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**2013-06-25-02a-NGPC Overview-GAC Safeguard Advice  
Applicable to All Strings.docx**

<p><b>What is the Issue?</b></p> <p>In the Beijing Communiqué, the GAC proposed six (6) safeguards that should apply to all new gTLDs and be subject to contractual oversight. The six elements of the safeguard advice address: (1) WHOIS verifications and checks, (2) mitigating abusive activities, (3) security checks, (4) documentation, (5) making and handling complaints and (6) consequences. The NGP is being asked to take formal action to accept the GAC's advice.</p>	<p><b>Why Is It Important?</b></p> <p>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. It is important to complete the consideration of this issue as soon as possible to bring more certainty to the New gTLD Program and to permit the greatest number of new gTLD applications to continue to move forward as soon as possible.</p>
<p><b>Who is the Decision-maker? Who is the Shepherd?</b></p> <p>Chris Disspain is the NGPC's shepherd on this issue.</p>	<p><b>Next Steps?</b></p> <p>This proposal only addresses safeguard advice applicable to all new gTLDs. Other categories of safeguard advice will be addressed separately, and the NGPC will be requested to act on such advice, including at future meetings.</p>

# **2013-06-25-02b-NGPC Overview-Summary of Comments on GAC Safeguards[1].docx**

Summary of Public Comments on GAC Safeguard Advice

<p><b>What is the Issue?</b></p> <p>In the Beijing Communiqué, the GAC proposed safeguard advice applicable to broad categories of proposed new gTLD strings. ICANN initiated a public comment forum to solicit input on how the NGPC should address this GAC advice. The NGPC is being asked to review the comments from the public comment forum.</p>	<p><b>Why Is It Important?</b></p> <p>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. It is important for the NGPC to consider the comments from the community as it makes decisions about how to potentially accept and implement the GAC’s safeguard advice.</p>
<p><b>Who is the Decision-maker? Who is the Shepherd?</b></p> <p>Chris Disspain is the NGPC’s shepherd on this issue.</p>	<p><b>Next Steps?</b></p> <p>The comment summaries are being provided for review by the NGPC. The NGPC will be asked to consider the public comments as it moves forward to consider whether to accept the GAC’s safeguard advice in the Beijing Communiqué.</p>

**2013-06-25-02a-NGPC Paper-GAC Safeguard Advice-All  
Strings 2013-06-19 -redline.docx**

**ICANN NGPC PAPER NO. 2013.06.25.2a**

**TITLE:** **GAC Advice in Beijing Communiqué regarding  
Safeguard Advice Applicable to All New gTLDs**  
**PROPOSED ACTION:** **For NGPC Consideration**

**EXECUTIVE SUMMARY:**

At its meeting in Amsterdam on 18 May 2013, the NGPC agreed to a framework that organizes individual advice from the GAC's Beijing Communiqué into discrete groupings to allow the NGPC to prioritize its work. In the Beijing Communiqué, the GAC proposed six (6) safeguards that should apply to all new gTLDs and be subject to contractual oversight. The six elements of the safeguard advice address: (1) WHOIS verifications and checks, (2) mitigating abusive activities, (3) security checks, (4) documentation, (5) making and handling complaints and (6) consequences (collectively, the "Safeguards Applicable to All Strings").

The NGPC is being asked to accept and implement the GAC's advice regarding Safeguards Applicable to All Strings. The proposal, attached Annex I, is an attempt to resolve GAC advice in a manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible. In some cases, the proposal recommends that ICANN (instead of registry operators) will implement the advice to address the GAC's concerns. In other cases, the proposal recommends that new mandatory provisions be included in the Public Interest Commitment Specification of the New gTLD Registry Agreement (Specification 11) to require the registry operators to implement the advice. Attached as Annex II is a proposed draft of Specification 11 to include the elements of the GAC's Safeguards Applicable to All Strings that would be required to be implemented by registry operators. The PIC would be a mandatory part of every New gTLD Registry Agreement.

This proposal only addresses safeguard advice applicable to all new gTLDs. Other categories of safeguard advice will be addressed separately, including at future meetings.

**STAFF RECOMMENDATION:**

Staff recommends the NGPC: (1) accept the GAC advice as presented in Annex I, and (2) direct staff to revise the proposed final draft of the New gTLD Registry Agreement as presented in Annex II.

**PROPOSED RESOLUTION:**

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.xx.xx.NGxx), 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.xx.xx.NGxx), 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.

#### **PROPOSED RATIONALE:**

##### **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.

Opposing commenters expressed that the GAC advice should be limited to specific concerns related to specific strings in the context of their respective applications. Commenters also suggested that if the NGPC were to adopt the safeguards, they would impose significant duties and operation impacts on registry operators and that in all cases, the NGPC should ensure that safeguards are enforceable. A review of the comments has been provided to the NGPC under separate cover. 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>

#### **What factors did the Board 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 adoption of the GAC advice as provided in the attached annexes 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.

**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.

**Signature Block:**

Submitted by: Jamie Hedlund

Position: Vice President of Stakeholder Engagement for North America

Date Noted: 19 June 2013

Email: [jamie.hedlund@icann.org](mailto:jamie.hedlund@icann.org)

## Annex I

### **Draft-NGPC Proposal for Implementation of GAC Safeguards Applicable to All New gTLDs**

~~12 June 2013-19 June 2013~~

The following is a draft proposal for how ICANN could implement the “GAC Safeguards Applicable to All New gTLDs.” This is an unapproved draft subject to further NGPC consideration.

1. WHOIS Verification and Checks (GAC Register # 2013-04-11-Safeguards-1)

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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, ICANN (instead of Registry Operators) is well positioned to implement the GAC’s advice that checks identifying registrations in a gTLD with deliberately false, inaccurate or incomplete WHOIS data be conducted at least twice a year. To achieve this, ICANN will perform a periodic sampling of WHOIS data across registries in an effort to identify potentially inaccurate records. ICANN will also maintain statistical reports that identify the number of inaccurate WHOIS records identified. This undertaking by ICANN would not require ICANN to provide special certifications to Registry Operators certifying the accuracy of any WHOIS data.

~~Instead, ICANN would perform periodic spot checks of WHOIS data across registries in an effort to identify potentially inaccurate records.~~ The WHOIS verification and checks would be focused on the current version of WHOIS requirements, but would eventually broaden to include directory services.

2. Mitigating Abusive Activity (GAC Register # 2013-04-11-Safeguards-2)

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ICANN will include a provision in the proposed New gTLD Registry Agreement (as a mandatory Public Interest Commitment in Specification 11)

<http://newgtlds.icann.org/en/applicants/agb/base-agreement-specs-29apr13-en.pdf>

obligating 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.

Paragraph 2 of the PIC Specification attached as Annex II includes language to implement the GAC advice. Because the Registry Operator does not have a direct contractual relationship with the Registered Name Holder, the language proposed in the PIC Specification would require the Registry Operator to include a provision in its Registry-Registrar Agreement, which in turn requires Registrars to include a provision in their Registration Agreements prohibiting Registered Name Holders from engaging in the abusive activity listed in the GAC advice.

3. Security Checks (GAC Register # 2013-04-11-Safeguards-3)

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ICANN will include a provision in the proposed New gTLD Registry Agreement (as a mandatory Public Interest Commitment in Specification 11) requiring Registry Operators periodically to conduct a technical analysis to assess whether domains in its gTLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. The provision will also require Registry Operators to maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operators will maintain these reports for the agreed contracted period and provide them to ICANN upon request. The contents of the reports will be publically available as appropriate.

Because there are multiple ways for a Registry Operator to implement the required security checks, ICANN will 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 language include in Paragraph 3 of the attached PIC Specification provides 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. This will permit Registry Operators to enter into agreements as soon as possible, while allowing for a careful and fulsome consideration by the community on the implementation details.

4. Documentation (GAC Register # 2013-04-11-Safeguards-4)

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As detailed in #1 above, ICANN will maintain statistical reports that identify the number of inaccurate WHOIS records identified as part of the checks to identify registrations with deliberately false, inaccurate or incomplete WHOIS data. Also, as detailed in #3 above, Registry Operators will be required to maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operators will maintain these reports for the agreed contracted period and provide them to ICANN upon request. The contents of the reports will be publically available as appropriate.

5. Making and Handling Complaints (GAC Register # 2013-04-11-Safeguards-5)

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Registry Operators will be required to ensure that there is a mechanism for making complaints to the Registry Operator regarding malicious conduct in the TLD. Section 4.1 of Specification 6 of the proposed New gTLD Registry Agreement provides that, “Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact

for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.” Also, Section 2.8 of the proposed New gTLD Registry Agreement provides that a, “Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD.”

ICANN operates the WHOIS Data Problem Reports System

<<http://www.icann.org/en/resources/compliance/complaints/whois/inaccuracy-form>>, which is a mechanism for making complaints that WHOIS information is inaccurate.

6. Consequences (GAC Register # 2013-04-11-Safeguards-6)

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As indicated in #2 above, ICANN will include a provision in the proposed New gTLD Registry Agreement (as a mandatory Public Interest Commitment in Specification 11) obligating 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.

Consequences for the demonstrated provision of false WHOIS information are set forth in Section 3.7.7.2 of the 2013 RAA

<<http://www.icann.org/en/resources/registrars/raa/proposed-agreement-22apr13-en.pdf>>: “A Registered Name Holder's willful provision of inaccurate or unreliable information, its willful failure to update information provided to Registrar within seven (7) days of any change, or its failure to respond for over fifteen (15) days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration shall constitute a material breach of the Registered Name Holder-registrar contract and be a basis for suspension and/or cancellation of the Registered Name registration.” Paragraph 1 of the proposed PIC Specification includes

a requirement that Registry Operator will use only ICANN accredited registrars that are party to the 2013 RAA so that these consequences are contractually required.

## Annex II

### **[DRAFT] Proposed PIC Spec Implementation of GAC Safeguards Applicable to all New gTLDs**

(~~12-19~~ June 2013)

The following is a preliminary draft reference version of the Beijing GAC safeguards advice for safeguards applicable to all new gTLDs implemented as Public Interest Commitments – for discussion only.

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#### **Specification 11 Public Interest Commitments**

1. Registry Operator will use only ICANN accredited registrars that are party to the Registrar Accreditation Agreement approved by the ICANN Board of Directors on \_\_\_\_\_, 2013 in registering domain names. A list of such registrars shall be maintained by ICANN on ICANN's website.

2. Registry Operator will include a provision in its Registry-Registrar Agreement 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.

3. Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.

**2013-06-25-02a-NGPC Paper-Safeguard Public  
Comments v2.docx**

## ICANN NGPC PAPER NO. 2013.06.25.2b

**TITLE:** **Summary of Comments from Public Comment Forum Regarding Broad Categories of Safeguard Advice in the GAC's Beijing Communiqué**

**PROPOSED ACTION:** **For NGPC Review and Discussion**

**EXECUTIVE SUMMARY:**

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 is being asked to review and consider the community's comments as the NGPC moves forward with formulating its response to the GAC's safeguard advice in the Beijing Communiqué.

Overall, the public comments represented a broad spectrum of opinions with many expressing support, opposition, and concern over the impact of the safeguard advice to the timing of the New gTLD Program. Although not requested in the public comment forum, the public lodged comments about other portions of the GAC's advice not subject to this comment period. These include: a) Strings for Further GAC Consideration, b) Community Support for Applications, c) Singular and Plural Versions of the Same String as a TLD, d) Protections for Intergovernmental Operations, e) Registrar Accreditation Agreement, f) International Olympic Committee and Red Cross/Red Crescent, and g) Public Interest Commitments Specifications.

With respect to the comments regarding the safeguard advice:

- Of comments regarding safeguards applicable to all new gTLDs approximately 29% of unique commenters expressed opposition whereas approximately 71% expressed support. Those expressing support also expressed concern over the method of implementation and noted that the GAC should not dictate the specific procedures for implementation.

- Of comments specific to the Category 1 safeguards approximately 70% expressed support versus approximately 30% expressing concern or opposition. Those expressing opposition suggested that this advice is untimely, ill-conceived, overbroad, and too vague to implement.
- 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.
- Of the comments specific to the Category 2, Exclusive Access safeguards approximately 86% expressed support versus approximately 14% expressing concern or opposition.

Attached to this Briefing Paper as Annex I is an executive summary of the comments received during the public comment forum. For a more detailed summary of the comments, please refer to Annex II of this Briefing Paper.

**STAFF RECOMMENDATION:**

Staff recommends the NGPC review and consider the comments from the public comment forum soliciting input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings.

