TABLE OF CONTENTS – NGPC Reference Materials

TITLE: **Update on String Similarity**

The NGPC previously addressed potential consumer confusion resulting from allowing singular and plural versions of the same string and determined that no changes were needed to the existing mechanisms in the AGB to address this issue. <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm#2.d>. Below is the paper and rationale considered by the NGPC when making its determination.

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 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-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 used confusion and loss of confidence in the DNS resulting fro 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.

REFERENCE MATERIALS TO NEW gTLD PROGRAM COMMITTEE

SUBMISSION 2013-09-10-2b

TITLE: **Reconsideration Request 13-5**

Summary Background

While the full background can be found in the documentation attached to this Annex, the 7 July 2013 Reconsideration Request 13-5, brought by Booking.com B.V. ("Booking.com"), through its counsel, Crowell & Moring, seeks reconsideration of the ICANN staff action of 26 February 2013, when the results of the String Similarity Panel were posted for the New gTLD Program. Specifically, the Request seeks reconsideration of the placement of the applications for .hotels and .hoteis into a string similarity contention. Alternatively, Booking.com requests that the ICANN provide a detailed analysis and reasoning regarding the String Similarity Panel's (the "Panel") decision to place .hotels into a non-exact match contention set.

In consideration of Booking.com's Request, the BGC noted that a similar reconsideration request was previously submitted by Booking.com on 28 March 2013 and placed on hold pending the completion of a request pursuant to ICANN's Documentary Information Disclosure Policy. Therefore, this Request relates back to the date of the original filing and should be evaluated under the Bylaws that were in effect from 20 December 2012 through 10 April 2013. Article IV, Section 2.2 of that version of ICANN's Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

> (a) and determined that the only claimed ground was
> whether "one or more staff actions or inactions contradict
> established ICANN policy(ies)." one or more staff actions
> or inactions that contradict established ICANN
> policy(ies); or

> (b) one or more actions or inactions of the ICANN Board
> that have been taken or refused to be taken without

consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act.

(Article IV §2.2 of the 20 December 2012 version of Bylaws, at http://www.icann.org/en/about/governance/bylaws/bylaws- 20dec12-en.htm#IVBylaws).

In order for Booking.com to state a Request for Reconsideration of a staff action or inaction, it must, among other things, provide a detailed explanation of the facts as presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). (*See* Article IV §2.6(g) of the 20 December 2012 version of Bylaws, at http://www.icann.org/en/about/governance/bylaws/bylaws-20dec12-en.htm#IV, and the current Reconsideration form effective as of 11 April 2013, at http://www.icann.org/en/groups/board/governance/reconsideration/request-form-11apr13-en.doc). Dismissal of a request for reconsideration is appropriate if the BGC finds that the requesting party does not have standing because the party failed to satisfy the criteria set forth in the Bylaws.

The BGC determined that Booking.com failed to state the proper grounds for reconsideration because if failed to identify the policy that was allegedly violated by the Staff action. The BGC noted that Booking.com does not suggest that the process for String Similarity Review set out in the Applicant Guidebook was not followed, or that ICANN staff violated any process in accepting the Panel decision on placing .hotels and .hoteis in contention sets. Instead, Booking.com seeks to supplant what it believes the review methodology for assessing visual similarity should have been as opposed to the methodology set out in Section 2.2.1.1.2 of the Applicant Guidebook and asks that the Board (through the New gTLD Program Committee) retry the 26 February 2013 decision based upon its proposed methodology. The BGC concluded that this is not sufficient ground for Reconsideration because the Reconsideration process is not available as a mechanism to re-try the decisions of the evaluation panels.

The BGC further considered whether the Panel's contention set decision was taken without material information, including Booking.com's linguistic expert's opinion, or other "information that would refute the mistaken contention that there is likely to be consume confusion between '.hotels' and '.hoteis' (Attachment A, page 7). The BGC concluded that there is *no* process point in the String Similarity Review process for applicants to submit additional information. The Review was based upon the methodology in the Applicant Guide Book, supplemented by the Panel's process documentation; the process does not allow for additional inputs, and allowing for those to be considered now would itself be a violation of ICANN process.

The BGC further concluded that just as the process does not call for additional applicant inputs into the visual similarity review, Booking.com's call for further information on the decision to place .hotels and .hoteis in a contention set "to give the Requester the opportunity to respond to this, before taking a final decision" is not rooted in any established ICANN process at issue. (Attachment A, page 9.) First, upon notification to the applicants and the posting of the String Similarity Review Panel report of contention sets, the decision was already final. While applicants may avail themselves of accountability mechanism to challenge decisions, the use of an accountability mechanism when there is no proper ground to bring a request for review under the selected mechanism does not then provide opportunity for additional substantive review of decisions already taken.

Second, the BGC noted that while it understands the impact that Booking.com faces by being put in a contention set, and that it wishes for more narrative information regarding the Panel's decision, no such narrative is called for in the process. The Applicant Guidebook sets out the methodology used when evaluating visual similarity of strings. The process documentation provided by the String Similarity Review Panel describes the steps followed by the Panel in applying the methodology set out in the Applicant Guidebook. ICANN then coordinates a quality assurance review over a random selection of Panel's reviews to gain confidence that the methodology and process were followed. That is the process used for a making and assessing a determination of visual similarity.

Booking.com's disagreement as to whether the methodology should have resulted in a finding of visual similarity does not mean that ICANN (including the third party vendors performing String Similarity Review) violated any policy in reaching the decision (nor does it support a conclusion that the decision was actually wrong).

The BGC also considered Booking.com's suggestion that the Board has the ability to overturn the Panel's decision on .hotels/.hoteis because the Panel merely provided "advice to ICANN" and ICANN made the ultimate decision to accept the advice. Booking.com further suggested that the NGPC'S acceptance of GAC advice relating to consideration of allowing singular and plural versions of strings in the New gTLD Program, as well as the NGPC's later determination that no changes were needed to the Applicant Guidebook regarding the singular/plural issue, shows the ability of the NGPC to override the Panel determinations. (Attachment A, pp. 5-6). The BGC concluded that Booking.com's conclusions of the String Similarity Review process are inaccurate and thus, Booking.com has not stated sufficient grounds for reconsideration. The BGC noted that all applied for strings are reviewed the Panel according to the standards and methodology of the visual string similarity review set out in the Applicant Guidebook. The Guidebook clarifies that once contention sets are formed by the Panel, ICANN will notify the applicants and will publish results on its website. (AGB, Section 2.2.1.1.1.) Whether the results are transmitted as "advice" or "outcomes" or "reports", ICANN had always made clear that it would rely on the advice of its evaluators in the initial evaluation stage of the New gTLD Program, subject to quality assurance measures. The BGC concluded that Booking.com is actually proposing a new and *different* process when it suggests that ICANN should perform substantive review (instead of process testing) over the results of the String Similarity Review Panel's outcomes prior to the finalization of contention sets.

The BGC further noted that the subsequent receipt and consideration of GAC advice on singular and plural strings does not change the established process for the development of contention sets based on visual similarity. The ICANN Board is required under the Bylaws to consider GAC Advice on issues of public policy, such as singular and plural

strings. Therefore the Board, through the NGPC, was obligated to respond to the GAC advice on singular and plural strings. Ultimately, the NGPC determined that no changes were needed to the Guidebook on this issue. (Resolution 2013.06.25.NG07, at http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm#2.d.) Neither the GAC advice nor the NGPC resolution focused on the issue of visual similarity, but instead the issue was potential consumer confusion from having singular and plural versions of the same word in the root zone. The BGC concluded that the NGPC's decision on a separate topic – and a decision that did not in any way alter or amend the work of an evaluation panel – does not support reconsideration of the development of the .hotels/.hoteis contention set.

Document/Background Links

The following attachments are relevant to the BGC's recommendation regarding Booking.com's Reconsideration Request 13-5.

Attachment A is Reconsideration Request 13-5, submitted on 7 July 2013.

Attachment B is Attachment 1 to Request 13-5, submitted on 7 July 2013. Attachment 2 to Request 13-5 was the complete New gTLD Applicant Guidebook, available at http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf.

Attachment C is Attachments 3-8 to Request 13-5, submitted on 7 July 2013.

Attachment D is Reconsideration Request 13-5, submitted on 28 March 2013.

Attachment E is the BGC's Recommendation on Reconsideration Request 13-5.

Submitted by:	Amy A. Stathos
Position:	Deputy General Counsel
Date Noted:	5 September 2013
Email:	amy.stathos@icann.org

crowell▪moring

Our ref :   fpe/mne/107646.0000001
Your ref : DIDP Request 20130328-1 and Reconsideration Request

Flip Petillion
Advocaat
Contact Information
Redacted

7 July 2013

To the attention of Mr. Steve Crocker and Mr. Cherine Chalaby
Chair, ICANN Board *resp.* Chair, New gTLD Program Committee

4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292
By regular mail and by e-mail: reconsideration@icann.org

Request for Reconsideration the Decisions of February 26, 2013 Materially Affecting Booking.com B.V.

Dear Sirs,

Please find attached an amended Reconsideration Request relating to the Decisions of February 26, 2013, submitted on behalf of Booking.com B.V. ('Booking.com')

The original Reconsideration Request was submitted to Mr. Crocker in his capacity as Chair of the ICANN Board, within the 30-day window of opportunity to submit such a request. The amended Reconsideration Request is filed within the 30-day window of opportunity granted by ICANN following the posting of the process description of the String Similarity new gTLD Evaluation Panel on 7 June 2013.

Despite the fact that the origin of the decisions is unclear, this Reconsideration Request is being submitted as a reconsideration of a "Staff action." In the event that the decisions referenced above are determined to be a "Board action," this request may be amended.

Reference is also made to our letters of 9 May 2013 and 26 June 2013, in which we had indicated that ICANN had failed to provide additional information or address any of Booking.com's concerns in a way that allows Booking.com to appropriately amend its Request for Reconsideration.

Because our request to publish additional information remains unanswered and because ICANN did not provide any information that the 30-day window following its communication of 7 June 2013 would be extended, Booking.com has decided to file this amended Reconsideration Request.

*

Booking.com reserves the right to further amend its Request for Reconsideration upon receipt of the information it previously requested and urges ICANN to publish the requested information as specified in our letter of 26 June 2013.

Yours sincerely,

Flip Petillion

Crowell & Moring ■ **www.crowell.com** ■ **Washington, DC** ■ **New York** ■ **San Francisco** ■ **Los Angeles** ■ **Orange County** ■ **Anchorage** ■ **London** ■ **Brussels**

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BOOKING.COM B.V.

Request for Reconsideration of the Decision of February 26, 2013

1.   Requester Information

Name: Booking.com B.V.

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional):

C/o:

Name: Flip Petillion, Crowell & Moring LLP

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional): Contact Information

2.   Request for Reconsideration of (check one only):

___ Board action/inaction

_X_ Staff action/inaction

3.   Description of specific action(s) you are seeking to have reconsidered.

Booking.com B.V. (hereinafter, the 'Requester'") seeks reconsideration of ICANN's decision to place the gTLD application for '.hotels' (Application ID 1-1016-75482) and the gTLD application for '.hoteis' (Application ID 1-1249-87712) in a non-exact match contention set (**Attachment 1**).

Booking.com B.V. also seeks reconsideration of ICANN's decision not to provide a detailed analysis or a reasoned basis for its decision to place the gTLD application for '.hotels' (Application ID 1-1016-75482) and the gTLD application for '.hoteis' (Application ID 1-1249-87712) in a non-exact match contention set.

Both decisions are hereinafter collectively referred to as the 'Decisions'.

4.   Date of action/inaction:

The Decisions were published on February 26, 2013 (**Attachment 1**).

5. **On what date did you became aware of the action or that action would not be taken?**

The Decisions were communicated to the primary contact of the Requester as specified in the Requester's application for the .hotels gTLD ('Primary Contact') on February 26, 2013 (**Attachment 2**). The Requester became aware of the Decisions on February 27, 2013, when the Primary Contact informed the Requester of the Decisions.

6. **Describe how you believe you are materially affected by the action or inaction:**

The Requester is the applicant for the '.hotels' gTLD. The Decisions will impact the Requester because ICANN has made it clear in the Applicant Guidebook that it "will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings" (Applicant Guidebook, Module 4-2). ICANN refers to a group of applications for contending strings as a contention set. By placing 'hotels' and 'hoteis' in a non-exact match contention set, ICANN's String Similarity Review Panel apparently determined that these strings would result in user confusion. As a result, ICANN will not approve both the application for 'hotels' and the application for 'hoteis'.

This directly impacts the Requester as follows:

- The Requester will not be allowed to operate a '.hotels' gTLD in the event that the '.hoteis' gTLD is recommended for delegation; and

- If the Requester wants to operate the '.hotels' gTLD, and the '.hoteis' application is not rejected by ICANN, it will need to either negotiate with the Applicant for '.hoteis' or participate in an auction with a view to obtaining the delegation of the '.hotels' gTLD. Both may require additional investments that are not justified given the erroneous decision by ICANN's String Similarity Review Panel.

Regarding ICANN's failure to provide a detailed explanation of its decision and the corresponding analysis, Requester is left without actual knowledge of the basis for ICANN's decision to put .hotels into a non-exact match contention set with .hoteis.

7. **Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.**

The Requester considers that the Decisions also adversely affect others:

- The Applicant for the '.hoteis' gTLD is adversely affected as it will equally not be allowed to operate a '.hoteis' gTLD if a '.hotels' gTLD is recommended;

- Internet users are adversely affected as there may be less competition at a TLD level as well as fewer TLDs targeted at non-English speaking communities (see response to Question 11 below); and

- Without a detailed explanation of the non-exact match contention set decision, the ICANN community is deprived of an understanding of ICANN's reasoning, analysis, and standards when evaluating user confusion.

8. **If you are complaining of an action, are you seeking a temporary stay of the action?** (Check one)

____ Yes

_x__ No

The Requester does not believe that a temporary stay is required. Instead, Requester asks that ICANN's decision regarding the non-exact match contention set be reversed. In the alternative, Requester asks that ICANN provide the detailed analysis and reasoning regarding the decision to place .hotels into a non-exact match contention set.

8a. **If Yes, you are seeking a temporary stay, do you believe any harm(s) will occur if the action is not stayed?** (Check one)

Not applicable

8b. **If you answered Yes to 8.a., please describe the harm(s) that you believe will occur if the action is not stayed:**

Not applicable

9. **Detail of Board or Staff Action – Required Information**

At present, it appears that the String Similarity review was likely conducted by a third party, but was then accepted and implemented by ICANN staff. It is unclear whether or not the decision of February 26, 2013 was reviewed by the ICANN Board, although the publicly available information suggests that it was not. In any event, ICANN Staff published the results of the String Similarity review on the ICANN website and communicated the decision to Requester's Primary Contact (**Attachment 1**). As a result, ICANN (Staff) has communicated that ICANN endorsed the decision to put the 'hotels' and 'hoteis' strings in a contention set. This is also confirmed by the process description of the String Similarity new gTLD Evaluation Panel (hereinafter, the 'Process Description'), which ICANN published on 7 June 2013. Indeed, the last step of the process described in this Process Description, which is entitled "Advice to ICANN", clearly indicating that the Evaluation Panel only provided advice to ICANN and that ICANN made the ultimate decision. This is confirmed by two recent Resolutions of the New gTLD Program Committee (NGPC):

- In Resolution 2013.06.04.NG01 (**Attachment 6**), the NGPC accepted the GAC Advice to consider whether to allow singular and plural versions of the same string;

- In Resolution 2013.06.25.NG07 (**Attachement 7**), the NGPC determined that no changes were 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.

These Resolutions indicate that ICANN first considered both the advice from the String Similarity new gTLD Evaluation Panel and the advice from the GAC in relation to string similarity and ultimately made the decision to put applied-for strings in a contention set or not.

The decision to put 'hotels' and 'hoteis' in a contention set is contrary to ICANN's established policy as set out in the Applicant Guidebook; the failure by ICANN to provide reasoning for the decision is contrary to ICANN's mandate to act transparently and fairly; and it seems likely that the contention set decision was made without all of the material information.

The Applicant Guidebook states:

> "*'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.*
>
> *[...]*
>
> *The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review [...] is the identification of contention sets among applications that have direct or indirect contention relationships with one another.*
>
> *Two strings are in direct contention if they are identical or similar to one another.*
>
> *[...]*
>
> *Two strings are in indirect contention if they are both in direct contention with a third string, but not with one another.*" (**Attachment 2**, Module 4-2, 4-3)

The Applicant Guidebook also states:

> "**Standard for String Confusion** – *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.*" (**Attachment 2**, Module 2-8)

As a result, two strings should only be placed in a contention set to the extent that they are so similar that they create a probability of user confusion if both strings are delegated into the root zone.

For the following reasons, there is no probability of user confusion if both 'hotels'

and 'hoteis' were delegated as a gTLD string into the root zone:

- The difference between the letter "i" and the letter "l" clearly distinguishes the 'hotels' and 'hoteis' strings from each other;

- The intended use of the 'hotels' gTLD clearly distinguishes this gTLD from the 'hoteis' gTLD; and

- The Internet user will not be confused between 'hotels' and 'hoteis', irrespective of whether or not the Internet user is requesting information or whether the Internet user is receiving information.

This is further explained below under Question 11.

Because there is no probability of user confusion if both 'hoteis' and 'hotels' were delegated as a gTLD string into the root zone, it is contrary to ICANN's policy to put them in a contention set.

ICANN's Articles of Incorporation require it to act "through open and transparent processes," and its Bylaws further provide that ICANN must "operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness." (Articles of Incorporation, Art. 4; Bylaws, Art. III. sec. 1) The Bylaws also require that ICANN "mak[e] decisions by applying documented policies neutrally and objectively, with integrity and fairness." (Bylaws, Art. I, Sec. 2.8). ICANN's Bylaws also prohibit discriminatory treatment, "ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment . . . " (Bylaws, Art. II., Sec. 3).

ICANN's failure to provide any reasoned decision or analysis in support of putting 'hotels' and 'hoteis' in a contention set is contrary to ICANN's mandate to act transparently, and prevents the Requester and the ICANN community from determining whether the decision was made fairly and in a non-arbitrary and non-discriminatory fashion.

Additionally, given the lack of a reasoned decision or other public information regarding ICANN's string contention analysis and decision, it is impossible to know what information ICANN considered in establishing the contention set (or approving the contention set proposed by an independent contractor). In an attempt to determine what information ICANN Staff considered in making the contention set decision, the Requester had separately submitted a request for information under ICANN's Documentary Information Disclosure Policy. It seems likely that ICANN failed to consider, for example, the information presented in this Request, which is materially related to the contention set decision. At a minimum, the Requester was never given an opportunity to provide information that would refute the mistaken contention that there is likely to be consumer confusion between '.hotels' and '.hoteis'.

In 27 April 2013, ICANN issued a response to the Requester's DIDP request. ICANN stated that an independent String Similarity Panel (SSP) performed the string similarity review and that the SSP was responsible for the development of its own

process documentation and methodology for performing the string similarity review. ICANN declared that many of the items that are sought from ICANN in the DIDP Request are not in existence within ICANN and cannot be provided in response to the DIDP Request. Nonetheless, ICANN indicated that it would be posting the SSP's String Similarity Process and Workflow shortly.

On 9 May 2013, the Requester wrote to ICANN noting that it had failed to provide any additional information or address any of the Requester's concerns as conveyed in its DIDP Request or Request for Reconsideration. Indeed, as demonstrated above, ICANN received the advice from the SSP on which it based its decision to put '.hotels' and '.hoteis' in a contention set. Stating that ICANN does not have many of the items sought within the DIDP request is not a reason for ICANN to disregard its obligations under ICANN's Articles of Incorporation and Bylaws and to disregard its obligation to provide a reasoned decision or analysis for putting '.hotels' and '.hoteis' in a contention set.

On 14 May 2013, ICANN responded that it intended to post the String Similarity Process and Workflow by 17 May 2013. On 7 June 2013, ICANN finally posted a process description of the String Similarity new gTLD Evaluation Panel (**Attachment 5**, hereinafter, the "Process Description"). ICANN also indicated that, as from the posting of the Process Description, the Requester had a 30-day period to amend its Request for Reconsideration.

On 26 June 2013, the Requester wrote to ICANN that the Process Description did not satisfy its request. On 3 July 2013, ICANN informed the Requester that it received this letter and that it is preparing a response. The Requester has not yet received an answer to its request, as formulated in its letter of 26 June 2013.

