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Note: On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of incorporation, Bylaws or ICANN's Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD Program. The full scope of the Committee's authority is set forth in its charter at http://www.icann.org/en/groups/board/new-gTLD.

A Regular Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held telephonically on 18 June 2013 at 13:00 UTC.

Committee Chairman Cherine Chalaby promptly called the meeting to order.

In addition to the Chair the following Directors participated in all or part of the meeting: Chris Disspain, Bill Graham, Olga Madruga-Forti, Gonzalo Navarro, George Sadowsky, Mike Silber, Judith Vazquez, and Kuo-Wei Wu.

Fadi Chehadé, Erika Mann, and Ray Plzak sent apologies.

Thomas Narten (IETF Liaison) and Francisco da Silva (TLG Liaison) were in attendance as non-voting liaisons to the Committee. Heather Dryden was in attendance as an observer to the Committee.

ICANN Staff in attendance for all or part of the meeting: Akram Atallah, Chief Operating Officer; John Jeffrey, General Counsel and Secretary; Megan Bishop; Michelle Bright; Samantha Eisner; Dan Halloran; Karen Lentz; Cyrus Namazi; Erika Randall; Amy Stathos; and Christine Willett.

These are the Minutes of the Meeting of the New gTLD Program Committee, which took place on 18 June 2013.

1. Consent Agenda

The Chair introduced the consent agenda items. George Sadowsky suggested revisions to the Minutes of the 4 June 2012 meeting to further clarify the name of the Scorecard annex approved at the 4 June 2013 meeting in order to avoid confusion if additional iterations of the Scorecard are approved at future meetings. The Committee agreed to reconsider the 4 June 2013 Minutes at its next meeting. The Committee then took the following action:

Resolved, the following resolutions in this Consent Agenda are approved:

a. Approval of Minutes of 8 May 2013 and 18 May 2013

Resolved (2013.06.18.NG01), the New gTLD Program Committee approves the minutes of the 8 May 2013 and 18 May 2013 Meetings of the New gTLD Program Committee.

All members of the Committee in attendance approved Resolution 2013.06.18.NG01. Fadi Chehadé, Erika Mann and Ray Plzak were not available to vote on the resolution. The Resolution carried.

2. Main Agenda

a. Discussion of Safeguard Advice Items Applying to All Strings

The Committee and staff had a discussion regarding the GAC's safeguard advice applicable to all strings. Akram Atallah provided an overview of the six recommendations to respond to the safeguard advice applicable to all strings. Akram noted that the Board had already directed staff to develop and execute certain WHOIS initiatives that would satisfy the GAC's advice on WHOIS, and recommended that the best way to address the advice was to have ICANN, instead of registry operators, implement the advice. Kuo-Wei Wu asked whether implementing the safeguard advice concerning WHOIS would have any impact on existing gTLDs or ccTLDs.

Thomas Narten questioned how ICANN planned to manage the significant responsibility it is proposing to undertake, while Judith Vazquez noted she was encouraged by the leadership position taken by ICANN management to address this advice. Thomas also inquired about whether the proposed changes to the Registry Agreement to accept the GAC's advice would be put out for public comment, and expressed concern regarding whether these new requirements would be posted for comment. Chris Disspain also asked whether the proposals had been socialized with potential new registry operators, and Olga agreed that it was important to make sure the proposals actually could be implemented by new registry operators. Akram noted that public comments were already solicited on how the NGPC could implement the GAC's safeguard advice, and many members of the community provided input.

Chris questioned why some of the advice was being implemented in the Registry Agreement instead of the Registrar Accreditation Agreement, and Akram noted that the enforcement purposes drove why the language was proposed in this way.

For safeguards to address security threats, Akram described a proposal for registry operators to conduct the periodic checks required by the GAC's

advice, but noted that the community needs to develop a uniform way to conduct the checks. George Sadowsky and Olga Madruga-Forti asked for clarification about the spot checks to be undertaken, and noted that the proposal should clearly provide that the checks will be conducted in a manner that is statistically sound.

Thomas raised concerns that the proposal to address security threats is very broad and may impose requirements on registry operators that cannot be implemented. Bill Graham agreed that "security threats" is a broad concept open to various interpretations, and shared similar implementation concerns expressed by Thomas. Bill suggested that the proposed public community consultation to develop the framework for registry operators to respond to security risks should include consulting with the GAC.

Olga requested that the proposal be revised to address whether the reports required by the safeguard advice would be available to the community for review, and Thomas agreed that the reports should be publically available. Akram noted the need to make the information public, while respecting the need to be careful not to publish information that may constitute sensitive security information.

Chris discussed how some of the advice would be enforced in the Registry Agreement, and Dan Halloran provided additional explanation of the enforcement mechanisms in the Registry Agreement for the PIC Specification.

The Chair and Heather Dryden inquired about the summary of public comments on implementing the GAC's safeguard advice, and staff provided an update on when the summary would be published.

The Committee agreed that it would consider this issue again at its next meeting.

b. Category 2 Advice (Restricted and Exclusive Registries)

The Committee and staff had a discussion regarding the continued work regarding addressing the GAC's advice concerning restricted and exclusive

registries. Chris Disspain explained the new gTLD application did not require applicants to specify whether they intended to operate an exclusive registry, so the challenge is to develop a mechanism to determine this information so that it would be clear which applicants could move forward with contracting and which applicants would be on hold pending resolution of the GAC's advice on exclusive access registries.

Chris also provided additional background on the issue of exclusive generic strings, and noted that the Committee should be careful to consider the specific wording from the GAC and not go beyond what was advised. Akram Atallah provided the Committee with an overview of the proposed scheme to address the advice, noting that the proposed revision to the PIC Specification in the Registry Agreement would put registry operators with generic exclusive strings on hold while allowing other strings to move forward.

George Sadowsky raised a concern that the proposed approach may be susceptible to gaming, and proposed an alternative approach to looking at the GAC's advice. George suggested that strings should be reviewed by looking at registries that propose to be open, registries where the GAC has advised that there should be limitations on the registrations, and everything else.

Bill Graham and Olga Madruga-Forti agreed that the proposed approach may be subject to gaming, and Olga suggested that perhaps "exclusive registry access" should be defined as access that is not completely open. Olga also recommended that additional attention be given to definition of "affiliate" as that may help resolve some of the lingering concerns. George noted that gaming could still be an issue.

Thomas Narten asked for clarification on the definition of exclusive access. Akram noted some challenges with establishing where to draw the line between open, restrictive and exclusive registry access.

Chris suggested that a smaller group of Committee members continue working through the issues and definitions and present a revised proposal

for the Committee to consider at its next meeting. The Committee agreed that further discussion was necessary on this item. The Chair urged this matter to be ready for Committee consideration at its next meeting.

The Chair called the meeting to a close.

Note: On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of incorporation, Bylaws or ICANN's Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD Program. The full scope of the Committee's authority is set forth in its charter at http://www.icann.org/en/groups/board/new-gTLD.

A Regular Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held telephonically on 25 June 2013 at 21:00 UTC.

Committee Chairman Cherine Chalaby promptly called the meeting to order.

In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO, ICANN), Chris Disspain, Bill Graham, Olga Madruga-Forti, Gonzalo Navarro, Ray Plzak, George Sadowsky, Mike Silber, Judith Vazquez, and Kuo-Wei Wu.

Erika Mann and Francisco da Silva (TLG Liaison) sent apologies.

Thomas Narten (IETF Liaison) was in attendance as a non-voting liaison to the Committee. Heather Dryden and Jonne Soininen were in attendance as observers to the Committee.

ICANN Staff in attendance for all or part of the meeting: Akram Atallah, Chief Operating Officer; John Jeffrey, General Counsel and Secretary; Megan Bishop; Michelle Bright; Allen Grogan; Dan Halloran; Jamie Hedlund; Karen Lentz; Cyrus Namazi; Erika Randall; Amy Stathos; and Christine Willett.

These are the Minutes of the Meeting of the New gTLD Program Committee, which took place on 25 June 2013.

1. Consent Agenda

The Chair introduced the consent agenda item. Bill Graham mentioned that Heather Dryden's status is not properly reflected on the 4 June 2013 Minutes, and the General Counsel and Secretary explained that the Board did not adopt a resolution making her a formal member of the Committee. Because of this, she is listed an observer. The Committee then took the following action:

Resolved, the following resolutions in this Consent Agenda are approved:

a. Approval of Minutes of 4 June 2013

Resolved (2013.06.25.NG01), the New gTLD Program Committee approves the minutes of the 4 June 2013 New gTLD Program Committee Meeting.

All members of the Committee in attendance approved Resolution 2013.06.25.NG01. Erika Mann was not available to vote on the Resolution. The Resolution carried.

2. Main Agenda

a. ALAC Statement on TMCH/Variants

The Committee continued its previous discussion concerning the ALAC's letter on variants and the trademark clearinghouse (TMCH). Karen Lentz provided a brief overview of the discussions to date, and the additional analysis requested by the Committee at a previous meeting. Thomas Narten suggested that the Committee have a dialogue with the ALAC to ensure they understand why the Committee is not directing any changes at this time to the implementation of the TMCH.

George Sadowsky noted that the request to ensure that the variant issue is settled before the TMCH begins providing services fails to recognize the complexity of the variant issue. Chris Disspain questioned whether dealing with the issue properly should be sacrificed for expediency. Ray Plzak agreed with George and Chris and suggested that the Committee might be better served by sending a letter to the ALAC acknowledging receipt of its letter, and either asking for specific clarifications on the items in the letter, or suggesting to hold a joint session at the Durban meeting to discuss the items. Thomas agreed that a meeting may be more effective to communicate the message than a response letter.

The Committee considered whether its response to the ALAC letter should suggest a dialogue in Durban. The President and CEO questioned whether it is the Committee's role to delve more deeply into the issues raised in the letter, or whether these are matters that are more suitable for staff to handle. Chris agreed, and Ray noted that ALAC provided its letter in its advisory capacity to the Committee, and the letter must be considered in this context. Thomas suggested that the proper balance may be for

members of the Committee to facilitate a meeting in Durban, with staff providing the technical details.

The Committee decided to further consider its response to the ALAC's letter, and agreed to discuss the item further at its next meeting.

b. Discussion of Safeguard Advice Items Applying to All Strings

The Committee continued its discussion of the GAC's safeguard advice applicable to all strings. Jamie Hedlund provided an overview of the proposal to accept the first six items of the GAC's safeguard advice in the Beijing Communiqué, and noted that for some items, ICANN would take over the responsibilities for implementing the advice, while registry operators would have the responsibility to implement other elements. Jamie noted that the rationale for the resolution would include additional analysis of the public comments that raised concerns about implementing the GAC's advice or suggested rejecting the GAC advice. Ray Plzak asked for clarification about what would be done with the reports of WHOIS sampling.

Ray Plzak moved and George Sadowsky seconded the proposed resolutions. The Committee then took the following action:

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué");

Whereas, the Beijing Communiqué included six (6) elements of safeguard advice applicable to all new gTLDs, which are identified in the GAC Register of Advice as: (a) 2013-04-11-Safeguards-1, (b) 2013-04-11-Safeguards-2, (c) 2013-04-11-Safeguards-3, (d) 2013-04-11-Safeguards-4, (e) 2013-04-11-Safeguards-5, and (f) 2013-04-11-Safeguards-6 (collectively, the "Safeguards Applicable to All Strings");

Whereas, on 23 April 2013, ICANN initiated a public comment forum to solicit the community's input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of New gTLD strings

<http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>;

Whereas, the NGPC met on 8 and 18 May and 4, 11 and 18 June 2013 to consider a plan for responding to the GAC's advice on the New gTLD Program, including the Safeguards Applicable to All Strings;

Whereas, the NGPC met on 25 June 2013 to further discuss and consider its plan for responding the GAC's advice in the Beijing Communiqué on the New gTLD Program;

Whereas, the NGPC has considered the public comments submitted during the public comment forum, and has determined that its position, as presented in Annex I attached to this Resolution, is consistent with the GAC's advice regarding Safeguards Applicable to All Strings;

Whereas, the NGPC proposes revisions to the final draft of the New gTLD Registry Agreement <http://www.icann.org/en/news/public-comment/base-agreement-29apr13-en.htm> as presented in Annex II attached to this Resolution to implement certain elements of the GAC advice regarding Safeguards Applicable to All Strings; and

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.06.25.NG02), the NGPC adopts the "NGPC Proposal for Implementation of GAC Safeguards Applicable to All New gTLDs" (19 June 2013), attached as Annex I to this Resolution, to accept the GAC's advice regarding Safeguards Applicable to All Strings.