**Signature Block:**

Submitted by: Jamie Hedlund

Position: Vice President of Stakeholder Engagement for North America

Date Noted: 19 June 2013

Email: jamie.hedlund@icann.org

**2013-06-25-02b-NGPC Overview-Category 2  
Safeguards.docx**

<p><b>What is the Issue?</b></p> <p>In the Beijing Communiqué, the GAC proposed “Category 2” safeguard advice, which includes recommended restrictions for “restricted access” TLDs and “exclusive access” TLDs. The NGP is being asked to consider a proposal to accept and implement the GAC’s advice.</p>	<p><b>Why Is It Important?</b></p> <p>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. It is important to complete the consideration of this issue to permit the greatest number of new gTLD applications to continue to move forward as soon as possible.</p>
<p><b>Who is the Decision-maker? Who is the Shepherd?</b></p> <p>The NGPC is the decision-maker on this issue. Chris Disspain is the NGPC’s shepherd on this issue.</p>	<p><b>Next Steps?</b></p> <p>This proposal only addresses safeguard advice applicable to Category 2 safeguards. Other categories of safeguard advice will be addressed separately, and the NGPC will be requested to act on such advice, including at future meetings.</p>

**2013-06-25-02b-NGPC Paper-Category 2 Safeguard  
Advice - revised 2013-06-21-clean.docx**

**ICANN NGPC PAPER NO. 2013-06-25-2b**

**TITLE:** **GAC Advice in Beijing Communiqué regarding  
Safeguard Advice Applicable to Category 2 Strings**  
**PROPOSED ACTION:** **For NGPC Consideration**

**EXECUTIVE SUMMARY:**

At its meeting in Amsterdam on 18 May 2013, the NGPC agreed to a framework that organizes individual advice from the GAC’s Beijing Communiqué into discrete groupings to allow the NGPC to prioritize its work. In the Beijing Communiqué, the GAC proposed “Category 2” safeguard advice, which includes recommended restrictions for “restricted access” TLDs and “exclusive access” TLDs.

For applicants not seeking to impose exclusive registry access, the NGPC is being asked to consider including a provision in the Public Interest Commitments (“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.”

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 to seek clarification regarding the appropriate definition of “public interest goal” for purposes of determining whether exclusive registry access serves a public interest goal. The term “generic string” is defined in the PIC Specification.

Annex I includes the proposal to revise the PIC Specification to address the Category 2 GAC Advice for those applicants not seeking to impose exclusive registry access.

Note that this proposal only addresses Category 2 advice. Other categories of safeguard advice will be addressed in separate briefing papers, including at future meetings.

**STAFF RECOMMENDATION:**

Staff recommends the NGPC accept the GAC advice regarding Category 2 Safeguards as presented in PIC Specification attached as Annex I, and (2) direct staff to revise the proposed final draft of the New gTLD Registry Agreement as presented in Annex I. Staff also recommends that the NGPC defer moving forward with the contracting process for new gTLD applicants seeking to impose exclusive registry access for generic strings, pending the results of the proposed dialogue with the GAC.

**PROPOSED RESOLUTION:**

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.xx.xx.NGxx), 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.xx.xx.NGxx), 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.xx.xx.NGxx), the NGPC directs staff to defer moving forward with the contracting process for applicants seeking to impose exclusive registry access for “generic strings,” pending a dialogue with the GAC to seek clarification regarding the appropriate definition of “public interest goal” for the purposes of determining whether exclusive registry access serves a public interest goal.

## **PROPOSED RATIONALE:**

### **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 to seek clarification regarding the appropriate definition of “public interest goal” for purposes of determining whether exclusive registry access serves a public interest goal. 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 a 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. 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 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>

### **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 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.

**Signature Block:**

Submitted by: Jamie Hedlund

Position: Vice President of Stakeholder Engagement for North America

Date Noted: 20 June 2013

Email: jamie.hedlund@icann.org



## Annex I

### **Proposed PIC Spec Implementation of GAC Category 2 Safeguards**

(20 June 2013)

The following is a preliminary draft reference version of the Beijing GAC safeguards advice for Category 2 safeguards implemented as Public Interest Commitments – for discussion only.

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#### **Specification 11**

##### **Public Interest Commitments (for Category 2 Safeguard Advice)**

1. Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.
2. Registry Operator of a “Generic String” TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person’s or entity’s Affiliates. “Generic String” means 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.