As indicated in the Requester's letter of 26 June 2013, the Process Description only gives a general overview of the process of the String Similarity Review Panel. Even through today, ICANN has not given *any* information on how the string similarity review between the .hotels string and other strings was assessed, using this Process (*e.g.*, What visual assessment did the operations manager make in its initial assessment?, How did ICC/UCL evaluators evaluate the .hotels string?, etc.). In other words, ICANN has not provided any particularized rationale or analysis for putting .hotels and .hoteis in a contention set.

The Requester does not understand why it took ICANN so long to publish a Process Description that merely outlines the general workflow and that does not include any string specific information. This is all the more bizarre given the fact that the Process Description itself indicates that the string similarity evaluation has been documented in so-called evaluation workbooks. Was the string similarity evaluation process designed as specified by the Process Description before the start of the evaluation or has it been adapted over time? If this process was adapted, why was it adapted, how was it adapted and how did it influence the evaluation results? And why was the publication of the Process Description delayed?

The Requester requested an answer to these questions along with a detailed overview of how the .hotels string has been evaluated and including a response to the following questions – a request that remains pending – :

- How has the .hotels string been evaluated, according to which criteria (*e.g.*,

what was included in the standard checklist to ensure consistency) and by whom specifically?

- What were the qualifications of the project manager, evaluator(s) and core team members that evaluated the .hotels string?

- What did the "evaluation workbook" contain for the .hotels string? Who had access to the "evaluation workbook" for .hotels during the evaluation process?

- What was the advice that the Operations Manager provided to ICANN re .hotels? Did that advice ever change throughout the evaluation process? How and when did ICANN check that the .hotels string evaluation was performed in accordance with the process described in the Process Description?

- The document titled the "String Similarity new gTLD Evaluation Panel -- Process Description" included the heading: "New gTLD Program Evaluation Panels: Geographic Names". Is this the description of the String Similarity Evaluation, or the Geographic Names Evaluation? Is this a mistake, or, were the evaluations combined?

Considering ICANN's obligations of transparency and accountability, there cannot be any "compelling reason for confidentiality." And, as mentioned above, there are numerous compelling reasons for publication of this information.

As indicated in the Requester's letter of 26 June 2013, the Requester cannot appropriately amend its filings until it gains a better understanding of what was decided, why it was decided, by whom it was decided, and in what particular fashion it was decided.

As ICANN has not yet replied to this request and given the imposed deadline to amend the Request for Reconsideration within 30 days following the posting of the Process Description, the Requester decided filing an amended Request for Reconsideration within this deadline. However, the Requester still urges ICANN to publish the requested information and reserves the right to amend its Request for Reconsideration upon receipt of the requested information.

10.   What are you asking ICANN to do now?

The Requester asks ICANN to reverse the decision in which 'hotels' (Application ID 1-1016-75482) and 'hoteis' (Application ID 1-1249-87712) were put in a non-exact match contention set.

ICANN is requested to decide that the 'hotels' gTLD as applied for in the Application with ID 1-1016-75482 can co-exist with the 'hoteis' gTLD as applied for in the Application with ID 1-1249-87712.

In the event that ICANN will not immediately reverse its decision, the Requester asks that ICANN provide its detailed analysis for the decision to include .hotels into a non-exact match contention set and to give the Requester the opportunity to respond to this, before taking a final decision.

11. What grounds or justification support your request?

a) The difference between the letter "i" and the letter "l" clearly distinguishes the 'hotels' and 'hoteis' strings from each other

The difference between the 'hotels' and 'hoteis' strings is grounded in the distinction between the character 'i' and the character 'l'. In linguistic terms, the characters 'i' and 'l' are manifestly distinct.

The Requester asked an independent expert to provide his views on the following questions:

1) Regardless of the ICANN framework, would you consider the 'hotels' and 'hoteis' strings to be confusing?
2) Given the ICANN framework, would you consider both strings visually similar to each other creating a probability of user confusion?

The Requester reserves the right to issue requests to additional experts.

The expert to whom this request was addressed, Professor Piet Desmet, is full professor at the University of Leuven in linguistics and language teaching methodology.

Professor Piet Desmet from the University of Leuven has found that the difference between 'hotels' and 'hoteis' can be reduced to the difference between l and i, which distinguishes both words. The opposition between l and i is clearly distinctive. There are a considerable number of "minimal pairs" in which the l and i alternate, i.e. pairs of words which differ from each other only in the alternation of l and i. These are minimal pairs like candies/candles, eider/elder, fails/falls, mail/mall or wail/wall. So the alternation of l and i in English is distinctive enough to keep words apart solely on the basis of this opposition.

This implies that words that only differ in the alternation of l and i do not confuse the language users visually, as they perfectly distinguish both characters. If this were not the case, the alternation would already have evolved to an alternative that speakers find more distinctive.

Professor Desmet points out that every language consists of a fixed set of phonemes (sounds) and graphemes (letters) that can be combined without limitations. This linguistic reality poses no problems for the language user, who is used to being confronted with words that differ from each other in only one character. This does not prevent the language user from visually distinguishing these words so as to see them as different meaningful entities.

Professor Desmet considers the elements above sufficient to dismiss the idea of string confusion in dealing with minimal pairs that only differ in the alternation of l and i.

Accordingly, '.hotels' and '.hoteis' are not confusingly similar, and the Decision that they should be placed in a contention set is therefore contrary to established ICANN policy. Requester's questions and Professor Desmet's answers are submitted as

Attachment 3 and Attachment 4, respectively.

b) The intended use of the 'hotels' gTLD clearly distinguishes this gTLD from the 'hoteis' gTLD

Both the Applicant for the 'hotels' gTLD and the Applicant for the '.hoteis' gTLD intend to use the applied-for gTLD in a very controlled and restricted way. Both gTLDs will be operated as single-registrant gTLDs. The Applicant for 'hotels' targets different language communities than the Applicant for 'hoteis'. The 'hotels' gTLD is targeted to English-speaking, Dutch-speaking and/or French-speaking communities, whereas the 'hoteis' gTLD is targeted to the Portuguese language community.

Given this clear distinction in target groups and the restricted and controlled use in both gTLDs, the 'hotels' and 'hoteis' gTLDs even become more distinct from each other. As a result, there is no likelihood that the Internet user will be confused, and ICANN's decision to place them in a contention set is contrary to established ICANN policy.

c) The Internet user will not be confused

As seen above, 'hotels' and 'hoteis' are clearly distinct from each other. As a result, an Internet user searching for information on hotels in English, French or Dutch would not mix up the search term 'hotels' with the Portuguese term 'hoteis' because the word 'hoteis' does not exist in the English language. The same is true for an Internet user searching for information on hotels in Portuguese. The user would not mix up the search term 'hoteis' with the English term 'hotels', the word 'hotels' being non-existent in Portuguese.

As indicated above, the difference between the 'hotels' and 'hoteis' strings is grounded in the distinction between the character 'i' and the character 'l', which are manifestly different from a linguistic point of view.

The Internet user has experience with the difference between the characters 'i' and 'l', also at a TLD level. Indeed, many TLDs that only differ by the substitution of the character 'i' by the character 'l' currently coexist, without any problem:

- .'gi' coexists with '.gl'

- '.ai' coexists with .'al'

- '.lt' coexists with '.it' (**Attachment 8**).

The Internet user also has experience with the coexistence between the TLDs '.il' and '.li', where the characters 'i' and 'l' are interchanged. There is no reason to assume that the Internet user would be confused by '.hotels' and '.hoteis', especially given the fact that the Internet user is already used to the difference between the characters 'i' and 'l' at a TLD level for many years.

It is also extremely unlikely that the Internet user would make a typographical error when searching for 'hotels', which would replace 'hotels' by 'hoteis', or *vice versa*.

The letter 'l' and the letter 'i' are located on a completely different location on a computer keyboard, whether qwerty, azerty or qwertz. Even in the very unlikely event that such error is made by an Internet user searching in English, such Internet user will immediately notice that an error has occurred because the information on 'hoteis' would be in Portuguese.

The same would be true for an Internet user looking for 'hoteis'. First, the word 'hotels' is non-existent in the Portuguese language. As a result, an Internet user looking for information on hotels in Portuguese would not confuse 'hoteis' with the English word. Second, the Internet user would not make a typographical error when searching for 'hoteis', which would replace 'hoteis' by 'hotels'. Finally, in the unlikely event that this typographical error is made, a Portuguese-speaking Internet user would also immediately notice that an error has occurred because the information on 'hotels' would not be in Portuguese.

As a result, the Internet user would not be confused; all of the above analysis demonstrates that ICANN's decision to place '.hoteis' and '.hotels' in contention is contrary to established policy. Nor is it clear whether ICANN considered any of the above material in determining wheter '.hotels' and '.hoteis' were confusingly similar. As a result, Requester asks that ICANN reverse the decision to place .hotels in a non-exact match contention set.

12.   Do you have any documents you want to provide to ICANN?

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm.

The Requester wishes to submit the following documents in support of its request:

Attachment 1:	Decision to place 'hotels' (Application ID 1-1016-75482) and 'hoteis' (Application ID 1-1249-87712) in a non-exact match contention set.
Attachment 2:	Applicant Guidebook (Version 2012-06-04).
Attachment 3:	Mail from Flip Petillion to Prof. Dr. Piet Desmet of March 21, 2013.
Attachment 4:	Mail from Prof. Dr. Piet Desmet to Flip Petillion of March 22, 2013.
Attachment 5:	Process description of the String Similarity new gTLD Evaluation Panel as published on June 7, 2013.
Attachment 6:	ICANN Resolution 2013.06.04 NG01, inclusive of its Annex
Attachment 7:	ICANN Resolution 2013.06.25 NG07
Attachment 8:	List of all currently existing TLDs, as delegated by IANA

The Requester also may submit additional documents not yet available, such as other

expert reports and analyses, in relation to the rationale that ICANN is requested to provide concerning its decision to put '.hotels' and '.hoteis' in a contention set. The Requester therefore requests that ICANN allow the submission of these documents when they become available.

*

Attachment 1.

ICANN

The Internet Corporation for Assigned Names and Numbers

26 February 2013

Mr. Winston Fuhriman
Contact Information Redacted

RE: String similarity results for application ID 1-1016-75482

Dear Mr. Winston Fuhriman:

The String Similarity Panel has completed its review of the applied-for strings and ICANN would like to inform you of the Panel's findings for application ID 1-1016-75482.

After careful consideration and extensive review performed against criteria in Section 2.2.1.1 of the Applicant Guidebook, the String Similarity Panel has found that the applied-for string (.hotels) is visually similarly to another applied-for string (.hoteis), creating a probability of user confusion.

Due to this finding, the following two strings have been placed in a contention set:

String	Application ID	Applicant Name
.hotels	1-1016-75482	Booking.com B.V.
.hoteis	1-1249-87712	Despegar Online SRL

The complete list of contention sets is being published on the ICANN microsite (newgtlds.icann.org). If you have any questions regarding this communication, please contact the Customer Service Center at newgtld@icann.org.

Sincerely,

Christine Willett
Vice President, New gTLD Operations
Internet Corporation for Assigned Names and Numbers

Los Angeles   4676 Admiralty Way, Suite 330   Marina del Rey, CA 90292-6601   USA   T +1 310 301 5800   F +1 310 823 8649
Offices: Brussels   •   Silicon Valley   •   Sydney   •   Washington

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http://icann.org

Attachment 3.

From:	Petillion, Flip
Sent:	jeudi 21 mars 2013 17:59
To:	Piet Desmet
Cc:	Janssen, Jan
Subject:	request
Attachments:	guidebook-full-04jun12-en[1]-c.pdf; 1-1016-75482.String Similarity Results-c.pdf

To the attention of Prof. Dr. Piet Desmet
Full Professor at KU Leuven
By email

Dear Professor Desmet,

I am writing to you as counsel to Booking.com B.V. I am contacting you in your capacity of specialist in Linguistics and Computer-Assisted Language Learning.

With my team, I have assisted Booking.com B.V. in the preparation of its application for the proprietary generic Top Level Domain (gTLD) ".hotels". You can read more about the gTLDs and the conditions to apply for a TLD on the website of ICANN (the Internet Corporation for Assigned Names and Numbers): www.icann.org.

ICANN is the organization that is presently managing the evaluations of applications.

ICANN has received an application by Booking.com for ".hotels" and by a third party (Despegar Online SRL) for ".hoteis", which is Portuguese for 'hotels'.

ICANN has also informed Booking.com that it was of the opinion that the applications for the strings ".hotels" and ".hoteis" were confusingly similar.

The motivation that Booking.com has received was the following:

> *"After careful consideration and extensive review performed against criteria in Section 2.2.1.1. of the Applicant Guidebook, the String Similarity Panel has found the applied-for string (.hotels) is visually similarly to another applied-for string (.hoteis), creating a probability of user confusion.*
>
> *Due to this finding, the following two strings have been placed in a contention set"*

Attached is a copy of the Applicant Guidebook. I also attach the letter that ICANN has communicated to the application representative of Booking.com on February 26, 2013.

Should this finding be maintained, than only one of the applied-for strings can be delegated. The parties concerned can do either of the following: or they negotiate with a view to finding an agreement on who of them can continue the application process, or, if they do not reach an agreement, they can enter into an auction process in which case the highest bidder for the application (i.e., the applicant paying the highest amount of money to ICANN) will be invited by ICANN to conduct the final negotiations with ICANN, provided that that highest bidder will have successfully passed the application process.

The ICANN framework that is applicable for this kind of situation and that may have served as the basis for ICANN's decision can be found on page "Module 2-5 to Module 2-9" of ICANN's Applicant Guidebook, where the following is mentioned under Section 2.2.1.1:

*"**Standard for String Confusion** – 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."*

Booking.com has asked me to represent it with a view to advising it on the possibility have the ICANN decision reviewed and to initiate the appropriate procedures to that purpose.

Therefore, I hereby ask you to confirm whether or not you are able to send me your expert opinion on the following questions:

1) Regardless of the ICANN framework, would you consider both strings to be confusing?

2) Given the ICANN framework, would you consider both strings visually similar to each other creating a probability of user confusion?

If you are in a position to provide the requested expert opinion, would you be able to prepare a substantiated answer in the coming days?

I have been asked to initiate appropriate procedures by next Monday, March 25, 2013, at the latest.

Therefore, I would appreciate it if you could confirm me your availability to meet the deadline of next Monday at which day I would like to receive your expert opinion.

I apologize for the short timeframe and notice and I thank you in advance.

Best regards,

Flip Petillion

Flip Petillion
Advocaat - Avocat
Contact Information Redacted

Attachment 4.

Janssen, Jan
_____

To the attention of Mr Flip Petillion
By email

Dear Sir,

Please find enclosed my reply to your request.

I trust that this answers your question.

Yours sincerely,

Piet Desmet

_____

Van: Petillion, Flip
Verzonden: donderdag 21 maart 2013 17:59
Aan: Piet Desmet
CC: Janssen, Jan
Onderwerp: request

To the attention of Prof. Dr. Piet Desmet
Full Professor at KU Leuven
By email

Dear Professor Desmet,

I am writing to you as counsel to Booking.com B.V. I am contacting you in your capacity of specialist in Linguistics and Computer-Assisted Language Learning.

With my team, I have assisted Booking.com B.V. in the preparation of its application for the proprietary generic Top Level Domain (gTLD) ".hotels". You can read more about the gTLDs and the conditions to apply for a TLD on the website of ICANN (the Internet Corporation for Assigned Names and Numbers): www.icann.org.

ICANN is the organization that is presently managing the evaluations of applications.

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The motivation that Booking.com has received was the following:

> *"After careful consideration and extensive review performed against criteria in Section 2.2.1.1. of the Applicant Guidebook, the String Similarity Panel has found the applied-for string (.hotels) is visually similarly to another applied-for string (.hoteis), creating a probability of user confusion.*

Due to this finding, the following two strings have been placed in a contention set"

Attached is a copy of the Applicant Guidebook. I also attach the letter that ICANN has communicated to the application representative of Booking.com on February 26, 2013.

Should this finding be maintained, than only one of the applied-for strings can be delegated. The parties concerned can do either of the following: or they negotiate with a view to finding an agreement on who of them can continue the application process, or, if they do not reach an agreement, they can enter into an auction process in which case the highest bidder for the application (i.e., the applicant paying the highest amount of money to ICANN) will be invited by ICANN to conduct the final negotiations with ICANN, provided that that highest bidder will have successfully passed the application process.

The ICANN framework that is applicable for this kind of situation and that may have served as the basis for ICANN's decision can be found on page "Module 2-5 to Module 2-9" of ICANN's Applicant Guidebook, where the following is mentioned under Section 2.2.1.1:

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2) Given the ICANN framework, would you consider both strings visually similar to each other creating a probability of user confusion?

If you are in a position to provide the requested expert opinion, would you be able to prepare a substantiated answer in the coming days?

I have been asked to initiate appropriate procedures by next Monday, March 25, 2013, at the latest.

Therefore, I would appreciate it if you could confirm me your availability to meet the deadline of next Monday at which day I would like to receive your expert opinion.

I apologize for the short timeframe and notice and I thank you in advance.

Best regards,

Flip Petillion

Flip Petillion
Advocaat - Avocat
Contact Information Redacted

Crowell & Moring LLP
Mr Flip Petillion
Contact Information Redacted

ONS KENMERK

UW KENMERK

LEUVEN   22 March 2013

Dear Sir,

I hereby send you my answer to your question whether string confusion may occur in the word pair hotels and hoteis.

From a linguistic point of view, the difference between hotels and hoteis can be reduced to the difference between l and i, which distinguishes both words.

As a linguistic expert having expertise in corpus analyses, I can inform you that the analysis of an English corpus of highly frequent words reveals that the opposition between l and i is clearly distinctive. We find a considerable number of minimal pairs in which the l and i alternate, i.e. pairs of words which differ from each other only in the alternation of l and i. These are minimal pairs like candies/candles, eider/elder, fails/falls, mail/mall or wail/wall. So the alternation of l and i in English is distinctive enough to keep words apart solely on the basis of this opposition.

This implies that words that only differ in the alternation of l and i do not confuse the language users visually, as they perfectly distinguish both characters. If this were not the case, the alternation would already have evolved to an alternative that speakers find more distinctive.

I would also like to point out that every language consists of a fixed set of phonemes (sounds) and graphemes (letters) that can be combined without limitations. This linguistic reality poses no problems for the language user, who is used to being confronted with words that differ from each other in only one character. This does not prevent the language user from visually distinguishing these words so as to see them as different meaningful entities.

I consider the elements mentioned above reason enough to dismiss the idea of string confusion in dealing with minimal pairs that only differ in the alternation of l and i.
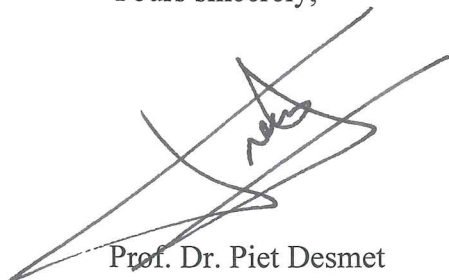
I trust that this answers your question.

PROF. DR. PIET DESMET, FULL PROFESSOR OF APPLIED LINGUISTICS
Contact Information Redacted

Should you require more information, please let us know.

Yours sincerely,

Prof. Dr. Piet Desmet

Attachment 5.

String Similarity new gTLD Evaluation Panel – Process Description

Step	Name	Actions	Tracking	Who
1	Application Receipt and Verification Checks	• Incoming applications from ICANN automatically generate new tickets in internal tracking system – one record per applied for string • Incoming strings are sorted in Unicode order prior to entering into internal tracking system • Each ticket is automatically assigned an identifying ticket number in internal tracking system • The number of tickets generated is checked against the number of tickets sent by ICANN • For each ticket, a check is done to ensure that the string, slot and applicant is correctly entered into the system • For each record the SWORD algorithm result where the score is greater or equal to 70 is recorded • When this step is complete the record is changed from "INITIAL VERIFICATION" to "INITIAL ASSESSMENT" state	• Records each have the following information (string, slot ID, applicant) • Records initially set to "INITIAL VERIFICATION" state • Due date set to "time of entry into system" plus two working days • Internal records are initially assigned to Operations Manager	• String Similarity Operations Manager does all of these tasks
2	Initial Assessment	• Operations manager posts a copy of notice/agreement of non-conflict for the string in internal tracking system – in the case of conflict, notice is provided to ICANN • Visual assessment of each string is done by operations manager to provide an initial assessment – first, ASCII or IDN (recorded in internal tracking system as string type); second, easy/possibly contentious/hard/IDN (recorded in internal tracking system as string difficulty)? • Internal records for each string are set to "AWAITING INITIAL EVALUATION" state	• Internal records enter this step in "INITIAL ASSESSMENT" state • Initial assessment is completed by the Operations Manager • Due date set to two working days in the future • Records leave this step in "AWAITING INITIAL EVALUATION" state	• Operations manager completes initial assessment of all strings entered into internal tracking system in step one. • When this step is complete the internal records for each string are returned to the Operations Manager

Step	Name	Actions	Tracking	Who
3a	Initial Assignment for ASCII Strings	• Operations Manager assigns each record with a string type of ASCII to an ICC evaluator • Operations Manager places current copy of TLD list (by reference) in the evaluation workbook • Operations Manager places current copy of reserved strings in the evaluation workbook • Operations Manager puts all pairwise comparison strings in the evaluation workbook • Tickets are put in "INITIAL EVALUATION IN PROGRESS" state	• Records enter this step in "AWAITING INITIAL EVALUATION" state • Internal records are given to ICC/UCL evaluators • Due date is set to three working days • Internal tracking system notifies evaluator	• Operations Manager assigns tickets to ICC/UCL evaluators
3b	Initial Assignment for IDN Strings	• Operations Manager identifies languages needed for initial evaluation of IDN strings based on list provided by ICANN • Operations Manager identifies number of strings in each language based on list provided by ICANN • Operations Manager coordinates with UCL Liaison to identify evaluators for IDN strings • UCL Liaison establishes evaluators for specific IDN strings and places nominations in each record for IDN applications • UCL Liaison uses nomination list to assign each ticket with a string type of IDN to a UCL nominated evaluator • Operations Manager places current copy of TLD list (by reference) in the workbook • Operations Manager places current copy of reserved strings (by reference) in the workbook • Operations Manager places current copy of Declared Variants list (by reference) in the workbook • Operations Manager places current copy of all IDN fast track strings (by reference) in the workbook • Operations Manager puts all pairwise comparison strings in the evaluation workbook • Internal records are put in "INITIAL EVALUATION IN PROGRESS" state	• Records enter this step in "AWAITING INITIAL EVALUATION" state • Workbooks are given to UCL evaluators • Due date is set to three working days • Internal tracking system notifies evaluator – notice in internal tracking system and by email • Records leave this step in "INITIAL EVALUATION IN PROGRESS"	• Operations Manager identifies IDN language and scope requirements based on initial material from ICANN • Operations Manager coordinates with UCL Liaison to state needs and get recommended UCL evaluators • UCL Liaison assigns evaluation workbooks to UCL evaluators

Step	Name	Actions	Tracking	Who
4	Initial Evaluation	• Evaluator posts a copy of notice/agreement of non-conflict for the string in internal tracking system – in the case of a conflict, the Operations Manager selects a new assessor using the mechanism in 3a or 3b as appropriate • Evaluator checks the string against the current copy of the TLD list • Evaluator checks the string against the current copy of the reserved string list • Evaluator checks against the current list of IDN fast track strings • Evaluator checks against the current Declared Variants List • For any string that does not meet one of the three tests above: the record for the string is put into the "FAILED INITIAL EVALUATION" state; string in conflict is recorded in internal tracking system; the record is given to the Operations Manager; the process moves to step 7a, below. • Evaluator optionally adds relevant details, if needed, explaining any failure in free form in the workbook. • For all other strings: the record is put into the "PASSED INITIAL EVALUATION" state; the process moves to step 5 below.	• Records enter this step in "INITIAL EVALUATION IN PROGRESS" state • Evaluators have three working days to make the initial evaluation • Records are owned by the evaluators • Records leave this step in either "FAILED INITIAL EVALUATION" or "PASSED INITIAL EVALUATION" state • At the end of this step either the Operations Manager owns the record for the individual string (in the event that the string did not pass); or, the Evaluator continues to own the record.	• Evaluators – ICC and UCL – process the initial evaluation • Evaluators continue to own the record throughout this step unless the Initial Evaluation fails (then, the Operations Manager is the owner of the record)

Step	Name	Actions	Tracking	Who
5a	Detailed Evaluation for ASCII Strings	• Evaluator completes a pairwise comparison of the applied for string and all other applied for strings • Evaluator considers SWORD pair scores as documented in the string evaluation workbook • The results of these two evaluations are documented in the string evaluation workbook • If the string is found to resemble another visually that it is likely to deceive or cause confusion: the tracking record for the string is put into "IN CONTENTION SET – AWAITING CONFIRMATION" state; the string, ticket number and slot ID of the strings in the contention set are documented; the record is assigned to the Operations Manager. • If the string is not found to be similar to any other string: the record is put into "PASSED DETAILED EVALUATION" state; the tracking record is assigned to the Operations Manager.	• Tracking records enter this step in "PASSED INITIAL EVALUATION" state • Records are set with a due date of ten working days • At the end of this step the record is either in the "IN CONTENTION SET – AWAITING CONFIRMATION" state or the "PASSED DETAILED EVALUATION" state • At the end of this step, the record is always owned by the Operations Manager	• Strings are evaluated by ICC/UCL evaluators • Results are returned to the Operations Manager

Step	Name	Actions	Tracking	Who
5b	Detailed Evaluation for IDN Strings	• Evaluator completes a pairwise comparison of the applied for string and all other applied for strings • Evaluator considers SWORD pair scores as documented in the string evaluation workbook • If the IDN is two characters in length, the evaluator completes the review against any one-character label (in any script), and any possible two-character ASCII combination. • The results of these four evaluations are documented in the string evaluation workbook • If the string is found to resemble another visually that it is likely to deceive or cause confusion: the tracking record is put into "IN CONTENTION SET – AWAITING CONFIRMATION" state; the string, ticket number and slot ID of the strings in the contention set are documented; the record is assigned to the Operations Manager. • If the string is not found to be similar to any other string: the ticket is put into "PASSED DETAILED EVALUATION" state; the tracking record is assigned to the Operations Manager.	• Tracking records enter this step in "PASSED INITIAL EVALUATION" state • Records are set with a due date of fifteen working days • At the end of this step the record is either in the "IN CONTENTION SET – AWAITING CONFIRMATION" state or the "PASSED DETAILED EVALUATION" state • At the end of this step, the tracking record is always owned by the Operations Manager	• Strings are evaluated by UCL evaluators • Results are returned to the Operations Manager

Step	Name	Actions	Tracking	Who
6a	Independent Contention Set Processing for ASCII Strings	• The Operations Manager requests that the Core Team execute an independent contention set assessment of the ASCII string in the tracking record. • The record and result is presented to the Core Team for quality assurance • If the result of the independent assessment results in a confirmation of the results in step 5a above, the record is placed in the "IN CONTENTION SET – CONFIRMED" state and the record is reassigned to the Operations Manager • If the result of the independent assessment results in a confirmation of the contention set, an automatic re-review of the string is completed using the process documented in steps 3, 4 and 5 • If the result of the independent assessment results in no confirmation or a question about the contention set, the ticket is placed in "PASSED INITIAL EVALUATION" state; the ticket is reassigned to the Operations Manager who then moves the process back to Step 5a for re-evaluation by another evaluator	• Tracking records enter this step in "IN CONTENTION SET – AWAITING CONFIRMATION" state with a String Type of ASCII • Tracking records are assigned for a confirmation assessment to a member of the Core Team • Review by the Core Team results in either a confirmation of the Contention Set analysts or a need for re-evaluation of the string • Records leave this step in either the "IN CONTENTION SET – CONFIRMED" state or the "PASSED INITIAL EVALUATION" state	• Operations Manager assigns the Contention Set assessment the Core Team • Core Team executes the assessment • Reporting by the Core Team results in actions by the Operations Manager

Step	Name	Actions	Tracking	Who
6b	Independent Contention Set Processing for IDN Strings	• The Operations Manager consults with the UCL Liaison to identify a second analyst for string similarity • The UCL Liaison nominates a new string similarity assessor for the string in the tracking record • The UCL Liaison assigns the record to the nominated assessor • The UCL Evaluator executes an independent assessment of the IDN string in the evaluation workbook • If the result of the independent assessment results in a confirmation of the results in step 5b above, the record is placed in the "IN CONTENTION SET – CONFIRMED" state and the ticket is reassigned to the Operations Manager • If the result of the independent assessment results in a confirmation of the contention set, an automatic re-review of the string is completed using the process documented in steps 3, 4 and 5 • If the result of the independent evaluation results in no confirmation or a question about the contention set, the ticket is placed in "PASSED INITIAL EVALUATION" state; the record is reassigned to the Operations Manager who then moves the process back to Step 5b for re-evaluation by another evaluator – the very few (if any) cases where this loop takes place are monitored by the Operations Manager	• Tracking records enter this step in "IN CONTENTION SET – AWAITING CONFIRMATION" state with a String Type of ASCII • Records are assigned for a confirmation assessment to a member of the UCL team as nominated by the UCL Liaison • Review by the UCL Evaluator results in either a confirmation of the Contention Set analysts or a need for re-evaluation of the string • Tracking records leave this step in either the "IN CONTENTION SET – CONFIRMED" state or the "PASSED INITIAL EVALUATION" state	• Operations Manager works with the UCL Liaison to assign the Contention Set analysis to an independent, different member of the UCL team • UCL Evaluator executes the assessment • Reporting by the Core Team results in actions by the Operations Manager

Step	Name	Actions	Tracking	Who
7a	Quality Review for Strings That Pass the Initial Evaluation	• For all tracking records in "PASSED DETAILED EVALUATION" state, the Operations Manager requests the full Core Team to lead a quality review against a standard checklist to ensure consistency in processing. The Operations Manager assigns the tracking record to the Core Team and facilitates the Core Team review. • For strings that have received more than one review with conflicting evaluations, the Core Team may determine to a) send the string for another evaluation, b) defer the decision on the String or c) resolve the conflict so that the string may move to the "PASSED DETAILED EVALUATION" or "IN CONTENTION SET – CONFIRMED" state. • When the Core Team chooses to re-evaluate a string with a conflicting evaluation, the string is placed into step 6a or 6b appropriately. As with the initial re-review, another independent evaluator is assigned the string without knowledge of the initial evaluations. • At the end of the quality review for tickets in "PASSED DETAILED EVALUATION" state, the tracking records are put into either "QUALITY REVIEW COMPLETED – NO CONCERNS NOTED" or the "QUALITY REVIEW COMPLETED – CONCERNS NOTED" state and reassigned to the Operations Manager for re-evaluation	• Tracking records are in one of three states: "FAILED INITIAL EVALUATION," "PASSED DETAILED EVALUATION," or "IN CONTENTION SET – CONFIRMED" • Records are initially owned by the Operations Manager • Tracking records are set with a due date of five working days • Records are assigned to the Core Team for Quality Review • Records change state based on the result of the Quality Review • Records are eventually reassigned to the Operations Manager	• Operations Manager assigns Quality Review to the Core Team • The Operations Manager facilitates the Core Team's Quality Review • The results are documented in the tracking record by the assigned Core Team member and the record is reassigned to the Operations Manager

Step	Name	Actions	Tracking	Who
7b	Quality Review for Strings That Do Not Pass the Evaluation	• For all tracking records in "FAILED INITIAL EVALUATION" or "IN CONTENTION SET – CONFIRMED" states, the Operations Manager requests the full Core Team to lead a quality review against a standard checklist to ensure consistency in processing. The Operations Manager assigns the tracking record to the Core Team and facilitates the Core Team review. • For strings that have received more than one review with conflicting evaluations, the Core Team may determine to a) send the string for another evaluation, b) defer the decision on the String or c) resolve the conflict so that the string may move to the "PASSED DETAILED EVALUATION" or "IN CONTENTION SET – CONFIRMED" state. • When the Core Team chooses to re-evaluate a string with a conflicting evaluation, the string is placed into step 6a or 6b appropriately. As with the initial re-review, another independent evaluator is assigned the string without knowledge of the initial evaluations. • At the end of the quality review for records in "PASSED DETAILED EVALUATION" state, the records are put into either "QUALITY REVIEW COMPLETED – NO CONCERNS NOTED" or the "QUALITY REVIEW COMPLETED – CONCERNS NOTED" state and reassigned to the Operations Manager	• Tracking records are in one of three states: "FAILED INITIAL EVALUATION," "PASSED DETAILED EVALUATION," or "IN CONTENTION SET – CONFIRMED" • Records are initially owned by the Operations Manager • Tracking records are assigned to the full Core Team (and, possibly, the UCL Liaison) for Quality Review • Records change state based on the result of the Quality Review • Records are eventually reassigned to the Operations Manager	• Operations Manager assigns Quality Review to the full Core Team • The Operations Manager facilitates the Core Team's Quality Review • If IDNs are involved in the ticket, the UCL Liaison participates in the Quality Review • The results are documented in the tracking record by the assigned Core Team member and the record is reassigned to the Operations Manager

Step	Name	Actions	Tracking	Who
8	Quality Concerns Resolution	• For records in the state "QUALITY REVIEW COMPLETED – CONCERNS NOTED" the concerns must be addressed and resolved before reporting to ICANN • Operations Manager assigns the record to the full Core Team to resolve the issue • Follow up dialogue between the Core Team and the participants in both the review and the evaluation. • All actions taken to resolve Quality Concerns are documented in the tracking record • The Core Team, facilitated by the Operations Manager, can set the state of the record to "QUALITY REVIEW COMPLETED – NO CONCERNS NOTED" as a resolution of the concerns or recommend that the record be fully re-evaluated. This is for Quality Control issues only. • The record is then reassigned to the Operations Manager	• Tracking records come to this step in the "QUALITY REVIEW COMPLETED – CONCERNS NOTED" state • Records are initially owned by the Operations Manager • Records are assigned to the full Core Team, facilitated by the Operations Manager to resolve the Quality or Process Issue • The record is returned to the Operations Manager in a resolved state or with a recommendation of full re-review.	• Tickets are passed to an independent Core Team member for assessment and resolution of the Quality Concerns • The ticket is then acted upon by the assigned Core Team Member and returned to the Operations Manager
9	Variant Analysis and Reporting	• Operations Manager makes any required, standardized additions to the tracking record • Operations Manager works with the UCL Liaison to perform the analysis against the IDN Variant Tables for all required strings • Operations Manager sets record state to "INTERNAL EVALUATION AND REPORTING COMPLETE" • Tracking records are closed and unavailable for further addition of material (text, tracking or attached files) • Operations Manager transfers the result of the evaluation in the ticket to ICANN's TAS • Operations Manager sets record state to "REPOINTERNAL TRACKING SYSTEMING TO ICANN COMPLETED" • Operations Manager puts the record into "EVALUATION CLOSED" state	• Internal reporting and findings are documented • IDN Variant Analysis is completed as necessary • Reporting to ICANN is completed • Tracking record is closed	• Operations Manager completes the reporting on the tracking record

Step	Name	Actions	Tracking	Who
10	Advice to ICANN	• Operations Manager transfers the result of the evaluation to ICANN's TAS • Operations Manager sets tracking record state to "REPORTING TO ICANN COMPLETED" • Operations Manager reports on contention sets in ICANN's TAS • Operations Manager puts the record into "EVALUATION CLOSED" state	• Reporting to ICANN is completed • Tracking record is closed	

Attachment 6.

Internet Corporation for Assigned Names and Numbers

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**Board & Chair
Self-Appraisal**
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**Board
Compensation
Election**
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**Procedure
Manual**
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**Resolutions
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**Statements of
Interest**
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Approved Resolution | Meeting of the New gTLD Program Committee

6

4 June 2013

1. **Main Agenda**

a. Consideration of Non-Safeguard Advice in the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'s Beijing Communiqué

Rationale for Resolution 2013.06.04.NG01

Main Agenda:

a.

Consideration of Non–Safeguard Advice in the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'s Beijing Communiqué

Whereas, the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué");

Whereas, on 18 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) posted the Beijing Communiqué and officially notified applicants of the advice, http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en (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;

Whereas, the NGPC met on 8 May 2013 to consider a plan for responding to the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice on the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program, transmitted to the Board through its Beijing Communiqué;

Whereas, the NGPC met on 18 May 2013 to further discuss and consider its plan for responding the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice in the Beijing Communiqué on the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program;

Whereas, the NGPC has considered the applicant responses submitted during the 21-day applicant response period, and the NGPC has identified nine (9) items of advice in the attached scorecard where its position is consistent with the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice in the Beijing Communiqué.

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Whereas, the NGPC developed a scorecard to respond to the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice in the Beijing Communiqué similar to the one used during the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) and Board meetings in Brussels on 28 February and 1 March 2011, and has identified where the NGPC's position is consistent with GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice, noting those as "1A" items.

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 (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Board's authority for any and all issues that may arise relating to the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program.

Resolved (2013.06.04.NG01), the NGPC adopts the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) Beijing Communiqué" (4 June 2013), attached as Annex 1 (/en/groups/board/documents/new-gtld-resolution-annex-1-04jun13-en.pdf) [PDF, 564 KB] to this Resolution, in response to the items of GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice in the Be jing Communiqué as presented in the scorecard.

Rationale for Resolution 2013.06.04.NG01

Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Bylaws http://www.icann.org/en/about/governance/bylaws#XI (/en/about/governance/bylaws#XI) permit the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) issued advice to the Board on the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program through its Beijing Communiqué dated 11 April 2013. The ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Bylaws require the Board to take into account the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (Governmental Advisory Committee) (Governmental Advisory Committee) advice, it must inform the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) and state the reasons why it decided not to follow the advice. The Board and the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) advice was not followed.

What is the proposal being considered?

The NGPC is being asked to consider accepting a discrete grouping of the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice as described in the attached NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) Beijing Communiqué (4 June 2013), which includes nine (9) items of non- safeguard advice from the Beijing Communiqué as listed in the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) Register of Advice. These items are those for which the NGPC has a position that is consistent with the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice.

Which stakeholders or others were consulted?

On 18 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) posted the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice and officially notified applicants of the advice, http://newgtlds.icann.org/en/announcements

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and-media/announcement-18apr13-en (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 (http://newgtlds.icann.org/en/applicants/gac-advice-responses). The NGPC has considered the applicant responses in formulating its response to the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice as applicable.

To note, on 23 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) initiated a public comment forum to solicit input on how the NGPC should address GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice regarding safeguards applicable to broad categories of new gTLD (generic Top Level Domain) (generic Top Level Domain) strings http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm (/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm). The public comment forum on how the NGPC should address GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice regarding safeguards is open through 4 June 2013. These comments will serve as important inputs to the NGPC's future consideration of the other elements of GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice not being considered at this time in the attached scorecard.

What concerns or issues were raised by the community?

As part of the 21-day applicant response period, ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) received 383 applicant response documents representing 745 unique applications. Twenty-three responses were withdrawn and eleven were submitted after the deadline. Applicants appear to generally support the spirit of the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice. The responses expressed concerns that the advice was too broad in its reach and did not take into account individual applications. Some applicant responses expressed concern that some elements of the advice seem to circumvent the bottom-up, multi-stakeholder model, while others proposed that the NGPC reject specific elements of the advice. A review of the comments has been provided to the NGPC under separate cover. The complete set of applicant responses can be reviewed at: http://newgtlds.icann.org/en/applicants/gac-advice-responses (http://newgtlds.icann.org/en/applicants/gac-advice-responses).

What significant materials did the Board review?

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

- GAC (Governmental Advisory Committee) (Governmental Advisory Committee) Beijing Communiqué: http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf (/en/news/correspondence/gac-to-board-18apr13-en.pdf) [PDF, 156 KB]
- Applicant responses to GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice: http://newgtlds.icann.org/en/applicants/gac-advice-responses (http://newgtlds.icann.org/en/applicants/gac-advice-responses)
- Applicant Guidebook, Module 3: http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf (http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf) [PDF, 261 KB]

What factors did the Board find to be significant?

The Beijing Communiqué generated significant interest from applicants and resulted in many comments. The NGPC considered the applicant comments, the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice transmitted in the Beijing Communiqué, and the procedures established in the AGB.

Are there positive or negative community impacts?

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The adoption of the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice as provided in the attached scorecard will assist with resolving the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice in manner that permits the greatest number of new gTLD (generic Top Level Domain) (generic Top Level Domain) applications to continue to move forward as soon as possible.