Resolved (2013.06.25.NG03), the NGPC directs staff to make appropriate changes to the final draft of the New gTLD Registry Agreement, as presented in Annex II attached to this Resolution, to implement certain elements of the GAC advice regarding Safeguards Applicable to All Strings.

All members of the Committee in attendance voted in favor of Resolutions 2013.06.25.NG02 – 2013.06.25.NG03. Erika Mann was not available to vote on the Resolutions. The Resolutions carried.

Rationale for Resolutions 2013.06.25.NG02 – 2013.06.25.NG03

Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN Bylaws http://www.icann.org/en/about/governance/bylaws - XI permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

What is the proposal being considered?

The NGPC is being asked to consider accepting a discrete grouping of the GAC advice as described in the attached "NGPC Proposal for Implementation of GAC Safeguards Applicable to All New gTLDs" (Annex I; 19 June 2013), which includes the six (6) items of safeguard advice from the Beijing Communiqué applicable to all new gTLDs. This advice is identified in the GAC Register of Advice as: (a) 2013-04-11-Safeguards-1, (b) 2013-04-11-Safeguards-2, (c) 2013-04-11-Safeguards-3, (d) 2013-04-11-Safeguards-4, (e) 2013-04-11-Safeguards-5, and (f) 2013-04-11-Safeguards-6 (collectively, the "Safeguards Applicable to All Strings").

Which stakeholders or others were consulted?

On 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm. The public comment forum closed on 4 June 2013. The NGPC has considered the community's comments in formulating its response to the GAC advice regarding Safeguards Applicable to All Strings. These comments also will serve as important inputs to the NGPC's future consideration of the other elements of GAC advice not being considered at this time in the attached annexes.

What concerns or issues were raised by the community?

ICANN received several responses from the community during the course of the public comment forum on broad categories of GAC safeguard advice. Of comments regarding safeguards applicable to all new gTLDs, approximately 29% of unique commenters expressed opposition whereas approximately 71% expressed support.

Regarding support, commenters expressed general agreement with the safeguards. Those expressing support also expressed concern over the method of implementation and that the GAC should not dictate the specific procedures for implementation. Supporters also indicated that some of these safeguards are already inherent in the 2013 RAA.

In adopting this Resolution, the NGPC specifically acknowledges comments from the community opposed to the NGPC accepting the GAC's advice. The NGPC takes note of comments asserting that adopting the GAC advice threatens the multi-stakeholder policy development process. ICANN's Bylaws permit the GAC to "consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues." (Art. XI, § 2.1.a) The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013. The ICANN Bylaws require the Board (and the NGPC) to take into account the

GAC's advice on public policy matters in the formulation and adoption of the polices, and if the Board (and the NGPC) takes an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The parties must then try in good faith to find a mutually acceptable solution. Thus, the GAC's advice is part of the multi-stakeholder process.

The posting of the Beijing Communiqué to solicit public comment on the broad categories of the GAC's safeguard advice demonstrates ICANN's commitment to a bottom-up, multi-stakeholder model, and provided stakeholders with approximately six weeks (including the public comment and reply periods) to analyze, review and respond to the proposed recommendations. The NGPC views finding a workable solution to the GAC's advice as a step forward as the community continues to respond to the needs of registrants, the community and all stakeholders.

The NGPC also took note of the comments from the community in opposition to ICANN implementing the safeguard advice concerning WHOIS verification checks to be performed by registry operators. The NGPC acknowledges the ongoing work in the community on WHOIS verification. In response to these comments in opposition, the NGPC accepted the spirit and intent of the GAC's advice on the WHOIS verification checks by having ICANN, instead of registry operators, implement the checks. ICANN is concluding its development of a WHOIS tool that gives it the ability to check false, incomplete or inaccurate WHOIS data, as the Board previously directed staff in Board Resolutions 2012.11.08.01 - 2012.11.08.02 to begin to "proactively identify potentially inaccurate gTLD data registration in gTLD registry and registrar services, explore using automated tools, and forward potentially inaccurate records to gTLD registrars for action; and 2) publicly report on the resulting actions to encourage improved accuracy." <http://www.icann.org/en/groups/board/documents/resolutions-08nov12-en.htm>. Given these ongoing activities, the NGPC determined that ICANN (instead of Registry Operators) is well positioned to implement the GAC's advice.

With respect to mitigating abusive activity, the NGPC acknowledges the comments noting that registries do not have relationships with registrants and should not be required to determine whether a registrant is in compliance with applicable laws. To address this concern, the NGPC included language in the PIC Specification that would obligate registry operators to include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision prohibiting registered name holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

With respect to the safeguards regarding security checks, the NGPC considered that the comments in opposition raise important questions about the costs and timing of implementing this measure, and the scope and framework of the security checks. The NGPC is mindful that there are various ways a registry operator could implement the required security checks, and has taken these concerns into consideration in its response to the GAC's advice. The NGPC's response directs ICANN to solicit community participation (including conferring with the GAC) in a task force or through a policy development process in the GNSO, as appropriate, to develop the framework for Registry Operators to respond to identified security risks that pose an actual risk of harm, notification procedures, and appropriate consequences, including a process for suspending domain names until the matter is resolved, while respecting privacy and confidentiality. The proposed implementation of the GAC's advice is phased to account for the commenters' concerns. The proposed language in the PIC Specification will provide the general guidelines for what registry operators must do, but omits the specific details from the contractual language to allow for the future development and evolution of the parameters for conducting security checks.

With respect to consequences in the safeguards applicable to all strings, the NGPC took note of the commenters' concerns that this item of safeguard

advice is already addressed in the 2013 RAA and by the WHOIS Data Problem Report system. The GAC's concerns are addressed in the existing framework and the NGPC is not proposing to duplicate the existing enforcement models.

The NGPC also takes note of the comments requesting that the GAC advice be rejected as "last-minute" or "untimely." The commenters asserted that this introduces uncertainty into the Program and the makes material changes to the AGB. As an alternative to accepting the advice, the NGPC considered the timing consequences if the NGPC rejected the advice. The NGPC took note of the procedure for any consultations that might be needed if the Board (and the NGPC) determines to take an action that is not consistent with GAC advice, which was developed by the ICANN Board-GAC Recommendation Implementation Working Group (BGRI-WG). The procedure was approved by the BGRI-WG in Beijing and would be used for any consultation on this GAC advice. The procedure says that the consultation process should conclude within six months, but that the GAC and the Board can agree to a different timetable. On balance, the NGPC determined that entering into a consultation process on this particular section of the safeguard advice would introduce greater uncertainty into the Program than if the NGPC found a workable solution to accept and implement the GAC's safeguard advice applicable to all strings.

The complete set of comments can be reviewed at: http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm.

What significant materials did the NGPC review?

As part of its deliberations, the NGPC reviewed the following significant materials and documents:

- GAC Beijing Communiqué http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf

- Public comments in response to broad categories of GAC safeguard advice:http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm

- Report of Public Comments, New gTLD Board Committee Consideration of GAC Safeguard Advice dated 18 June 2013: http://www.icann.org/en/news/public-comment/report-comments-gac-safeguard-advice-19jun13-en

What factors did the NGPC find to be significant?

The Beijing Communiqué generated significant interest from the community and resulted in many comments. The NGPC considered the community comments, the GAC's advice transmitted in the Beijing Communiqué, and the procedures established in the AGB for addressing GAC advice to the New gTLD Program.

Are there positive or negative community impacts?

The NGPC's adoption of the GAC advice as provided in the attached annexes will assist with resolving the GAC advice in a manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

There are no foreseen fiscal impacts associated with the adoption of this resolution.

Are there any security, stability or resiliency issues relating to the DNS?

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

On 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings: http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm. The public comment forum closed on 4 June 2013.

c. Category 2 Advice (Restricted and Exclusive Registries)

Chris Disspain provided the Committee with an overview of the proposed approach to responding to the GAC's Category 2 safeguard advice, and noted the developments made in the proposal since it was discussed at the Committee's meeting the previous week. Chris explained that a provision would be added to the Public Interest Commitment (PIC) Specification in the New gTLD Registry Agreement to address the advice, and that applicants who do not want exclusive registry access could move forward, but applicants who want exclusive registry access would be on hold while the Committee dialogues with the GAC about how to implement the advice. Chris also discussed the efforts to better define the terms "exclusive registry access" and "affiliates" based on the concerns raised in previous meetings.

Olga Madruga-Forti and George Sadowsky recommended that the definition of "affiliate" be included up front in the PIC Specification and the resolution to provide greater clarity and transparency. Chris agreed.

Ray Plzak moved and Olga Madruga-Forti seconded the proposed resolutions. The Committee then took the following action:

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué");

Whereas, the Beijing Communiqué included Category 2 safeguard advice, which is identified in the GAC Register of Advice as 2013-04-11-Safeguards-Categories-2 (the "Category 2 Safeguard Advice");

Whereas, on 23 April 2013, ICANN initiated a public comment forum to solicit the community's input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of New gTLD strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>;

Whereas, the NGPC met on 8 and 18 May and 4, 11 and 18 June 2013 to consider a plan for responding to the GAC's advice on the New gTLD Program, including the Category 2 Safeguard Advice;

Whereas, the NGPC met on 25 June 2013 to further discuss and consider its plan for responding the GAC's advice in the Beijing Communiqué on the New gTLD Program;

Whereas, the NGPC has considered the public comments submitted during the public comment forum, and proposes revisions to the final draft of the New gTLD Registry Agreement <http://www.icann.org/en/news/public-comment/base-agreement-29apr13-en.htm> as presented in Annex I attached to this Resolution to implement the Category 2 Safeguard Advice for applicants not seeking to impose exclusive registry access; and

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.06.25.NG04), the NGPC adopts the "Proposed PIC Spec Implementation of GAC Category 2 Safeguards" (20 June 2013), attached as Annex I to this Resolution, to accept and implement the GAC's Category 2 Safeguard Advice for applicants not seeking to impose exclusive registry access.

Resolved (2013.06.25.NG05), the NGPC directs staff to make appropriate changes to the final draft of the New gTLD Registry Agreement, as presented in Annex I attached to this Resolution, to implement the GAC's Category 2 Safeguard Advice for applicants not seeking to impose exclusive registry access.

Resolved (2013.06.25.NG06), the NGPC directs staff to defer moving forward with the contracting process for applicants seeking to impose exclusive registry access for "generic strings" to a single person or entity and/or that person's or entity's Affiliates (as defined in Section 2.9(c) of the Registry Agreement), pending a dialogue with the GAC.

All members of the Committee in attendance voted in favor of Resolutions 2013.06.25.NG04 – 2013.06.25.06. Erika Mann was not available to vote on the Resolutions. The Resolutions carried.

Rationale for Resolutions 2013.06.25.NG04 – 2013.06.25.NG06

Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN Bylaws http://www.icann.org/en/about/governance/bylaws#XI permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

What is the proposal being considered?

The NGPC is being asked to consider accepting Category 2 safeguard advice identified in the GAC Register of Advice as 2013-04-11-Safeguards-Categories-2. For applicants not seeking to impose exclusive registry access, the NGPC is being asked to consider including a provision in the PIC Specification in the New gTLD Registry Agreement that would require TLDs to operate in a transparent manner consistent with general principles of openness and non-discrimination. Additionally, the proposed PIC Specification would include a provision to preclude registry operators from imposing eligibility criteria that limit registration of a generic string exclusively to a single person or entity and their "affiliates." The term "affiliate" is defined to mean a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise. [New gTLD Registry Agreement § 2.9(c) http://newgtlds.icann.org/en/applicants/agb/base-agreement-specs-29apr13-en.pdf].

For applicants seeking to impose exclusive registry access for "generic strings", the NGPC is being asked to defer moving forward with the contracting process for these applicants, pending a dialogue with the GAC. The term "generic string" is defined in the PIC Specification to mean "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."