# **2013-06-25-02c-NGPC Overview Paper-Singular and Plural Strings.docx**

<p><b>What is the Issue?</b></p> <p>In its 11 April 2013 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.” The NGP is being asked to conclude its discussions on allowing singular and plural versions of the same string, and to take formal action to document its position.</p>	<p><b>Why Is It Important?</b></p> <p>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. It is important to complete the consideration of this issue as soon as possible to bring more certainty to all interested parties.</p>
<p><b>Who is the Decision-maker? Who is the Shepherd?</b></p> <p>The NGPC will decide whether any changes are need to the New gTLD Program to address singular and plural versions of the same string. Chris Disspain is the NGPC’s shepherd on this issue.</p>	<p><b>Next Steps?</b></p> <p>If approved by the NGPC, no changes would be made to the New gTLD Program and the existing protections in the Applicant Guidebook for string similarity and consumer confusion would remain unchanged.</p>

# 2013-06-25-02c-NGPC Paper-Single vs Plural v2.doc

**ICANN NGPC PAPER NO. 2013-06-25-2c**

**TITLE:** **Consideration of String Similarity between Singular and Plural Strings**

**PROPOSED ACTION:** **For NGPC Consideration**

**EXECUTIVE SUMMARY:**

In its 11 April 2013 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.” The NGPC met on 11 June 2013 to begin to discuss this advice. The discussion followed the NGPC’s decision on 4 June 2013 to accept the GAC’s advice to consider this issue. The NGP is being asked to conclude its discussions on the advice, and to take formal action to document its position.

**STAFF RECOMMENDATION:**

Staff recommends that the NGPC not make changes to the Applicant Guidebook (AGB) and continue to rely on the mechanisms in the AGB to address string similarity issues that potentially arise with singular and plural version of the same strings.

**PROPOSED RESOLUTION:**

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-xx-xx-xx), 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.

## **PROPOSED RATIONALE:**

### **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 policies. 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-en> triggering 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 user 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 (see <http://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.

**Signature Block:**

Submitted by: Christine Willett

Position: Vice President, gTLD Operations

Date Noted: 18 June 2013

Email: [christine.willett@icann.org](mailto:christine.willett@icann.org)

**2013-06-25-02d-NGPC Overview-IGO INGO  
Protections.docx**

<p><b>What is the Issue?</b></p> <p>In its 11 April 2013 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 NGP is being asked to take formal action to document its position on this advice.</p>	<p><b>Why Is It Important?</b></p> <p>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. It is important to complete the consideration of this issue as soon as possible to bring more certainty to the New gTLD Program.</p>
<p><b>Who is the Decision-maker? Who is the Shepherd?</b></p> <p>The NGPC is the decision-maker for this issue. Chris Disspain is the NGPC’s shepherd on this issue.</p>	<p><b>Next Steps?</b></p> <p>In response to a number of issues raised by the Board, the GAC noted 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.” In a letter to the GAC dated 6 June 2013, Steve Crocker, proposed that a small number of NGPC members and ICANN staff begin a dialogue with the GAC.</p>

**2013-06-25-02d-NGPC Paper-IGO INGO Protections-  
revised 2013-06-21.docx**

## ICANN NGPC PAPER NO. 2013.06.25.2d

**TITLE:** **GAC Advice in Beijing Communiqué regarding Initial Protection for IGO Identifiers**

**PROPOSED ACTION:** **For NGPC Consideration**

### **EXECUTIVE SUMMARY:**

At its meeting in Amsterdam on 18 May 2013, the NGPC agreed to a framework that organizes individual advice from the GAC's Beijing Communiqué into discrete groupings to allow the NGPC to prioritize its work. 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 assuming that the GAC is willing to engage promptly in a dialog with the NGPC to discuss implementation issues. The draft 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. The GAC Communiqué states that, "[t]he GAC is mindful of outstanding implementation issues and commits to actively working with IGOs, the Board, and ICANN Staff to find a workable and timely way forward." On 6 June 2013, the NGPC (through the ICANN Board Chairman) sent the GAC a formal request to engage in a dialog < <http://www.icann.org/en/news/correspondence/crocker-to-dryden-2-06jun13-en>>.

### **STAFF RECOMMENDATION:**

Staff recommends the NGPC adopt a resolution confirming that appropriate preventative initial protection for the IGO identifiers will continue to be provided as presented in the proposed New gTLD Registry Agreement while the GAC, NGPC, ICANN Staff and community continue to actively work through outstanding implementation issues.