Are there fiscal impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) (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 (Domain Name System) (Domain Name System)?

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS (Domain Name System) (Domain Name System).

Is this either a defined policy process within ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations or ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s Organizational Administrative Function decision requiring public comment or not requiring public comment?

ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) posted the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice and officially notified applicants of the advice on 18 April 2013 http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en (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.

Published on 6 June 2013

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ANNEX 1 to NGPC Resolution No. 2013.06.04.NG01

NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué

4 June 2013

This document contains the NGPC's response to the GAC Beijing Communiqué issued 11 April 2013 <http://www.icann.org/en/news/correspondence/gac-to-board-11apr13-en> for the non-safeguard advice items in the GAC Register of Advice where the NGPC has adopted a score of "1A" to indicate that its position is consistent with the GAC advice as described in the Scorecard. Refer to the GAC Register of Advice for the full text of each item of advice in the GAC Beijing Communiqué <https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>.

1

GAC Register #	Summary of GAC Advice		NGPC Response
1. 2013-04-11-Obj-Africa (Communiqué §1.a.i.1)	The GAC Advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .africa (Application number 1-1165-42560)	1A	The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) The NGPC directs staff that pursuant to the GAC advice and Section 3.1 of the Applicant Guidebook, Application number 1-1165-42560 for .africa will not be approved. In accordance with the AGB the applicant may withdraw (pursuant to AGB § 1.5.1) or seek relief according to ICANN's accountability mechanisms (see ICANN Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.
2. 2013-04-11-Obj-GCC (Communiqué §1.a.i.2)	The GAC Advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .gcc (application number: 1-1936-2101)	1A	The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) The NGPC directs staff that pursuant to the GAC advice and Section 3.1 of the Applicant Guidebook, Application number 1-1936-2101 for .gcc will not be approved. In accordance with the AGB the applicant may withdraw (pursuant to AGB § 1.5.1) or seek relief according to ICANN's accountability mechanisms (see ICANN Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.

GAC Register #	Summary of GAC Advice		NGPC Response
3. 2103-04-11- Religious Terms (Communiqué §1.a.ii)	The GAC Advises the Board that with regard to Module 3.1 part II of the Applicant Guidebook, the GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.	1A	The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that there are concerns about a particular application 'dot-example,' the ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns." Pursuant to Section 3.1.ii of the AGB, the NGPC stands ready to enter into dialogue with the GAC on this matter. We look forward to liaising with the GAC as to how such dialogue should be conducted. (Note a community objection has been filed with the International Centre for Expertise of the ICC against .ISLAM and .HALAL. Because formal objections have been filed, these applications cannot move to the contracting phase until the objections are resolved.)

GAC Register #	Summary of GAC Advice		NGPC Response
4. 2013-04-11-gTLDStrings (Communiqué §1.c)	In addition to this safeguard advice, the GAC has identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban. Consequently, the GAC advises the ICANN Board to not proceed beyond Initial Evaluation with the following strings : .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .date, .spa, . yun, .thai, .zulu, .wine, .vin	1A	The NGPC accepts this advice. The AGB provides that "GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process)" (AGB § 3.1). At this time, ICANN will not proceed beyond initial evaluation of these identified strings. In other words, ICANN will allow evaluation and dispute resolution processes to go forward, but will not enter into registry agreements with applicants for the identified strings for now.

(Note: community objections have been filed with the International Centre for Expertise of the ICC against .PERSIANGULF, .AMAZON, and .PATAGONIA. The application for .ZULU was withdrawn.) |
| 5. 2013-04-11-CommunitySupport (Communiqué §1.e) | The GAC advises the Board that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information. | 1A | The NGPC accepts this advice. Criterion 4 for the Community Priority Evaluation process takes into account "community support and/or opposition to the application" in determining whether to award priority to a community application in a contention set. (Note however that if a contention set is not resolved by the applicants or through a community priority evaluation then ICANN will utilize an auction as the objective method for resolving the contention.) |

GAC Register #	Summary of GAC Advice		NGPC Response
6. 2013-04-11-PluralStrings (Communiqué §1.f)	The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion. Therefore the GAC advises the Board to reconsider its decision to allow singular and plural versions of the same strings.	1A	The NGPC accepts this advice and will consider whether to allow singular and plural versions of the same string.
7. 2013-04-11-RAA (Communiqué §2)	The GAC advises the ICANN Board that the 2013 Registrar Accreditation Agreement should be finalized before any new gTLD contracts are approved.	1A	The NGPC accepts this advice. The final draft of the RAA was posted for public comment on 22 April 2013. The new gTLD Registry Agreement was posted for public comment on 29 April 2013, and it requires all new gTLD registries to only use 2013 RAA registrars. The public comment reply period for the 2013 RAA closes on 4 June 2013. The NGPC intends to consider the 2013 RAA shortly thereafter.
8. 2013-04-11-WHOIS (Communiqué §3)	The GAC urges the ICANN Board to ensure that the GAC Principles Regarding gTLD WHOIS Services, approved in 2007, are duly taken into account by the recently established Directory Services Expert Working Group.	1A	The NGPC accepts this advice. The NGPC notes that staff has confirmed that the GAC Principles have been shared with the Expert Working Group.

GAC Register #	Summary of GAC Advice		NGPC Response
9. 2013-04-11-IOCRC (Communiqué §4)	The GAC advises the ICANN Board to amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.	1A	The NGPC accepts the GAC advice. The proposed final version of the Registry Agreement posted for public comment on 29 April 2013 includes protection for an indefinite duration for IOC/RCRC names. Specification 5 of this version of the Registry Agreement includes a list of names (provided by the IOC and RCRC Movement) that "shall be withheld from registration or allocated to Registry Operator at the second level within the TLD." This protection was added pursuant to a NGPC resolution to maintain these protections "until such time as a policy is adopted that may require further action" (204.11.26.NG03). The resolution recognized the GNSO's initiation of an expedited PDP. Until such time as the GNSO approves recommendations in the PDP and the Board adopts them, the NGPC's resolutions protecting IOC/RCRC names will remain in place. Should the GNSO submit any recommendations on this topic, the NGPC will confer with the GAC prior to taking action on any such recommendations.

Attachment 7.

Internet Corporation for
Assigned Names and Numbers

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Board Compensation Election (/en/groups/board/documents/ce)

Procedure Manual (/en/groups/board/documents/draft -procedure- manual- 09oct12-en)

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Approved Resolutions | Meeting of the New gTLD Program Committee

25 June 2013

1. **Consent Agenda**
   a. Approval of NGPC Meeting Minutes

2. **Main Agenda**
   a. ALAC (At-Large Advisory Committee) (At-Large Advisory Committee) Statement on TMCH/Variants
   b. Safeguards Applicable to all New gTLDs

   Rationale for Resolutions 2013.06.25.NG02 – 2013.06.25.NG03

   c. Category 2 Safeguard Advice re Restricted and Exclusive Registry Access

   Rationale for Resolutions 2013.06.25.NG04 – 2013.06.25.06

   d. Singular & Plural Versions of the Same String as a TLD (Top Level Domain) (Top Level Domain)

   Rationale for Resolution 2013.06.25.NG07

   e. IGO (Intergovernmental Organization) (Intergovernmental Organization) Protection
   f. AOB

8

1.

   Consent Agenda:

   a.

   Approval of NGPC Meeting Minutes

   Resolved (2013.06.25.NG01), the Board approves the minutes of the 4 June 2013 New gTLD (generic Top Level Domain) (generic Top Level Domain) Program Committee Meeting.

2.

   Main Agenda:

   a.

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http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm   3/07/2013

ALAC (At-Large Advisory Committee) (At-Large Advisory Committee) Statement on TMCH/Variants

No resolution taken.

b.

Safeguards Applicable to all New gTLDs

Whereas, the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) initiated a public comment forum to solicit the community's input on how the NGPC should address GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice regarding safeguards applicable to broad categories of New gTLD (generic Top Level Domain) (generic Top Level Domain) strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm (/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 (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice on the New gTLD (generic Top Level Domain) (generic Top Level Domain) 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 (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice in the Beijing Communiqué on the New gTLD (generic Top Level Domain) (generic Top Level Domain) 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 (/en/groups/board/documents/resolutions-new-gtld-annex-i-agenda-2b-25jun13-en.pdf) [PDF, 72 KB] attached to this Resolution, is consistent with the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice regarding Safeguards Applicable to All Strings;

Whereas, the NGPC proposes revisions to the final draft of the New gTLD (generic Top Level Domain) (generic Top Level Domain) Registry Agreement <http://www.icann.org/en/news/public-comment/base-agreement-29apr13-en.htm (/en/news/public-comment/base-agreement-29apr13-en.htm)> as presented in Annex II (/en/groups/board/documents/resolutions-new-gtld-annex-ii-agenda-2b-25jun13-en.pdf) [PDF, 64 KB] attached to this Resolution to implement certain elements of the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Board's authority for any and all issues that may arise relating to the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program.

Resolved (2013.06.25.NG02), the NGPC adopts the "NGPC Proposal for Implementation of GAC (Governmental Advisory Committee) (Governmental Advisory Committee) Safeguards Applicable to All New gTLDs" (19 June 2013), attached as Annex I (/en/groups/board/documents/resolutions-new-gtld-annex-i-agenda-2b-25jun13-

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en.pdf) [PDF, 72 KB] to this Resolution, to accept the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (generic Top Level Domain) (generic Top Level Domain) Registry Agreement, as presented in Annex II (/en/groups/board/documents/resolutions-new-gtld-annex-ii-agenda-2b-25jun13-en.pdf) [PDF, 64 KB] attached to this Resolution, to implement certain elements of the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice regarding Safeguards Applicable to All Strings.

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 (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Bylaws http://www.icann.org/en/about/governance/bylaws#XI (/en/about/governance/bylaws#XI) permit the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) issued advice to the Board on the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program through its Beijing Communiqué dated 11 April 2013. The ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Bylaws require the Board to take into account the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (Governmental Advisory Committee) (Governmental Advisory Committee) advice, it must inform the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) and state the reasons why it decided not to follow the advice. The Board and the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) advice was not followed.

What is the proposal being considered?

The NGPC is being asked to consider accepting a discrete grouping of the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice as described in the attached "NGPC Proposal for Implementation of GAC (Governmental Advisory Committee) (Governmental Advisory Committee) Safeguards Applicable to All New gTLDs" (Annex I (/en/groups/board/documents/resolutions-new-gtld-annex-i-agenda-2b-25jun13-en.pdf) [PDF, 72 KB]; 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 (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) initiated a public comment forum to solicit input on how the NGPC should address GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice regarding safeguards applicable to broad categories of new gTLD (generic Top Level Domain) (generic Top Level Domain) strings http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm (/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 (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) advice not being considered at this time in the attached annexes.

What concerns or issues were raised by the community?

ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) received several responses from the community during the course of the public comment forum on broad categories of GAC (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) should not dictate the specific procedures for implementation. Supporters also indicated that some of these safeguards are already inherent in the 2013 RAA (Registrar Accreditation Agreement) (Registrar Accreditation Agreement).

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

The posting of the Be jing Communiqué to solicit public comment on the broad categories of the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'s safeguard advice demonstrates ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'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 (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice as a step forward as the community continues to respond to the needs of registrants, the community and all stakeholders.

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http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm   3/07/2013

The NGPC also took note of the comments from the community in opposition to ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) 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 (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice on the WHOIS verification checks by having ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers), instead of registry operators, implement the checks. ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) 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 (generic Top Level Domain) (generic Top Level Domain) data registration in gTLD (generic Top Level Domain) (generic Top Level Domain) registry and registrar services, explore using automated tools, and forward potentially inaccurate records to gTLD (generic Top Level Domain) (generic Top Level Domain) 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 (/en/groups/board/documents/resolutions-08nov12-en.htm)>. Given these ongoing activities, the NGPC determined that ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) (instead of Registry Operators) is well positioned to implement the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'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 distr buting 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 (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice. The NGPC's response directs ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) to solicit community participation (including conferring with the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)) in a task force or through a policy development process in the GNSO (Generic Names Supporting Organization) (Generic Names Supporting Organization), 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 (Governmental Advisory Committee) (Governmental Advisory Committee)'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.

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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 (Registrar Accreditation Agreement) (Registrar Accreditation Agreement) and by the WHOIS Data Problem Report system. The GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) advice, which was developed by the ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) advice. The procedure says that the consultation process should conclude within six months, but that the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (/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 (Governmental Advisory Committee) (Governmental Advisory Committee) Be jing Communiqué: http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf (/en/news/correspondence/gac-to-board-18apr13-en.pdf) [PDF, 156 KB]

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

Report of Public Comments, New gTLD (generic Top Level Domain) (generic Top Level Domain) Board Committee Consideration of GAC (Governmental Advisory Committee) (Governmental Advisory Committee) Safeguard Advice dated 18 June 2013: http://www.icann.org/en/news/public-comment/report-comments-gac-safeguard-advice-19jun13-en (/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 (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice transmitted in the Beijing Communiqué, and the procedures established in the AGB for addressing GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice to the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program.

Are there positive or negative community impacts?

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The adoption of the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice as provided in the attached annexes will assist with resolving the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice in manner that permits the greatest number of new gTLD (generic Top Level Domain) (generic Top Level Domain) applications to continue to move forward as soon as possible.

Are there fiscal impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) (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 (Domain Name System) (Domain Name System)?

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS (Domain Name System) (Domain Name System).

Is this either a defined policy process within ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations or ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s Organizational Administrative Function decision requiring public comment or not requiring public comment?

On 23 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) initiated a public comment forum to solicit input on how the NGPC should address GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice regarding safeguards applicable to broad categories of new gTLD (generic Top Level Domain) (generic Top Level Domain) strings http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm (/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm). The public comment forum closed on 4 June 2013.

c.

Category 2 Safeguard Advice re Restricted and Exclusive Registry Access

Whereas, the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) Register of Advice as 2013-04-11-Safeguards-Categories-2 (the "Category 2 Safeguard Advice");

Whereas, on 23 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) initiated a public comment forum to solicit the community's input on how the NGPC should address GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice regarding safeguards applicable to broad categories of New gTLD (generic Top Level Domain) (generic Top Level Domain) strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm (/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 (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice on the New gTLD (generic Top Level Domain) (generic Top Level Domain) 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 (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice in the Beijing Communiqué on the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program;

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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 (generic Top Level Domain) (generic Top Level Domain) Registry Agreement <http://www.icann.org/en/news/public-comment/base-agreement-29apr13-en.htm (/en/news/public-comment/base-agreement-29apr13-en.htm)> as presented in Annex I (/en/groups/board/documents/resolutions-new-gtld-annex-i-agenda-2c-25jun13-en.pdf) [PDF, 52 KB] 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 (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Board's authority for any and all issues that may arise relating to the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program.

Resolved (2013.06.25.NG04), the NGPC adopts the "Proposed PIC Spec Implementation of GAC (Governmental Advisory Committee) (Governmental Advisory Committee) Category 2 Safeguards" (20 June 2013), attached as Annex I (/en/groups/board/documents/resolutions-new-gtld-annex-i-agenda-2c-25jun13-en.pdf) [PDF, 52 KB] to this Resolution, to accept and implement the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (generic Top Level Domain) (generic Top Level Domain) Registry Agreement, as presented in Annex I (/en/groups/board/documents/resolutions-new-gtld-annex-i-agenda-2c-25jun13-en.pdf) [PDF, 52 KB] attached to this Resolution, to implement the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (Governmental Advisory Committee) (Governmental Advisory Committee).

Rationale for Resolutions 2013.06.25.NG04 – 2013.06.25.06

Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Bylaws http://www.icann.org/en/about/governance/bylaws#XI (/en/about/governance/bylaws#XI) permit the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) issued advice to the Board on the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program through its Beijing Communiqué dated 11 April 2013. The ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Bylaws require the Board to take into account the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (Governmental Advisory Committee) (Governmental Advisory Committee) advice, it must inform the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) and state the reasons why it decided not to follow the advice. The Board and the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (generic Top Level Domain) (generic Top Level Domain) 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 (generic Top Level Domain) (generic Top Level Domain) Registry Agreement § 2.9(c) http://newgtlds.icann.org/en/applicants/agb/base-agreement-specs-29apr13-en.pdf (http://newgtlds.icann.org/en/applicants/agb/base-agreement-specs-29apr13-en.pdf) [PDF, 600 KB]]

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 (Governmental Advisory Committee) (Governmental Advisory Committee). 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 (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) initiated a public comment forum to solicit input on how the NGPC should address GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice regarding safeguards applicable to broad categories of new gTLD (generic Top Level Domain) (generic Top Level Domain) strings http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm (/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 (Governmental Advisory Committee) (Governmental Advisory Committee)'s Category 2 Safeguard Advice.

What concerns or issues were raised by the community?

ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) received several responses from the community during the course of the public comment forum on broad categories of GAC (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (Governmental Advisory Committee) (Governmental Advisory Committee)'s safeguard advice. This demonstrates ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'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 (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (Top Level Domain) (Top Level Domain) should be operated in an open manner. The NGPC understands the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) supports. In light of the comments raised, ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) included new language in the PIC Specification to accept and respond to the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice regarding restricted access in a way that balances the concerns raised in the public comments with the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice for restricted TLDs. The revised PIC Specification establishes what it means for a TLD (Top Level Domain) (Top Level Domain) to be operated consistent with principals of openness and non-discrimination. Specifically, by establishing, publishing and adhering to clear registration policies, the TLD (Top Level Domain) (Top Level Domain) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) and other members of the community have expressed concerns regarding "closed generic" TLDs. In February 2013, the NGPC directed ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) staff to initiate a public comment period on the issue of closed generic TLD (Top Level Domain) (Top Level Domain) 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 (/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 (Governmental Advisory Committee) (Governmental Advisory Committee) advice, ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) is proposing a way for a large number of strings to move forward while the community continues to work through the issue.

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While respecting the community's comments, the NGPC revised the PIC Specification to address the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (generic Top Level Domain) (generic Top Level Domain) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (/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 (Governmental Advisory Committee) (Governmental Advisory Committee) Be jing Communiqué: http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf (/en/news/correspondence/gac-to-board-18apr13-en.pdf) [PDF, 156 KB]

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

Report of Public Comments, New gTLD (generic Top Level Domain) (generic Top Level Domain) Board Committee Consideration of GAC (Governmental Advisory Committee) (Governmental Advisory Committee) Safeguard Advice dated 18 June 2013: http://www.icann.org/en/news/public-comment/report-comments-gac-safeguard-advice-19jun13-en (/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 (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice transmitted in the Beijing Communiqué, and the procedures established in the AGB for addressing GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice to the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program.

Are there positive or negative community impacts?

The adoption of the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice as provided in the attached Annex I (/en/groups/board/documents/resolutions-new-gtld-annex-i-agenda-2c-25jun13-en.pdf) [PDF, 52 KB] will assist with resolving the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice in a manner that permits the greatest number of new gTLD (generic Top Level Domain) (generic Top Level Domain) 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 (Governmental Advisory Committee) (Governmental Advisory Committee).

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http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm   3/07/2013

Are there fiscal impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) (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 (Domain Name System) (Domain Name System)?

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS (Domain Name System) (Domain Name System).

Is this either a defined policy process within ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations or ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s Organizational Administrative Function decision requiring public comment or not requiring public comment?

On 23 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) initiated a public comment forum to solicit input on how the NGPC should address GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice regarding safeguards applicable to broad categories of new gTLD (generic Top Level Domain) (generic Top Level Domain) strings http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm (/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 (Top Level Domain) (Top Level Domain)

Whereas, the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) 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 (Governmental Advisory Committee) (Governmental Advisory Committee)'s advice on the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program, transmitted to the Board through its Beijing Communiqué;

Whereas, on 4 June 2013, the NGPC took action accepting GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice identified in the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Board's authority for any and all issues that may arise relating to the New gTLD (generic Top Level Domain) (generic Top Level Domain) 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.

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http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm   3/07/2013

Rationale for Resolution 2013.06.25.NG07

Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Bylaws (http://www.icann.org/en/about/governance/bylaws#XI (/en/about/governance/bylaws#XI)) permit the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) issued advice to the Board on the New gTLD (generic Top Level Domain) (generic Top Level Domain) Program through its Beijing Communiqué dated 11 April 2013. The ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Bylaws require the Board to take into account the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (Governmental Advisory Committee) (Governmental Advisory Committee) advice, it must inform the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) and state the reasons why it decided not to follow the advice. The Board and the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) advice was not followed.

In its Beijing Communiqué, the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) 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 (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (generic Top Level Domain) (generic Top Level Domain) 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 (generic Top Level Domain) (generic Top Level Domain) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) in its Beijing Communiqué.

Which stakeholders or others were consulted?

On 18 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) posted the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice and officially notified applicants of the advice, http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en (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 (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 (Governmental Advisory Committee) (Governmental Advisory Committee) advice. Most were against changing the existing policy but with one identified in support of the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'s concern. The supporting applicant has filed a string confusion objection. Those not supporting the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (http://newgtlds.icann.org/en/applicants/gac-advice-responses)>.

What concerns or issues were raised by the community?

In September 2007, the GNSO (Generic Names Supporting Organization) (Generic Names Supporting Organization) issued a set of recommendations (approved by the ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Board in June 2008) to implement a process to allow for the introduction of new gTLDs. These include a recommendation that new gTLD (generic Top Level Domain) (generic Top Level Domain) strings must not be confusingly similar to an existing top-level domain or a reserved name. The GNSO (Generic Names Supporting Organization) (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) posted the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'s Beijing Communiqué and officially notified applicants of the advice, <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en (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 (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) and New gTLD (generic Top Level Domain) (generic Top Level Domain) applicant communities have raised concerns to the ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) Board regarding the GAC (Governmental Advisory Committee) (Governmental Advisory Committee)'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 (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) Beijing Communiqué: http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf (/en/news/correspondence/gac-to-board-18apr13-en.pdf) [PDF, 156 KB]

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- Applicant responses to GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice: http://newgtlds.icann.org/en/applicants/gac-advice-responses (http://newgtlds.icann.org/en/applicants/gac-advice-responses)
- String Similarity Contention Sets <http://www.icann.org/en/news/announcements/announcement-26feb13-en.htm (/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:

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   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 (Domain Name System) (Domain Name System) 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 (generic Top Level Domain) (generic Top Level Domain) 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 (Domain Name System) (Domain Name System) 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 (generic Top Level Domain) (generic Top Level Domain) applicants had standing to file a string confusion objection against another application.

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   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 (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) with the creation of an algorithm that helped automate the process for objectively assessing similarity among proposed and existing TLD (Top Level Domain) (Top Level Domain) 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.

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   The NGPC reflected on existing string similarity in the DNS (Domain Name System) (Domain Name System) and considered the positive and negative impacts. The NGPC observed that numerous examples of similar strings, including singulars and

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http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm   3/07/2013

plurals exist within the DNS (Domain Name System) (Domain Name System) 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 (Domain Name System) (Domain Name System) resulting fro 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 poss ble 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 l kelihood of confusion. This panel utilized its independent expertise, including in linguistics, to perform the review against the criteria in the Applicant Guidebook. ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) 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 (generic Top Level Domain) (generic Top Level Domain) operator) or an existing contention set would be modified to include the application subject to the objection (for an objection by another gTLD (generic Top Level Domain) (generic Top Level Domain) applicant).

■

The NGPC took note of the objections filed during the objection period, which closed on 13 March 2013. All new gTLD (generic Top Level Domain) (generic Top Level Domain) 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 (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.

http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm   3/07/2013

The string similarity review is the implementation of the GNSO (Generic Names Supporting Organization) (Generic Names Supporting Organization)'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 (Domain Name System) (Domain Name System) 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 (Governmental Advisory Committee) (Governmental Advisory Committee) advice in manner that permits the greatest number of new gTLD (generic Top Level Domain) (generic Top Level Domain) applications to continue to move forward as soon as possible.

Are there fiscal impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) (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 (Domain Name System) (Domain Name System)?

The security, stability and resiliency issues relating to the DNS (Domain Name System) (Domain Name System) 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 (Domain Name System) (Domain Name System).

Is this either a defined policy process within ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations or ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s Organizational Administrative Function decision requiring public comment or not requiring public comment?

ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) posted the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice and officially notified applicants of the advice on 18 April 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en (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 (generic Top Level Domain) (generic Top Level Domain) Program.

e.

IGO (Intergovernmental Organization) (Intergovernmental Organization) Protection

No resolution taken.

f.

AOB

No resolution taken.

Published on 27 June 2013

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(/en/news/rss)**

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Attachment 8.

 Homepage

Root Zone Database

The Root Zone Database represents the delegation details of top-level domains, including gTLDs such as .com, and country-code TLDs such as .uk. As the manager of the DNS root zone, IANA is responsible for coordinating these delegations in accordance with its policies and procedures.

Much of this data is also available via the WHOIS protocol at whois.iana.org.

Domain	Type	Sponsoring Organisa ion
.ac	country-code	Network Information Center (AC Domain Registry) c/o Cable and Wireless (Ascension Island)
.ad	country-code	Andorra Telecom
.ae	country-code	Telecommunication Regulatory Authority (TRA)
.aero	sponsored	Societe Internationale de Telecommunications Aeronautique (SITA INC USA)
.af	country-code	Ministry of Communications and IT
.ag	country-code	UHSA School of Medicine
.ai	country-code	Government of Anguilla
.al	country-code	Electronic and Postal Communications Authority - AKEP
.am	country-code	Internet Society
.an	country-code	University of The Netherlands Antilles
.ao	country-code	Faculdade de Engenharia da Universidade Agostinho Neto
.aq	country-code	Mott and Associates
.ar	country-code	Presidencia de la Nación – Secretaría Legal y Técnica
.arpa	infrastructure	Internet Assigned Numbers Authority
.as	country-code	AS Domain Registry
.asia	sponsored	DotAsia Organisation Ltd.
.at	country-code	nic.at GmbH
.au	country-code	.au Domain Administration (auDA)
.aw	country-code	SETAR
.ax	country-code	Ålands landskapsregering
.az	country-code	IntraNS
.ba	country-code	Universtiy Telinformatic Centre (UTIC)
.bb	country-code	Government of Barbados Ministry of Economic Affairs and Development Telecommunications Unit
.bd	country-code	Ministry of Post & Telecommunications Bangladesh Secretariat
.be	country-code	DNS BE vzw/asbl
.bf	country-code	ARCE-AutoritÈ de RÈgulation des Communications Electroniques
.bg	country-code	Register.BG
.bh	country-code	Telecommunications Regulatory Authority (TRA)
.bi	country-code	Centre National de l'Informatique
.biz	generic-restricted	NeuStar, Inc.
.bj	country-code	Benin Telecoms S.A.
.bl	country-code	Not assigned
.bm	country-code	Registry General Ministry of Labour and Immigration
.bn	country-code	Telekom Brunei Berhad
.bo	country-code	Agencia para el Desarrollo de la Información de la Sociedad en Bolivia
.bq	country-code	Not assigned
.br	country-code	Comite Gestor da Internet no Brasil
.bs	country-code	The College of the Bahamas
.bt	country-code	Ministry of Information and Communications
.bv	country-code	UNINETT Norid A/S
.bw	country-code	University of Botswana
.by	country-code	Reliable Software Inc.
.bz	country-code	University of Belize
.ca	country-code	Canadian Internet Registration Authority (CIRA) Autorite Canadienne pour les Enregistrements Internet (ACEI)
.cat	sponsored	Fundacio puntCAT
.cc	country-code	eNIC Cocos (Keeling) Islands Pty. Ltd. d/b/a Island Internet Services
.cd	country-code	Office Congolais des Postes et Télécommunications - OCPT
.cf	country-code	Societe Centrafricaine de Telecommunications (SOCATEL)
.cg	country-code	ONPT Congo and Interpoint Switzerland
.ch	country-code	SWITCH The Swiss Education & Research Network
.ci	country-code	INP-HB Institut National Polytechnique Felix Houphouet Boigny
.ck	country-code	Telecom Cook Islands Ltd.
.cl	country-code	NIC Chile (University of Chile)
.cm	country-code	Cameroon Telecommunica ions (CAMTEL)
.cn	country-code	Computer Network Information Center, Chinese Academy of Sciences
.co	country-code	.CO Internet S.A.S.
.com	generic	VeriSign Global Registry Services
.coop	sponsored	DotCooperation LLC
.cr	country-code	National Academy of Sciences Academia Nacional de Ciencias
.cu	country-code	CENIAInternet Industria y San Jose Capitolio Nacional
.cv	country-code	Agência Nacional das Comunicações (ANAC)
.cw	country-code	University of the Netherlands Antilles
.cx	country-code	Christmas Island Internet Administration Limited
.cy	country-code	University of Cyprus
.cz	country-code	CZ.NIC, z s.p.o
.de	country-code	DENIC eG
.dj	country-code	Djibouti Telecom S.A
.dk	country-code	Dansk Internet Forum
.dm	country-code	DotDM Corporation
.do	country-code	Pontificia Universidad Catolica Madre y Maestra Recinto Santo Tomas de Aquino
.dz	country-code	CERIST
.ec	country-code	NIC.EC (NICEC) S.A.
.edu	sponsored	EDUCAUSE
.ee	country-code	National Institute of Chemical Physics and Biophysics

Domain	Type	Sponsoring Organisation
.eg	country-code	Egyptian Universities Network (EUN) Supreme Council of Universities
.eh	country-code	Not assigned
.er	country-code	Eritrea Telecommunication Services Corporation (EriTel)
.es	country-code	Red.es
.et	country-code	Ethio telecom
.eu	country-code	EURid vzw/asbl
.fi	country-code	Finnish Communications Regulatory Authority
.fj	country-code	The University of the South Pacific IT Services
.fk	country-code	Falkland Islands Government
.fm	country-code	FSM Telecommunications Corporation
.fo	country-code	FO Council
.fr	country-code	AFNIC (NIC France) - Immeuble International
.ga	country-code	Agence Nationale des Infrastructures Numériques et des Fréquences (ANINF)
.gb	country-code	Reserved Domain - IANA
.gd	country-code	The National Telecommunications Regulatory Commission (NTRC)
.ge	country-code	Caucasus Online
.gf	country-code	Net Plus
.gg	country-code	Island Networks Ltd.
.gh	country-code	Network Computer Systems Limited
.gi	country-code	Sapphire Networks
.gl	country-code	TELE Greenland A/S
.gm	country-code	GM-NIC
.gn	country-code	Centre National des Sciences Halieutiques de Boussoura
.gov	sponsored	General Services Administration Attn: QTDC, 2E08 (.gov Domain Registration)
.gp	country-code	Networking Technologies Group
.gq	country-code	GETESA
.gr	country-code	ICS-FORTH GR
.gs	country-code	Government of South Georgia and South Sandwich Islands (GSGSSI)
.gt	country-code	Universidad del Valle de Guatemala
.gu	country-code	University of Guam Computer Center
.gw	country-code	Fundação IT & MEDIA Universidade de Bissao
.gy	country-code	University of Guyana
.hk	country-code	Hong Kong Internet Registration Corporation Ltd.
.hm	country-code	HM Domain Registry
.hn	country-code	Red de Desarrollo Sostenible Honduras
.hr	country-code	CARNet - Croatian Academic and Research Network
.ht	country-code	Consortium FDS/RDDH
.hu	country-code	Council of Hungarian Internet Providers (CHIP)
.id	country-code	IDNIC-PPAU Mikroelektronika
.ie	country-code	University College Dublin Computing Services Computer Centre
.il	country-code	Internet Society of Israel
.im	country-code	Isle of Man Government
.in	country-code	National Internet Exchange of India
.info	generic	Afilias Limited
.int	sponsored	Internet Assigned Numbers Authority
.io	country-code	IO Top Level Domain Registry Cable and Wireless
.iq	country-code	Communications and Media Commission (CMC)
.ir	country-code	Institute for Research in Fundamental Sciences
.is	country-code	ISNIC - Internet Iceland ltd.
.it	country-code	IIT - CNR
.je	country-code	Island Networks (Jersey) Ltd.
.jm	country-code	University of West Indies
.jo	country-code	National Information Technology Center (NITC)
.jobs	sponsored	Employ Media LLC
.jp	country-code	Japan Registry Services Co., Ltd.
.ke	country-code	Kenya Network Information Center (KeNIC)
.kg	country-code	AsiaInfo Telecommunication Enterprise
.kh	country-code	Ministry of Post and Telecommunications
.ki	country-code	Ministry of Communications, Transport, and Tourism Development
.km	country-code	Comores Telecom
.kn	country-code	Ministry of Finance, Sustainable Development Information & Technology
.kp	country-code	Star Joint Venture Company
.kr	country-code	Korea Internet & Security Agency (KISA)
.kw	country-code	Ministry of Communications
.ky	country-code	The Information and Communications Technology Authority
.kz	country-code	Association of IT Companies of Kazakhstan
.la	country-code	Lao National Internet Committee (LANIC), Ministry of Posts and Telecommunications
.lb	country-code	American University of Beirut Computing and Networking Services
.lc	country-code	University of Puerto Rico
.li	country-code	Universitaet Liechtenstein
.lk	country-code	Council for Information Technology LK Domain Registrar
.lr	country-code	Data Technology Solutions, Inc.
.ls	country-code	National University of Lesotho
.lt	country-code	Kaunas University of Technology Information Technology Development Institute
.lu	country-code	RESTENA
.lv	country-code	University of Latvia Institute of Mathematics and Computer Science Department of Network Solutions (DNS)
.ly	country-code	General Post and Telecommunication Company
.ma	country-code	Agence Nationale de Réglementation des Télécommunications (ANRT)
.mc	country-code	Gouvernement de Monaco Direction des Communications Electroniques
.md	country-code	MoldData S.E.
.me	country-code	Government of Montenegro
.mf	country-code	Not assigned
.mg	country-code	NIC-MG (Network Information Center Madagascar)
.mh	country-code	Cabinet Office
.mil	sponsored	DoD Network Information Center
.mk	country-code	Ministry of Foreign Affairs
.ml	country-code	Agence des Technologies de l'Information et de la Communication
.mm	country-code	Ministry of Communications, Posts & Telegraphs
.mn	country-code	Datacom Co., Ltd.
.mo	country-code	Bureau of Telecommunications Regulation (DSRT)

Domain	Type	Sponsoring Organisation
.mobi	sponsored	Afilias Technologies Limited dba dotMobi
.mp	country-code	Saipan Datacom, Inc.
.mq	country-code	MEDIASERV
.mr	country-code	University of Nouakchott
.ms	country-code	MNI Networks Ltd.
.mt	country-code	NIC (Malta)
.mu	country-code	Internet Direct Ltd
.museum	sponsored	Museum Domain Management Association
.mv	country-code	Dhiraagu Pvt. Ltd. (DHIVEHINET)
.mw	country-code	Malawi Sustainable Development Network Programme (Malawi SDNP)
.mx	country-code	NIC-Mexico ITESM - Campus Monterrey
.my	country-code	MYNIC Berhad
.mz	country-code	Centro de Informatica de Universidade Eduardo Mondlane
.na	country-code	Namibian Network Information Center
.name	generic-restricted	VeriSign Information Services, Inc.
.nc	country-code	Office des Postes et Telecommunications
.ne	country-code	SONITEL
.net	generic	VeriSign Global Registry Services
.nf	country-code	Norfolk Island Data Services
.ng	country-code	Nigeria Internet Registration Association
.ni	country-code	Universidad Nacional del Ingernieria Centro de Computo
.nl	country-code	SIDN (Stichting Internet Domeinregistratie Nederland)
.no	country-code	UNINETT Norid A/S
.np	country-code	Mercantile Communications Pvt. Ltd.
.nr	country-code	CENPAC NET
.nu	country-code	The IUSN Foundation
.nz	country-code	InternetNZ
.om	country-code	Telecommunications Regulatory Authority (TRA)
.org	generic	Public Interest Registry (PIR)
.pa	country-code	Universidad Tecnologica de Panama
.pe	country-code	Red Cientifica Peruana
.pf	country-code	Gouvernement de la Polynésie française
.pg	country-code	PNG DNS Administration Vice Chancellors Office The Papua New Guinea University of Technology
.ph	country-code	PH Domain Foundation
.pk	country-code	PKNIC
.pl	country-code	Research and Academic Computer Network
.pm	country-code	AFNIC (NIC France) - Immeuble International
.pn	country-code	Pitcairn Island Administration
.post	sponsored	Universal Postal Union
.pr	country-code	Gauss Research Laboratory Inc.
.pro	generic-restricted	Registry Services Corporation dba RegistryPro
.ps	country-code	Ministry Of Telecommunications & Information Technology, Government Computer Center.
.pt	country-code	Fundação para a Computação Científica Nacional
.pw	country-code	Micronesia Investment and Development Corporation
.py	country-code	NIC-PY
.qa	country-code	The Supreme Council of Information and Communication Technology (ictQATAR)
.re	country-code	AFNIC (NIC France) - Immeuble International
.ro	country-code	National Institute for R&D in Informatics
.rs	country-code	Serbian National Register of Internet Domain Names (RNIDS)
.ru	country-code	Coordination Center for TLD RU
.rw	country-code	Rwanda Information Communication and Technology Association (RICTA)
.sa	country-code	Communications and Information Technology Commission
.sb	country-code	Solomon Telekom Company Limited
.sc	country-code	VCS Pty Ltd
.sd	country-code	Sudan Internet Society
.se	country-code	The Internet Infrastructure Foundation
.sg	country-code	Singapore Network Information Centre (SGNIC) Pte Ltd
.sh	country-code	Government of St. Helena
.si	country-code	Academic and Research Network of Slovenia (ARNES)
.sj	country-code	UNINETT Norid A/S
.sk	country-code	SK-NIC, a.s.
.sl	country-code	Sierratel
.sm	country-code	Telecom Italia San Marino S.p.A.
.sn	country-code	Universite Cheikh Anta Diop NIC Senegal
.so	country-code	Ministry of Post and Telecommunications
.sr	country-code	Telesur
.ss	country-code	Not assigned
.st	country-code	Tecnisys
.su	country-code	Russian Institute for Development of Public Networks (ROSNIIROS)
.sv	country-code	SVNet
.sx	country-code	SX Registry SA B.V.
.sy	country-code	National Agency for Network Services (NANS)
.sz	country-code	University of Swaziland Department of Computer Science
.tc	country-code	Melrex TC
.td	country-code	Société des télécommunications du Tchad (SOTEL TCHAD)
.tel	sponsored	Telnic Ltd.
.tf	country-code	AFNIC (NIC France) - Immeuble International
.tg	country-code	Cafe Informatique et Telecommunications
.th	country-code	Thai Network Information Center Foundation
.tj	country-code	Information Technology Center
.tk	country-code	Telecommunication Tokelau Corporation (Teletok)
.tl	country-code	Ministry of Infrastructure Information and Technology Division
.tm	country-code	TM Domain Registry Ltd
.tn	country-code	Agence Tunisienne d'Internet
.to	country-code	Government of the Kingdom of Tonga H.R.H. Crown Prince Tupouto'a c/o Consulate of Tonga
.tp	country-code	-
.tr	country-code	Middle East Technical University Department of Computer Engineering
.travel	sponsored	Tralliance Registry Management Company, LLC.
.tt	country-code	University of the West Indies Faculty of Engineering
.tv	country-code	Ministry of Finance and Tourism