To implement the advice in this way, the PIC Specification will define exclusive registry access as limiting registration of a generic string exclusively to a single person or entity and their affiliates (as defined above). All applicants would be required to respond by a specified date indicating whether (a) the applicant is prepared to accept the proposed PIC

Specification that precludes exclusive registry access or (b) the applicant is unwilling to accept the proposed PIC Specification because the applicant intends to implement exclusive registry access.

Which stakeholders or others were consulted?

On 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings: http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm. The public comment forum closed on 4 June 2013. The NGPC has considered the community comments in formulating its response to the GAC's Category 2 Safeguard Advice.

What concerns or issues were raised by the community?

ICANN received several responses from the community during the course of the public comment forum on broad categories of GAC safeguard advice. Of the limited number of comments specific to the Category 2, Restricted Access safeguards, approximately 60% expressed support versus approximately 40% expressing concern or opposition. Supporting comments generally agreed that, for certain strings, restricted access is warranted. Opposing comments generally indicated that this is unanticipated and wholly new policy without justification and that these strings would be unfairly prejudiced in the consumer marketplace. Of the comments specific to the Category 2, Exclusive Access safeguards, approximately 86% expressed support versus approximately 14% expressing concern or opposition. Supporting comments indicated that exclusive registry access should "serve a public purpose." Others indicated that "closed generics" should not be allowed at all.

In adopting this Resolution, the NGPC specifically acknowledges comments from the community opposed to the NGPC accepting the GAC's advice. Opposing commenters generally expressed concern that this is new and unanticipated policy, contrary to the bottom-up process. They also indicated that the concept of public interest is vague and not adequately defined. The

NGPC notes that the Beijing Communiqué was published to solicit public comment on the broad categories of the GAC's safeguard advice. This demonstrates ICANN's commitment to a bottom-up, multi-stakeholder model, and provided stakeholders with approximately six weeks (including the public comment and reply periods) to analyze, review and respond to the proposed recommendations. The NGPC views finding a workable solution to the GAC's advice as a step forward as the community continues to respond to the needs of registrants, the community and all stakeholders.

For the comments specifically concerning restricted registry access (i.e. Paragraph 1 of the Category 2 Advice), the NGPC takes note of the concerns expressed in the comments regarding the "general rule" that a TLD should be operated in an open manner. The NGPC understands the GAC's advice for TLDs for which registration is restricted to generally be operated in an open manner to be a call for transparency, which is fundamental to providing consumers choice in the marketplace, and a goal that ICANN supports. In light of the comments raised, ICANN included new language in the PIC Specification to accept and respond to the GAC advice regarding restricted access in a way that balances the concerns raised in the public comments with the GAC's advice for restricted TLDs. The revised PIC Specification establishes what it means for a TLD to be operated consistent with principals of openness and non-discrimination. Specifically, by establishing, publishing and adhering to clear registration policies, the TLD would fulfill its obligation to be operated in a "transparent manner consistent with general principles of openness and non-discrimination."

With respect to comments specifically regarding exclusive registry access safeguards (i.e. Paragraph 2 of the Category 2 Advice), the NGPC understands that the GAC and other members of the community have expressed concerns regarding "closed generic" TLDs. In February 2013, the NGPC directed ICANN staff to initiate a public comment period on the issue of closed generic TLD applications so that the NGPC could understand and consider all views and potential ramifications related to closed generic TLDs. <http://www.icann.org/en/news/announcements/announcement-2-05feb13-en.htm>. In light of the comments raised in this public comment forum, the closed generics public comment forum, and the GAC advice,

ICANN is proposing a way for a large number of strings to move forward while the community continues to work through the issue.

While respecting the community's comments, the NGPC revised the PIC Specification to address the GAC's advice regarding exclusive registry access. The proposed PIC Specification includes a provision to preclude registry operators from imposing eligibility criteria that limit registration of a generic string exclusively to a single person or entity and their "affiliates." The definition for "affiliates" is the definition in Section 2.9(c) of the New gTLD Registry Agreement. For applicants seeking to impose exclusive registry access for "generic strings", the NGPC agrees to defer moving forward with the contracting process for these applicants, pending a dialogue with the GAC to seek clarification regarding aspects of the advice, including key definitions, and its implementation. Revising the PIC Specification in this way permits the greatest number of strings to continue moving forward while recognizing the concerns raised in the community's comments, including additional policy work.

The complete set of public comments can be reviewed at: http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm.

What significant materials did the NGPC review?

As part of its deliberations, the NGPC reviewed the following significant materials and documents:

- GAC Beijing Communiqué: http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf

- Public comments in response to broad categories of GAC safeguard advice:http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm

- Report of Public Comments, New gTLD Board Committee Consideration of GAC Safeguard Advice dated 18 June 2013: http://www.icann.org/en/news/public-comment/report-comments-gac-safeguard-advice-19jun13-en

What factors did the Board find to be significant?

The Beijing Communiqué generated significant interest from the community and stimulated many comments. The NGPC considered the community comments, the GAC's advice transmitted in the Beijing Communiqué, and the procedures established in the AGB for addressing GAC advice to the New gTLD Program.

Are there positive or negative community impacts?

The adoption of the GAC advice as provided in the attached Annex I will assist with resolving the GAC advice in a manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible. However, applicants seeking to impose exclusive registry access would not be able to progress to the contracting process at this time if the NGPC adopts the proposed Resolution. Those applicants would be on hold pending the outcome of the dialogue with the GAC.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

There are no foreseen fiscal impacts associated with the adoption of this resolution.

Are there any security, stability or resiliency issues relating to the DNS?

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

On 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm. The public comment forum closed on 4 June 2013.

d. Singular & Plural Versions of the Same String as a TLD

The Committee revisited its previous discussions about whether program changes are needed to address the issue of singular and plural versions of the same root string as TLDs. Chris Disspain provided an overview of the resolutions before the Committee. Olga Madruga-Forti discussed the rationale for the proposed resolutions and noted the various options and alternatives explored in the rationale. George Sadowsky expressed support for the resolutions, but asked the General Counsel and Secretary about the process for including voting statements in the minutes. Olga noted the difficulty of coming to a decision on the issue and requested George to provide a written voting statement to the Committee as others may want to join the statement. The Chair concurred with this suggestion.

Mike Silber expressed concerns about the allowing singular and plural versions of the same string.

Ray Plzak moved and Olga Madruga-Forti seconded the proposed resolution. The Committee then took the following action:

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué");

Whereas, the NGPC met on 8 and 18 May and 4 and 11 June 2013, to consider a plan for responding to the GAC's advice on the New gTLD Program, transmitted to the Board through its Beijing Communiqué;

Whereas, on 4 June 2013, the NGPC took action accepting GAC advice identified in the GAC Register of Advice as "2013-04-11-PluralStrings" and agreed to consider whether to allow singular and plural versions of the same string;

Whereas, the NGPC met on 11 June 2013 to consider the GAC Beijing advice regarding singular and plural versions of the same string; and

Whereas, after careful consideration of the issues, review of the comments raised by the community, the process documents of the expert review panels, and deliberations by the NGPC, the NGPC has determined that no changes to the ABG are needed to address potential consumer confusion specifically resulting from allowing singular and plural versions of the same strings;

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.06.25.NG07), the NGPC has determined that no changes are needed to the existing mechanisms in the Applicant Guidebook to address potential consumer confusion resulting from allowing singular and plural versions of the same string.

Ten members of the Committee voted in favor of Resolution 2013.06.25.NG07. Mike Silber opposed Resolution 2013.06.25.NG07. Erika Mann was not available to vote on the Resolution. The Resolution carried.

In voting in favor of Resolution 2013.06.25.NG07, some Committee members noted that the resolution presented the most feasible and best solution under the circumstances. A joint voting statement of George

Sadowsky, Olga Madruga-Forti and Cherine Chalaby is available at <INSERT LINK UPON PUBLIC POSTING>.

Rationale for Resolution 2013.06.25.NG07

Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN Bylaws (http://www.icann.org/en/about/governance/bylaws#XI) permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

In its Beijing Communiqué, the GAC advised the Board that due to potential consumer confusion, the Board should "reconsider its decision to allow singular and plural version of the same strings." On 4 June 2013, the NGPC accepted the GAC's advice to consider this issue. The NGPC met on 11 June 2013 to discuss this advice, and to consider whether any changes are needed to the New gTLD Program to address singular and plural versions of the same string.

What is the proposal being considered?

The NGPC is considering whether any changes are needed to the New gTLD Program (i.e. the Applicant Guidebook) as a result of the NGPC considering whether to allow singular and plural versions of the same strings as requested by the GAC in its Beijing Communiqué.

Which stakeholders or others were consulted?

On 18 April 2013, ICANN posted the GAC advice and officially notified applicants of the advice, http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-entriggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1 <http://newgtlds.icann.org/en/applicants/gac-advice-responses>. The NGPC considered the applicant responses in considering this issue.

To note, a handful of unique applicants, representing nearly 400 application responses, addressed this piece of GAC advice. Most were against changing the existing policy but with one identified in support of the GAC's concern. The supporting applicant has filed a string confusion objection. Those not supporting the GAC's concern indicated this topic was agreed as part of the AGB and is addressed in the evaluation processes. The full summary of applicant responses can be reviewed at: <http://newgtlds.icann.org/en/applicants/gac-advice-responses>.

What concerns or issues were raised by the community?

In September 2007, the GNSO issued a set of recommendations (approved by the ICANN Board in June 2008) to implement a process to allow for the introduction of new gTLDs. These include a recommendation that new gTLD strings must not be confusingly similar to an existing top-level domain or a reserved name. The GNSO constituency groups lodged comments during that time, and these comments were considered as part of the approval of the Program. The NGPC considered these community comments as part of its deliberations.

More recently, ICANN posted the GAC's Beijing Communiqué and officially notified applicants of the advice, <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> triggering the 21-day applicant response period pursuant to the AGB Module 3.1. Multiple members of the ICANN and New gTLD applicant communities have raised concerns to the ICANN Board regarding the GAC's advice regarding singular and plural versions of the same string. Some of the concerns raised by the community are as follows:

- Allowing singular and plural versions of the same string amounts to a "serious flaw" in the Program, and the Program should not rely on the self-interest of others to file objections to avoid string confusion.

- The independent panels have ruled and it would not be appropriate for either ICANN or the Board to overturn these decisions. The findings of the independent string similarity review panel should not be upset, absent a finding of misconduct.

- The Board approved the evaluation process, which included independent assessment of each application against AGB criteria, appropriately away from the interests of those with stakes in the outcome.

- ICANN should not change course on this issue, as it would open the door to one stakeholder group undoing independently arrived-at results because it disagrees with the outcome.

The concerns raised by the community highlight the difficulty of the issue and the tension that exists between minimizing user confusion while encouraging creativity, expression and competition. The NGPC weighed these comments during its deliberations on the issue.

What significant materials did the NGPC review?

The NGPC reviewed and considered the following significant materials as part of its consideration of the issue:

- GAC Beijing Communiqué: http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf

- Applicant responses to GAC advice: http://newgtlds.icann.org/en/applicants/gac-advice-responses

- String Similarity Contention Sets: <http://www.icann.org/en/news/announcements/announcement-26feb13-en.htm>

What factors did the NGPC find to be significant?

The NGPC considered several significant factors during its deliberations about whether to allow singular and plural version of the same strings. The NGPC had to balance the competing interests of each factor to arrive at a decision. The following are among the factors the NGPC found to be significant:

- The NGPC considered whether it was appropriate to reject the work of the expert review panel and apply its own judgment to a determination of what rises to the level of probable user confusion. The NGPC considered whether the evaluation process would be undermined if it were to exert its own non-expert opinion and override the determination of the expert panel. It also considered whether taking an action to make program changes would cause a ripple effect and re-open the decisions of all expert panels.

- The NGPC considered that the objective of the string similarity review in the AGB is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings. In the AGB, "similar" means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone. During the policy development and implementation design phases of the New gTLD Program, aural and conceptual string similarities were considered. These types of similarity were discussed at length, yet ultimately not agreed to be used as a basis for the analysis of the string similarity panels' consideration because on balance, this could have unanticipated results in limiting the expansion of the DNS as well as the reach and utility of the Internet. However, the grounds for string confusion objections include all types of similarity, including visual, aural, or similarity of meaning. All

new gTLD applicants had standing to file a string confusion objection against another application.

- The NGPC considered the objective function of the string similarity algorithm in the AGB (§ 2.2.1.1.2) and the results it produced. SWORD assisted ICANN with the creation of an algorithm that helped automate the process for objectively assessing similarity among proposed and existing TLD strings. Various patent and trademark offices throughout the world use SWORD's verbal search algorithms. The String Similarity Panel was informed in part by the algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs and reserved names. The score provided one objective measure for consideration by the panel, as part of the process of identifying strings likely to result in user confusion. However, this score was only indicative and the panel's final determination was based on careful review and analysis. A full consideration of potential consumer confusion issues is built into the procedures that have been applied in the analysis of the strings.

- The NGPC reflected on existing string similarity in the DNS and considered the positive and negative impacts. The NGPC observed that numerous examples of similar strings, including singulars and plurals exist within the DNS at the second level. Many of these are not registered to or operated by the same registrant. There are thousands of examples including:

auto.com	autos.com
car.com	cars.com
new.com	news.com
store.com	stores.com

- The NGPC considered the process used by the panel of experts from InterConnect Communications working in conjunction with

the University College London to perform a visual similarity review to prevent used confusion and loss of confidence in the DNS resulting from the delegation of similar strings. The panel made its assessments using the standard defined in the Applicant Guidebook: *String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion*. This panel utilized its independent expertise, including in linguistics, to perform the review against the criteria in the Applicant Guidebook. ICANN did not provide any instructions to the panel outside of the criteria specified in the Applicant Guidebook, including any pre-judgment of whether singular or plural versions of strings should be considered visually similar.

- The NGPC considered whether there were alternative methods to address potential user confusion if singular and plural versions of the same string are allowed to proceed. The NGPC discussed the String Confusion Objection mechanism in the AGB, and noted that string confusion objections are not limited to visual similarity, but may include any type of similarity, including visual, aural, or similarity of meaning. The DRSP panels reviewing string confusion objections use the following standard for assessing string confusion, as specified in the Applicant Guidebook: *String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion*. The NGPC took note of the fact that in the case of a successful string confusion objection, either the application would not proceed (for an objection by an existing gTLD operator) or an existing

contention set would be modified to include the application subject to the objection (for an objection by another gTLD applicant).

- The NGPC took note of the objections filed during the objection period, which closed on 13 March 2013. All new gTLD applicants had standing to file a string confusion objection against another application. By the end of the objection period, a total of 67 string confusion objections were filed (seehttp://newgtlds.icann.org/en/program-status/odr/filings). Based on staff analysis, there were a total of 26 singular/plural applied-for, English language strings. The strings in these pairs had a total of 21 string similarity objections filed against them.

Are there positive or negative community impacts?

The string similarity review is the implementation of the GNSO's policy recommendation 2: "Strings must not be confusingly similar to an existing top-level domain or a Reserved Name." As noted above, the objective of the string similarity review is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings. A full consideration of potential consumer confusion issues is built into the procedures that have been applied in the analysis of the strings. The adoption of the proposed resolution will assist with continuing to resolve the GAC advice in manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

There are no foreseen fiscal impacts associated with the adoption of this resolution.

Are there any security, stability or resiliency issues relating to the DNS?

The security, stability and resiliency issues relating to the DNS were considered when the AGB was adopted. The NGPC's decision does not propose any changes to the existing program in the AGB, and thus there are no additional foreseen issues related to the security, stability or resiliency of the DNS.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

ICANN posted the GAC advice and officially notified applicants of the advice on 18 April 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>. This triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. No additional public comment is required as the NGPC's action does not propose any policy or program changes to the New gTLD Program.

e. Protection for Names and Acronyms of IGOs

Chris Disspain provided the Committee with an update on the proposed intersessional discussion between a small group of the Committee and a small group of the GAC and the IGO representatives on the issue of protecting names of IGOs. Chris noted that if the registry agreement is finalized before resolving the IGO protections issue with the GAC, the Committee would need to adopt a temporary protection measure for IGO names and acronyms. Chris explained that this step would allow applicants to move forward with signing the agreement while the GAC and Committee continued to work through the implementation issues.

Ray asked for a clarification about whether the temporary resolution would move to a more permanent one, and Chris noted that a subsequent resolution would need to be adopted to reflect whatever agreement is reached with the GAC. Jamie Hedlund indicated that it is envisioned that the temporary protections would only apply until a date certain, and if the Committee and the GAC did not reach agreement by that date, only IGO names – and not acronyms – would be protected. The Committee directed staff to prepare a revised resolution for consideration at its next meeting.

f. Any Other Business

The Chair led the Committee in a brief discussion concerning the agenda items that would be considered at its next meeting, including the Board Governance Committee's Recommendation on Reconsideration Request 13-3, the New gTLD Registry Agreement and the GAC's advice on Category 1 safeguards.

Heather Dryden thanked the Committee and staff for working through the GAC's advice in the Beijing Communiqué, and notified the Committee that the GAC would like a written update of the actions taken by the Committee to address the advice to date, and which items of advice remain outstanding. Heather stressed the need to provide this communication to the GAC so that the GAC could prepare for its discussions with the Committee during the Durban meeting. Chris Disspain agreed to work on the communication to the GAC.

The Chair then called the meeting to a close.

Voting Statement Regarding New gTLD Program Committee Resolution 2013.06.25.NG07
(Singular/Plural New gTLD Strings)
July 26, 2013

The Board Members listed below voted in favor of this resolution with the understanding that the resolution presented the most feasible and best solution under some very limiting and constrained circumstances. While user confusion may occur, the Applicant Guidebook and the process of string similarity review rely on a standard of visual similarity rather than a broader standard of similarity. The effect of the previously agreed upon visual similarity standard limits the ability to consider other types of similarity that might emerge such as the relationship between plural and singular versions of the same word. At this point in time the resolution presents the most feasible immediate alternative. As user experience and the new TLDs roll out it is important to monitor situations of user confusion and be prepared to consider and apply alternative solutions to this issue.

The central issue in resolving this reconsideration is that the string similarity panel was given terms of reference that did not include instructions to consider that user confusion could result from more dimensions than just visual similarity. As a result, the review did not find a possibility of user confusion between certain strings applied for in both singular and plural forms, because visually they are clearly different. However, the standards set in the applicant guidebook make no mention of singular vs. plural forms, thus the string similarity panels were provided with a narrow mandate restricted to visual similarity. We are asked to reconsider the results of the review panels with the given factor of a visual, and not a broader, standard. Under such a circumstance we can only conclude that the panels correctly applied the standard supplied to them.

In addition, it appears that the panels were somewhat constrained from considering necessary changes to the standard or recommending any review of the standard. It simply was not their function. The panels were not instructed to evaluate the standard but rather to apply it to the best of their ability. Thus the circumstances restricted the panels from suggesting possible changes to their own terms of reference. Under such instructions, and in a time-constrained circumstance, it is unlikely the panels, guided by the community standards to the best of their ability, would have highlighted the need for the community to consider a broader standard.

The situation is further compounded by the fact that in several languages, some words that appear to be plurals because they have a terminal 'S' or ‘ES’ have in fact significantly different meanings than the same string without the terminal letters. Of course most have essentially the same meaning and are likely to lead to some level of user confusion. Separating these two classes of occurrences is non-trivial and relies upon a human understanding of the semantic content of each string within a specific cultural and linguistic context. Thus there is no automatic method of implementing the separation using a visual similarity standard. Similar problems may well exist in other languages and other character sets. Therefore, if the Committee in reassessing the issue were to declare that some singular and plural forms should be considered equivalent, it would result in a time consuming and inevitably fractious task for which there is no clearly defined authority under our present scenario and the Applicant Guidebook.

The undersigned also considered that while singular and plural forms of a number of strings currently exist as second level domains in .com and possibly in other existing registries, this is the result of the policies and business models of those registries. ICANN goals and considerations must consider the entire community, including users, and are not necessarily the same as those of existing registries, and therefore current policies of some registries are not necessarily dispositive of the plural and singular TLD issue and future results with respect to non-confusability.

Thus, given the limiting factors noted above and the fact that it is inevitable that unforeseen scenarios emerge in this experience, the undersigned feel compelled to honor the standards as set forth in the Applicant Guidebook at this time. It is important to monitor user experience and actual confusion as strings emerge onto the internet. In future rounds we will have the benefit of being informed by actual user experience and further community input. We hope that this issue and the considerations of the GAC and other community members will result in any necessary modifications for future rounds without pre-conditioned limiting factors.

George Sadowsky
Olga Madruga-Forti
Cherine Chalaby, Chair, New gTLD Program Committee

Note: On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of incorporation, Bylaws or ICANN's Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD Program. The full scope of the Committee's authority is set forth in its charter at http://www.icann.org/en/groups/board/new-gTLD.

A Regular Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held telephonically on 02 July 2013 at 13:00 UTC.

Committee Chairman Cherine Chalaby promptly called the meeting to order.

In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO, ICANN), Chris Disspain, Erika Mann, Gonzalo Navarro, Ray Plzak, George Sadowsky, Mike Silber, and Judith Vazquez.

Bill Graham, Olga Madruga-Forti and Kuo-Wei Wu sent apologies.

Thomas Narten (IETF Liaison) and Francisco da Silva (TLG Liaison) were in attendance as non-voting liaisons to the Committee. Heather Dryden and Jonne Soininen were in attendance as observers to the Committee. Bertrand de La Chapelle was in attendance as an invited (non-voting) observer for Item 1 on the Main Agenda.

ICANN Staff in attendance for all or part of the meeting: Akram Atallah, President, Generic Domains Division; John Jeffrey, General Counsel and Secretary; Megan Bishop; Michelle Bright; Samantha Eisner; Allen Grogan;

Dan Halloran; Jamie Hedlund; Marika Konings; Cyrus Namazi; Erika Randall; Amy Stathos; and Christine Willett.

This is a preliminary report the Meeting of the New gTLD Program Committee, which took place on 02 July 2013.

1. Main Agenda

a. Revised BGC Recommendation on Reconsideration Request 13-3

The Chair provided an overview of the meeting agenda, and introduced the first item concerning the Board Governance Committee recommendation on Reconsideration Request 13-3. Amy Stathos provided an overview of the Request and the grounds stated by the Non-Commercial Stakeholders Group (NCSG) in the Request, in particular the NCSG's assertion that staff developed policy when including the Trademark+50 provision (for names that had previously been determined to have been abusively registered or used) in the Trademark Clearinghouse. The NCSG also asserted that there was a Bylaws-mandated requirement for consultation with the GNSO prior to implementing the Trademark+50 provision in the Trademark Clearinghouse, and that consultation did not occur.

Amy noted that the BGC spent significant time discussing Reconsideration Request 13-3 and reported that the BGC's final recommendation to the Committee is that no further action is warranted with respect to the Request. Amy highlighted that the BGC recognized broader issues identified in the Request about the ongoing consultation within the community about what should be considered implementation and what should be considered policy.

Ray Plzak asked Amy if the BGC spent any time discussing whether something should be a policy, or the other issues raised in the request, including previously-abusive names. Amy explained that the main focus of the BGC discussion was on the grounds for reconsideration, which is whether or not staff had violated (or taken any action inconsistent with) any ICANN policy or process in implementing the Trademark+50 provision.

Bertrand de La Chapelle made a presentation to the Committee to express his reasons for opposing the BGC's recommendation on the Request. Bertrand provided a statement on Reconsideration Request 13-3 for consideration by the Committee, which is available for review at <INSERT LINK>. Bertrand also suggested that at a later date, the Board should consider the overarching question about what should be policy.

Bertrand stated his opinion that it was inappropriate for the staff to be the ultimate arbiter of a dispute between itself and the GNSO Council on whether a question is a policy matter. Bertrand noted that in these cases, the matter should come to the Board for a final decision. Bertrand concluded his remarks to the Committee by explaining to the Committee that accepting the reconsideration request would not open a "Pandora's box" of issues; instead, the Committee could adopt a resolution on the substance of the matter by stating that the Trademark+50 addition to the Clearinghouse is an appropriate measure given the balance of rights and responsibilities, and the overall comments from the community.

The President and CEO moved and Judith Vazquez seconded a motion to adopt the BGC's recommendation on Reconsideration Request 13-3. The Committee engaged in a discussion of the motion.

Mike Silber noted that the "Pandora's box" gets into the detail of the matter and not the recommendation at hand. Bertrand clarified that his point was with regard to the high-level issue about whether staff has authority to decide disputes between the staff and the GNSO.

Thomas Narten asked Bertrand to clarify whether he was recommending that the Committee adopt a resolution to move forward with the Trademark+50 approach. Bertrand confirmed his recommendation.

Ray Plzak suggested that the Committee send the BGC a letter to take under consideration the issues Bertrand raised with regard to the policy and the policy process.

Thomas also asked whether subjects not explicitly covered by a policy are automatically deemed not to be covered by a policy. Amy responded that in the case at hand, there were 19 GNSO policy recommendations that the Board approved and which served as the basis for the New gTLD Program, and the BGC did not identify any action taken in contradiction with those policies, nor did it identify any other existing policy that was contradicted as a result of the addition of the Trademark+50 provision into the Trademark Clearinghouse.

George Sadowsky stated his opinion about staff taking action on a policy matter where the GNSO felt it had policy authority, and indicated that he would be voting against the resolution.

Ray noted that the only policy authority that the GNSO has is to bring a policy recommendation forward through the policy development process for Board approval.

Bertrand informed the Committee that if it takes an interpretation that "policy" in Article 4, Section 2.2 of the Bylaws is only policy development process-generated policies, then, in his opinion, the Committee would unduly restrict the accountability of staff.

Mike noted his understanding for Bertrand's position in the sense that, currently, there is not documented process to help guide staff action or process where there is an absence of policy, where policy is unclear, or where policy is underway and action needs to be taken. Mike suggested that it would be worthwhile for the BGC to begin looking at this issue, and suggested a conservative approach. Ray concurred.

The President and CEO informed the Committee of all of the consultation hours that went into consulting with the community on this matter, and stressed that the decision was the result of much discussion in the community. The President and CEO concurred with Mike and Bertrand about the larger concern of how these matters are decided when there is an absence of policy or the policy is not clear. The President and CEO urged the Committee not to start a new review effort for this issue, and suggested that that Committee rely on the ongoing reviews to inform this issue.

The Chair read aloud a note from Jonathan Robinson thanking the BGC for the changes made to the BGC's recommendation in response to comments from him and Jeff Neuman.

Ray invited the Chair, Bertrand and Mike to join in preparing a letter to the BGC to address the policy process concerns raised by Bertrand, and to consider documenting a process to help guide staff action where there is an absence of policy or where policy is unclear.

The Committee then took the following action:

Whereas, the Noncommercial Users Stakeholders Group's ("NCSG") Reconsideration Request, Request 13-3, sought reconsideration of the staff action of 20 March 2013 regarding "Trademark Claims Protections for Previously Abused Names".

Whereas, the BGC considered the issues raised in Reconsideration Request 13-3, as well as the issues brought to and discussed by the GNSO Council regarding some of the language in the BGC's Recommendation.

Whereas, the BGC revoked its initial recommendation, and issued a Revised BGC Recommendation on Reconsideration Request 13-3, which ultimately recommended that no further action was warranted with respect to Request 13-3.

Resolved (2013.07.02.NG01), the New gTLD Program Committee adopts the Revised BGC Recommendation on Reconsideration Request 13-3 <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-ncsg-25jun13-en.pdf>.

Resolved (2013.07.02.NG02), the New gTLD Program Committee directs ICANN's President and CEO to assure that the issues raised within Request 13-3 are brought to the ongoing community discussion on policy versus implementation within ICANN.

Eight members of the Committee voted in favor of Resolutions 2013.07.02.NG01 – 2013.07.02.NG02. George Sadowsky voted against the Resolutions. Bill Graham, Olga Madruga-Forti and Kuo-Wei Wu were not available to vote on the Resolutions. The Resolutions carried.

Rationale for Resolutions 2013.07.02.NG01 – 2013.07.02.NG02

ICANN's Bylaws call for the Board Governance Committee to evaluate and make recommendations to the Board with respect to Reconsideration Requests. See Article IV, section 3 of the Bylaws. The New gTLD Program Committee ("NGPC"), bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the revised BGC Recommendation on Reconsideration Request 13-3 and finds the analysis sound.

Having a Reconsideration process whereby the BGC reviews and makes a recommendation to the Board/New gTLD Program Committee for approval positively affects ICANN's transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN's policies, Bylaws and Articles of Incorporation.

This Request asserted that a staff action allowing up to 50 names that were previously determined registered or used abusively to be included in verified trademark records in the Clearinghouse created policy or was in contradiction of existing policy or process. The BGC considered the specific issue raised in the Request, and determined that the staff action here was implementation of existing policy, namely Recommendation 3 of the GNSO Council's policy recommendations on the introduction of new gTLDs. (See ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, at http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm, adopted by the Board at http://www.icann.org/en/groups/board/documents/resolutions-26jun08-en.htm.) The BGC further determined that there were no other policies or procedures that were alleged to be violated by this staff action.

Upon making its determination, the BGC issued a Recommendation to the NGPC for consideration. Before the NGPC took up the matter, one GNSO Councilor raised some concerns over some of the language in BGC's Recommendation. The GNSO Council held a lengthy discussion regarding the BGC's Recommendation and asked that the BGC reconsider some of the language in the Recommendation, although not the ultimate conclusion. The BGC carefully considered the GNSO Council's request and stated concerns, and ultimately determined to revise its Recommendation. In doing so, the BGC properly noted that the Recommendation should not be seen as against the ongoing, community-wide discussion about policy and implementation. The BGC also noted that its revised Recommendation should not be construed as discounting the importance of consulting with community members. Community consultation is at the heart of the multistakeholder model, and is critical whether the community is acting as a policy development body or during the implementation of policy.

Request 13-3 demonstrates the import of the ongoing work within the ICANN community regarding issues of policy versus implementation, and the need to have clear definitions of processes and terms used when seeking community guidance and input. The Committee recognizes that the GNSO Council continues to address some of these issues, and agrees with the BGC that it is advisable to pay close attention to the policy/implementation

debate, and to make sure that the issues raised within this Request be part of that community work.

Adopting the BGC's recommendation has no financial impact on ICANN and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

After the completion of the vote, Bertrand excused himself for the remainder of the meeting.

b. Initial Protection for IGO Identifiers

The Committee continued its previous discussions about adopting temporary protections for IGO names and acronyms, pending its dialogue with the GAC on the implementation issues and scope of the protections. Chris Disspain gave the Committee an overview of the proposed resolution, and noted that members of the Committee would have a call with representatives of IGOs and some members of the GAC. Chris also indicated that this issue would be on the NGPC-GAC agenda at the Durban meeting.

Thomas Narten asked a procedural question about the timing of adopting the resolution and whether the New gTLD Registry Agreement must be adopted prior to extending temporary protections to IGO names and acronyms. Chris confirmed that adopting the resolution, similar to the other resolutions adopted to address the GAC advice, to some extent only becomes relevant once the registry agreement is approved.

Chris Disspain moved, and George Sadowsky seconded the motion to approve the proposed resolutions.

The Committee then took the following action:

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué");

Whereas, the Beijing Communiqué reiterated the GAC's previous advice to the Board that "appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch" (the "IGO GAC Advice"). The IGO GAC Advice is identified in the GAC Register of Advice as 2013-04-11-IGO;

Whereas, in response to a number of issues raised by the Board, the GAC noted in the Beijing Communiqué that it is "mindful of outstanding implementation issues" and that it is committed to "actively working with IGOs, the Board, and ICANN Staff to find a workable and timely way forward";

Whereas, the NGPC met on 8 and 18 May and 4, 11 and 18 June 2013 to consider a plan for responding to the advice on the New gTLD Program, including the IGO GAC Advice;

Whereas, in a 6 June 2013 response letter to the GAC on the IGO GAC Advice, the ICANN Board Chairman proposed that a small number of NGPC members and ICANN staff begin a dialogue with the GAC on these issues http://www.icann.org/en/news/correspondence/crocker-to-dryden-2-06jun13-en;

Whereas, the NGPC met on 25 June 2013 to further discuss and consider its plan for responding the GAC's advice in the Beijing Communiqué on the IGO GAC Advice;

Whereas, the final draft of the New gTLD Registry Agreement posted for public comment on 29 April 2013 < http://www.icann.org/en/news/public-comment/base-agreement-29apr13-en.htm> includes IGO protections, but does not yet specify the names and acronyms to be protected;

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's

authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.07.02.NG03), the NGPC confirms that appropriate preventative initial protection for the IGO identifiers will continue to be provided as presented in the proposed New gTLD Registry Agreement posted for public comment on 29 April 2013 <http://www.icann.org/en/news/public-comment/base-agreement-29apr13-en.htm> while the GAC, NGPC, ICANN Staff and community continue to actively work through outstanding implementation issues.

Resolved (2013.07.02.NG04), the NGPC determines that pursuant to Specification 5 in the proposed New gTLD Registry Agreement posted for public comment on 29 April 2013 <http://www.icann.org/en/news/public-comment/base-agreement-29apr13-en.htm>, registry operators will implement temporary protections for the IGO names and acronyms on the "IGO List dated 22/03/2013" attached to this Resolution as Annex 1 until the first meeting of the NGPC following the ICANN 47 Meeting in Durban.

Resolved (2013.07.02.NG05), the NGPC will dialogue with the GAC prior to its first meeting following the ICANN 47 meeting in Durban to work through outstanding implementation issues concerning protections for IGO names and acronyms.

Resolved (2013.07.02.NG06), if the NGPC and GAC do not reach an agreement on outstanding implementation issues for protecting IGO names and acronyms by the first meeting of the NGPC following the ICANN 47 meeting in Durban, and subject to any matters that arise during the discussions, the NGPC determines that registry operators will be required to protect only the IGO names identified on the GAC's "IGO List dated 22/03/2013" attached to this Resolution as Annex 1.

All members of the Committee in attendance voted in favor of Resolutions 2013.07.02.NG03 – 2013.07.02.NG06. Bill Graham, Olga Madruga-Forti and Kuo-Wei Wu were not available to vote on the Resolutions. The Resolutions carried.

Rationale for Resolutions 2013.07.02.NG03 – 2013.07.02.NG06

Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN Bylaws http://www.icann.org/en/about/governance/bylaws#XI permits the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

What is the proposal being considered?

In the Beijing Communiqué, the GAC reiterated previous advice that "appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch." The NGPC is being asked to consider accepting this advice, while being mindful of the outstanding implementation issues. This advice is identified in the GAC Register of Advice as 2013-04-11-IGO.

The proposed final draft of the New gTLD Registry Agreement includes protections for IGO but does not yet specify the names and acronyms to be protected. The current draft of the New gTLD Registry Agreement provides the following protections in Specification 5, Section 6:

> *As instructed from time to time by ICANN, Registry Operator will implement the protections mechanism determined by the ICANN Board of Directors relating to the protection of identifiers for Intergovernmental Organizations. Any such protected identifiers for*

> *Intergovernmental Organizations may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such protected identifiers shall be transferred as specified by ICANN….*

To address the GAC advice regarding IGO names and acronyms, the NGPC is considering providing temporary protections for the IGO names and acronyms previously identified by the GAC on its "IGO List dated 22/03/2013," which is attached as Annex 1 until a date certain, so that the GAC and the NGPC will have time to work out outstanding implementation issues, as noted in the Beijing Communiqué. The NGPC proposes the temporary protections to remain in place until the first meeting of the NGPC following the ICANN Meeting in Durban, South Africa. If the NGPC and the GAC do not reach agreement on the issues, and subject to any matters that arise during the discussions, the NGPC would require registry operators only to protect the names, but not the acronyms, identified on the GAC's IGO List dated 22/03/2013. The proposed Resolution would provide temporary protections for IGOs while respecting the ongoing work on implementation issues.

Which stakeholders or others were consulted?

On 29 April 2013, ICANN initiated a public comment forum to solicit input on the proposed final draft of the New gTLD Registry Agreement <http://www.icann.org/en/news/public-comment/base-agreement-29apr13-en.htm>. The public comment forum closed on 11 June 2013. The NGPC has considered the community comments on the New gTLD Registry Agreement in formulating its response to the IGO GAC Advice as it relates to the New gTLD Registry Agreement <http://forum.icann.org/lists/comments-base-agreement-29apr13/>.

