cause by facilitating digital theft. For this reason, we join a broad spectrum of creative organizations, including the Coalition for Online Accountability, to urge ICANN to accept key elements of the GAC's proposed "Safeguards on New gTLDs."

I. ICANN Should Adopt the GAC's Advice Regarding New gTLDs.

As a body comprised of sovereign governments, the GAC has a unique perspective regarding the potential impact of new gTLDs on a wide spectrum of stakeholders, from private citizens to multi-national conglomerates. As a result, and like our Guilds and Unions, the GAC recognizes the creative and entrepreneurial opportunities of new gTLDs as well as the importance of protecting fundamental rights and preventing infringement or other abuse. The GAC's Advice reflects this careful balance. It creates a framework to help the new gTLD program achieve its stated goals of expanding competition and enhancing consumer choice, while still providing important protections for all members of the ever-expanding online community, including those represented by the undersigned Guilds and Unions.

II. The GAC's "Safeguards Applicable to all New gTLDs" Are Well-Reasoned Protections Against Abuse of the gTLD system.

The GAC proposes six safeguards that will significantly reduce the risk of abusive registrations of gTLDs. These safeguards will require registry operators to:

1. Know registrants' identities;
2. Perform reasonable security monitoring;
3. Maintain documentation for a period of time;
4. Contractually bind registrants to refrain from abusive uses of the domain names they register;
5. Provide channels for victims of abuse to register their complaints, and
6. Impose consequences when violations occur.

These safeguards are minimal, common sense procedures that responsible registry operators will be in a position to implement. They will also benefit registry operators and ICANN itself by ensuring the integrity of registry systems.

The GAC's proposed safeguards reflect a careful balance between the rights, interests and responsibilities of all members of the ever-expanding online community. They permit legitimate entrepreneurs and innovators, many of whom are members of our Guilds and Unions, to utilize gTLDs to expand competition and benefit consumers. They provide important protections for others, many of whom are also members of our Guilds and Unions, whose individual, creative, human and economic rights must be protected in the global online community. At the same time, the proposed safeguards guarantee the integrity of registry operators and the registry system more broadly, ensuring any new gTLDs respect the rights of all law-abiding members of the global online community.

III. At a Minimum, the Six Safeguards Should be Implemented for the "Sensitive Strings" Identified by the GAC.

The proposed safeguards are especially critical in the context of gTLDs that, by their nature, are at higher risk of abuse. Of particular concern to the undersigned Guilds and Unions are those TLDs targeted at sectors dependent on copyright protection, such as the strings identified under the intellectual property category. Our members have experienced first-hand the impact of online theft in these industries, and these gTLDs have the potential to facilitate and accelerate further criminal activity and abusive conduct. As a result, ICANN should take

meaningful action to anticipate and manage these risks. Even if not required for all new gTLDs, the GAC's six basic safeguards should be mandated for the "sensitive strings" identified by the GAC, as well as other gTLDs that follow similar patterns. Furthermore, ICANN should adopt the additional proposed safeguards specifically tied to the sensitive strings.

ICANN has a tremendous opportunity to take simple but critical steps to realize the promise of gTLDs while ensuring the global online community is a secure one, and one that respects and protects the rights of all citizens by providing simple mechanisms for stakeholders to identify, address and curb abuses or infringing activity. Failure to take action at the onset of gTLD expansion could open a Pandora's Box that cannot easily be closed. The undersigned Guilds and Unions urge you to take the GAC's Advice and implement reasonable safeguards to prevent that box from opening.

We appreciate the opportunity to comment on this important issue.

Sincerely,

Kathy Garmezy, Associate Executive Director, Government & International Affairs
Directors Guild of America (DGA)

Scott Harbinson, International Representative,
International Alliance of Theatrical Stage Employees (IATSE)

Jeffrey Bennett, Deputy General Counsel & Associate Executive Director, New York
Danielle S. Van Lier, Senior Counsel, Intellectual Property and Contracts
Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA)