



MPAA COMMENTS ON GAC ADVICE RE NEW gTLDs

May 14, 2013

Introduction

The Motion Picture Association of America, Inc. (MPAA) appreciates this opportunity to comment on how the New gTLD Program Committee (NGPC) should address the Governmental Advisory Committee (GAC) Advice regarding safeguards applicable to the new gTLD program.¹ The MPAA encourages ICANN to incorporate the GAC Advice, particularly the list of “Safeguards Applicable to all New gTLDs,” in the new gTLD program. These protections are critical for gTLDs at higher risk of abuse, such as those targeted at industries that depend on copyright protection. Including these safeguards will further ICANN’s stated goals of “ensuring the security and stability of the domain name system.”²

The MPAA champions the creative and artistic freedoms of filmmakers, while working around the world to safeguard intellectual property rights, advance technology-driven innovation, and open markets to the global medium of film. MPAA member studios include Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc. For further information, see <http://www.mpa.org/>.

ICANN Should Not Ignore GAC Advice on New gTLDs

We applaud ICANN for providing a clear role in this process for the GAC, and we appreciate the GAC’s thoughtful recommendations with regard to the proposed safeguards. Because the GAC is made up of sovereign governments, it plays a distinctive role within the multi-stakeholder process. Governments are concerned with broad public policy matters that impact their citizens, such as law enforcement and consumer protection. For the multi-stakeholder process to thrive, their views cannot be ignored. With respect to the safeguards at issue, the consensus among governments is that online intellectual property protections are necessary, and that there is a history of abuse that needs to be addressed. ICANN’s final action should therefore reflect GAC’s input by, at a minimum, adopting the six essential safeguards to ensure that intellectual property is protected.

¹ GAC Communiqué – Beijing, People’s Republic of China, Annex 1 at 7-8 (April 11, 2013) (GAC Advice).

² See ICANN, New Generic Top-Level Domains, <http://newgtlds.icann.org/en/about/program>.

Compelling Rationales Exist for Incorporating Reasonable Safeguards

New gTLDs have the potential to transform the Internet by creating new opportunities for commerce, including legitimate means of distributing of movies and other creative works. MPAA and its member studios are excited about the prospect for growth and innovation. At the same time, the anticipated scale of the expansion could result in an explosion of online counterfeiting and fraud. MPAA member studios already experience consistently high levels of copyright infringement under the current regime, which is much more contained. Without appropriate protections, we are concerned that new gTLDs may develop into havens for piracy and copyright infringement.

Copyright protection helps preserve the jobs of actors, writers, set painters, electricians, carpenters, and many others who help create motion pictures around the globe. MPAA therefore urges ICANN to adopt the common sense procedures outlined by the GAC to ensure that new gTLDs do not become a front for piracy of copyright-protected content and other illegal activity.

The GAC Proposed Safeguards are Reasonable and Sufficiently Adaptable

The GAC's six safeguards – WHOIS verification and checks, responsible terms of use, periodic security checks, the maintenance of statistical reports, establishment of a complaint mechanism, and enforcement penalties – are reasonable and flexible. A requirement that terms of use contain prohibitions on copyright infringement, piracy, or other unlawful behavior puts registrants on notice that they must respect the rule of law. A swift and accessible third-party complaint mechanism, together with predictable, “real and immediate consequences,” provides teeth for enforcement actions to deter and punish violations.³ Protocols of this nature are central to ICANN's broader objective of overseeing the Internet's security and stability.

These practical and evenhanded measures are especially essential for strings focused on sectors that rely on copyright protection and continually combat significant online infringement, such as the movie industry. Heightened accountability is needed to deter bad actors attempting to operate anonymously. Clear obligations on strings like .film, .movie, and .video will ensure that the new gTLDs facilitate legitimate and law-abiding uses. If ICANN does not adopt requirements for all new gTLDs then, at a minimum, new gTLDs for strings related to intellectual property should be required to implement the recommended safeguards.⁴

Incorporating GAC Proposed Safeguards Would Not Materially Delay Rollout of New gTLDs

The GAC is intimately familiar with the challenges posed by rolling out new gTLDs, including the potential for delay. Yet, it made the calculation that a minimum of six fundamental safeguards should apply to all new gTLDs. Given that discussions about safeguards have been ongoing for

³ GAC Advice, Annex 1 at 8.

⁴ *Id.* at 8-10.

over a year, the GAC Advice should not be a surprise. Similar, complementary protections are already contained in the Proposed 2013 Registrar Accreditation Agreement, and some new gTLD applicants prudently anticipated such features and included them in their applications.⁵ In many cases, systems have been designed to accommodate comparable safeguards, so the capability already exists. Extending safeguards to gTLDs targeting the creative sector should not cause significant delay, especially because most of them are in contention and therefore will be delayed by resolution procedures anyway.

Failure to include the GAC safeguards would represent a critical missed opportunity -- it would undermine ICANN's efforts to develop a secure online environment and deprive key stakeholders with a mechanism to curb abuses and illegal online activity.

We appreciate the opportunity to offer comment on this important issue.

Respectfully submitted,

MOTION PICTURE ASSOCIATION OF
AMERICA, INC.

By:



Linda Kinney
Senior Vice President
1600 Eye Street, NW
Washington, D.C. 20006
(202) 378-9139

⁵ The MPAA urges ICANN to provide "additional safeguards" for strings related to intellectual property by establishing a working relationship with the relevant regulatory and industry bodies. Through such a partnership, affected industry actors, like the MPAA, can have a seat at the table to develop strategies aimed at mitigating piracy and online infringement.