Additionally, on 14 June 2013, the GNSO Policy Development Process Working Group tasked with addressing the issue of protecting the identifiers of certain IGOs and International Non-Governmental Organizations ("INGOs") in all gTLDs published its Initial Report for public comment. The

public comment period is scheduled to close 7 August 2013. < http://www.icann.org/en/news/public-comment/igo-ingo-initial-14jun13-en.htm> The Issue Report was initiated as a result of a recommendation by the GNSO Drafting Team formed to provide a GNSO Council response to the Board and GAC on the protection of IOC and RCRC names in new gTLDs. After community review, the scope of the Final GNSO Issue Report included an evaluation of whether to protect the names of both IGOs and non-government organizations at the top level and second level in all gTLDs.

What concerns or issues were raised by the community?

ICANN received several responses from the community during the course of the public comment forum on the proposed final draft of the New gTLD Registry Agreement; however, none of the responses specifically relates to the provisions in the New gTLD Registry Agreement to provide protections for IGO identifiers. <http://forum.icann.org/lists/comments-base-agreement-29apr13/>

What significant materials did the NGPC review?

As part of its deliberations, the NGPC reviewed the following significant materials and documents:

- GAC Beijing Communiqué: http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf

- Public comments in response to the New gTLD Registry Agreement: http://forum.icann.org/lists/comments-base-agreement-29apr13/

- GNSO PDP Working Group Initial Report on Protection of IGO and INGO Identifiers in all gTLDs: < http://gnso.icann.org/en/issues/igo-ingo-initial-14jun13-en.pdf>

What factors did the Board find to be significant?

The Beijing Communiqué generated significant interest from the community and stimulated many comments. The NGPC considered the community comments, the GAC's advice transmitted in the Beijing Communiqué, and the ongoing work of the GNSO PDP Working Group on the Protection of IGO and INGO Identifiers in all gTLDs.

Are there positive or negative community impacts?

The response to the GAC advice as provided in the NGPC's Resolution will assist with resolving the GAC advice in manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible, while being mindful of the ongoing efforts to work through the outstanding implementation issues.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

There are no foreseen fiscal impacts associated with the adoption of this resolution.

Are there any security, stability or resiliency issues relating to the DNS?

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

On 29 April 2013, ICANN initiated a public comment forum to solicit input on the proposed final draft of the New gTLD Registry Agreement. The public comment forum closed on 11 June 2013.

On 14 June 2013, the GNSO Policy Development Process Working Group tasked with addressing the issue of protecting the identifiers of certain IGOs and INGOs in all gTLDs published its Initial Report for public comment. The

public comment period is scheduled to close 7 August 2013. < http://www.icann.org/en/news/public-comment/igo-ingo-initial-14jun13-en.htm>

c. Category 1 Safeguard Advice from GAC

Chris Disspain provided the Committee with an overview of the proposed general approach to respond to the GAC's advice regarding Category 1 Safeguards. Chris noted that the first paragraph of Category 2 Safeguard advice (Category 2.1) actually relates to the Category 1 Safeguards. Because of this, Chris informed that Committee that the Category 2.1 Safeguard advice would be considered in the proposed dialogue with the GAC on Category 1 Safeguards if the Committee adopted the proposed resolutions.

Chris walked through the issues with the Category 1 advice as discussed in the briefing materials, and noted that there are not many issues with Safeguards 1-3, but for consistency, the proposal is that the entire set of Category 1 Safeguards would be discussed with the GAC.

George Sadowsky moved and Judith Vazquez seconded the proposed resolutions.

Chris recommended a revision to the resolutions to make sure it is clear why the Category 2.1 Safeguard advice was being considered with the Category 1 Safeguard advice.

The Committee then took the following action:

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué");

Whereas, the Beijing Communiqué included Category 1 safeguard advice, which is identified in the GAC Register of Advice as 2013-04-11-Safeguards-Categories-1 (the "Category 1 Safeguard Advice");

Whereas, on 23 April 2013, ICANN initiated a public comment forum to solicit the community's input on how the NGPC should address GAC advice

regarding safeguards applicable to broad categories of New gTLD strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>;

Whereas, the NGPC met on 8 and 18 May and 4, 11, 18 and 25 June 2013 to consider a plan for responding to the GAC's advice on the New gTLD Program, including the Category 1 Safeguard Advice;

Whereas, the NGPC met on 2 July 2013 to further discuss and consider its plan for responding the GAC's advice in the Beijing Communiqué on the New gTLD Program;

Whereas, the NGPC has considered the public comments on the Category 1 Safeguard Advice submitted during the public comment forum; and

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.07.02.NG07), the NGPC agrees to begin a dialogue with the GAC during the ICANN Meeting in Durban to clarify the scope of the requirements provided in the Category 1 Safeguard Advice. (Note: the dialogue with the GAC on Category 1 will also include discussion of GAC's Category 2.1 Safeguard Advice regarding "Restricted Access" since that advice applies to the strings listed under Category 1.)

Resolved (2013.07.02.NG08), the NGPC directs staff to defer moving forward with the contracting process for applicants who have applied for TLD strings listed in the GAC's Category 1 Safeguard Advice, pending a dialogue with the GAC.

All members of the Committee in attendance voted in favor of Resolutions 2013.07.02.NG07 – 2013.07.02.NG08. Bill Graham, Olga Madruga-Forti and Kuo-Wei Wu were not available to vote on the Resolutions. The Resolutions carried.

Rationale for Resolutions 2013.07.02.NG07 – 2013.07.02.NG08

Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN Bylaws http://www.icann.org/en/about/governance/bylaws#XI permits the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

What is the proposal being considered?

The NGPC is being asked to consider its response to the Category 1 Safeguard Advice identified in the GAC Register of Advice as "2013-04-11-Safeguards-Categories-1." The NGPC proposes to begin a dialogue with the GAC in Durban to clarify the scope of the requirements provided in the Category 1 Safeguard Advice.

Which stakeholders or others were consulted?

On 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13- en.htm. The public comment forum closed on 4 June 2013. The NGPC has considered the community comments in adopting this Resolution.

What concerns or issues were raised by the community?

ICANN received several responses from the community during the course of the public comment forum on broad categories of GAC safeguard advice. The full set of comments and a summary are available at <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>. Of those commenters voicing support, the commenters expressed general agreement with the Category 1 safeguards but some also indicated they require additional clarity. Those expressing opposition suggested that this advice is untimely, ill-conceived, overbroad, and too vague to implement. There was also concern expressed over the inherent lack of fairness and predictable treatment of strings with respect to their placement in the respective sectors/sub-categories of Category 1 and some comments pointed out that the list itself is inconsistent. One commenter expressed that the GAC's advice proposes to "make registrars and registries authoritative licensing validation entities for 200 jurisdictions and an innumerable number of sectors and professions."

One overarching theme from the public comments was the need for additional clarity on the scope and intent of the Category 1 Safeguard Advice. In particular, the community noted the following concerns, which the NGPC considered in adopting this Resolution:

I. Categories of Strings

1. The list of strings is inconsistent. The categories are broad and undefined. This creates issues of fairness and predictable treatment of new gTLD applications. Specifically:

    a. The list places many generic words in the same categories as highly regulated industries. For example:

Generic	Highly Regulated
SAVE	BANK
CARE	LAWYER
HEART	PHARMACY

b. Some of the strings identified apply to a range of individuals, businesses and associations and has segments that are both licensed and unlicensed.

    i. Example: .ENGINEER could apply to software engineers as well as civil engineers. Also, engineers are regulated in some parts of the world, but not others. In some cases, only specific disciplines require licenses or certificates.

    ii. Example: .LEGAL could apply to lawyers, paralegals, legal research services and publishers, and court reporting and transcribing services often used in the legal profession. Not all of these businesses and associations require licenses.

c. It is difficult to determine the relevant industry self-regulation organizations. If the relevant organizations could be identified, it is not feasible to establish working relationships with them all.

    i. Example: In the United States, some engineering disciplines are regulated at the state level- not the national level. This would require the registry operator for .ENGINEER to form relationships with all 50 state regulators in the United States, in addition to regulators across the world. This could easily amount to hundreds of relationships.

    ii. Example: For .HIPHOP, it is not clear who the relevant regulatory body is for purposes of complying with the Category 1 Safeguards.

d. Many of the strings are generic terms which may be sensitive or regulated in a single or a few jurisdictions, but it is not appropriate to limit their use in other jurisdictions.

2. There is no principled basis for distinguishing between certain categories and strings. Examples provided by the community include:

GAC Category 1	Includes	Does Not Include
Children	.school	.camp
Intellectual Property	.fashion	.style; .clothing
Intellectual Property	.author	.actor
Education	.degree, .mba, and .university	.college; .education; .phd; .training; .science
Financial	.discount	.cheap or .bargain
Charity	.charity	.foundation
Financial	.financialaid	.scholarships
Professional Services	.lawyer and .doctor	.contractors

3. In some instances the safeguards are related to the content of websites, which is outside the scope of ICANN's remit.

II. Comments and other concerns regarding Category 1 Safeguards

A. Safeguards 1 & 2

Safeguard #1: Registry operators will include in its acceptable use policy that registrants 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.

Safeguard #2: Registry operators will require registrars at the time of registration to notify registrants of this requirement.

1. No concerns. Safeguards 1 and 2 require registrants to comply with applicable law, which all registrants are already required to do.

B. Safeguard #3: Registry operators will require 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 and recognized industry standards.

1. The safeguard is not specific enough, and thus it is not possible to implement it.

2. The registry operator is not the appropriate entity to carry out the safeguard. Instead, it should be handled by appropriate legislative, law enforcement and industry expert bodies.

3. It is not clear whether the phrase “reasonable and appropriate security measures commensurate with the offering of those services, *as defined by applicable law and recognized industry standards*" is intended to simply require registrants to abide by applicable law (which would be feasible), or if the GAC is intending to create a new standard (reasonable and appropriate…) that registries would be required to develop and enforce;

4. It is not clear how “recognized industry standards” would be identified and applied in the context of hundreds of different sectors.

C. Safeguard #4: Establish a working relationship with the relevant regulatory, or industry self-regulatory, bodies, including developing a

strategy to mitigate as much as possible the risks of fraudulent, and other illegal, activities.

1. The safeguard raises contract enforcement questions (e.g., how are the relevant regulatory agencies and industry self-regulatory organizations identified; who determines which industry self-regulation organizations bodies are "relevant" to a particular string and which governmental body is the competent regulatory agency).

2. Some regulatory bodies or industry self-regulatory bodies may not be responsive to collaboration with registry operators.

D. *Safeguard #5: Registrants must be required by the registry operators to notify to them a single point of contact 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.*

1. Let's say that an individual wants to register myname.health in order to keep his friends informed of his progress in eating better and exercising more. How would he determine which regulatory agencies and self-regulatory organizations around the globe are relevant?

2. Registry operators already have a point of contact for a registrant as a result of the accurate WHOIS data requirements. The advice does not acknowledge the existing standards, such as RFC 2142, that mandates abuse@domain as the standard point of contact for "inappropriate public behavior."

3. For unrestricted TLDs, the appropriate way to implement this safeguard would be via registrars and the RAA.

E. Safeguard #s 6-8

Safeguard #6: At the time of registration, the registry operator must verify and validate the registrants' authorisations, charters, licenses and/or other related credentials for participation in that sector.

Category 1 Safeguard #7: In case of doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents.

Category 1 Safeguard #8: The registry operator must conduct periodic post-registration checks to ensure registrants' validity and compliance with the above requirements 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.

1. Implementation would change the nature of some new gTLDs from being open to uses that are not regulated into restricted TLDs open only to registrants that can prove their status or credentials.

2. Implementation would potentially discriminate against users in developing nations whose governments do not have regulatory bodies or keep databases which a registry/registrar could work with to verify credentials.

3. Implementation would potentially discriminate against users in developed nations whose governments have developed different regulatory regimes. For example, in Australia, anyone can claim to be an accountant but anyone holding themselves out as a chartered accountant is subject to regulation.

The complete set of public comments can be reviewed at: http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm.

What significant materials did the NGPC review?