Domain	Type	Sponsoring Organisation
.tw	country-code	Taiwan Network Information Center (TWNIC)
.tz	country-code	Tanzania Network Information Centre (tzNIC)
.ua	country-code	Communication Systems Ltd
.ug	country-code	Uganda Online Ltd.
.uk	country-code	Nominet UK
.um	country-code	Not assigned
.us	country-code	NeuStar, Inc.
.uy	country-code	SeCIU - Universidad de la Republica
.uz	country-code	Computerization and Information Technologies Developing Center UZINFOCOM
.va	country-code	Holy See Secretariat of State Department of Telecommunications
.vc	country-code	Ministry of Telecommunications, Science, Technology and Industry
.ve	country-code	Comisión Nacional de Telecomunicaciones (CONATEL)
.vg	country-code	Pinebrook Developments Ltd
.vi	country-code	Virgin Islands Public Telcommunications System c/o COBEX Internet Services
.vn	country-code	Ministry of Information and Communications of Socialist Republic of Viet Nam
.vu	country-code	Telecom Vanuatu Limited
.wf	country-code	AFNIC (NIC France) - Immeuble International
.ws	country-code	Government of Samoa Ministry of Foreign Affairs & Trade
.测试	test	Internet Assigned Numbers Authority
.परीक्षा	test	Internet Assigned Numbers Authority
.한국	country-code	KISA (Korea Internet & Security Agency)
.ভারত	country-code	National Internet Exchange of India
.বাংলা	country-code	Not assigned
.испытание	test	Internet Assigned Numbers Authority
.қаз	country-code	Association of IT Companies of Kazakhstan
.срб	country-code	Serbian National Register of Internet Domain Names (RNIDS)
.테스트	test	Internet Assigned Numbers Authority
.சிங்கப்பூர்	country-code	Singapore Network Information Centre (SGNIC) Pte Ltd
.பரிட்சை	test	Internet Assigned Numbers Authority
.中国	country-code	China Internet Network Information Center
.中國	country-code	China Internet Network Information Center
.భారత్	country-code	National Internet Exchange of India
.ලංකා	country-code	LK Domain Registry
.測試	test	Internet Assigned Numbers Authority
.ભારત	country-code	National Internet Exchange of India
.भारत	country-code	National Internet Exchange of India
.آزمایشی	test	Internet Assigned Numbers Authority
.பரிட்சை	test	Internet Assigned Numbers Authority
.укр	country-code	Ukrainian Network Information Centre (UANIC), Inc.
.香港	country-code	Hong Kong Internet Registration Corporation Ltd.
.δοκιμή	test	Internet Assigned Numbers Authority
.إختبار	test	Internet Assigned Numbers Authority
.台湾	country-code	Taiwan Network Information Center (TWNIC)
.台灣	country-code	Taiwan Network Information Center (TWNIC)
.мон	country-code	Not assigned
.الجزائر	country-code	CERIST
.عمان	country-code	Telecommunications Regulatory Authority (TRA)
.ایران	country-code	Not assigned
.امارات	country-code	Telecommunications Regulatory Authority (TRA)
.پاکستان	country-code	Not assigned
.الاردن	country-code	National Information Technology Center (NITC)
.بھارت	country-code	National Internet Exchange of India
.المغرب	country-code	Agence Nationale de Réglementation des Télécommunications (ANRT)
.السعودية	country-code	Communications and Information Technology Commission
.سودان	country-code	Not assigned
.ملیسیا	country-code	MYNIC Berhad
.ລາວ	country-code	Not assigned
.ไทย	country-code	Thai Network Information Center Foundation
.سورية	country-code	National Agency for Network Services (NANS)
.рф	country-code	Coordination Center for TLD RU
.تونس	country-code	Agence Tunisienne d'Internet
.ভারত	country-code	National Internet Exchange of India
.مصر	country-code	National Telecommunication Regulatory Authority - NTRA
.قطر	country-code	Supreme Council for Communications and Information Technology (ictQATAR)
.இலங்கை	country-code	LK Domain Registry
.இந்தியா	country-code	National Internet Exchange of India
.新加坡	country-code	Singapore Network Information Centre (SGNIC) Pte Ltd
.فلسطين	country-code	Ministry of Telecom & Information Technology (MTIT)
.テスト	test	Internet Assigned Numbers Authority
.xxx	sponsored	ICM Registry LLC
.ye	country-code	TeleYemen
.yt	country-code	AFNIC (NIC France) - Immeuble International
.za	country-code	ZA Domain Name Authority
.zm	country-code	ZAMNET Communication Systems Ltd.
.zw	country-code	Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ)

crowell moring

Our ref :   fpe/mne/107646.0000001
Your ref :

28 March 2013

To the attention of Mr. Steve Crocker
Chair, ICANN Board
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292
By regular mail and by e-mail: reconsideration@icann.org

Request for Reconsideration the Decisions of February 26, 2013 Materially Affecting Booking.com B.V.

Dear Sir,

Please find attached a Reconsideration Request relating to the Decisions of February 26, 2013, submitted on behalf of Booking.com B.V.

This Reconsideration Request is submitted to you in your capacity of chair of the ICANN Board, within the 30-day window of opportunity to submit such a request.

Despite the fact that the origin of the decisions is somewhat unclear, this Reconsideration Request is being submitted as a reconsideration of a "Staff action." In the event that the decisions referenced above are determined to be a "Board action," this request may be amended.

Yours sincerely,

Flip Petillion
Crowell & Moring LLP
Contact Information Redacted

BOOKING.COM B.V.

Request for Reconsideration of the Decision of February 26, 2013

1. **Requester Information**

Name: Booking.com B.V.

Address: Contact Information Redacted

Email:

Phone Number (optional):

C/o:

Name: Flip Petillion, Crowell & Moring LLP

Address: Contact Information Redacted

Email:

Phone Number (optional): Contact Information Redacted

2. **Request for Reconsideration of (check one only):**

___ **Board action/inaction**

_X_ **Staff action/inaction**

3. **Description of specific action(s) you are seeking to have reconsidered.**

Booking.com B.V. (hereinafter, the 'Requester'") seeks reconsideration of ICANN's decision to place the gTLD application for '.hotels' (Application ID 1-1016-75482) and the gTLD application for '.hoteis' (Application ID 1-1249-87712) in a non-exact match contention set (**Attachment 1**).

Booking.com B.V. also seeks reconsideration of ICANN's decision not to provide a detailed analysis or a reasoned basis for its decision to place the gTLD application for '.hotels' (Application ID 1-1016-75482) and the gTLD application for '.hoteis' (Application ID 1-1249-87712) in a non-exact match contention set.

Both decisions are hereinafter collectively referred to as the 'Decisions'.

4. **Date of action/inaction:**

The Decisions were published on February 26, 2013 (**Attachment 1**).

5.   On what date did you became aware of the action or that action would not be taken?

The Decisions were communicated to the primary contact of the Requester as specified in the Requester's application for the .hotels gTLD ('Primary Contact') on February 26, 2013 (**Attachment 2**). The Requester became aware of the Decisions on February 27, 2013, when the Primary Contact informed the Requester of the Decisions.

6.   Describe how you believe you are materially affected by the action or inaction:

The Requester is the applicant for the '.hotels' gTLD. The Decisions will impact the Requester because ICANN has made it clear in the Applicant Guidebook that it "will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings" (Applicant Guidebook, Module 4-2). ICANN refers to a group of applications for contending strings as a contention set. By placing 'hotels' and 'hoteis' in a non-exact match contention set, ICANN's String Similarity Review Panel apparently determined that these strings would result in user confusion. As a result, ICANN will not approve both the application for 'hotels' and the application for 'hoteis'.

This directly impacts the Requester as follows:

-   The Requester will not be allowed to operate a '.hotels' gTLD in the event that the '.hoteis' gTLD is recommended for delegation; and

-   If the Requester wants to operate the '.hotels' gTLD, and the '.hoteis' application is not rejected by ICANN, it will need to either negotiate with the Applicant for '.hoteis' or participate at an auction with a view to obtaining the delegation of the '.hoteis' gTLD. Both may require additional investments which are not justified given the reasons why the consideration by ICANN's String Similarity Review Panel is erroneous.

Regarding ICANN's failure to provide a detailed explanation of its decision and the corresponding analysis, Requester is left without actual knowledge about the basis for ICANN's decision to put .hotels into a non-exact match contention set with .hoteis.

7.   Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

The Requester considers that the Decisions also adversely affect others:

-   The Applicant for the '.hoteis' gTLD is adversely affected as it will equally not be allowed to operate a '.hoteis' gTLD if a '.hotels' gTLD is recommended;

-   Internet users are adversely affected as there may be less competition at a TLD level as well as fewer TLDs targeted at non-English speaking communities (see response to Question 11 below); and

- Without a detailed explanation of the non-exact match contention set decision, the ICANN community is deprived of an understanding of ICANN's reasoning, analysis, and standards when evaluating user confusion.

8.   If you are complaining of an action, are you seeking a temporary stay of the action? (Check one)

_____ Yes

_x__ No

The Requester does not believe that a temporary stay is required. Instead, Requester asks that ICANN's decision regarding the non-exact match contention set be reversed. In the alternative, Requester asks that ICANN provide the detailed analysis and reasoning regarding the decision to place .hotels into a non-exact match contention set.

8a.   If Yes, you are seeking a temporary stay, do you believe any harm(s) will occur if the action is not stayed? (Check one)

Not applicable

8b.   If you answered Yes to 8.a., please describe the harm(s) that you believe will occur if the action is not stayed:

Not applicable

9.   Detail of Board or Staff Action – Required Information

At present, it appears that the String Similarity review was likely conducted by a third party, but was then accepted and implemented by ICANN staff. It is unclear whether or not the decision of February 26, 2013 was reviewed by the ICANN Board, although the publicly available information suggests that it was not. In any event, ICANN Staff published the results of the String Similarity review on the ICANN website and communicated the decision to Requester's Primary Contact (**Attachment 1**). As a result, ICANN (Staff) has communicated that ICANN endorsed the decision to put the 'hotels' and 'hoteis' strings in a contention set.

The decision to put 'hotels' and 'hoteis' in a contention set is contrary to ICANN's established policy as set out in the Applicant Guidebook; the failure by ICANN to provide reasoning for the decision is contrary to ICANN's mandate to act transparently and fairly; and it seems likely that the contention set decision was made without all of the material information.

The Applicant Guidebook states:

> "'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.

[...]

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review [...] is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in direct contention if they are identical or similar to one another.

[...]

Two strings are in indirect contention if they are both in direct contention with a third string, but not with one another." (**Attachment 2**, Module 4-2, 4-3)

The Applicant Guidebook also states:

*"**Standard for String Confusion** – 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."* (**Attachment 2**, Module 2-8)

As a result, two strings should only be placed in a contention set to the extent that they are so similar that they create a probability of user confusion if both strings are delegated into the root zone.

For the following reasons, there is no probability of user confusion if both 'hotels' and 'hoteis' were delegated as a gTLD string into the root zone:

-   The difference between the letter "i" and the letter "l" clearly distinguishes the 'hotels' and 'hoteis' strings from each other;

-   The intended use of the 'hotels' gTLD clearly distinguishes this gTLD from the 'hoteis' gTLD; and

-   The Internet user will not be confused between 'hotels' and 'hoteis', irrespective of whether or not the Internet user is requesting information or whether the Internet user is receiving information.

This is further explained below under Question 11.

Because there is no probability of user confusion if both 'hoteis' and 'hotels' were delegated as a gTLD string into the root zone, it is contrary to ICANN's policy to put them in a contention set.

ICANN's Articles of Incorporation require it to act "through open and transparent processes," and its Bylaws further provide that ICANN must "operate to the maximum extent feasible in an open and transparent manner and consistent with

procedures designed to ensure fairness." (Articles of Incorporation, Art. 4; Bylaws, Art. III. sec. 1) The Bylaws also require that ICANN "mak[e] decisions by applying documented policies neutrally and objectively, with integrity and fairness." (Bylaws, Art. I, Sec. 2.8)

ICANN's failure to provide any reasoned decision or analysis in support of putting 'hotels' and 'hoteis' in a contention set is contrary to ICANN's mandate to act transparently, and prevents the Requester and the ICANN community from determining whether the decision was made fairly and in a non-arbitary fashion.

Additionally, given the lack of a reasoned decision or other public information regarding ICANN's string contention analysis and decision, it is impossible to know what information ICANN considered in establishing the contention set (or approving the contention set proposed by an independent contractor). In an attempt to determine what information ICANN Staff considered in making the contention set decision, the Requester has separately submitted a request for information under ICANN's Documentary Information Disclosure Policy. It seems likely that ICANN failed to consider, for example, the information presented in this Request, which is materially related to the contention set decision. At a minimum, the Requester was never given an opportunity to provide information that would refute the mistaken contention that there is likely to be consumer confusion between '.hotels' and '.hoteis'.

10.   What are you asking ICANN to do now?

The Requester asks ICANN to reverse the decision in which 'hotels' (Application ID 1-1016-75482) and 'hoteis' (Application ID 1-1249-87712) were put in a non-exact match contention set.

ICANN is requested to decide that the 'hotels' gTLD as applied for in the Application with ID 1-1016-75482 can co-exist with the 'hoteis' gTLD as applied for in the Application with ID 1-1249-87712.

In the event that ICANN will not immediately reverse its decision, the Requester asks that ICANN provide its detailed analysis for the decision to include .hotels into a non-exact match contention set.

11.   What grounds or justification support your request?

a) The difference between the letter "i" and the letter "l" clearly distinguishes the 'hotels' and 'hoteis' strings from each other

The difference between the 'hotels' and 'hoteis' strings is grounded in the distinction between the character 'i' and the character 'l'. In linguistic terms, the characters 'i' and 'l' are manifestly distinct.

The Requester asked an independent expert to provide his views on the following questions:

1) Regardless of the ICANN framework, would you consider the 'hotels' and 'hoteis' strings to be confusing?
2) Given the ICANN framework, would you consider both strings visually similar to each other creating a probability of user confusion?

The Requester reserves the right to issue requests to additional experts.

The expert to whom this request was addressed, Professor Piet Desmet, is full professor at the University of Leuven in linguistics and language teaching methodology.

Professor Piet Desmet from the University of Leuven has found that the difference between 'hotels' and 'hoteis' can be reduced to the difference between l and i, which distinguishes both words. The opposition between l and i is clearly distinctive. There are a considerable number of "minimal pairs" in which the l and i alternate, i.e. pairs of words which differ from each other only in the alternation of l and i. These are minimal pairs like candies/candles, eider/elder, fails/falls, mail/mall or wail/wall. So the alternation of l and i in English is distinctive enough to keep words apart solely on the basis of this opposition.

This implies that words that only differ in the alternation of l and i do not confuse the language users visually, as they perfectly distinguish both characters. If this were not the case, the alternation would already have evolved to an alternative that speakers find more distinctive.

Professor Desmet points out that every language consists of a fixed set of phonemes (sounds) and graphemes (letters) that can be combined without limitations. This linguistic reality poses no problems for the language user, who is used to being confronted with words that differ from each other in only one character. This does not prevent the language user from visually distinguishing these words so as to see them as different meaningful entities.

Professor Desmet considers the elements above sufficient to dismiss the idea of string confusion in dealing with minimal pairs that only differ in the alternation of l and i.

Accordingly, '.hotels' and '.hoteis' are not confusingly similar, and the Decision that they should be placed in a contention set is therefore contrary to established ICANN policy. Requester's questions and Professor Desmet's answers are submitted as

Attachment 3 and Attachment 4, respectively.

b) The intended use of the 'hotels' gTLD clearly distinguishes this gTLD from the 'hoteis' gTLD

Both the Applicant for the 'hotels' gTLD and the Applicant for the '.hoteis' gTLD intend to use the applied-for gTLD in a very controlled and restricted way. Both gTLDs will be operated as single-registrant gTLDs. The Applicant for 'hotels' targets different language communities than the Applicant for 'hoteis'. The 'hotels' gTLD is targeted to English-speaking, Dutch-speaking and/or French-speaking communities, whereas the 'hoteis' gTLD is targeted to the Portuguese language community.

Given this clear distinction in target groups and the restricted and controlled use in both gTLDs, the 'hotels' and 'hoteis' gTLDs even become more distinct from each other. As a result, there is no likelihood that the Internet user will be confused, and ICANN's decision to place them in a contention set is contrary to established ICANN policy.

c) The Internet user will not be confused

As seen above, 'hotels' and 'hoteis' are clearly distinct from each other. As a result, an Internet user searching for information on hotels in English, French or Dutch would not mix up the search term 'hotels' with the Portuguese term 'hoteis' because the word 'hoteis' does not exist in the English language. The same is true for an Internet user searching for information on hotels in Portuguese. The user would not mix up the search term 'hoteis' with the English term 'hotels', the word 'hotels' being non-existent in Portuguese.

It is also extremely unlikely that the Internet user would make a typographical error when searching for 'hotels', which would replace 'hotels' by 'hoteis', or vica versa.

The letter 'l' and the letter 'i' are located on a completely different key of a computer keyboard, whether qwerty, azerty or qwertz. Even in the very unlikely event that such error is made by an Internet user searching in English, such Internet user will immediately notice that an error has occurred because the information on 'hoteis' would be in Portuguese.

The same would be true for an Internet user looking for 'hoteis'. First, the word 'hotels' is non-existent in the Portuguese language. As a result, an Internet user looking for information on hotels in Portuguese would not confuse 'hoteis' with the English word. Second, the Internet user would not make a typographical error when searching for 'hoteis', which would replace 'hoteis' by 'hotels'. Finally, in the unlikely event that this typographical error is made, a Portuguese-speaking Internet user would also immediately notice that an error has occurred because the information on 'hotels' would not be in Portuguese.

As a result, the Internet user would not be confused; all of the above factors demonstrate that ICANN's decision to place '.hoteis' and '.hotels' in contention is contrary to established policy. Nor is it clear whether ICANN considered any of the

above material in determining wheter '.hotels' and '.hoteis' were confusingly similar. As a result, Requester asks that ICANN reverse the decision to place .hotels in a non-exact match contention set.

12. Do you have any documents you want to provide to ICANN?

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm.

The Requester wishes to submit the following documents in support of its request:

Attachment 1:	Decision to place 'hotels' (Application ID 1-1016-75482) and 'hoteis' (Application ID 1-1249-87712) in a non-exact match contention set.
Attachment 2:	Applicant Guidebook (Version 2012-06-04).
Attachment 3:	Mail from Flip Petillion to Prof. Dr. Piet Desmet of March 21, 2013.
Attachment 4:	Mail from Prof. Dr. Piet Desmet to Flip Petillion of March 22, 2013.

The Requester also may submit additional documents not yet available, such as other expert reports and analyses, in support of its Request. The Requester therefore requests that ICANN allow the submission of these documents when they become available.

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RECOMMENDATION

OF THE BOARD GOVERNANCE COMMITTEE (BGC)

RECONSIDERATION REQUEST 13-5

1 AUGUST 2013[1]

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On 7 July 2013, Booking.com B.V. ("Booking.com"), through its counsel, Crowell & Moring, submitted a reconsideration request ("Request"). The Request was revised from Booking.com's 28 March 2013 submission of a similar reconsideration request, which was put on hold pending the completion of a request pursuant to ICANN's Documentary Information Disclosure Policy ("DIDP").

The Request asked the Board to reconsider the ICANN staff action of 26 February 2013, when the results of the String Similarity Panel were posted for the New gTLD Program. Specifically, the Request seeks reconsideration of the placement of the applications for .hotels and .hoteis into a string similarity contention set.

I.   Relevant Bylaws

As the Request is deemed filed as of the original 28 March 2013 submission, this Request was submitted and should be evaluated under the Bylaws that were in effect from 20 December 2012 through 10 April 2013. Article IV, Section 2.2 of that version of ICANN's Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

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[1] At its 1 August 2013 meeting, the Board Governance Committee deliberated and reached a decision regarding this Recommendation. During the discussion, however, the BGC noted revisions that were required to the draft Recommendation in order to align with the BGC's decision. After revision and allowing for the BGC member review, the BGC Recommendation on Request 13-5 was finalized and submitted for posting on 21 August 2013.

(a) one or more staff actions or inactions that contradict established ICANN policy(ies); or

(b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act.

A third criteria was added to the Bylaws effective 11 April 2013, following the Board's adoption of expert recommendations for revisions to the Reconsideration process. That third basis for reconsideration, focusing on Board rather than staff conduct, is "one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information." (See http://www.icann.org/en/about/governance/bylaws#IV.)

When challenging a staff action or inaction, a request must contain, among other things, a detailed explanation of the facts as presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). See Article IV §2.6(g) of the 20 December 2012 version of Bylaws (http://www.icann.org/en/about/governance/bylaws/bylaws-20dec12-en.htm#IV) and the current Reconsideration form effective as of 11 April 2013 (http://www.icann.org/en/groups/board/governance/reconsideration/request-form-11apr13-en.doc).

Dismissal of a request for reconsideration is appropriate if the Board Governance Committee ("BGC") finds that the requesting party does not have standing because the party failed to satisfy the criteria set forth in the Bylaws. These standing requirements are intended to protect the reconsideration process from abuse and to ensure that it is not used as a mechanism simply to challenge an action with which someone disagrees, but that it is limited to situations where the staff acted in contravention of established policies.

The Request was originally received on 28 March 2013, which makes it timely under the then effective Bylaws.[2] Bylaws, Art. IV, § 2.5.