**PROPOSED RESOLUTION:**

Resolution Not Considered

Resolution Not Considered

**PROPOSED RATIONALE:**

Rationale Not Considered

Rationale Not Considered

Rationale Not Considered

Rationale Not Considered

**Signature Block:**

Submitted by: Jamie Hedlund

Position: Vice President of Stakeholder Engagement for North America

Date Noted: 20 June 2013

Email: [jamie.hedlund@icann.org](mailto:jamie.hedlund@icann.org)

# 2013-06-25-02e-NGPC Paper-ALAC-TMCH.doc

## ICANN NGPC PAPER NO. 2013-06-25-2e

**TITLE:** ALAC Statement on Trademark Clearinghouse and IDN Variants

**PROPOSED ACTION:** For Committee Review and Discussion

### **EXECUTIVE SUMMARY:**

The ALAC submitted to the Board its Statement on Trademark Clearinghouse and IDN Variants on 30 May 2013. The statement offers a set of recommendations:

1. Call for a more open and flexible TMCH model that is variants-friendly and support a community-based, bottom-up solution for TMCH implementation.
2. Ensure the IDN variant issue is addressed before the TMCH begin providing services to the new gTLD registries.
3. Request from the ICANN CEO an interim mechanism that can yield appropriate solutions efficiently and on an urgent basis that may involve the following:
  - a. ICANN (staff) providing relevant expertise to the community to develop interim services in order to authenticate and verify that trademarks are compatible with variants. Such services should be interoperable with the TMCH so as to enable the timely launch of the IDN TLDs;
  - b. A consideration for expediting the LGR process for the Han script; and
  - c. Longer-term recommendation: A review of the IDN Tables and IDN Registration Rules and Policies submitted by new gTLD applicants offering IDN registrations as a basis for developing a more comprehensive, longer-term solution.

IDN and variant considerations have been addressed in the implementation of the Trademark Clearinghouse, and the staff recommendation is that no changes are necessary at this time. Should a new proposal be presented by the community that can provide a more effective solution, this should be considered.

### **Role of the Clearinghouse**

The major functions of the Trademark Clearinghouse are:

1. Verification of trademark data
2. Administration of the TMCH database
3. Provision of data to registries for Sunrise and Claims services

The verification process confirms that trademark data submitted by rights holders is accurate. The criteria for inclusion in the Clearinghouse are the same for trademarks from all jurisdictions, although the steps needed for verification may differ according to availability of information in the issuing jurisdiction.

The role of the Clearinghouse is to record existing rights. The Clearinghouse does not have a role in arbitrating disputes or making determinations concerning the scope of particular rights.

There is no widely accepted definition of what constitutes a “variant” to a trademark. Policies in this area may differ: for example, a mark using simplified Chinese characters is considered by the PRC Trademark Office to be similar to the mark in traditional Chinese characters, and vice versa. In other words, if a mark in one Chinese orthography is filed, the PRC Trademark Office would block subsequent applications for registration for the mark in the other Chinese orthography by third parties.

Given that marks from all jurisdictions can coexist in the Clearinghouse, the Clearinghouse cannot “block” submission of a record based on an existing Clearinghouse record. The Clearinghouse could (and does where appropriate) create records for both a Simplified and Traditional version of a trademark; however, it does not do so of its own accord, but where both trademarks can be verified according to the established criteria.

### **Domain Name Matching Rules**

The domain name label(s) that are considered to “match” a trademark are generated based on an automated set of matching rules, as specified in the Applicant Guidebook.

An identical match occurs when the domain name consists of the complete and identical textual elements of the mark. Additionally, trademarks may contain spaces and characters that are not valid for use in domain names. These are addressed according to matching rules so that, for instance, the trademark “EXAMPLE EXAMPLE” would match the domain labels <exampleexample> and <example-example>. These matching rules are based on the discussions that occurred in the community.

### **Implementing Sunrise and Trademark Claims**

It was recognized early on that variant characters exist in some scripts, and that existing registries have developed practices for handling these. This issue was posed for

discussion with the Implementation Assistance Group (IAG) for the Trademark Clearinghouse and a set of options were identified and considered to address the existence of variant characters.

