



May 14, 2013

Via Electronic Mail to comments-gac-safeguard-advice-23apr13@icann.org

Re: Public Comment on GAC Advice by Google Inc.

We appreciate the opportunity to comment on the implementation of the Government Advisory Committee's safeguard advice, as provided in the [GAC Beijing Communiqué](#). The issues raised by the GAC are important not only to Google but also to applicants and end users.

We recognize that the GAC plays an important role in the multistakeholder model and that members of the GAC face the difficult task of coming to consensus on challenging issues. Although we were pleased to see the GAC come together to offer this advice to the community, we do have some concerns regarding how it will be implemented.

Google currently has 98 active gTLD applications through its subsidiary, Charleston Road Registry (CRR), which was established to provide registry services to the Internet public.

Safeguards Applicable to all New gTLDs

Google is particularly concerned with the Safeguards Applicable to all New gTLDs. (See Section IV(1)(b) and Annex 1 of GAC Communiqué.)

The GAC was formed to consider and provide advice on the activities of ICANN as they relate to the concerns of governments, particularly on matters where ICANN's policies, which are developed through the policy development process (PDP), may intersect with various national or regional laws or public policy issues.

The Applicant Guidebook was developed over three years through the multistakeholder process. It represents an attempt to balance the needs and concerns of all stakeholders within the ICANN community, including the GAC. During this process, the GAC played a critical role: its regular Communiqués, its work during the Brussels Intersessional, and its Scorecard efforts in 2011 all served as meaningful inputs to the process. Through these efforts, the GAC had the opportunity to provide direct and meaningful advice on the new gTLD process. As a result, the new gTLD program contains a number of safeguards that exceed those present for existing TLDs.

As expressly set forth in the Applicant Guidebook, GAC Advice on New gTLDs at this stage should address *specific* applications that have been identified by governments as potentially problematic (Module 3-2). For example, the GAC may raise concerns regarding any application that potentially violates national law, raises sensitivities, or, in the case of geographic names, does not enjoy the support of the corresponding government(s). In all such cases, the Guidebook specifies that the various governments should work together within the GAC to achieve consensus and provide that consensus view to the Board in the form of official GAC Advice.

The role of GAC advice at this stage, as outlined in the Applicant Guidebook, is to address *individual strings*, not provide advice on the program as a whole. The GAC, along with all members of the community, had many chances to provide holistic suggestions as the New gTLD program was being developed.

GAC advice at this stage needs to be meaningful but targeted. Its advice should have been limited to specific concerns related to specific strings and should have provided the Board with recommendations as to how to handle those strings. Instead, the GAC provided overarching advice that it seeks to apply to all new gTLD applicants. At this stage, the GAC's general advice threatens to undermine and circumvent ICANN's thorough, balanced, and multi-stakeholder-driven PDP.

Therefore, safeguards and other advice that are intended to apply to all TLDs should be enacted through the PDP. A consensus policy adopting such safeguards would allow them to apply not only to those TLDs launched as part of this round of expansion, but also to incumbent registries as well as future applicants. Should the Board agree that the community should consider such safeguards, it should use its authority to initiate a PDP to do so. *This process need not, and should not, delay the delegation of TLDs because consensus policies become binding on all registries even post-delegation.* On the other hand, the Board should not simply alter the Applicant Guidebook at this late stage by incorporating this broad set of GAC Advice. Such an approach would undermine the PDP and the multistakeholder model, so we urge the Board to carefully consider its actions with regard to this specific issue.

Proposed Course of Action: The Board should request an Issue Report on the topics covered by the GAC's proposed safeguards applicable to all TLDs in order to initiate a PDP relating to those safeguards. Since a consensus policy on these safeguards would be binding on all registry operators, the Board should not delay the approval and delegation of new gTLDs while the PDP is pending.

Consumer Protection, Sensitive Strings, and Regulated Markets

In general, we support the GAC's advice as it pertains to consumer protection, sensitive strings, and regulated markets. In many examples highlighted by the GAC, the registrants in the applied-for TLDs may offer regulated services (e.g., medical care). The potential for user

confusion and harm could be high depending on how the string is marketed and operated. These safeguards are particularly pertinent where the TLDs reference terms that imply a registrant possesses a specific set of credentials or professional licenses (e.g., .PHD or .LAWYER), that consumers are likely to rely on to provide specific content, or that are targeted to a particular vulnerable audience (e.g., .KID). In many cases, CRR had already committed in its applications to providing safeguards above and beyond those requested by the GAC and the Applicant Guidebook as well, including creating policies to verify the credentials of registrants prior to registration or limiting registrations in TLDs specifically targeting certain types of media content to legitimate rights-holders.

However, some of the Category 1 string-specific safeguards may be unclear or overly burdensome for some of the specific strings or sub-groupings. While several of the groupings outlined by the GAC likely require the full set of safeguards provided for in Category 1 (e.g., strings that directly relate to a regulated industry such as .LLC or .BANK), we do not believe that the same level of concerns exist with, for example .EARTH or .NEWS. In CRR's response to GAC advice on specific strings, we previously identified a number of instances where we thought the full range of safeguards was not necessary. Although this general principle may apply across a broader range of strings and groupings, we assume other applicants are best equipped to provide their own assessment as to the appropriateness of safeguards on their specific strings. However, below we include a brief summary of our conclusions in the table below:

Applicable Safeguards	Relevant gTLDs
The gTLD relates to a regulated or professional sector invoking an implied level of trust from consumers, but is not targeted at registrants who might gather sensitive medical or financial information. It is reasonable to apply Category 1 Safeguards #1, #2, #4 and #5, but Safeguard #3 is not relevant to the gTLD.	.CORP, .CPA, .GMBH, .INC, .KID, .LLC, .LLP, .MBA, .SRL
The gTLD relates to a regulated or professional sector invoking an implied level of trust from consumers, and is targeted at registrants who might gather sensitive medical or financial information. It is reasonable to apply all Category 1 Safeguards for the gTLD.	.MED, .DDS
The gTLD relates to a type of content for which enhanced intellectual property safeguards are appropriate. It is reasonable to apply Category 1 Safeguards #1, #2, #4 and #5, but Safeguard #3 is not relevant to	.BOOK, .FILM, .MOVIE, .MUSIC, .TOUR

the gTLD.	
We believe that the TLD does not target a regulated or professional sector invoking an implied level of trust from consumers, nor is it generally associated with a specific type of content for which the GAC's proposed safeguards are appropriate. However, CRR already offers a variety of enhanced safeguards across all of our gTLDs in order to minimize the risk of abuse.	.APP, .CLOUD, .EARTH, .FREE, .GAME, .PLAY, .SHOW, .ZIP

Several of the Category 1 Safeguards, particularly #4, may be difficult to enforce. The Board may wish to limit contractual commitments to those Safeguards that are reasonably enforceable through ICANN's contractual regime. For Safeguard #5, we note that during the registration process, registrants are already required to provide both administrative and technical contacts, and registrants have an ongoing obligation to keep this information current. Rather than creating an additional contact, registries may reasonably require that one or both of these contacts is responsible for reports of registration abuse.

In addition to the Category 1 Safeguards, the GAC also advises in Category 2.1 that for some TLDs it may also be appropriate to restrict registrations in a manner appropriate to the risks of the TLD. We agree. CRR has already committed to create restricted registration policies for each of the TLDs in which we believe Category 1 Safeguards should apply, and it may be reasonable for the Board to require such a commitment prior to delegating TLDs where consumers are likely to associate the TLD with a specific credential or experience.

Proposed Course of Action: For strings that convey a specific credential or that consumers are likely to trust to provide specific content or experiences, the Board may reasonably require applicants to enter into Public Interest Commitments that provide consumers with added protection. However, the Board should avoid extending safeguards where the likelihood of consumer reliance or confusion is low.

Plurals/Singulars

We agree with the GAC that singular and plural versions of the same string have a high probability of causing user confusion. CRR filed string confusion objections against other applicants where confusion was likely to occur. However, due to the late release of ICANN's own string similarity review, there was very limited time for applicants to do so. The Board may wish to consider whether it is appropriate to limit delegations to a single string in such situations. Such an approach should be limited to situations in which consumers will be confused. In our own analysis, we determined that such confusion was likely to occur when both singular and plural forms were in common use, but did not have distinct meanings. So, it is likely that consumers would be confused by combinations such as PET and PETS or KID and KIDS, but

not WEB and WEBS (the plural form of WEB is not in common use) or NEW and NEWS (which are actually two entirely different words with two distinct meanings).

Proposed Course of Action: The Board may consider limiting delegation of singular and plural forms to a single string. If the Board elects to take this course, it should provide a clear mechanism for decontention between singular and plural forms, and limit the application of this principle to situations where confusion between the strings is probable.

Protections for Intergovernmental Organizations

We understand the concerns raised by the GAC and other members of the community related to protections afforded to Intergovernmental Organizations. Google does not have a position on this specific issue, but these issues have been raised previously by others. The concerns gave rise to a PDP that has not yet concluded. To the extent that the Board decides to intercede on this issue, it should make sure that it does not supercede or interfere with the results of the ongoing PDP.

Proposed Course of Action: The Board should ensure that any interim solution is compatible with the work of the Intergovernmental Organization Names-Inter-Non-Governmental Organization Names (IGO-INGO) PDP.

Other Topics

We generally do not take a position on other elements of the GAC's communique. Many of the elements of the advice, such as the use of the 2013 RAA, the prioritization of applications that represent a well-defined community, or the protection of Red Cross and IOC names, have already been incorporated into the New gTLD program and should not require further consideration or action by the Board.

Conclusion

While we applaud the work of the GAC in issuing its consensus advice during the ICANN Beijing meeting, we have concerns regarding its scope and ICANN's ability to effectively implement it.

- The Applicant Guidebook made clear that at this stage, the GAC's advice must focus on specific strings, not overarching concerns regarding the program. The GAC's advice for all strings is broadly worded and does not provide targeted suggestions for resolution. Moreover, the time for offering such universal advice has past. We urge to move forward with the delegation of gTLDs and, *in parallel*, the Board to engage the community as to whether additional safeguards are warranted and if so, to initiate a PDP as a means of applying these safeguards to **all** gTLDs.
- For the cases where specific concerns have been raised (e.g., category concerns, string similarity), the Board should consider using final Board approval, in conjunction with

Public Interest Commitments, as a way to address concerns associated with a particular string. Such an approach would allow the vast majority of strings to be delegated while the applicants and the community can move toward the resolution of any outstanding issues. In all cases, the Board should ensure that safeguards are enforceable and targeted at those gTLDs where it is likely that consumers will expect an enhanced degree of trust.

- In all cases, ICANN should respect its own processes and follow them. Maintaining and improving confidence in ICANN's own procedures will be critical to ensuring the expansion of the gTLD space is a success.

Sincerely,



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