II.   Background

Within the New gTLD Program, every applied-for string has been subjected to the String Similarity Review set out at Section 2.2.1.1 of the Applicant Guidebook. The String Similarity Review checks each applied-for string against existing TLDs, reserved names and other applied-for TLD strings (among other items) for "visual string similarities that would create a probability of user confusion." (Applicant Guidebook, Section 2.2.1.1.1.) If applied-for strings are determined to be visually identical or similar to each other, the strings will be placed in a contention set, which is then resolved pursuant to the contention resolution processes in Module 4 of the Applicant Guidebook. If a contention set is created, only one of the strings within that contention set may ultimately be approved for delegation.

After issuing a request for proposals, ICANN selected InterConnect Communications ("ICC") to perform the string similarity review called for in the Applicant Guidebook. On 26 February 2013, ICANN posted ICC's report, which included two non-exact match contention sets (.hotels/.hoteis and .unicorn/.unicom) as well as 230 exact match contention sets. http://www.icann.org/en/news/announcements/announcement-26feb13-en.htm. The String Similarity Review was performed in accordance with process documentation posted at http://newgtlds.icann.org/en/program-status/evaluation-panels/geo-names-similarity-process-07jun13-en.pdf. As part of ICANN's acceptance of the ICC's results, a quality assurance review

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[2] ICANN staff and the requester communicated regarding the holds placed on the Request pending the DIDP Response, and the requester met all agreed-upon deadlines, thereby maintaining the timely status of this Request.

was performed over a random sampling of applications to, among other things, test whether the process referenced above was followed.

Booking.com is an applicant for the .hotels string. As a result of being placed in a contention set, .hotels and .hoteis cannot both proceed to delegation. Booking.com will have to resort to private negotiations with the applicant for .hoteis, or proceed to an auction to resolve the contention issue. Request, page 4.

Although the String Similarity Review was performed by a third party, ICANN has determined that the Reconsideration process can properly be invoked for challenges of the third party's decisions where it can be stated that either the vendor failed to follow its process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision. Because the basis for the Request is not Board conduct, regardless of whether the 20 December 2012 version, or the 11 April 2013 version, of the Reconsideration Bylaws is operative, the BGC's analysis and recommendation below would not change.

III.   Analysis of Booking.com's Request for Reconsideration

Booking.com seeks reconsideration and reversal of the decision to place .hotels and .hoteis in a non-exact match contention set. Alternatively, Booking.com requests that an outcome of the Reconsideration process could be to provide "detailed analysis and reasoning regarding the decision to place .hotels into a non-exact match contention set" so that Booking.com may "respond" before ICANN takes a "final decision." (Request, Page 9.)

A.   Booking.com's Arguments of Non-Confusability Do Not Demonstrate Process Violations

The main focus of Booking.com's Request is that .hotels and .hoteis can co-exist in the root zone without concern of confusability. (Request, pages 10 – 12.) To support this assertion, Booking.com cites to the opinion of an independent expert that was not part of the string

similarity review panel (Request, pages 10-11), references the intended uses of the .hotels

and .hoteis strings (Request, page 11) and the difference in language populations that is expected

to be using .hotels and .hoteis (Request, page 11), references ccTLDs that coexist with

interchangeable "i"s and "l"s (Request, page 11), notes the keyboard location of "i"s and "l"s

(Request, page 12), and contends that potential users who get to the wrong page would

understand the error they made to get there (Request, page 12).

Booking.com does not suggest that the process for String Similarity Review set out in the

Applicant Guidebook was not followed, or that ICANN staff violated any established ICANN

policy in accepting the String Similarity Review Panel ("Panel") decision on placing .hotels

and .hoteis in contention sets. Instead, Booking.com is supplanting what it believes the review

methodology for assessing visual similarity should have been, as opposed to the methodology set

out at Section 2.2.1.1.2 of the Applicant Guidebook. In asserting a new review methodology,

Booking.com is asking the BGC (and the Board through the New gTLD Program Committee

(NGPC)) to make a substantive evaluation of the confusability of the strings and to reverse the

decision. In the context of the New gTLD Program, the Reconsideration process is not however

intended for the Board to perform a substantive review of Panel decisions.. While Booking.com

may have multiple reasons as to why it believes that its application for .hotels should not be in

contention set with .hoteis, Reconsideration is not available as a mechanism to re-try the

decisions of the evaluation panels.[3]

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[3] Notably, Booking.com fails to reference one of the key components of the documented String Similarity Review, the use of the SWORD Algorithm, which is part of what informs the Panel in assessing the visual similarity of strings. .hotels and .hoteis score a 99% on the publicly available SWORD algorithm for visual similarity. See https://icann.sword-group.com/algorithm/.

Booking.com also claims that its assertions regarding the non-confusability of the .hotels and .hoteis strings demonstrate that "it is contrary to ICANN policy[4] to put them in a contention set." (Request, pages 6-7.) This is just a differently worded attempt to reverse the decision of the Panel. No actual policy or process is cited by Booking.com, only the suggestion that – according to Booking.com – the standards within the Applicant Guidebook on visual similarity should have resulted in a different outcome for the .hotels string. This is not enough for Reconsideration.

Booking.com argues that the contention set decision was taken without material information, including Booking.com's linguistic expert's opinion, or other "information that would refute the mistaken contention that there is likely to be consumer confusion between '.hotels' and '.hoteis.'" (Request, page 7.) However, there is *no* process point in the String Similarity Review for applicants to submit additional information. This is in stark contrast to the reviews set out in Section 2.2.2 of the Applicant Guidebook, including the Technical/Operational review and the Financial Review, which allow for the evaluators to seek clarification or additional information through the issuance of clarifying questions. (AGB, Section 2.2.2.3 (Evaluation Methodology).) As ICANN has explained to Booking.com in response to its DIDP requests for documentation regarding the String Similarity Review, the Review was based upon the methodology in the Applicant Guidebook, supplemented by the Panel's process documentation; the process does not allow for additional inputs.

Just as the process does not call for additional applicant inputs into the visual similarity review, Booking.com's call for further information on the decision to place .hotels and .hoteis in

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[4] It is clear that when referring to "policy", Booking.com is referring to the process followed by the String Similarity Review.

a contention set "to give the Requester the opportunity to respond to this, before taking a final decision" is similarly not rooted in any established ICANN process at issue. (Request, page 9.) First, upon notification to the applicants and the posting of the String Similarity Review Panel report of contention sets, the decision was already final. While applicants may avail themselves of accountability mechanism to challenge decisions, the use of an accountability mechanism when there is no proper ground to bring a request for review under the selected mechanism does not then provide opportunity for additional substantive review of decisions already taken.

Second, while we understand the impact that Booking.com faces by being put in a contention set, and that it wishes for more narrative information regarding the Panel's decision, no such narrative is called for in the process. The Applicant Guidebook sets out the methodology used when evaluating visual similarity of strings. The process documentation provided by the String Similarity Review Panel describes the steps followed by the Panel in applying the methodology set out in the Applicant Guidebook. ICANN then coordinates a quality assurance review over a random selection of Panel's reviews to gain confidence that the methodology and process were followed. That is the process used for a making and assessing a determination of visual similarity. Booking.com's disagreement as to whether the methodology should have resulted in a finding of visual similarity does not mean that ICANN (including the third party vendors performing String Similarity Review) violated any policy in reaching the decision (nor does it support a conclusion that the decision was actually wrong).[5]

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[5] In trying to bring forward this Request, Booking.com submitted requests to ICANN under the Documentary Information Disclosure Policy (DIDP). As of 25 July 2013, all requests had been responded to, including the release of the Panel process documentation as requested. See Request 20130238-1 at http://www.icann.org/en/about/transparency. Booking.com describes the information it sought through the DIDP at Pages 8 – 9 of its Request. The discussion of those requests, however, has no bearing on the outcome of this Reconsideration.

B.   Booking.com's Suggestion of the "Advisory Status" of the String Similarity Panel Decision Does Not Support Reconsideration

In its Request, Booking.com suggests that the Board has the ability to overturn the Panel's decision on .hotels/.hoteis because the Panel merely provided "advice to ICANN" and ICANN made the ultimate decision to accept that advice. Booking.com then suggests that the NGPC's acceptance of GAC advice relating to consideration of allowing singular and plural versions of strings in the New gTLD Program, as well as the NGPC's later determination that no changes were needed to the Applicant Guidebook regarding the singular/plural issue, shows the ability of the NGPC to override the Panel determinations. (Request, pages 5-6.) Booking.com's conclusions in these respects are not accurate and do not support Reconsideration.

The Panel reviewed all applied for strings according to the standards and methodology of the visual string similarity review set out in the Applicant Guidebook. The Guidebook clarifies that once contention sets are formed by the Panel, ICANN will notify the applicants and will publish results on its website. (AGB, Section 2.2.1.1.1.) That the Panel considered its output as "advice" to ICANN (as stated in its process documentation) is not the end of the story. Whether the results are transmitted as "advice" or "outcomes" or "reports", the important query is what ICANN was expected to do with that advice once it was received. ICANN had always made clear that it would rely on the advice of its evaluators in the initial evaluation stage of the New gTLD Program, subject to quality assurance measures. Therefore, Booking.com is actually proposing a new and *different* process when it suggests that ICANN should perform substantive review (instead of process testing) over the results of the String Similarity Review Panel's outcomes prior to the finalization of contention sets.

The subsequent receipt and consideration of GAC advice on singular and plural strings does not change the established process for the development of contention sets based on visual

similarity. The ICANN Bylaws require the ICANN Board to consider GAC advice on issues of public policy (ICANN Bylaws, Art. XI, Sec. 2.1.j); therefore the Board, through the NGPC, was obligated to respond to the GAC advice on singular and plural strings. Ultimately, the NGPC determined that no changes were needed to the Guidebook on this issue. (Resolution 2013.06.25.NG07, at http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm#2.d.) Notably, neither the GAC advice nor the NGPC resolution focused on the issue of visual similarity (which the String Similarity Review Panel was evaluating), but instead the issue was potential consumer confusion from having singular and plural versions of the same word in the root zone. It is unclear how the NGPC's decision on a separate topic – and a decision that did not in any way alter or amend the work of an evaluation panel – supports reconsideration of the development of the .hotels/.hoteis contention set.

VIII. Recommendation And Conclusion

Based on the foregoing, the BGC concludes that Booking.com has not stated proper grounds for reconsideration and we therefore recommend that Booking.com's request be denied without further consideration. This Request challenges a substantive decision taken by a panel in the New gTLD Program and not the process by which that decision was taken. As stated in our Recommendation on Request 13-2, Reconsideration is not a mechanism for direct, de novo appeal of staff or panel decisions with which the requester disagrees, and seeking such relief is, in fact, in contravention of the established processes within ICANN. See http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-nameshop-01may13-en.pdf.

The BGC appreciates the impact to an applicant when placed in a contention set and does not take this recommendation lightly. It is important to recall that the applicant still has the

opportunity to proceed through the New gTLD Program subject to the processes set out in the Applicant Guidebook on contention. We further appreciate that applicants, with so much invested and so much at stake within the evaluation process, are interested in seeking any avenue that will allow their applications to proceed easily through evaluation. However, particularly on an issue such as visual similarity, which is related to the security and stability of the domain name system, there is not – nor is it desirable to have – a process for the BGC or the Board (through the NGPC) to supplant its own determination as to the visual similarity of strings over the guidance of an expert panel formed for that particular purpose. As there is no indication that either the Panel or ICANN staff violated any established ICANN policy in reaching or accepting the decision on the placement of .hotels and .hoteis in a non-exact contention set, this Request should not proceed.

If Booking.com thinks that it has been treated *unfairly* in the new gTLD evaluation process, and the NGPC adopts this Recommendation, Booking.com is free to ask the Ombudsman to review this matter. (*See* ICANN Bylaws the Ombudsman shall "have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN)".)

Annex 1 to NGPC Resolution No. 2013.09.10.2c

[DRAFT] ICANN Board New gTLD Program Committee Scorecard in response to GAC Durban Communiqué

4 September 2013

This document contains the NGPC's notes on the GAC Durban Communiqué issued 17 July 2013 <https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2>. Refer to the GAC Register of Advice for the full text of each item of advice in the GAC Durban Communiqué <https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>.

Each GAC scorecard item is noted with a "1A", "1B", or "2":
- "1A" indicates that the NGPC's proposed position is consistent with GAC advice as described in the Scorecard.
- "1B" indicates that the NGPC's proposed position is consistent with GAC advice as described in the Scorecard in principle, with some revisions to be made.
- "2" indicates that the NGPC's current position is not consistent with GAC advice as described in the Scorecard, and further discussion with the GAC is required following relevant procedures in the ICANN Bylaws.

This is a preliminary draft, unapproved by the NGPC. ICANN reserves the right to make additional changes after further discussions and review of public comments.

Annex 1 Text Superseded

Annex 1 Text Superseded

Annex 1 Text Superseded

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Summary of Applicant Responses to GAC Advice in the Durban Communiqué

29 August 2013

Table of Contents

Executive Summary

This report is intended to provide a summary of applicant responses to GAC Advice presented in the GAC Durban Communiqué issued 18 July 2013[1]. Per Section 3.1 of the Applicant Guidebook, ICANN provided the applicants of applications identified in the Durban Communiqué 21 calendar days to submit a response to the ICANN Board. The deadline for responses was 23 August 2013.

Broadly, the applicants thank the ICANN Board for the opportunity to respond to the GAC Communiqué.

Several of the applicants who received application-specific GAC Advice indicated that they have entered into dialogue with the affected parties, and they anticipated reaching agreement on the areas of concern. Some of the applicants that have proposed additional safeguards to address the concerns of the relevant governments are unsure as to whether a settlement can be reached, but have asked that the ICANN Board allow their applications to proceed even if an agreement among the relevant parties cannot be reached.

Additionally, inquiries have been made as to whether applicants and the relevant governments will have the opportunity to comment on conversations among the GAC, ICANN Board, and ICANN staff. There have been requests that that the GAC, NGPC, and ICANN staff consult with applicants before decisions regarding any additional safeguards are made.

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[1] The full list of applicant responses can be accessed at:
http://newgtlds.icann.org/en/applicants/gac-advice/durban47

Solicitation of Responses

The GAC issued advice to the ICANN Board in the Durban Communiqué regarding 14 strings, spanning 17 active applications. ICANN solicited responses from the applicants for these 17 applications. Responses pertaining to 14 of these applications were received, and have been summarized in the "Summary of Responses by Application" section.

Strings Identified in the Durban Communiqué

1a. The GAC objects to the following applications:
- AMAZON
- アマゾン ("Amazon" in Japanese)
- 亚马逊 ("Amazon" in Chinese)
- THAI

1b. The GAC advises the ICANN Board to not allow the following applications to proceed beyond initial evaluation until agreements between the relevant parties are reached:
- 广州 ("Guangzhou" in Chinese)
- 深圳 ("Shenzhen" in Chinese)
- SPA
- YUN

2. The GAC requires additional time to consider:
- WINE
- VIN

3. The GAC has finalized its consideration of the following strings and does not object to them proceeding:
- DATE
- PERSIANGULF

4. The GAC has noted the concerns of the Government of India not to proceed with the following applications:
- INDIANS
- RAM

Summary of Responses by Application

AMAZON (アマゾン, 亚马逊)

Amazon EU S.à r.l. (AMAZON: 1-1315-58086) - [Response](#)
Amazon EU S.à r.l. (アマゾン: 1-1318-83995) - [Response](#)
Amazon EU S.à r.l. (亚马逊: 1-1318-5591) - [Response](#)

The applicant notes that the GAC advice creates a rebuttable presumption that the identified applications should not be approved, but asserts that the presumption is plainly rebutted by the facts presented. The applicant provided a 20-page memorandum and 300+ pages of additional material to support its position.

The applicant highlights that "[a]dvice provided by the GAC to the NGPC is just that: advice." The applicant asserts that the GAC Advice pertaining to the .AMAZON applications should be rejected for the following reasons:
1. The GAC Advice is inconsistent with international law.
2. The acceptance of GAC Advice would be non-transparent and discriminatory, which conflicts with ICANN's governing documents.
3. The GAC Advice contravenes policy recommendations implemented within the Applicant Guidebook and achieved through international consensus over many years.

The applicant notes the important role of governments in the multi-stakeholder model, but advises that governments "cannot exercise veto power over multi-stakeholder policy and ICANN's Governing Documents or use ICANN to override the very laws under which the same governments operate." The applicant urges the NGPC to not allow governments to accomplish what they have not been able to accomplish, and cannot accomplish through their national legislatures.

THAI

Better Living Management Company Limited (1-2112-4478) - [Response](#)
The GAC reached consensus objection advice on the application for .THAI. The applicant asserts that the application has the support of several government ministries in Thailand.

The applicant further explains that Thailand's GAC representative traveled to the ICANN meeting in Durban with the intention of asking the GAC to remove .THAI from the list of strings identified in the Communiqué. Unfortunately, he was not able to attend the GAC meeting and express this in his official capacity.

GUANGZHOU (广州)

YU Wei Information Technology Co. , Ltd. (1-1121-22691) - Response
The applicant asserts that it has been working closely with the Guangzhou Municipal Government to address the outstanding issues. The applicant is confident that it will have the necessary letter of support/non-objection by the end of the Extended Evaluation period.

SHENZHEN (深圳)

Guangzhou YU Wei Information Technology Co. , Ltd. (1-1121-82863) - Response
The applicant asserts that it has been working closely with the Shenzhen Municipal Government to address the outstanding issues. The application is tied to the GUANGZHOU application (1-1121-22691), and once the settlement has been finalized for GUANGZHOU, the applicant expects the SHENZHEN application to follow suit. The applicant is confident that it will have the necessary letter of support/non-objection by the end of the Extended Evaluation period.

SPA

Asia Spa and Wellness Promotion Council Limited (1-1309-81322) - Response
The applicant asserts that their application for the .SPA gTLD is the only one of the .SPA applications that proposes "specific implementable policies to mitigate potential abuse corresponding to the protection of the City of Spa." Further, the applicant indicates that they are the only applicant for .SPA that has reached an agreement with the relevant party.

Foggy Sunset, LLC (1-1619-92115) - Response
Donuts Inc. (the applicant's parent) asserts that it should not be on hold as the string does not meet the requirements of a Geographic Name Requiring Government Support (per the Applicant Guidebook, section 2.2.1.4.2).

The applicant has contacted the City of Spa in attempt to reach an agreement, but it is unsure as to whether an agreement will be reached. The applicant asserts, "It is unclear whether we will reach agreement with the city, as we found several of the city's demands, including 25% of all net profit from the .SPA TLD, to be unacceptable."

YUN

Amazon EU S.à r.l. (1-1318-12524) - Response
The applicant asserts that they are in active negotiations with the People's Republic of China, and have offered to implement safeguards to ensure that the string is not

used in a manner that may cause confusion. ("Yun" means "cloud" in Pinyin, but the Yunnan Province in China is sometimes locally shortened to "Yun.") The applicant asks the ICANN Board to reject this portion of the Communiqué, and asserts that there is no basis for a GAC "hold" until resolution for the same reasons discussed in its .AMAZON applications. The applicant included the response for the .AMAZON applications for the Board's reference.

WINE & VIN

June Station, LLC (WINE, 1-1515-14214) - Response
Holly Shadow, LLC (VIN, 1-1538-23177) - Response
The applicants' parent entity, Donuts Inc. ("Donuts"), submitted a single response for its applications for .WINE and .VIN. Donuts asserts that it has no current plans to amend its applications for .WINE and .VIN. Donuts asserts that it will implement measures beyond those required by the Applicant Guidebook and Registry Agreement for the prevention of abusive registrations. Donuts supports the Public Interest Commitments advocated by the GAC, and "is committed to maintaining an open Internet with no restrictions on lawful usage of generic terms." Donuts commits to compliance with applicable laws.

Afilias Limited (WINE, 1-868-66341)
The applicant has not provided a response to GAC Advice as of 29 August 2013.

Dot Wine Limited (WINE, 1-1223-37711)
The applicant has not provided a response to GAC Advice as of 29 August 2013.

DATE

Dot Date Limited (1-1247-30301)
The applicant has not provided a response to GAC Advice as of 29 August 2013.

PERSIANGULF

Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti. (1-2128-55439) - Response
The GAC has indicated that it does not object to the .PERSIANGULF application.

Selected citation:
> "I hereby would like to express our deep appreciation on [*sic*] GAC's positive attitude toward this TLD and they [*sic*] wise consideration of the target community's interests. AGIT completely understands the concerns of governments on the new applied for TLDs and has always expressed its interest and readiness for deep collaborations with ICANN and Internet

stakeholders in clarifying the concerns and resolving the misunderstandings."

