5 February 2015 NGPC Meeting
07:00 UTC (3:00pm – 5:00pm in Singapore)

Consent Agenda

1. **Approval of Minutes from 11 December 2014**

Main Agenda

1. **Update on NGPC/GAC discussion regarding new gTLD GAC advice (for discussion only; no resolution; refer to recent letter from GAC re: safeguard advice in reference materials)**
2. **Update on NGPC/ALAC discussion regarding ALAC statement on Public Interest Commitments (for discussion only; no resolution; paper)**
3. **GAC Advice**
    a. **Verification and Validation of Credentials for Category 1 Strings Associated with Market Sectors with Clear and/or Regulated Entry Requirements (scorecard, paper)**
    b. **Category 2 Safeguards: Ensuring Non-Discriminatory Registration Policies (scorecard, paper)**
    c. **Community Priority Evaluation (scorecard)**
    d. **Category 2 Exclusive Access (paper)**
4. Item Removed From Agenda
5. **AOB**

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ICANN NGPC PAPER NO. 2015.02.05.NG2b

TITLE:	**NGPC-ALAC Discussion Regarding ALAC Statement on the Public Interest Commitments**
PROPOSED ACTION:	**For Discussion**

EXECUTIVE SUMMARY:

Background – ALAC Statement on Public Interest Commitments

This briefing is provided to assist the NGPC's continued its discussions regarding the ALAC Statement on Public Interest Commitments issued on 16 October 2014 and the follow-up statement issued on 19 November 2014. The ALAC Statement advised the Board to immediately cease contracting of or delegating the 28 TLD strings identified by the GAC as requiring enhanced safeguards ("Category 1, Safeguards 1-8"), pending further community review and subsequent changes to the Public Interest provisions of the New gTLD Registry Agreements. Some of the strings included in this category are: .pharmacy, .medical, .doctor, .lotto, .casino, .bank, .charity, .cpa, .corp and .gmbh. (See https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf)

On 19 December 2014, the NGPC sent a response to the ALAC acknowledging the serious concerns expressed by the ALAC, the GAC and other parts of the ICANN community about the PICs in the New gTLD Registry Agreements. The NGPC noted that it would engage immediately with the ALAC to better understand its concerns and to explore potential solutions. The NGPC also informed the ALAC that it was not supportive of the ALAC's request to freeze the Category 1 strings requiring enhanced safeguards at this stage.

ALAC Concerns Regarding PICs Expressed During 22 January 2015 Conference Call

On 22 January 2015, a sub-group of the NGPC met with members of the ALAC to gain a better understanding of the concerns, and to discuss possible solutions as a path forward. During the course of the meeting, comments from the sub-group of the NGPC and ALAC

members highlight various competing factors and concerns that the NGPC may wish to consider as part of its discussions. The following chart attempts to capture the identified balancing factors and concerns in an effort to assist the NGPC as it deliberates on its next steps.

Public trust in the DNS	Public interest	Fairness
Consumer protection	Consumer choice	Responsiveness of ICANN to complaints of governments, regulatory agencies, etc.
Competition	Security/stability	Consistency with multi-stakeholder/consensus driven model
ICANN's limited technical remit	Business considerations of registries/registrars	Consistency with ICANN's mission and core values expressed in the Bylaws
Existing consensus policy	Risk – legal, reputational, security	Predictability

Possible Options to Address ALAC's Concerns

Several options to potentially address the ALAC's concerns emerged during the discussion, which are outlined below for the NGPC's consideration.

1. Freeze contracting for the strings identified in the ALAC Statement. The ALAC and the GAC have noted concerns about the current requirement in the Registry Agreement that registrants must represent that they possess all necessary credentials, authorizations or licenses to register a name in certain TLDs identified by the GAC and ALAC, as opposed to requiring verification and validation of credentials, authorizations or licenses as a precondition to register

names in the TLDs. To address the concerns of ALAC (and the GAC), the NGPC could consider directing staff to stop signing agreements for the remaining strings in Category 1, and launching a public comment period to develop and receive feedback on a new framework to implement the ALAC Statement and the GAC advice calling for verification and validation of credentials, authorizations or licenses as a precondition to register names in certain highly regulated TLDs. Given that ICANN has signed agreements with more than half of the Category 1 strings associated with highly regulated industries, an implementation challenge raised by this option is determining whether (and if so how) to amend the PIC included in the already signed Registry Agreements for Category 1 strings associated with highly regulated industries. The NGPC could consider trying to amend the agreement pursuant to the procedures set forth in Section 7.6.

