

# COALITION FOR ONLINE ACCOUNTABILITY

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C/O MITCHELL SILBERBERG & KNUPP LLP • 1818 N STREET N.W., 8TH FLOOR • WASHINGTON, D.C. 20036-2406  
TEL: (202) 355-7900 • FAX: (202) 355-7899 • E-MAIL: INFO@ONLINEACCOUNTABILITY.NET

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## REPLY COMMENTS ON GAC SAFEGUARDS ADVICE

June 4, 2013

The Coalition for Online Accountability submits the following reply comments regarding the GAC Advice re safeguards for new gTLDs (“GAC Advice”).

In its initial round comments (see <http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/msg00068.html>), COA urged ICANN to welcome the GAC Advice, to begin a focused dialogue with GAC on how the Advice should be applied to .brand applications, and to direct affected applicants to submit additional Public Interest Commitment specifications implementing the Advice as contractual commitments. The scores of comments ICANN has received to date reflect broad support for the GAC Advice from around the world.<sup>1</sup> This support comes not only from companies, associations and coalitions from the content industries<sup>2</sup>, but also from diverse sectors such as telecomm<sup>3</sup>, financial services<sup>4</sup>, online travel<sup>5</sup>, child protection<sup>6</sup>, and the trademark community.<sup>7</sup>

Even more notably, the GAC Advice garners strong support from many new gTLD applicants, who might be expected to resist the imposition of new contractual obligations. This support from applicants was exhibited not only in the public comment forum<sup>8</sup>, but also in the

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<sup>1</sup> All comments referenced in this document may be viewed at <http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/>.

<sup>2</sup> See, e.g., comments of the International Publishers Association, International Video Federation, Comcast/NBC Universal, Music Community Coalition, Copyright Alliance, Interactive Software Federation of Europe, and the Danish coalition of right holders (RettighedsAlliancen), as well as organizations of publishers from Italy, France, Norway and Sweden, and of sound recording producers from Bulgaria, Austria, Finland, Sweden, Italy and Greece, among many other commenters.

<sup>3</sup> See, e.g., comments of USTelecom.

<sup>4</sup> See, e.g., comments of American Insurance Association, Insurance Council of Australia.

<sup>5</sup> See, e.g., comments of Expedia Inc.

<sup>6</sup> See, e.g., comments on Family Online Safety Institute.

<sup>7</sup> See, e.g., comments of MARQUES.

<sup>8</sup> See, e.g., comments of Big Room Inc. (.eco); Shaul Jolles (for Dot Registry LLC, applicant for several new gTLDs); Artemis Internet Inc. (.secure).

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American Society of Composers  
Authors & Publishers (ASCAP)

Entertainment Software Association (ESA)

Software & Information Industry Association (SIIA)

Broadcast Music Inc. (BMI)

Motion Picture Association of America (MPAA)

Time Warner Inc.

Recording Industry Association of America (RIAA)

The Walt Disney Company

*Counsel: Steven J. Metalitz (met@msk.com)*

separate responses submitted by applicants under the Applicant Guidebook procedure, and compiled at <http://newgtlds.icann.org/en/applicants/gac-advice> . In the latter forum, numerous applicants for new gTLD strings targeted to copyright-dependent sectors indicated support for key elements of the GAC Advice. See, e.g., response of Famous Four Media Ltd. (applicant for .book, .game, .movie, .music) (stating support for, or “no issue with,” most of the six basic safeguards, but seeking clarification of one of them); response of Radix (applicant for .movie and .music) (“we will comply with all safeguards as required by ICANN,” and spelling out how it proposes to do so); response of DotBook, LLC (applicant for .book) (reaffirming “intention to implement a version of each of these six safeguards”); response of .Music LLC (applicant for .music) (“we are confident we have addressed all of the GAC’s concerns”); response of DotMusic Limited (applicant for .music) (“Our application’s safeguards surpass those illustrated in GAC’s communique”).

One recurring theme in the submissions of many new gTLD applicant groups is the need for flexibility in fulfilling the safeguards set out in the GAC Advice, or, more precisely, in making them “subject to contractual oversight” by ICANN.<sup>9</sup> See, e.g., response of NU DOTCO, LLC (applicant for .movie) (“Although we have committed to implementing these Safeguards, neither the ICANN Board nor the GAC should attempt to dictate the specific processes or methodologies.”) COA noted in its initial comments that contractual oversight could be accomplished either through revision of the base registry agreement, or through the submission of additional PIC statements which, if the Board (after an opportunity for public input) found them acceptable as implementation of the adopted safeguards, would then be incorporated into the agreement signed with that successful applicant. We note that one applicant group, in its responses, calls for “standard PICs” to be developed, “after expedited consultation and discussion with the community” to implement some of the GAC-recommended safeguards in contractual form.<sup>10</sup> This hybrid approach might be worth considering for all the safeguards. In any event, as noted in our initial comments, the choice of method for incorporating the safeguards into the new gTLD program involves some trade-offs among flexibility, uniformity, and expeditiousness, but should not present any insurmountable problems.

Some new gTLD applicants – including some with large portfolios of applications -- have reacted more negatively to the GAC Advice. Some of these applicants argue that GAC has overstepped its bounds, that its Advice is impossible to implement, or even that for ICANN to accept it would undermine the multi-stakeholder process. We urge ICANN to firmly reject these extreme views. To some extent this opposition reflects displeasure that the GAC Advice may require applicants to modify their plans and in some cases incur some additional costs. These reactions are understandable, but they miss the fundamental point. The new gTLD rollout is not being carried out for the benefit of new gTLD applicants or their investors; and the possibility of imposing additional costs on these parties cannot be the determinative factor in ICANN’s decision. If the new gTLD rollout is worth doing, it must be done in a way that maximizes the benefits, and minimizes the risks, to the public as a whole. The Governmental Advisory Committee, consisting of sovereign governments acting on behalf of their citizenries, is

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<sup>9</sup> GAC Advice, at 7.

<sup>10</sup> See response of Donuts at 9.

uniquely well situated to articulate the public interest concerns that must take precedence in this process, and to recommend safeguards to protect them. A sound multi-stakeholder model would incorporate these recommendations within the process to the extent feasible. Indeed, insufficient attention to important public policy concerns is likely to harm the process and reduce the chances for long-term success.

In its initial comments on the first iteration of the Draft Applicant Guidebook, COA articulated the issue as follows: “Will the proposed new gTLD launch truly deliver significant benefits to the Internet community (including consumers, individual Internet users, and businesses large and small)? Or, as too often was the case in previous new gTLD launches, will it primarily enrich registrars, registries, resellers of registration services, and those unscrupulous registrants engaged in speculation, opportunism, fraud, or worse?”<sup>11</sup> These questions, which we posed in December 2008, remain apposite today. ICANN’s response to the GAC Advice will in large measure determine the answer.

Thank you for consideration of our views.

Respectfully submitted,

Steve Metalitz, counsel to COA

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<sup>11</sup> See [http://www.onlineaccountability.net/pdf/COA%20comments%20on%20new%20gTLD%20Draft%20Applicant%20Guidebook%20122008%20\(2113406\).PDF](http://www.onlineaccountability.net/pdf/COA%20comments%20on%20new%20gTLD%20Draft%20Applicant%20Guidebook%20122008%20(2113406).PDF) .