The first option was to provide the Clearinghouse with a set of rules to apply for each script, such that a trademark record in the Clearinghouse could generate “matching” domain names based on the existence of variant characters in the mark. However, since no accepted set of rules exists, this was not a workable option. (Note that there is work in progress in ICANN to establish a set of IDN Label Generation Rules for the root zone. However, this is designed for a particular purpose and we would need to be cautious about applying it to other uses. Such rules might not necessarily be appropriate for use by the Trademark Clearinghouse as they could conflict with practices of local law or established registry IDN tables.)

The second option discussed was for each registry to provide its IDN tables and rules to the Clearinghouse in advance of its sunrise and trademark claims periods, and have the Clearinghouse apply those rules to trademark records during those periods. This was also generally considered to be unworkable, as it essentially would mean multiple customized versions of the services, which would reduce efficiencies and drive up cost.

The third option was to continue the current practice of any variant rules being applied at the registry level. This approach was adopted as the most flexible. How this would work is described in the following sections.

#### *Sunrise Period*

- Trademark holder submits mark “example” to the Clearinghouse. The trademark information is verified and a signed mark data file is generated indicating that the rights holder is eligible to register the domain name <example.tld> based on those rights.
- Registry uses an IDN table where “è” is a variant character to “e” and hence “èxample” is a variant label of “example” in the registry. When presented with

the SMD file for registration of <example.tld> the registry has the ability either to: a) block registration of <example.tld> or b) include registration of <example.tld> automatically with the registration of <example.tld>, according to what its policy is.

### *Trademark Claims Period*

- Taking the same case, a registrant attempts to register <example.tld>.
- If such registration is not blocked by registry policy, the registry applies its variant rules generating the corresponding variant names, e.g., <example.tld>.
- For those names that will be ultimately registered, the registry is required to query the list of labels subject to Claims, i.e., it will query both <example> and <example> to determine whether there is a match.
- Since the mark “example” is in the Clearinghouse, a match will be found, and the registry will provide the indicator to the registrar that a Claims notice should be shown to the registrant.
- A Claims notice is shown to the registrant based on the mark “example” and the registrant can elect whether to proceed.

### **THE ALAC STATEMENT**

The ALAC statement contains recommendations that:

1. Call for a more open and flexible TMCH model that is variants-friendly and support a community-based, bottom-up solution for TMCH implementation.
2. Ensure the IDN variant issue is addressed before the TMCH begin providing services to the new gTLD registries.
3. Request from the ICANN CEO an interim mechanism that can yield appropriate solutions efficiently and on an urgent basis that may involve the following:
  - a. ICANN (staff) providing relevant expertise to the community to develop interim services in order to authenticate and verify that trademarks are compatible with variants. Such services should be interoperable with the TMCH so as to enable the timely launch of the IDN TLDs;
  - b. A consideration for expediting the LGR process for the Han script; and
  - c. Longer-term recommendation: A review of the IDN Tables and IDN Registration Rules and Policies submitted by new gTLD applicants offering IDN registrations as a basis for developing a more comprehensive, longer-term solution.

As described in this paper, the Trademark Clearinghouse implementation has taken into account these issues in the most comprehensive manner possible. The suggested response is attached.

**Signature Block:**

Submitted by: Karen Lentz

Position: Director, Operations & Policy Research

Date Noted: 20 June 2013

Email: karen.lentz@icann.org

Response Not Considered

Response Not Considered

# 2013-06-25-NGPC-Notice .docx

**New gTLD Program Committee Members,**

**Attached below please find the Notice of the following New gTLD committee meeting:**

**25 June 2013 – NGPC Meeting at 21:00 UTC – This Committee meeting is estimated to last 90 minutes.**

<http://www.timeanddate.com/worldclock/fixedtime.html?msg=New+gTLD+Committee+Meeting&iso=20130625T21>

**Some other time zones:**

**25 June 2013 - 2:00 PM PDT Los Angeles**

**25 June 2013 – 5:00 PM EDT Washington, D.C.**

**25 June 2013 – 11:00 PM CEST Brussels**

**Consent Agenda: 1) Approval of Minutes of 4 June 2013**

**Main Agenda: 1) ALAC Statement on TMCH/Variants**

**2) Safeguards Applicable to all New gTLDs**

**3) Category 2 Safeguard Advice re Exclusive Registry Access**

**4) Singular & Plural Versions of the Same String as a TLD**

**5) IGO Protections**

**6) AOB**

**MATERIALS -- All Materials will be available on** Contact Information Redacted **, if**

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

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

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

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

**John Jeffrey**

**General Counsel & Secretary, ICANN**

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