2. Explore the development of Consensus Policy to address the concerns. The ALAC or the NGPC could consult with the GNSO about any policy considerations raised by the ALAC Statement, and whether the development of consensus policy may address the concerns. Generally speaking, under Specification 1 of the New gTLD Registry Agreement, Registry Operators would be obligated to comply with Consensus Policies established pursuant to the procedures set forth in ICANN's Bylaws. If the issues and potential solutions contemplated by the ALAC fit within the scope of the topics that are properly subject to Consensus Policy (such as, for example, principles for allocation of registered names in the TLD – see Section 1.3.1 of Specification 1), those solutions could potentially be implemented through establishment of a Consensus Policy addressing the issue.

3. Use the amendment procedure in the New gTLD Registry Agreement. The NGPC could consider beginning the process to propose amendments the PICs and/or the PICDRP to address the ALAC's specific concerns about appropriate safeguards for identified strings and enforcement mechanisms for those safeguards. The amendment procedures are included in Article 7 of the Registry Agreement. The process for approving an amendment includes a requirement that ICANN obtain

the affirmative vote of a majority of the impacted Registry Operators (one vote per TLD), and approval of impacted Registry Operators whose payments to ICANN account for two-thirds of the total amount of fees paid to ICANN by all during the immediately previous calendar year by all impacted Registry Operators.

4. Negotiate individual amendments to registry agreements for strings identified in the ALAC Statement. Under this option, the NGPC could consider contacting each of the registry operators who have executed agreements for a string identified in the ALAC Statement, and request that the registry operator implement additional safeguards to address the concerns raised in the ALAC Statement. If this option is explored, the NGPC may need to consider how to incentivize registry operators to voluntarily take on new obligations not currently required by the existing agreements executed with ICANN.

5. Develop a certification process for registries agreeing to additional safeguards. Under this option, the NGPC could consider working with the community to develop additional standards and measures that registries would voluntarily agree to implement to provide additional safeguards for the strings identified in the ALAC Statement. Registries agreeing to implement the additional standards would receive a special certification that would serve as a symbol to consumers that the TLD adheres to a heightened level of safeguards, and thus this certification may instill a higher level of public trust in the TLD. If the NGPC considers this option, some questions to consider are:

    a. Who should be the "certifying" entity (e.g. Self-certification? ICANN? An outside third party?);

    b. What is the remedy if a registry does not comply with the certification (e.g. if the registry wants to be certified, should the registry be required to voluntarily amend its agreement so that it is able to be enforced via ICANN Contractual Compliance and the PICDRP?); and

c. How will consumers and Internet users know that a particular TLD meets the "certification" standards?

6. Revisit the work of the High Security Zone TLD Advisory Group. The High Security Zone TLD (HSTLD) Advisory Group (the "Group") was formed in response to public comment about the importance of implementing measures to mitigate malicious conduct in new gTLDs. An additional impetus for the creation of the Group was a request from representatives of governments and the financial services sector to identify a set of security, stability and resiliency requirements for TLDs whose primary purpose is to offer services where users have an expectation of higher security, particularly those offering financial services. The Group commenced its effort in December 2009 and worked through February 2010 to study and develop proposed solutions for establishing a High Security Zone TLD Program. The goal of the Group was to bring together community representatives to evaluate the viability of a voluntary program, supporting control standards and incentives that could potentially be adopted to provide an enhanced level of trust and security over the baseline registration-authority controls. It should be noted that the Group produced a final report of its findings, but during the course of its deliberations did not reach consensus on a recommended approach to implement a proposed HSTLD Program.

