2013-02-01-01-new-gltd-comm-overview-sheet-enforcing-applicant-commitments.docx

New gTLD Program Commitee Overview Sheet

"Enforcing Applicant Commitments"
(25 January 2013)

What is the issue?	Why is it important?
Approval to publish for comment a proposed "Public Interest Commitments" specification to be added to each new gTLD registry agreement including: 1. an obligation to only use registrars under the 2013 RAA 2. an option to designate elements from the application to be included in the agreement 3. an option to specify additional commitments to be included in the agreement	In its Toronto communiqué the GAC advised the Board "that it is necessary for all of these statements of commitment and objectives to be transformed into binding contractual commitments, subject to compliance oversight by ICANN."
Who is the decision-maker? Who is the shepherd? The New gTLD Program Committee has responsibility to exercise Board-level authority for all issues relating to the current round of the New gTLD Program. The Board shepherd for this issue is Chris Disspain. This issue directly affects the proposed contracts for the new gTLD registry operators and thus would raise conflict of interest issues if addressed outside of the committee.	Next steps 1. 5 February 2013: seek public comment on proposed new registry agreement including the Public Interest Commitments specification. (Note: dates are approximate.) 2. 5 March 2013: applicants could optionally designate which parts of their application and which additional promises they will agree to have included in their contracts. Each applicant's PIC Spec would be posted for public and GAC review. 3. 12 April 2013: Committee approval sought for the addition of the PIC Spec to the base New gTLD registry agreement.

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New gTLD Program Committee Submission 2013-02-01-01

TO:	**New gTLD Program Committee**
TITLE:	**Update on Addressing GAC Advice on Enforcing Applicants' Commitments**
PROPOSED ACTION:	**For Committee Decision**

Executive Summary

As discussed with the Committee previously, gTLD applications included business plans and statements of intent regarding applicant plans for operation of the proposed new gTLD registries. For example, some applicants stated in their applications that they intend to implement registration restrictions or heightened rights protection mechanisms above those required in the base new gTLD registry agreement. Outside of community-based applications, there are no mechanisms for requiring these plans and objectives to be incorporated into the Registry Agreement. The GAC's Toronto Communiqué provided advice to the Board that "it is necessary for all of these statements of commitment and objectives to be transformed into binding contractual commitments, subject to compliance oversight by ICANN." For additional information please refer to the reference materials associated with this paper.

Staff Recommendation

Staff requests New gTLD Program Committee approval to publish for comment a proposed "Public Interest Commitments" specification to be added to each new gTLD registry agreement including:

1. an obligation to only use registrars under the 2013 RAA
2. an option to designate elements from the application to be included in the agreement
3. an option to specify additional commitments to be included in the agreement seek public comment on a proposed mechanism for implementing GAC advice to convert new gTLD applicants' plans into binding contractual commitments.

Proposed Resolution:

Whereas, applicants for new gTLDs identified certain purposes of the applied for gTLD and certain business plans that they intend to incorporate into the operation of their registry, but much of these plans are not currently anticipated to be incorporated as obligations into Registry Agreements.

Whereas, the GAC's Toronto Communiqué includes advice to ICANN that "it is necessary for all of these statements of commitment and objectives to be transformed into binding contractual commitments, subject to compliance oversight by ICANN."

Resolved (2013-02-01-NGxx), the New gTLD Program Committee directs the President and CEO to seek public comment on a proposed mechanism to address the GAC advice on these additional applicant commitments.

Proposed Rationale:

It is important to determine if it is possible to address the advice received from the GAC on this issue. Creating a mechanism through which applicants will make binding commitments to ICANN in alignment with their applications could serve to promote the transparency and accountability of all within the ICANN community. While work still remains in developing this mechanism, it is anticipated that the creation of these binding commitments will benefit the public interest.

The work called for in this resolution will require resources to complete, though it is not anticipated that this planning work will exceed budgeted resources. If properly implemented, the introduction of a mechanism to incorporate additional binding commitments could result in a positive benefit on the security, stability and resiliency of the DNS.

Submitted by:	Samantha Eisner (Senior Counsel) Daniel Halloran (Deputy General Counsel)
Date Noted:	25 January 2013
Email and Phone Number	samantha.eisner@icann.org daniel.halloran@icann.org

2013-02-02-01-new-gtld-comm-Overview Sheet-Closed-Generic-Apps.doc

New gTLD Program Committee Overview Sheet

"Closed Generic" Applications

What is the issue?	**Why is it important?**
The issue is whether ICANN should take action to: a) identify certain applied-for gTLDs as generic terms, and b) prohibit such TLDs from having registration restrictions (i.e., from operating as "closed" TLDs.)	Action by the Board to issue direction in regard to these applications is being urged by some in the community to address stated public interest. Taking action that changes the fundamental provisions and criteria in the Applicant Guidebook that were relied on by applicants in making business plans and investments involves high risk, and these considerations must be balanced very carefully.
Who is the decision-maker? Who is the shepherd? The New gTLD Program Committee has responsibility for this issue pursuant to its charter to exercise Board-level authority for all issues relating to the current round of the New gTLD Program. The Board shepherd for this issue is Chris Disspain. This issue directly affects applications that are currently under review and thus would raise conflict of interest issues if addressed outside of the committee.	**Next steps** Following the Committee's discussion, staff will take steps to issue guidance to the community to clarify the terms regarding the Code of Conduct, as well as any additional steps directed by the Committee.

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ICANN BOARD PAPER NO. NGPC-2013-02-02-01

TO: **New gTLD Program Committee**

TITLE: **"Closed Generic" gTLD Applications**

PROPOSED ACTION: **For Review and Discussion**

EXECUTIVE SUMMARY:

Following the publication of the gTLD applications in June 2012, ICANN has been contacted by some in the community concerning certain applications for strings which are labeled as "generic terms." These applications are considered problematic by some due to the proposed use of the TLD by the applicant, e.g., using the TLD in a manner that is seen as inappropriately exclusive, particularly in the sense of creating a competitive advantage. These applications have been the subject of public comments and Early Warnings, as well as discussion among members of the New gTLD Program Committee.

The policy advice for the New gTLD Program did not contain guidance on how ICANN should place restrictions on an applicant's use of a TLD, and no such restrictions were included in the Applicant Guidebook.

Alternatives to be considered include:

- Referring the issue to the GNSO for policy guidance. This option is not recommended at this time, as it will likely introduce delay to the evaluations in process as well as raising liability on the introduction of additional criteria to the process.

- Issuing Board-level direction to staff to amend the evaluation process or registry agreement to preclude certain business models. This option is not recommended at this time, as the Applicant Guidebook did not indicate expected restrictions from ICANN on an applicant's use of a TLD, and there is no existing policy advice that can be used to define this.

- Taking no action and relying on existing mechanisms to sort out relevant issues. This is the recommended option, as there are objection mechanisms

in place to support consideration of issues for applications that a party considers problematic, and these processes should continue to be used where relevant.

In addition, it should be noted that many of the community comments rely on what appears to be a mis-interpretation of existing provisions that conflate TLD registration policy with the registry-registrar code of conduct. Staff recommends that guidance be issued to the community to clarify the existing provisions.

The Committee discussed this issue at its meeting on 10 January 2013 (the previous paper is included in the Reference Materials for this agenda item). Additional analysis in relation to the Committee's discussion during the 10 January meeting is included in the Reference Materials; however, staff's recommendations above are consistent with those previously provided.

Submitted by:	Karen Lentz
Position:	Director, Operations & Policy Research
Date Noted:	24 January 2013
Email:	karen.lentz@icann.org

Item Removed From Agenda

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