

Comments of Neustar, Inc.
GAC Advice re: *Safeguards on New gTLDs* (Beijing Communique Annex 1)

Neustar appreciates this opportunity to comment on the advice issued by the Government Advisory Committee (“GAC”) in its communiqué issued in Beijing on 11 April 2013 (the “Advice”), and in particular Annex 1 thereto. These comments reflect the views of Neustar, Inc., and not necessarily the views of all new gTLD applications for which we are providing back-end services.

We have provided detailed comments in the attached chart, but briefly highlight some of our principle views below.

Mandatory, New Baseline Requirements

As a threshold matter, Neustar appreciates and shares the concerns underlying much of the GAC Advice. In fact, Neustar offers - and *many of our applicant-customers have elected to include* - safeguards related to: WHOIS verification and checks; abuse mitigation; monitoring for abuse and malware including phishing, pharming, and botnetting; and complaint escalation and response services; specialized policy development and other services to enforce compliance with niche/community-oriented registration limits. **These services were *not*, however, required to meet the criteria set forth in the final New gTLD Applicant Guidebook, and** many of the issues are appropriately addressed in the draft 2013 Registrar Accreditation Agreement and/or the subject of ongoing policy development work. In addition, we note that both the draft 2013 RAA and the draft Registry Agreement for New gTLDs contain various processes for considering changes of this sort.

Delayed Consideration of Certain Strings

The GAC Advice regarding strings that “should not proceed beyond Initial Evaluation” includes names that fall outside of the definition of geographic names in the New gTLD Applicant Guidebook and, given the fact that the complaining governments themselves permit and protect non-confusing commercial use of identical strings, cannot fairly be said to conflict with national law or raise cultural, or religious sensitivities. In addition, the New gTLD Applicant Guidebook provides for review by the Independent Objector. We respectfully submit that use of the GAC New gTLD Objection Process in those cases raises significant questions about fundamental fairness, transparency, and predictability.

Category 1 Strings

Many applicants, including applicants supported by Neustar registry services, have proposed industry-appropriate safeguards to ensure compliance with consumer protection, licensing, and regulatory requirements. Unfortunately, however, the GAC Advice related to strings “likely to invoke a level of implied trust from consumers, and carry a higher level of risk associated with consumer harm” cannot be implemented without an objective standard against which the specific use proposed can be measured. This is demonstrated by the attached chart, which includes a sample of 30 strings that are on the list and more than 30 similar strings that are not. Why, for example, is “dance” on the list, but “hiphop” is not? Many more such examples can be found. (We point this out not to demonstrate why this standard is difficult to implement, and not to suggest expansion of the Category 1 list.) This seems to us to put ICANN in a very difficult position and create significant issues regarding fair and predictable treatment of new gTLD applications.

In addition, the intention of the GAC with respect to the specific Advice for Category 1 strings requires further consideration. As an example, registries and registrars are, under the current draft agreements, required to cooperate with law enforcement, consumer protection authorities, and certain quasi-governmental bodies. Significant legal and practical concerns arise, however, if the effect of that Advice is to require operators of traditional, unrestricted registries to determine what “applicable law” is in any given situation, and then to evaluate a particular registrant’s conduct in light of that law.



Conclusion

While Neustar supports the goal of increasing WHOIS accuracy and improving accountability for misuse of the domain name system, it is undeniable that participants in the multi-stakeholder process – including the GAC – cannot have had a meaningful opportunity to evaluate the extent to which those public interest goals will be served by the GAC recommendations. Coming so late in the New gTLD process, there has been no opportunity to weigh any likely benefits against the fundamental public interest articulated by principle 2.5 in the GAC Principles Regarding New gTLDs dated 28 March 2007, which states:

The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional criteria should be used in the selection process.

Neustar shares many of the concerns that appear to underlie the GAC Advice. At the same time, use of the GAC Objection procedure to create new, one-size-fits-all, across-the-board mandatory requirements at this late date is in fundamental tension with the ICANN multi-stakeholder model in general, and its bottom-up policy development principle in particular.

The New gTLD Process has been long and arduous. The GAC has provided input, guidance and advice throughout that process. ICANN has listened hard to GAC input, and it is reflected in the New gTLD Applicant Guidebook. It is time to move forward on that basis.

That does not mean, however, that the GAC Advice is without merit. It does not mean that the community is not listening to the GAC. Moving forward need not mean putting the GAC Advice on a shelf. Rather, we see this as an opportunity for all to re-commit to recommit to the multi-stakeholder process and undertake bottom-up policy development on the issues raised by the GAC Advice. Specifically, we note that both the draft Registrar Accreditation Agreement and the draft New gTLD Registry Agreement contain new mechanisms for considering the kinds of changes embodied in the GAC Advice.