7. Make an affirmative commitment to the community that PICs will be enforced. During the January 22nd conference call, some ALAC members expressed doubt as to whether ICANN will actually enforce the PICs, and wanted explicit reassurance that PICs will be enforced. ICANN provided reassurance on the call, as well as in a written explanation (in correspondence to the GAC available here). As explained on the call, and expressed in writing, because the PICs are incorporated in Specification 11 of the Registry Agreement, they are part of the contract between ICANN and the Registry Operator, and accordingly, these PICs are subject to enforcement by ICANN's contractual compliance department. ICANN's contractual compliance team routinely undertakes a variety of activities to ensure compliance with contractual obligations; some of the activities are a

result of complaints submitted to ICANN by third parties, some are the result of monitoring by ICANN, and others are audit-related. Monitoring activities are ICANN-initiated, based largely on industry articles and social media postings, in an effort to proactively address any alleged failure to comply with contract terms.

If ICANN receives a complaint or learns of potential non-compliance with PICs from the media or other sources, it may undertake an investigation and seek to require the Registry Operator to comply with the terms and conditions of the PIC. Anyone can file a contractual compliance complaint with ICANN if they believe a contracted party is breaching its agreement with ICANN. The Registry Operator is obligated to designate a compliance contact to receive reports forwarded from ICANN alleging non-compliance with its PICs, and promptly to review and address reports of alleged non-compliance with those PICs, and where applicable, correct any non-compliance. If the Registry Operator fails to cure any non-compliance with its PICs, ICANN is entitled to pursue available remedies, up to and including termination of the Registry Agreement. ICANN could do this for failure to comply with a PIC the same as it could with any other provision of the agreement.

Third parties that believe they have been harmed as a result of a Registry Operator's failure to comply with its PICs may report such alleged non-compliance by the Registry Operator to ICANN compliance for review and investigation and may also choose to avail themselves of the Public Interest Commitments Dispute Resolution Procedure ("PICDRP"). The PICDRP provides a potential alternative or parallel mechanism for a harmed party to pursue remedies, but it does not preclude or limit ICANN from enforcing the PICs through its normal contractual compliance process and timetable. In many cases, ICANN's normal compliance processes will result in a speedy resolution.

STAFF RECOMMENDATION:

This briefing is being provided for discussion. There is no staff recommended action at this time.

Signature Block:

Submitted by: Akram Atallah

Position: President, Global Domains Division

Date Noted: 29 January 2015

Email: akram.atallah@icann.org

ICANN NGPC PAPER NO. 2015.02.05.NG2c

TITLE: **GAC Advice: Updates and Actions**

PROPOSED ACTION: **For Resolution**

EXECUTIVE SUMMARY:

The Governmental Advisory Committee (GAC) delivered additional advice on the New gTLD Program in the Los Angeles Communiqué issued 15 October 2014. Over the past year and half, the NGPC developed and adopted a series of scorecards to respond to the GAC's advice concerning the New gTLD Program. At this time, the NGPC is being asked to consider adopting another iteration of the scorecard to resolve the new items of advice in the Los Angeles Communiqué, as well as to provide updates on open items of advice from prior Communiqués (Beijing, Durban, Buenos Aires, Singapore and London).

The scorecard provides updates on the NGPC's progress, and where appropriate, includes actions to be undertaken to continue to make progress on resolving the open items of GAC advice.

Consistent with the Applicant Guidebook, ICANN has notified relevant applicants of strings named in the Los Angeles Communiqué of the GAC advice, and has provided at least 21 days for those applicants to submit responses to the NGPC for consideration. The applicants submitted comments by 17 November 2014, which are publically available for review on the New gTLD microsite <http://newgtlds.icann.org/en/applicants/gac-advice/losangeles51>. The Reference Materials include a summary of the responses from applicants concerning the GAC's Los Angeles Communiqué.

With the adoption of this scorecard, only a handful of GAC advice items would remain for the NGPC to resolve over the coming months, including GAC advice on the following:

1. Particular strings: .RAM

2. Second-level IGO and Red Cross/Red Crescent protections

3. Category 2 Safeguard advice (Exclusive access and restricted access)

4. Category 1 Safeguard advice – Verification and validation of credentials for Category 1 strings associated with market sectors with clear and/or regulated entry requirements

The NGPC may consider additional iterations of the scorecard at subsequent meetings as it continues to address the remaining items of GAC advice.

STAFF RECOMMENDATION:

Staff recommends the NGPC adopt the attached scorecard to address the new items of GAC advice in the Los Angeles Communiqué, and to provide updates on open items of advice from Beijing, Durban, Buenos Aires, Singapore and London.