As part of its deliberations, the NGPC reviewed the following significant materials and documents:

- GAC Beijing Communiqué:

http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf

- Public comments in response to broad categories of GAC safeguard advice: http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm

- Report of Public Comments, New gTLD Board Committee Consideration of GAC Safeguard Advice dated 18 June 2013: http://www.icann.org/en/news/public-comment/report-comments-gac-safeguard-advice-19jun13-en

What factors did the Board find to be significant?

The Beijing Communiqué generated significant interest from the community and stimulated many comments. The NGPC considered the community comments, the GAC's advice transmitted in the Beijing Communiqué, and the procedures established in the AGB for addressing GAC advice to the New gTLD Program.

Are there positive or negative community impacts?

The adoption of the Resolution will assist with moving forward to resolve the GAC advice in a manner that provides clarity to applicants on the scope and implementation of the Category 1 Safeguard Advice.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

There are no foreseen fiscal impacts or ramifications on ICANN associated with the adoption of this resolution.

Are there any security, stability or resiliency issues relating to the DNS?

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

On 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13- en.htm. The public comment forum closed on 4 June 2013.

d. Registry Agreement

The Chair presented the agenda topic to the Committee, and Akram Atallah led the Committee's discussion of the revised New gTLD Registry Agreement. Akram highlighted some of the key changes in the agreement as compared to the draft agreement from 29 April 2013. Akram highlighted the changes to the provisions concerning the timing of paying fees, the Public Interest Commitments Specification, and publication of registration data. Akram noted that there were still some ongoing negotiations on the periphery, but staff recommended that the base agreement was in a position to be approved by the Committee.

Akram made note of ongoing negotiations with the brand applicants to possibly modify some of the provisions in the base agreement being considered by the Committee, and informed the Committee that additional changes could be made to the PIC Specification depending on how the Committee and the GAC resolved the Category 1 Safeguard advice.

Akram informed the Committee that staff could create a mechanism to ensure that parties executing the registry agreement, if approved by the Committee, are aware that there may be additional changes to the agreement that they would be required to accept to address the open

issues. Akram noted that any material changes to the base agreement being considered by the Committee would be brought back to the Committee for review and approval.

Thomas Narten asked whether the agreement presented to the Committee had been reviewed by other members of the community, given that there were many changes to the agreement. Akram noted that the proposed changes were not materially different from the version posted for public comment in April. Akram also noted that the bulk of the changes are the result of responding to the GAC advice, and the community had been provided an opportunity to comment on the implementation of how ICANN could implement the GAC's safeguard advice in the Beijing Communiqué.

Judith Vazquez expressed concerns about approving the agreement at this point in time, noting that she believed the pulse of the registry community is that changes are being forced on them at the last minute. Cyrus Namazi reiterated that the agreement being considered is substantially similar to what was posted for public comment in April. Cyrus noted that the agreement had been socialized with members of the community, who generally expressed support with moving forward with the agreement at this time. Chris echoed these sentiments of support from the community.

Chris highlighted the fact that if an applicant wanted to sign the registry agreement in the current form proposed for approval, the applicant could proceed, but if the applicant wanted to negotiate points of the agreement, then the applicant would enter into a negotiation process. Chris noted that this process of negotiation could take longer than if the applicant accepted the standard form of agreement.

Chris Disspain moved and Ray Plzak seconded the proposed resolutions. The Committee then took the following action:

Whereas, the new generic Top-Level Domain (New gTLD) Program was developed to increase competition and choice by introducing new gTLDs into the Internet's addressing system;

Whereas, the Applicant Guidebook (AGB) was produced to define the New gTLD Program, and included a draft New gTLD Registry Agreement to be entered into by successful applicants and ICANN before proceeding to delegation;

Whereas, on 5 February 2013, ICANN posted for public comment a proposed "Revised New gTLD Registry Agreement Including Additional Public Interest Commitments Specification," which announced proposed revisions to the agreement in response to developments since the last posting of the AGB in June 2012 and a general review of the contractual needs of the New gTLD Program;

Whereas, on 29 April 2013, ICANN posted for public comment the "Proposed Final New gTLD Registry Agreement," which included certain updates and changes to the New gTLD Registry Agreement in response to community feedback on the version of the New gTLD Registry Agreement posted for public comment on 5 February 2013 and discussions of the agreement at the ICANN 46 meeting in Beijing, China;

Whereas, ICANN and a group selected by the Registry Stakeholder Group, the Registry Negotiating Team, have continued negotiating the proposed terms of the New gTLD Registry Agreement;

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued advice in a Communiqué on 11 April 2013 ("Beijing Communiqué");

Whereas, on 23 April 2013, ICANN initiated a public comment forum to solicit the community's input on how the NGPC should address GAC advice in the Beijing Communiqué regarding safeguards applicable to broad categories of New gTLD strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>;

Whereas, the Beijing Communiqué included advice, which if implemented as suggested by the community, in some cases would require revisions to the New gTLD Registry Agreement;

Whereas, on 25 June 2013, the NGPC adopted resolutions to revise the New gTLD Registry Agreement to respond to certain elements of the GAC's safeguard advice in the Beijing Communiqué <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm#2>;

Whereas, the NGPC has considered all of the comments received from the community from the various public comment forums, and has determined that the revised New gTLD Registry Agreement attached to this Resolution as Annex 1 includes significant improvements in response to the concerns raised by the community; and

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.07.02.NG09), the NGPC approves the form of the New gTLD Registry Agreement attached to this Resolution as Annex 1.

Resolved (2013.07.02.NG10), the President and CEO is authorized to take all necessary steps to implement the revised New gTLD Registry Agreement and to move forward with implementation of the New gTLD Program.

All members of the Committee in attendance voted in favor of Resolutions 2013.07.02.NG09 – 2013.07.02.NG10. Bill Graham, Olga Madruga-Forti and Kuo-Wei Wu were not available to vote on the Resolutions. The Resolutions carried.

The President and CEO thanked Cyrus for his work in helping to negotiate the agreement and work with the community to move the process forward. The President and CEO also noted Akram's new role as the president of the Generic Domains Division.

Rationale for Resolutions 2013.07.02.NG09 – 2013.07.02.NG10

Why the NGPC is addressing the issue?

After the NGPC approves the revised terms of the New gTLD Registry Agreement, it will serve as the contract between successful New gTLD Applicants and ICANN, and will govern the rights and obligations of New gTLD registry operators. Successful New gTLD applicants would be expected to enter into this agreement before proceeding to the next phase of delegation of the TLD.

What is the proposal being considered?

The NGPC is considering approving the revised New gTLD Registry Agreement for the New gTLD Program. The New gTLD Registry Agreement reflects months of negotiations on many key issues raised by the community during various public comment forums. In addition, the New gTLD Registry Agreement addresses GAC advice issued on the New gTLD Program, including its most recent advice issued through the Beijing Communiqué.

Some of the changes to the New gTLD Registry Agreement include:

- **Publication of Registration Data; Personal Data (Sections 2.5 and 2.18)**: In response to comments advising that the publication of registration data should be subject to all applicable data protection and regulations (including European Data Protection laws), the latest version of the Registry Agreement (Section 7.13) provides that ICANN and the Working Group (as defined in the Registry Agreement) will mutually cooperate to develop an ICANN procedure for ICANN's review and consideration of alleged conflicts between applicable laws and provisions of the Registry Agreement. In the meantime, ICANN will review and consider alleged conflicts between applicable laws and the provisions of the registry in a manner similar to ICANN's Procedure For Handling WHOIS Conflicts with Privacy Law.

- **Public Interest Commitments (Specification 11)**: Revisions were made to Specification 11 to implement the non-Category 1 safeguard advice in the GAC's Beijing Communiqué (i.e. safeguards applicable to all strings and Category 2 safeguards). The revisions to Specification 11 will incorporate standardized language that would be included in every New gTLD's Specification 11 to address the safeguard advice. Applicant-specific PICs will be included on a case-by-case basis to the extent not superseded by or inconsistent with the standard PICs included to address the GAC's Beijing Communiqué.

- **Adjustment to Fees (Section 6.5)**: Taking the public comment into consideration, the fees section was revised to provide that adjustments to fees will become effective as of the first day of the first calendar quarter following ICANN's notice of the adjustment.

- **Referrals to Competition Authorities**: In response to the public comments, the agreement was modified to provide that ICANN will, when feasible and appropriate, provider registry operators with advance notice prior to referring arrangement to competition authorities. (Section 2.9)

- **Brand gTLDs**: ICANN is currently considering alternative provisions for inclusion in the Registry Agreement for .brand and closed registries, and is working with members of the community to identify appropriate alternative provisions. Following this effort, alternative provisions may be included in the Registry Agreement.

The complete Summary of Changes to the New gTLD Registry Agreement is attached to this Resolution as Annex 2. A redline of the current agreement as compared to the prevision version dated 29 April 2013 is attached to this Resolution as Annex 3. The Summary and Analysis of Public Comments is available at http://www.icann.org/en/news/public-comment/report-comments-base-agreement-01jul13-en.pdf. In adopting this Resolution, the NGPC considered the comments and rationale provided for the changes as presented in the Annexes and the Report of Public Comments.

What significant materials did the NGPC review?

As part of its deliberations, the NGPC reviewed the following significant materials and documents:

- GAC Beijing Communiqué: http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf

- Public comments in response to broad categories of GAC safeguard advice: http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm

- Report of Public Comments, New gTLD Board Committee Consideration of GAC Safeguard Advice dated 18 June 2013: http://www.icann.org/en/news/public-comment/report-comments-gac-safeguard-advice-19jun13-en

- Public comments on 29 April 2013 version of the New gTLD Registry Agreement: http://www.icann.org/en/news/public-comment/base-agreement-29apr13-en.htm

- New gTLD Program Applicant Guidebook: http://newgtlds.icann.org/en/applicants/agb

What factors did the NGPC find to be significant?

The NGPC took into consideration the public comments form the community submitted during the various public comment forums on the New gTLD Registry Agreement. In addition, the NGPC considered the advice offered by the GAC in its Beijing Communiqué and the public comments on the safeguard advice in the GAC's Beijing Communiqué. The NGPC also considered the New gTLD Program as established in the Applicant Guidebook.

Are there positive or negative community impacts?

The adoption of the Resolution will permit successful New gTLD applicants to move forward to the contracting phase of the New gTLD Program. This progress will mark another milestone toward the goal of delegating new gTLDs into the root.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

There is no fiscal impact. The fee provisions in the New gTLD Registry Agreement will provide substantial additional resources for ICANN's compliance and registry engagement services in furtherance of ICANN's ongoing coordination, security and stability role. The revised agreement clarifies that registry fees will become due upon delegation, which will help fund expected expenditures to support the roll out of new gTLDs.

Are there any security, stability or resiliency issues relating to the DNS?

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS. The NGPC previously considered issues of security, stability and resiliency of the DNS issue when adopting the New gTLD Program.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

On 29 April 2013, ICANN initiated a public comment forum to solicit input on the proposed final draft of the New gTLD Registry Agreement. The public comment forum closed on 11 June 2013. On 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13- en.htm. The public comment forum closed on 4 June 2013.

e. ALAC Statement on TMCH/Variants – Discussion of letter

Thomas Narten provided the Committee with an overview and background of ALAC's letter regarding the trademark clearinghouse and IDN variants, and began a discussion about the Committee's proposed response to the letter. Thomas noted that he would like to bring Board Liaisons Ram Mohan and Suzanne Woolf into this discussion in the future to receive their expert opinion on these topics.

Thomas suggested two possible approaches to address the ALAC letter, including meeting with the ALAC in Durban with the goal of having ALAC, staff and the TMCH providers trying to get on the same page about the issues and what is needed going forward to deal with the issues. Thomas also noted that no changes would be proposed to the program at this time, and that some of the requests (in particular with Chinese IDNs) include things that the Board has previously determined will not be granted in the current round.

Ray Plzak was supportive of responding to the ALAC with a letter indicating the Committee is concerned about the issues raised and will attend to them in due course. Ray cautioned that there were some requests that are covered by existing policy or would be tantamount to the Committee making policy if adopted. Ray suggested that if these matters are covered by a policy, but there is no effective process or procedure to implement it, the Committee should direct staff to create a process and, if necessary, provide it for public comment. If these are matters that are not covered by policy, then the Committee should send a message to the appropriate policy forum suggesting that a particular concern has been raised in the community and that they should work to produce a policy to address it, or invite the ALAC to do the same outreach.

