5 June NGPC Meeting Agenda

Main Agenda

1. **Implementation of GAC Advice Regarding .DOCTOR**
2. **GAC Category 2.1 Safeguard Advice – Non-discrimination**
3. **GAC Category 2.2 Safeguard Advice – Exclusive Generic TLDs**
4. **AOB**

ICANN NGPC PAPER NO. 2015.06.05.NG2a

TITLE:	**Implementation of GAC Advice Regarding .DOCTOR**
PROPOSED ACTION:	**For Discussion**

EXECUTIVE SUMMARY:

At its 6 May 2015 meeting, the Board Governance Committee (BGC) recommend that "the NGPC again review the proposed implementation of a public interest commitment for the .DOCTOR TLD, and to re-evaluate the NGPC's 12 February 2015 determination." The BGC's recommendation was in response to Reconsideration Request 15-3 filed by Brice Trail, LLC (an entity related to Donuts Inc.) – one of the contending applicants for the .DOCTOR TLD. Brice Trail's Reconsideration Request challenges staff and NGPC actions relating to the implementation of the GAC's Buenos Aires advice about .DOCTOR. In the Buenos Aires Communiqué (20 November 2013), the GAC advised the Board to "recategorize the string .doctor as falling within Category 1 safeguard advice addressing highly regulated sectors, therefore ascribing these domains exclusively to legitimate medical practitioners. The GAC notes the strong implications for consumer protection and consumer trust, and the need for proper medical ethical standards, demanded by the medical field online to be fully respected."

On 5 February 2014, the NGPC addressed the GAC's advice in an iteration of the Scorecard stating: "With respect to the additional advice in the Buenos Aires Communiqué on the Category 1 Safeguards, the NGPC accepts the advice to re-categorize the string .doctor as falling within Category 1 safeguard advice addressing highly regulated sectors and ensure that the domains in the .doctor TLD are ascribed exclusively to legitimate medical practitioners."

To implement the NGPC's 5 February 2014 action in the Scorecard, staff informed the three applicants for the .DOCTOR TLD that in addition to the eight PICs for "highly regulated" TLDs, an additional PIC would be required for the .DOCTOR Registry Agreement to ensure that domains in the TLD are ascribed exclusively to legitimate

medical practitioners. (The Reference Materials provide additional background on the GAC's advice regarding .DOCTOR and the NGPC and staff actions to implement the advice.)

Brice Trail asserts that the implementation of the GAC's advice will unfairly limit registrations in the TLD to "legitimate medical practitioners" at the exclusion of other potential registrants of .DOCTOR domains – such as professors, doctors of law and other credentialed parties, those who perform repairs or have "doctor" in their business name (e.g., "Rug Doctor," "Computer Doctor") and directories, review sites, commentators and services that provide information about medical and other types of doctors. Brice Trail contends that implementation of the GAC's advice singles out the .DOCTOR TLD for treatment widely disparate from that given all other similarly situated TLDs, and severely limits expressive activity in the TLD, which has no historical precedent or basis. Moreover, Brice Trail argues that the staff and NGPC actions violate ICANN policy and GAC advice against discrimination.

This briefing provides some potential options for the NGPC to consider as it takes up the BGC recommendation to again review the proposed implementation of a public interest commitment for the .DOCTOR TLD, and to re-evaluate its 12 February 2015 determination.

- Option 1: The NGPC may wish to address the BGC's recommendation by requiring that the Registry Agreement for the .DOCTOR TLD exclude the proposed PIC drafted to ensure that domains in the TLD are ascribed exclusively to legitimate medical practitioners. If this option is selected, the .DOCTOR Registry Agreement would include the eight Category 1 PICs required for strings associated with highly regulated industries or industries having closed entry requirements in multiple jurisdictions. (The Reference Materials include the eight Category 1 PICs that would be included in the .DOCTOR Registry Agreement if this option is selected.) This option would be consistent with the NGPC's treatment of other strings designated as "highly regulated", such as .ATTORNEY, .BANK, and .PHARMACY. One disadvantage of this option is that it may be

viewed as inconsistent with or disregarding the portion of the GAC's Buenos Aires advice about "ascribing [the .DOCTOR] domains *exclusively* to legitimate medical practitioners." (Emphasis added.)

- Option 2: The NGPC may wish to consider the suggestion made by Brice Trail in its Reconsideration Request about how to implement the GAC's advice. Brice Trail asks the NGPC to consider a "compromise solution, namely to require a registrant to demonstrate 'legitimate medical practitioner' status only if the registrant holds itself out as a medical practitioner. An obstetrician applying for OBSTRETICS.DOCTOR, for example, would have to demonstrate his or her qualification to practice medicine." Brice Trail notes that the benefit of this solution is that it "would help protect against abuse of medical uses of the domain by non-practitioners (the very conduct the GAC seeks to prevent), and at the same time avoid potential discrimination against other legitimate, nonmedical uses of the domain (conduct also opposed by the GAC)."

  The downside to this proposed solution is that it may be seen to merely reiterate what is already required by one of the eight Category 1 PICs: *Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring a representation that the registrant possesses any necessary authorizations, charters, licenses and/or other related credentials for participation in the sector associated with the TLD.*

- Option 3: The NGPC may wish to direct staff to continue with the current approach of requiring the addition of a PIC in the .DOCTOR Registry Agreement restricting the TLD to legitimate medical practitioners.

STAFF RECOMMENDATION:

There is no staff recommendation at this time.

Signature Block:

Submitted by: Akram Atallah

Position: President, Global Domains Division

Date Noted: 27 May 2015

Email: akram.atallah@icann.org

ICANN NGPC PAPER NO. 2015.06.05.NG2b

TITLE:	**GAC Advice in the Singapore Communiqué regarding Redress for Discrimination**
PROPOSED ACTION:	**For Discussion**

EXECUTIVE SUMMARY:

At its 25 April 2015 meeting, the NGPC continued its discussions on how to address the GAC's request in the Singapore Communiqué (12 February 2015) to "provide greater clarity about the mechanisms for redress in the event registrants believe they have been unduly discriminated against." This request follows on from GAC advice in the Los Angeles Communiqué (15 October 2014) where the GAC "strongly advised" the Board to "focus its attention on… [a]mend[ing] the PIC specification requirement for Category 2 new gTLDs to include a non-discriminatory requirement for registrants an avenue to seek redress for discriminatory policies." The NGPC was previously briefed on some of the implementation challenges and questions raised by the GAC's advice in the Los Angeles Communiqué, which the NGPC discussed with members of the GAC in January 2015.

STAFF RECOMMENDATION:

Staff recommends that NGPC provide a written response to the GAC, a draft of which is attached, in response to the GAC's request in the Singapore Communiqué to provide greater clarity about the mechanisms for redress for registrants who believe they have been unduly discriminated against.

Signature Block:

Submitted by: Jamie Hedlund

Position: Vice President, Strategic Programs, Global Domains Division

Date Noted: 29 May 2015

Email: jamie.hedlund@icann.org

ICANN NGPC PAPER NO. 2015.06.05.NG2c

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

PROPOSED ACTION: **For Discussion**

EXECUTIVE SUMMARY:

At its 25 April 2015 meeting, the NGPC continued its discussions 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." Based on the discussion, the NGPC requested staff to narrow down the list of options being considered to address the GAC's advice. Two options are outlined in the chart below for further consideration by the NGPC. To assist the NGPC's deliberations on the consequences or next steps associated with adopting a particular option, the chart identifies: (1) whether the GAC's advice is accepted or rejected, (2) whether exclusive generic TLDs would be permitted in the current round of the New gTLD Program, (3) how contention resolution will be conducted, (4) signing the Registry Agreement, and (5) additional next steps requiring community or GNSO consultation. current form of New gTLD Registry Agreement, which includes the standard PIC prohibiting exclusive generic TLDs

Currently, the following applications would fall into this category:

- .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

	GAC Advice	Exclusive Generics Permitted in Current Round?	Impact on Contention Resolution	Contracting	Additional Next Steps – Community/GNSO Consultation
Option 1	Accept	No	Exclusive Generic Applicant will have 30 days to either: (1) submit application change request to no longer be an exclusive generic TLD; or (2) withdraw application for a refund.	The prevailing applicant (whether the Exclusive Generic Applicant or other applicant) signs the current form of New gTLD Registry Agreement, which includes the standard PIC prohibiting exclusive generic TLDs.	NGPC to recommend that GNSO consider developing policy on exclusive generic TLDs for the next round of the New gTLD Program.
Option 2	Accept	Yes	Exclusive Generic Applicant will be scheduled for an auction and will have 30 days to: (1) withdraw application for a refund; or (2) submit application change request to no longer be an exclusive generic TLD; or (3) maintain its plan to operate an exclusive generic TLD and elect to move forward with contention resolution while maintaining the right to submit a change request to no longer be an exclusive generic TLD post prevailing in the contention resolution.	If prevailing applicant is the Exclusive Generic Applicant, the Exclusive Generic Applicant will be placed on hold, pending the outcome of the "Additional Next Steps – Community/GNSO Consultation"; or the Exclusive Generic Applicant can submit a change request to no longer be an exclusive generic TLD, and sign the current form of New gTLD Registry Agreement, which includes the standard PIC prohibiting exclusive generic TLDs. If prevailing applicant is the non-Exclusive Generic Applicant, the parties sign the current form of New gTLD Registry Agreement, which includes the standard PIC prohibiting exclusive generic TLDs.	NGPC to initiate community process (via a Cross-Community Working Group, for example) to develop criteria to be used to evaluate whether prevailing Exclusive Generic Applicant's proposed exclusive registry access serves a public interest goal. Pending the outcome of this work, the Exclusive Generic Applicant would enter into a Registry Agreement taking into account any additional requirements that result from the Cross-Community Working Group's output.