PROPOSED RESOLUTION:

Resolution Not Considered

Resolution Not Considered

PROPOSED RATIONALE:

Rationale Not Considered

Rationale Not Considered

Rationale Not Considered

Signature Block:

Submitted by: Jamie Hedlund

Position: Vice President, Strategic Programs, Global Domains Division

Date Noted: 29 January 2015

Email: jamie.hedlund@icann.org

ICANN NGPC PAPER NO. 2015.02.05.NG2c

TITLE: **GAC Advice in the Beijing Communiqué regarding Category 2 Safeguards – Exclusive Registry Access**

PROPOSED ACTION: **For Discussion**

EXECUTIVE SUMMARY:

This paper provides options for the NGPC to consider as it continues to deliberate on how to address the GAC's Category 2 Safeguard advice in the Beijing Communiqué. The GAC advice states that, "For strings representing generic terms, exclusive registry access should serve a public interest goal."

The number of applicants indicating their applied-for TLD would be operated as an exclusive access registry continues to decline. As of 26 January 2015, five applicants representing six applications maintain that their applied-for TLD would be operated as an exclusive access registry as noted below. This is down from 12 applicants representing 11 strings previously reported to the NGPC in October 2014. These applicants provided an explanation for how exclusive access registry for the applied-for TLD would serve a public interest goal. Staff continues to peruse its outreach efforts to the applicants to encourage them to consider operating the applied-for generic string in a non-exclusive manner so that they may continue to move forward in the Program.

- .CRUISE (Viking River Cruises (Bermuda) Ltd.) – in contention with one other application
- .DATA (Dish DBS Corporation) – in contention with two other applications
- .DVR (Hughes Satellite Systems Corporation) – not in a contention set
- .FOOD (Lifestyle Domain Holdings, Inc.) – in contention with two other applications
- .GROCERY (Wal-Mark Stores, Inc.) – not in a contention set
- .PHONE (Dish DBS Corporation) – in contention with one other application

Five potential options to address the open item of GAC advice are as follows:

1. Prohibit Exclusive Generic TLDs – Under this option, the NGPC would take action not to move forward with applicants who proposed to provide exclusive registry access for a generic string. Although this option may satisfy members of the community that believe ICANN should prohibit exclusive access for generic strings, this approach is inconsistent with the GNSO's position (ICANN should not have responsibility to restrict the use of gTLDs in any manner; *see* http://gnso.icann.org/en/correspondence/robinson-to-crocker-chalaby-07mar13-en.pdf) and the Applicant Guidebook, and appears inconsistent with the GAC's advice. (Note: the GAC advice does not say that exclusive registry access for a generic string should be prohibited, but rather says that the exclusive registry access should serve a public interest goal.)

2. Reject the GAC advice, and permit Exclusive Generic TLDs – By selecting this option, the NGPC would take an action that would allow applicants who proposed to provide exclusive registry access for a generic string to continue to move forward in the New gTLD Program. This action would appear to be consistent with the Applicant Guidebook and the GNSO position on exclusive access for generic TLDs. If this option is selected, the NGPC would need to begin the GAC-Board consultation process since the NGPC's action would not be consistent with GAC advice, which provides that exclusive registry access should serve a public interest goal. Electing this option may also cause many applicants for generic strings that currently say they intend to provide non-exclusive registry access to change their registration policies to provide exclusive access.

3. Initiate a public comment period – At its 8 September meeting, the NGPC requested that staff prepare a list of questions to frame a discussion in the event a public comment forum is initiated to gather community feedback on how to implement the GAC's Category 2 safeguard advice. As the NGPC previously discussed, defining the public interest is a complex matter because "public interest" is an amorphous, malleable concept. The questions presented below are

intended to help define a framework based on key issues that a registry operator would need to address to demonstrate that its proposed exclusive registry access serves a public interest goal.

a. Describe the user community whose needs you seek to meet?

b. What are the needs of the target user community?

c. How do you propose to meet the needs of the target user community (e.g. what are your implementation plans)?

d. Will meeting the needs of the target user community conflict with the needs or interests of others? How will you address this conflict/tension?

e. How will you measure your effectiveness in meeting your public interest goal? How will you report on your effectiveness?

f. How and to whom will you be held accountable for meeting your public interest goal?