Ray expressed support for meeting with some members of the ALAC in Durban to discuss these issues, outside of the Board's regularly scheduled session, if the Committee was in a position to engage in a discussion. Ray

and Thomas agreed that the CEO and President should identify appropriate staff to be present for the proposed meeting.

Ray advised that Committee members should be cautious about expressing opinions that may be construed as comments on of the substance and merit of the matter. Ray also cautioned that if the Committee wants staff to continue being involved in doing work on this issue, the Committee should be careful how it responds to the ALAC so that the Committee does not contradict staff and make their work ineffective.

In response to a question from the Chair, Thomas indicated that he supported having a dialogue with the ALAC to give the Committee a better understanding of what their real concerns are and where the common ground is.

Chris Disspain asked Thomas to clarify his earlier statements about whether changes were needed to the program, and Chris expressed support for making it clear to the ALAC that the Committee is not going to make changes to the program, but takes note of some concerns about variants that the Committee would like to discuss. Ray suggested that the Committee leave open the possibility of making changes to the program to make sure the Committee fully understands what it wants to do, and noted that there are changes that might be appropriate for consideration in round two.

The President and CEO suggested that if this is an implementation matter (which at the moment it seems to be), then the Committee should defer to staff to discuss the issues with ALAC respectfully. Chris agreed that the issues should be addressed by staff.

Ray questioned whether the ALAC would view the Committee as unreceptive or unresponsive if the Committee defers to staff to address the ALAC's issues. Ray also noted that this is not simply an implementation matter, and that ICANN needs to develop an implementation methodology to provide clear-cut procedures and processes for staff to deal with these things. Ray suggested that if the procedure is going to require a staff

decision, then the procedure should cite the appropriate policy that needs to be brought into the evaluation.

The Chair closed the discussion and provided a review of the action items from the discussion. Thomas agreed to prepare a draft of the response to the ALAC to be sent prior to the Durban meeting. The Chair also noted that Suzanne and Ram would be invited to be involved as subject matter experts, but would not participate in any decision.

The Chair then called the meeting to a close.

Regarding the BGC Recommendation on Reconsideration Request 13-3

The reconsideration procedure established by Article IV Section 2 of the ICANN Bylaws is the primary component of ICANN's accountability framework. Its proper functioning is therefore critical to ensuring ICANN's legitimacy and respect. It behooves the Board to guarantee its proper implementation.

The reconsideration process is in particular the only internal accountability mechanism covering staff actions and establishes (in section 2.2) the criteria for evaluation in that case:

"*one or more staff actions or inactions*
that contradict established ICANN policy(ies)"

Interpreting each term of this provision in too narrow a sense would drastically and unduly limit the overall accountability of ICANN staff, defeating the very purpose of the reconsideration process.

The reconsideration request 13-3 submitted by the NCSG raised in that context important process issues regarding:

- the scope of ICANN's Reconsideration process regarding staff actions
- the conditions for a modification of previously agreed policies
- the balance of responsibilities between community, staff and Board in the occurrence of a dispute regarding the distinction between policy and implementation

For the reasons detailed below, we believe the recommendation of the BGC on Reconsideration 13-3, adopted on June 25, 2013 did not interpret the provisions of Article IV Section 2.2 appropriately in that case and this was the main justification for our objection.

* * *

Recommendation 3 of the 2007 gNSO Policy is not the relevant policy of reference

The Board Governance Committee in its recommendation on Reconsideration Request 13-3 states (p.9) :

> "*we conclude that the staff action at issue here was an implementation of the ICANN Policy that "Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.*"

The quote is from Recommendation 3 of the 2007 gNSO Policy[1] validated by the Board in its 2008 Paris meeting. However, like all recommendations of the 2007 Policy adopted by the gNSO, this provision only refers to "strings" (ie: the top-level domains) and not the second-level registrations.

The TMCH on the contrary is intended to facilitate protection of rights at the second level, "*serving as a database to provide information to the new gTLD registries to support pre-launch Sunrise or Trademark Claims Services*[2]". The 2007 gNSO Policy cannot therefore be the reference the reconsideration should take into account, as the TMCH itself cannot be an implementation of Recommendation 3.

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[1] See: http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm
[2] See information on the Trademark Clearinghouse at:
http://newgtlds.icann.org/en/applicants/agb/trademark-clearinghouse-11jan12-en.pdf

Should the consequence be that there is no policy at all the staff action should be evaluated against to determine potential contradiction, justifying immediate rejection of the request? This requires a more thorough analysis of the scope of the reconsideration process, and in particular the interpretation of the term "*policy(ies)*" in Article IV Section 2.2 of the Bylaws.

ICANN uses the term policy[3] to describe a broad range of principles, norms, rules and sometimes procedures, adopted through various methods, many of which involve extensive community consultations. They collectively represent the body of rules that staff action should be evaluated against, and this includes the provisions of the Bylaws.

Any restriction on the contrary of the term "policy(es)" in section 2.2 to only cover Policies produced by a formal Policy Development Process (PDP) by a Supporting Organization would automatically place outside of the scope of reconsideration numerous actions of staff even if they contradicted community-developed and consensually endorsed decisions, or even the Bylaws.

Regarding the new gTLD Program, this would have the unacceptable consequence to exclude from any possible reconsideration all staff decisions taken after the adoption of the 2007 Policy. An extensive interpretation of the term "*policy(ies)"* is a guarantee of staff accountability.

In the particular case of Reconsideration 13-3, the decision to create a Trademark Clearinghouse and several of its key operational modalities resulted from extensive and iterative community interactions. They included the setting up of the dedicated Implementation Recommendation Team (IRT) composed of members of the IP constituency and the subsequent creation of the Special Trademark Issues Review Team (STI), the reports of both being subjected to extensive public comment periods.

In particular, both groups have extensively discussed the possibility to include more than exact marks. However, the final report of the STI established rough consensus on this limited approach and suggested that the TCMH database "*should be structured to report to registries strings that are considered an "identical match" with the validated trademarks*[4]". These recommendations were later adopted unanimously by the gNSO Council, incorporated in the Applicant Guidebook and finally validated by the Board in Singapore.

The fact that such concepts were not elaborated through the formal procedure of a gNSO PDP cannot reduce the policy nature of both the creation of the TMCH and the establishment of the "identical match" limited criteria. This was indeed the approach of the NCSG in its Request for Reconsideration 13-3.

The Board Governance Committee Recommendation therefore in our view incorrectly states (p.12) that "*the NCSG has not identified any other applicable policy*" against which staff action should be evaluated. The initial conception and parameters of the TMCH are the relevant policy reference here, not Recommendation 3 of the gNSO in 2007.

The TMCH+50 is a substantive modification of the provisions of the Applicant Guidebook

The ICANN Bylaws require evaluation of a "*contradiction*" of staff action or inaction with established ICANN policies.

In the case at hand, the introduction of the registration of up to 50 previously abusively registered names for each trademark included in the TMCH did not contradict the overall

[3] Cf. the document « Policy vs Implementation – Draft Framework for Discussion ». See: http://gnso.icann.org/en/correspondence/policy-implementation-framework-08jan13-en.pdf
[4] See STI Report Para 4.3 p.9 in : http://gnso.icann.org/issues/sti/sti-wt-recommendations-11dec09-en.pdf

purpose of the TMCH (protection of rights) nor altered in any major way its intended architecture or operations. Is this sufficient however to decide that it therefore did not contradict the policy that established it? We believe it is not.

As previously mentioned, too strict an interpretation of the terms of Article IV Section 2.2 should not lead to a diminution of the overall accountability of ICANN staff. In particular, although direct contradiction between a staff action and established policies is the obvious ground for reconsideration, any staff action that substantially modifies a critical element of a community-developed agreement should also be evaluated for its coherence with it.

Were it not the case, this would potentially allow staff to overrule ex post the balanced outcome of extensive consultations and detrimentally affect the very mechanisms of the bottom-up multi-stakeholder decision-making. Reducing the incentive to reach agreement within the community, this would also prevent closure through constant attempts at reopening agreed compromises, submitting the staff itself to increased lobbying by individual segments of the community.

In this regard, the introduction of the so-called TMCH+50 represents a significant modification and cannot reasonably be considered an implementation of the "identical match" established by the Applicant Guidebook. However, this latter provision was a critical component of the policy establishing the TMCH and of the degree of consensus achieved in its development, as illustrated by the fact that both the IRT and STI had extensively discussed the opportunity to include more than exact marks and decided against it. The proposal is therefore in contradiction with the previously agreed policy.

Staff rightly argues that the development of the strawman proposal followed for a large part established ICANN procedures, including a public consultation, simply developing it in a more expedite process than a long PDP. To some extent, the process was somewhat parallel to the one that initially established the TMCH. However, it did not go through the same ultimate validation by the gNSO Council and the Board. Furthermore, and irrespective of the critics regarding the initial composition of the group, the result of the public consultation on the specific TMCH+50 proposal showed a strong objection from significant parts of the community and a consensus level apparently inferior to the one achieved around the establishment of the TMCH itself.

While reopening a previously agreed provision could be deemed appropriate when it presents the opportunity to improve upon an established policy, the revised proposal should at least obtain the same level of support as the initial one, and be subject to the same ultimate validation. This was not the case here.

In view of the above, in arguing that the TMCH+50 was a mere implementation of established policy, the BGC Recommendation incorrectly discards the fact that the proposal represented a substantive modification of a critical element of the relevant policy (the introduction of the TMCH and not the 2007 Recommendation 3) and was in contradiction with it.

Staff cannot be the ultimate arbiter of whether an issue is a policy or implementation matter

Finally, even if the arguments above were not retained, Reconsideration Request 13-3 raised other questions related to who should set the distinction between policy and implementation.

While staff considered that the introduction of the TMCH+50provision was a mere implementation of existing policy and therefore within its purview, NCSG in its Reconsideration Request argued otherwise.

It quoted in particular several statements made by staff in that regard, including:

- the November 29, 2012 ICANN document entitled "Trademark Clearinghouse: Strawman Solution", and a November 26, 2012 blog post by ICANN CEO Fadi Chehade, both stating that the TMCH+50 "*can be considered a policy matter …*"
- the request made by ICANN CEO to the gNSO Chair asking for "*policy guidance*" on the portion of the Strawman model pertaining to "the scope of trademark claims"

In response to this last request, the Chair of the gNSO indicated that: " *the majority of the Council feels that this proposal is best addressed as a policy concern, where the interests of all stakeholders can be considered*". This was later acknowledged by staff in the March 20, 2013 Memorandum on the Trademark Clearinghouse "Strawman Proposal", which stated that: "*The gNSO advises that this should be a policy discussion rather than an implementation change*".

Staff however confirmed its interpretation that *"(the) proposal appears to be a reasonable add to an existing service, rather than a proposed new service*", ie: a mere implementation matter.

The question of the delimitation between policy and implementation has been an ongoing debate within ICANN for a long time as precise criteria to determine the frontier are hard to establish. A community consultation process is currently under way on this very issue[5]. The existence of such a process does not preclude the Board from making whatever determination it deems necessary in specific cases such as the one under consideration here, as the BGC Recommendation does.

However, the existence of a request from ICANN CEO for "policy guidance" and the response of the gNSO Council raise in this case an overarching process question that needs to be addressed irrespective of the substance: what procedure should be followed when the gNSO and staff disagree on whether some particular decision is a matter of policy or implementation? This question touches upon the general distribution of responsibilities between community, staff and the Board, and therefore the overall balance of the ICANN model.

As a matter of principle, staff cannot be the ultimate arbiter of such a dispute in which it is a party. Deciding otherwise would dramatically alter the balance of responsibilities between ICANN staff and one of the Supporting Organizations primary responsible for the development of policy, the respect of whose authority is essential to the bottom-up multi-stakeholder model.

Absent any consensual resolution of the dispute, the proper course of action for the staff should thus have been to refer the issue to the Board for determination.

Therefore, even if the TMCH+50 were to be ultimately determined to be a mere implementation of policy, by making this determination unilaterally in lieu of the Board, after the gNSO had explicitly expressed its position to the contrary, ICANN staff has overstepped its authority. This argument alone should justify accepting the Reconsideration Request 13-3 presented by the NCSG.

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[5] Cf. : http://gnso.icann.org/en/correspondence/policy-implementation-framework-08jan13-en.pdf