STAFF RECOMMENDATION:

Taking into the consideration the pros of cons of each option, including the operational, legal and reputational risks, staff recommends that the NGPC adopt Option 1. Staff will prepare a resolution for action by the NGPC at a subsequent meeting, pending the outcome of the discussion.

Signature Block:

Submitted by: Jamie Hedlund

Position: Vice President, Strategic Programs, Global Domains Division

Date Noted: 29 May 2015

Email: jamie.hedlund@icann.org

REFERENCE MATERIALS EXH A – NGPC PAPER NO. 2015.06.05.NG2a

TITLE: **Implementation of GAC Advice Regarding .DOCTOR**

This document provides an overview of the background facts regarding the GAC's advice concerning .DOCTOR and the NGPC's response to the advice.

1. .DOCTOR was included as one of the Category 1 strings requiring additional safeguards in the GAC's Beijing Communiqué (11 April 2013).

2. ICANN initiated a public comment period (23 April 2013) to solicit input on how the NGPC should address the GAC's safeguard advice in the Beijing Communiqué.

3. On 29 October 2013, the NGPC sent a letter to the GAC about its proposed implementation of the Category 1 Safeguard advice in the Beijing Communiqué.

    a. The NGPC proposed to modify the text of the Category 1 Safeguards as appropriate to meet the spirit and intent of the advice in a manner that allowed the requirements to be implemented as Public Interest Commitments (PICs) in Specification 11 of the New gTLD Registry Agreement.

    b. The NGPC also proposed to distinguish the list of strings between those that the NGPC considered to be associated with market sectors or industries that have highly-regulated entry requirements in multiple jurisdictions, and those that do not. The Category 1 Safeguards in the PIC would apply to the TLDs based on how the TLD string was categorized (i.e. the highly-regulated TLDs would have 8 additional PICs, and the others would have 3 additional PICs). A copy of the PICs is included in the Reference Materials.

c. In the October 2013 proposal, .DOCTOR was not proposed to be classified as "highly-regulated," and thus it would be required to have 3 additional PICs in its Registry Agreement.

4. In the GAC's Buenos Aires Communiqué (20 November 2013), the GAC advised the Board "to re-categorize the string .doctor as falling within Category 1 safeguard advice addressing highly regulated sectors, ***therefore ascribing these domains exclusively to legitimate medical practitioners***. The GAC notes the strong implications for consumer protection and consumer trust, and the need for proper medical ethical standards, demanded by the medical field online to be fully respected." (Emphasis added.)

5. The NGPC considered the GAC's Buenos Aires advice, and in the iteration of the Scorecard from 5 February 2014, the NGPC:

   a. adopted the proposed implementation of Category 1 Safeguards that was sent to the GAC in October 2013; and

   b. accepted the GAC's Buenos Aires advice to reclassify .DOCTOR to highly-regulated so that it would be required to have the 8 additional PICs, and to "**ensure that domains in the TLD are restricted to legitimate medical practitioners**." (Emphasis added.)

6. In January 2015, staff contacted the three contending .DOCTOR applicants in advance of the "private auction," which was scheduled for late January 2015. To implement the NGPC's action regarding .DOCTOR, staff informed the applicants that in addition to the standard eight PICs for Category 1 strings in the highly-regulated category, an additional PIC would be required to ensure that domains would be restricted to legitimate medical practitioners. The additional PIC would read as follows: "Registry Operator will ensure that the domains in the TLD are ascribed exclusively to legitimate medical practitioners."

7. On 21 January 2015, Donuts sent an email to the CEO and some members of the NGPC raising concerns that the PIC developed by staff for .DOCTOR goes

beyond what the NGPC action called for in its 5 February 2014 Scorecard/resolution. The email stated that .DOCTOR is being singled out for disparate treatment far beyond that of any other highly sensitive TLD. The NGPC discussed the email from Donuts at its 12 February 2015 meeting, and after discussion, the sense of the NGPC was for staff to continue to move forward with implementation of the NGPC's 5 February 2014 resolution on the matter.

8. On 12 March 2015, Brice Trail filed Reconsideration Request 15-3.

REFERENCE MATERIALS EXH B - NGPCPAPER NO. 2015.06.05.NG2a

TITLE: **Implementation of GAC Advice Regarding .DOCTOR**

This document provides the additional eight Public Interest Commitments (PICs) that are required to be included in Registry Agreements for identified strings associated with highly regulated industries or industries having closed entry requirements in multiple jurisdictions.

1. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring registrants to comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.
2. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars at the time of registration to notify registrants of the requirement to comply with all applicable laws.
3. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring that registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law.
4. Registry Operators will proactively create a clear pathway for the creation of a working relationship with the relevant regulatory or industry self-regulatory bodies by publicizing a point of contact and inviting such bodies to establish a channel of communication, including for the purpose of facilitating the development of a strategy to mitigate the risks of fraudulent and other illegal activities.
5. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a

provision requiring registrants to provide administrative contact information, which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.

6. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring a representation that the registrant possesses any necessary authorizations, charters, licenses and/or other related credentials for participation in the sector associated with the TLD.
7. If a Registry Operator receives a complaint expressing doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents regarding the authenticity.
8. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring registrants to report any material changes to the validity of the registrants' authorizations, charters, licenses and/or other related credentials for participation in the sector associated with the TLD in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve.

__ June 2015

Thomas Schneider
Chair, ICANN Governmental Advisory Committee

Re: Outstanding items from Singapore Communiqué

Dear Mr. Schneider:

On behalf of the NGPC, I wish to provide you with a response to the request in the Singapore Communiqué stating, "The GAC urges the NGPC to provide greater clarity as to the mechanisms for redress in the event registrants believe they have been unduly discriminated against."

Every New gTLD Registry Agreement includes a Public Interest Commitment (PIC) in Specification 11 with a non-discrimination provision that states that "Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies." (See Registry Agreement, Specification 11, Section 3.c.) Under this provision, a registry operator is required to publish clear registration policies such that a prospective registrant is able to understand whether they are eligible to register a domain name in the TLD. A prospective registrant may seek redress by filing a contractual compliance complaint with ICANN if the prospective registrant believes they have been unduly discriminated against as a result of a registry operator violating its published eligibility criteria for registering names in the TLD.

In addition, a prospective registrant would have a right to seek redress under the Registry Agreement if they believe they have been unduly discriminated against as a result of a Registry Operator of a "generic string" imposing eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person's or entity's affiliates. (Note: "Generic String" is defined in the Registry Agreement as a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.)

Prospective registrants seeking redress for illegal discrimination, for example based on civil rights or antitrust laws, should seek redress in other fora, such as with governmental regulatory bodies.

I hope this information is helpful in providing clarity to the GAC regarding the mechanisms for redress in the event registrants believe they have been unduly discriminated against. Please let us know if you have any questions or concerns.

Sincerely,

Dr. Stephen Crocker
Chair, ICANN Board Of Directors

REFERENCE MATERIALS - NGPC PAPER NO. 2015.06.05.NG2c

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

Options for Consideration of GAC Category 2 Safeguard advice

#1 - Prohibit Exclusive Generic TLDs in this Round of the New gTLD Program	
Pro	**Con**
Will satisfy community members that think ICANN should prohibit Exclusive Generic TLDs	Inconsistent with current GNSO position
Simple	Inconsistent with AGB
Consistent with current language added to the Registry Agreement which prohibits exclusive generic TLDs	

#2 – Allow Exclusive Generic TLDs in this Round of the New gTLD Program, Pending Community Process to Define Criteria to Evaluate Public Interest Goals	
Pro	**Con**
Seeks implementation direction through a transparent, community-driven process	May be seen as unreasonable delay at this juncture
Consistent with view that ICANN should adhere to its remit and not regulate business models	Will require new Program process to be created to implement action
	Not clear whether community process will be able to reach consensus on a path forward, which would leave open the issue of what to do with the exclusive generic applications

New gTLD Program Committee Members,

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

5 June 2015 – NGPC Meeting at 13:00 UTC. This Committee meeting is estimated to last 90 minutes.

http://www.timeanddate.com/worldclock/fixedtime.html?msg=Board+New+gTLD+Program+Committee&iso=20150605T13

Some other helpful time zones:
5 June 2015 – 6:00 a.m. PDT Los Angeles
5 June 2015 – 9:00 a.m. EDT Washington, D.C.
5 June 2015 – 3:00 p.m. CEST Brussels
5 June 2015 – 9:00 p.m. CST Taipei
5 June 2015 – 11:00 p.m. AEST Sydney

Main Agenda

1. **Implementation of GAC Advice Regarding .DOCTOR**
2. **GAC Category 2.1 Safeguard Advice – Non-discrimination [NOTE: For this item, we are now proposing that the NGPC send the GAC a letter so there would be no need for action in BA]**
3. **GAC Category 2.2 Safeguard Advice – Exclusive Generic TLDs**
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.

John Jeffrey
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