4. Accept the GAC advice, and implement the advice by requesting the impacted applicants to submit a PIC to be included in Specification 11 of the New gTLD Registry Agreement. This option is consistent with the treatment of other GAC advice, but has the potential to present future enforcement challenges if the PICs extend too far beyond the scope of ICANN's technical remit. For example, Wal-Mart Stores, Inc., which indicated that it planned to operate .GROCERY as an exclusive registry access TLD, identified the following as some of the public interests goals its exclusive registry access will serve: enhanced competition; a unique secure marketplace; brand protection; cost reduction for Wal-Mart by reducing the need for defensive registrations in other TLDs; and increased consumer trust by providing a secure and reliable commercial platform. If the NGPC adopts this option, these public interest goals would need to be transformed into binding commitments to be included in the Registry Agreement

and enforcement of those commitments, whether by ICANN's compliance team or through the PICDRP, could be problematic.

5. Defer the matter for possible development of consensus policy – At its 12 – 14 October 2014 meeting in Los Angeles, the NGPC discussed that the GAC's advice may raise policy considerations. The NGPC may wish to consider consulting with the GNSO about any policy considerations raised by the GAC advice, and whether the development of consensus policy may be needed to address/implement the advice. As part of this option, staff can continue to peruse its outreach efforts to the applicants to encourage them to consider operating the applied-for generic string in a non-exclusive manner.

In the NGPC's previous briefing materials on this topic, the Reference Materials documents included: (i) possible pros and cons of selecting a particular approach, and (ii) a discussion about "exclusive registry access" and "generic strings" in an effort to help clear up some confusion in the community regarding the GAC's Category 2 Safeguard advice and what the New gTLD Registry Agreement actually says about generic strings.

STAFF RECOMMENDATION:

This paper is provided for discussion purposes. There is no staff recommended action at this time. Staff will prepare a resolution for action by the NGPC, pending the outcome of the discussion.

Signature Block:

Submitted by: Jamie Hedlund

Position: Vice President, Strategic Programs, Global Domains Division

Date Noted: 29 January 2015

Email: jamie.hedlund@icann.org

1. **Consent Agenda:**

    a. **Approval of Minutes**

    Resolved (2015.02.05.NGxx), the Board New gTLD Program Committee (NGPC) approves the minutes of its 11 December 2014 meeting.

2. **Main Agenda:**

    a. **GAC Advice: Updates and Actions**

Resolution Not Considered

Rationale for Resolution 2015.02.05.NGxx

Rationale Not Considered

Rationale Not Considered

Rationale Not Considered

New gTLD Program Committee Members,

Attached below please find Notice of the following New gTLD Program Committee Meeting:

5 February 2015 – NGPC Meeting at 07:00 UTC (3:00pm – 5:00pm in Singapore). This Committee meeting is estimated to last 2 hours (though may conclude in less time).

http://www.timeanddate.com/worldclock/fixedtime.html?msg=New+gTLD+Program+Committee&iso=20150205T15&p1=236&ah=2

Some other helpful time zones:
4 February 2015 – 11:00 p.m. PST Los Angeles, CA
5 February 2015 – 2:00 a.m. EST Washington, D.C.
5 February 2015 – 8:00 a.m. CET Brussels
5 February 2015 – 3:00 p.m. CST Taipei
5 February 2015 – 6:00 p.m. AEDT Sydney

Consent Agenda

1. **Approval of Minutes from 11 December 2014**

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a. **Verification and Validation of Credentials for Category 1 Strings Associated with Market Sectors with Clear and/or Regulated Entry Requirements (scorecard, paper)**
b. **Category 2 Safeguards: Ensuring Non-Discriminatory Registration Policies (scorecard, paper)**
c. **Community Priority Evaluation (scorecard)**
d. **Category 2 Exclusive Access (paper)**

4. **AOB**

Materials can be found HERE on BoardVantage

If you have trouble with access, please let us know and we will work with you to assure that you can use the BoardVantage Portal for this meeting.

If call information is required, it will be distributed separately.

If you have any questions, or we can be of assistance to you, please let us know.

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