INDIANS

Reliance Industries Limited (1-1308-78414) - Response
After receiving GAC Early Warning from India, the applicant has entered into dialogue with the Indian government, Department of Electronics and Information Technology India, and the GAC representative from India. As recommended by the Indian government, the applicant has declared[2] that the proposed TLD will follow the same operating principles as the .IN ccTLD and will create a group of government officials to audit the policies and practices of the .INDIAN TLD to ensure that it is aligned with public interest.

The applicant requests that the GAC provide additional information regarding the GAC Advice in the Durban Communiqué, as it asserts that all issues described in the Early Warning have been addressed.

RAM

Chrysler Group LLC (1-2055-15880) - Response
The applicant asserts its interest in resolving the matter in a way that addresses the Indian government's concerns and allows Chrysler Group LLC ("Chrysler") to operate the .RAM gTLD.

Since receiving GAC Early Warning from the Indian government, the applicant has proposed several measures to ensure that the proposed TLD will not be abused by registrants and remains sensitive to all religious issues. In the event that an agreement with the Indian government cannot be reached, the applicant asks the NGPC allow the .RAM application to proceed.

Additionally, the applicant asserts that, "Because Chrysler a restricted exclusively-controlled gTLD for a commercial, non-religious purpose the company believes that there is little risk that religious or social issues will arise from Chrysler's operation of the gTLD."

The applicant has asked for procedural clarification of the consideration of this matter by the ICANN Board (timing, communications, consultation of outside experts).

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[2] The applicant's declaration is available as an annex in its response to the GAC Advice.

Additional Responses

In addition to the 17 applications for which responses were solicited by ICANN staff, 7 unique responses were submitted by applications that were not identified in the Durban Communiqué. The 7 responses include responses from portfolio applicants and span 136 applications.

Donuts Inc. (99 applications)

The portfolio applicant provided a response that referenced 99 strings. The applicant asserts that the proposed safeguards are overly restrictive, and that the GAC, NGPC, and ICANN staff should consult with applicants before moving forward with implementing additional safeguards.

Dot Registry (INC: 1-880-35979, LLP: 1-880-35508, CORP: 1-880-39342, LLC: 1-880-17627)

The applicant indicates that they support the GAC Advice that recommends that preferential treatment be given to community applications with community support.

Selected citation:
> "We hope as a community application and an engaged member of this process that ICANN will push for the immediate start of CPE, the development of an oversight process to evaluate the merit of applications in relation to GAC advice, and the efficient handling of the review process."

Radix Registry (31 applications)

The portfolio applicant sent a single response for 31 of its applications. The applicant urges the NGPC to allow all strings mentioned in the Beijing Communiqué to proceed to contracting, on the condition that they sign the supplement to the Registry Agreement.

DotOnline Inc., Radix Registry (ONLINE, 1-1070-97873)

The applicant asserts that the GAC has misinterpreted the meaning of "online" and that the NGPC should reevaluate the GAC's inclusion of it in the list of Category 1, Intellectual Property strings from the Beijing Communiqué.

Rise Victory Limited (时尚 - IDN for "fashion", 1-1120-95098)

The applicant asserts that the proposed TLD's safeguards are sufficient.

DotKids Foundation Limited (KIDS, 1-1309-46695)

The applicant welcome's the NGPC's resolution to accept the GAC's safeguard advice applicable to all strings. The applicant commits to complying with the United Nations Convention on the Rights of the Child.

GTLD Limited (INC, 1-1309-22501)

The applicant supports the GAC Advice and safeguards as they apply to . INC. The applicant is committed to taking measures that will prevent abusive registrations. The applicant has identified the databases from relevant authorities around the world and is committed to connecting with them to implement rights protection mechanisms.

Annex 1 to NGPC Information Paper No. 2013.09.10.2d

Status Update – NGPC Response to Advice in GAC's Beijing Communiqué

4 September 2013

This document provides an update on the NGPC's response to the GAC Beijing Communiqué issued 11 April 2013 <http://www.icann.org/en/news/correspondence/gac-to-board-11apr13-en>. Refer to the GAC Register of Advice for the full text of each item of advice in the GAC Beijing Communiqué <https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>.

GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
1. 2013-04-11-Obj-Africa (Communiqué §1.a.i.1)	The GAC Advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .africa (Application number 1-1165-42560)	The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) At the NGPC's direction, staff advised the applicant, DotConnectAfrica Trust (DCA Trust), that its application for .africa would not be approved. On 19 June 2013, DCA Trust submitted a reconsideration request to the Board Governance Committee ("BGC") requesting that the NGPC's 4 June 2013 action regarding DCA Trust's new gTLD application be reconsidered. On 13 August 2013, the NGPC adopted the BGC's recommendation to deny the reconsideration request because DCA Trust has not stated proper grounds for reconsideration. <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-13aug13-en.htm#1.c>
2. 2013-04-11-Obj-GCC (Communiqué §1.a.i.2)	The GAC Advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .gcc (application number: 1-1936-2101)	The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) At the NGPC's direction, staff advised the applicant, GCCIX WLL, that its application for .gcc would not be approved.

GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
3. 2103-04-11- Religious Terms (Communiqué §1.a.ii)	The GAC Advises the Board that with regard to Module 3.1 part II of the Applicant Guidebook, the GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.	The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting. The AGB provides that if "GAC advises ICANN that there are concerns about a particular application 'dot-example,' the ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns." Pursuant to Section 3.1.ii of the AGB, the NGPC and some members of the GAC met during the ICANN 47 meeting in Durban to discuss the concerns about the applications for .islam and .halal. A community objection has been filed with the International Centre for Expertise of the ICC against .ISLAM and .HALAL, and these applications cannot move to the contracting phase until the objections are resolved. The NGPC will not take further action at this time.

GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
4. 2013-04-11-gTLDStrings (Communiqué §1.c)	In addition to this safeguard advice, the GAC has identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban. Consequently, the GAC advises the ICANN Board to not proceed beyond Initial Evaluation with the following strings: .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .date, .spa, . yun, .thai, .zulu, .wine, .vin.	The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting. The AGB provides that "GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process)" (AGB § 3.1). At the direction of the NGPC, ICANN is allowing evaluation and dispute resolution processes to go forward, but will not enter into registry agreements with applicants for the identified strings for now.

(Note: community objections have been filed with the International Centre for Expertise of the ICC against .PERSIANGULF, .AMAZON, and .PATAGONIA. The application for .ZULU was withdrawn. Additionally, the applications for .SHENZHEN (IDN in Chinese), .PERSIANGULF, .GUANGZHOU (IDN in Chinese), .AMAZON (and IDNs in Japanese and Chinese), .DATE, .SPA, .YUN, .THAI, .WINE, and .VIN were the subject of GAC advice in the Durban Communiqué and will be addressed accordingly.) |
| 5. 2013-04-11-CommunitySupport (Communiqué §1.e) | The GAC advises the Board that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information. | The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting, and noted that Criterion 4 for the Community Priority Evaluation process takes into account "community support and/or opposition to the application" in determining whether to award priority to a community application in a contention set. |

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GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
6. 2013-04-11-PluralStrings (Communiqué §1.f)	The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion. Therefore the GAC advises the Board to reconsider its decision to allow singular and plural versions of the same strings.	The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting, and to consider singular and plural versions of the same strings. At its 25 June 2013 meeting, the NGPC considered whether to allow singular and plural versions of the same string, and adopted a resolution confirming that no changes were 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 <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm#2.d>.
7. 2013-04-11-RAA (Communiqué §2)	The GAC advises the ICANN Board that the 2013 Registrar Accreditation Agreement should be finalized before any new gTLD contracts are approved.	The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting. The ICANN Board approved the 2013 RAA on 27 June 2013, and the NGPC approved the New gTLD Registry Agreement shortly thereafter (i.e. 2 July 2013).
8. 2013-04-11-WHOIS (Communiqué §3)	The GAC urges the ICANN Board to ensure that the GAC Principles Regarding gTLD WHOIS Services, approved in 2007, are duly taken into account by the recently established Directory Services Expert Working Group.	The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting, and noted that staff confirmed that the GAC Principles have been shared with the Expert Working Group.

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GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
9. 2013-04-11-IOCRC (Communiqué §4)	The GAC advises the ICANN Board to amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.	The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting. The New gTLD Registry Agreement adopted by the NGPC on 2 July 2013 included protection for an indefinite duration for IOC/RCRC names. Specification 5 of the approved Registry Agreement included a list of names (provided by the IOC and RCRC Movement) that "shall be withheld from registration or allocated to Registry Operator at the second level within the TLD." This protection was added pursuant to a NGPC resolution to maintain these protections "until such time as a policy is adopted that may require further action" (204.11.26.NG03). The resolution recognized the GNSO's initiation of an expedited PDP. The Initial Report for the PDP was posted for public comment on 14 June 2013 and concluded 7 August 2013 <http://www.icann.org/en/news/public-comment/igo-ingo-initial-14jun13-en.htm>. Until such time as the GNSO approves recommendations in the PDP and the Board adopts them, the NGPC's resolutions protecting IOC/RCRC names will remain in place. Should the GNSO submit any recommendations on this topic, the NGPC will confer with the GAC prior to taking action on any such recommendations.

GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
10. 2013-04-11-IGO (Communiqué § 1.g)	GAC reiterates its advice that appropriate preventative initial protection for IGO names and acronyms on the provided list be in place before any new gTLDs would launch.	On 2 July 2013, the NGPC adopted a resolution to provide temporary protections to the IGO names and acronyms on the "IGO List dated 22/03/2013" until the first meeting of the NGPC following the ICANN 47 Meeting in Durban. The NGPC engaged in a dialogue with the GAC during the Durban meeting to work through outstanding implementation issues concerning protections for IGO names and acronyms, and on 17 July 2013, the NGPC adopted a resolution to extend the temporary protections for IGO names and acronyms until the first meeting of the NGPC following the ICANN 48 Meeting in Buenos Aires or until the NGPC makes a further determination on the advice, whichever is earlier. If the GAC and NGPC do not reach an agreement on the outstanding implementation issues in that timeframe, registry operators will be required to protect only the IGO names identified on the GAC's IGO list.

GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
11. 2013-04-11-Safeguards - 1 (Communiqué Annex I, Item 1)	WHOIS verification and checks — Registry operators will conduct checks on a statistically significant basis to identify registrations in its gTLD with deliberately false, inaccurate or incomplete WHOIS data at least twice a year. Registry operators will weight the sample towards registrars with the highest percentages of deliberately false, inaccurate or incomplete records in the previous checks. Registry operators will notify the relevant registrar of any inaccurate or incomplete records identified during the checks, triggering the registrar's obligation to solicit accurate and complete information from the registrant.	On 25 June 2013, the NGPC adopted a resolution accepting a proposal for implementation of the GAC safeguards applicable to all new gTLDs. In some cases, ICANN, instead of registry operators, would implement the safeguard. The NGPC also approved some changes to the New gTLD Registry Agreement to implement certain elements of the safeguard advice. The changes are reflected in the New gTLD Registry Agreement approved by the NGPC on 2 July 2013.

GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
12. 2013-04-11-Safeguards - 2 (Communiqué Annex I, Item 2)	Mitigating abusive activity — Registry operators will ensure that terms of use for registrants include prohibitions against the distribution of malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.	On 25 June 2013, the NGPC adopted a resolution accepting a proposal for implementation of the GAC safeguards applicable to all new gTLDs. In some cases, ICANN, instead of registry operators, would implement the safeguard. The NGPC also approved some changes to the New gTLD Registry Agreement to implement certain elements of the safeguard advice. The changes are reflected in the New gTLD Registry Agreement approved by the NGPC on 2 July 2013.
13. 2013-04-11-Safeguards - 3 (Communiqué Annex I, Item 3)	Security checks — While respecting privacy and confidentiality, Registry operators will periodically 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. If Registry operator identifies security risks that pose an actual risk of harm, Registry operator will notify the relevant registrar and, if the registrar does not take immediate action, suspend the domain name until the matter is resolved.	On 25 June 2013, the NGPC adopted a resolution accepting a proposal for implementation of the GAC safeguards applicable to all new gTLDs. In some cases, ICANN, instead of registry operators, would implement the safeguard. The NGPC also approved some changes to the New gTLD Registry Agreement to implement certain elements of the safeguard advice. The changes are reflected in the New gTLD Registry Agreement approved by the NGPC on 2 July 2013.

GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
14. 2013-04-11-Safeguards - 4 (Communiqué Annex I, Item 4)	Documentation — Registry operators will maintain statistical reports that provide the number of inaccurate WHOIS records or security threats identified and actions taken as a result of its periodic WHOIS and security checks. Registry operators will maintain these reports for the agreed contracted period and provide them to ICANN upon request in connection with contractual obligations.	On 25 June 2013, the NGPC adopted a resolution accepting a proposal for implementation of the GAC safeguards applicable to all new gTLDs. In some cases, ICANN, instead of registry operators, would implement the safeguard. The NGPC also approved some changes to the New gTLD Registry Agreement to implement certain elements of the safeguard advice. The changes are reflected in the New gTLD Registry Agreement approved by the NGPC on 2 July 2013.
15. 2013-04-11-Safeguards - 5 (Communiqué Annex I, Item 5)	Making and Handling Complaints — Registry operators will ensure that there is a mechanism for making complaints to the registry operator that the WHOIS information is inaccurate or that the domain name registration is being used to facilitate or promote malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.	On 25 June 2013, the NGPC adopted a resolution accepting a proposal for implementation of the GAC safeguards applicable to all new gTLDs. In some cases, ICANN, instead of registry operators, would implement the safeguard. The NGPC also approved some changes to the New gTLD Registry Agreement to implement certain elements of the safeguard advice. The changes are reflected in the New gTLD Registry Agreement approved by the NGPC on 2 July 2013.

GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
16. 2013-04-11-Safeguards - 6 (Communiqué Annex I, Item 6)	Consequences — Consistent with applicable law and any related procedures, registry operators shall ensure that there are real and immediate consequences for the demonstrated provision of false WHOIS information and violations of the requirement that the domain name should not be used in breach of applicable law; these consequences should include suspension of the domain name.	On 25 June 2013, the NGPC adopted a resolution accepting a proposal for implementation of the GAC safeguards applicable to all new gTLDs. In some cases, ICANN, instead of registry operators, would implement the safeguard. The NGPC also approved some changes to the New gTLD Registry Agreement to implement certain elements of the safeguard advice. The changes are reflected in the New gTLD Registry Agreement approved by the NGPC on 2 July 2013.
17. 2013-04-11-Safeguards – Categories -1 (Communiqué Annex I, Category 1)	Strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm.	At its 2 July 2013 meeting, the NGPC adopted a resolution to defer entering into registry agreements with applicants who have applied for TLD strings listed in the GAC's Category 1 Safeguard Advice, pending a dialogue with the GAC. As noted by the community during the public comment period on the GAC's safeguard advice, the GAC's Category 1 Safeguard Advice presents some implementation concerns. The NGPC began a dialogue with the GAC during the ICANN 47 meeting in Durban. After hearing the concerns of the GAC in Durban and discussing the implementation issues, the NGPC is developing a potential path forward for implementing the Category 1 safeguard advice in anticipation of an intersessional dialogue with the GAC.

GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
18. 2013-04-11-Safeguards – Categories -1 (Communiqué Annex I, Category 1, Item 1)	For Category 1 strings, registry operators will include in their acceptable use policies 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. (GAC Annex I, Category 1, Item 1)	At its 2 July 2013 meeting, the NGPC adopted a resolution to defer entering into registry agreements with applicants who have applied for TLD strings listed in the GAC's Category 1 Safeguard Advice, pending a dialogue with the GAC. As noted by the community during the public comment period on the GAC's safeguard advice, the GAC's Category 1 Safeguard Advice presents some implementation concerns. The NGPC began a dialogue with the GAC during the ICANN 47 meeting in Durban. After hearing the concerns of the GAC in Durban and discussing the implementation issues, the NGPC is developing a potential path forward for implementing the Category 1 safeguard advice in anticipation of an intersessional dialogue with the GAC.
19. 2013-04-11-Safeguards – Categories -1 (Communiqué Annex I, Category 1, Item 2)	For Category 1 strings, registry operators will require registrars at the time of registration to notify registrants of requirement (above) to comply with all applicable laws.	At its 2 July 2013 meeting, the NGPC adopted a resolution to defer entering into registry agreements with applicants who have applied for TLD strings listed in the GAC's Category 1 Safeguard Advice, pending a dialogue with the GAC. As noted by the community during the public comment period on the GAC's safeguard advice, the GAC's Category 1 Safeguard Advice presents some implementation concerns. The NGPC began a dialogue with the GAC during the ICANN 47 meeting in Durban. After hearing the concerns of the GAC in Durban and discussing the implementation issues, the NGPC is developing a potential path forward for implementing the Category 1 safeguard advice in anticipation of an intersessional meeting with the GAC.

GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
20. 2013-04-11- Safeguards – Categories -1 (Communiqué Annex I, Category 1, Item 3)	For Category 1 strings, 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.	At its 2 July 2013 meeting, the NGPC adopted a resolution to defer entering into registry agreements with applicants who have applied for TLD strings listed in the GAC's Category 1 Safeguard Advice, pending a dialogue with the GAC. As noted by the community during the public comment period on the GAC's safeguard advice, the GAC's Category 1 Safeguard Advice presents some implementation concerns. The NGPC began a dialogue with the GAC during the ICANN 47 meeting in Durban. After hearing the concerns of the GAC in Durban and discussing the implementation issues, the NGPC is developing a potential path forward for implementing the Category 1 safeguard advice in anticipation of an intersessional meeting with the GAC..
21. 2013-04-11- Safeguards – Categories -1 (Communiqué Annex I, Category 1, Item 4)	For Category 1 strings, registry operators must 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.	At its 2 July 2013 meeting, the NGPC adopted a resolution to defer entering into registry agreements with applicants who have applied for TLD strings listed in the GAC's Category 1 Safeguard Advice, pending a dialogue with the GAC. As noted by the community during the public comment period on the GAC's safeguard advice, the GAC's Category 1 Safeguard Advice presents some implementation concerns. The NGPC began a dialogue with the GAC during the ICANN 47 meeting in Durban. After hearing the concerns of the GAC in Durban and discussing the implementation issues, the NGPC is developing a potential path forward for implementing the Category 1 safeguard advice in anticipation of an intersessional meeting with the GAC..

GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
22. 2013-04-11-Safeguards – Categories -1 (Communiqué Annex I, Category 1, Item 5)	For Category 1 strings, 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.	At its 2 July 2013 meeting, the NGPC adopted a resolution to defer entering into registry agreements with applicants who have applied for TLD strings listed in the GAC's Category 1 Safeguard Advice, pending a dialogue with the GAC. As noted by the community during the public comment period on the GAC's safeguard advice, the GAC's Category 1 Safeguard Advice presents some implementation concerns. The NGPC began a dialogue with the GAC during the ICANN 47 meeting in Durban. After hearing the concerns of the GAC in Durban and discussing the implementation issues, the NGPC is developing a potential path forward for implementing the Category 1 safeguard advice in anticipation of an intersessional meeting with the GAC..
23. 2013-04-11-Safeguards – Categories -1 (Communiqué Annex I, Category 1)	The GAC has identified a non-exhaustive list of strings that should be subject to the Category 1 safeguards.	At its 2 July 2013 meeting, the NGPC adopted a resolution to defer entering into registry agreements with applicants who have applied for TLD strings listed in the GAC's Category 1 Safeguard Advice, pending a dialogue with the GAC. As noted by the community during the public comment period on the GAC's safeguard advice, the GAC's Category 1 Safeguard Advice presents some implementation concerns. The NGPC began a dialogue with the GAC during the ICANN 47 meeting in Durban. After hearing the concerns of the GAC in Durban and discussing the implementation issues, the NGPC is developing a potential path forward for implementing the Category 1 safeguard advice in anticipation of an intersessional meeting with the GAC..

GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
24. 2013-04-11-Safeguards – Categories -1 (Communiqué Annex I, Category 1)	In addition (to the Category 1 Safeguards) applicants for .fail, .gripe, .sucks, and .wtf should develop clear policies and processes to minimize the risk of cyber bullying/harassment.	At its 2 July 2013 meeting, the NGPC adopted a resolution to defer entering into registry agreements with applicants who have applied for TLD strings listed in the GAC's Category 1 Safeguard Advice, pending a dialogue with the GAC. As noted by the community during the public comment period on the GAC's safeguard advice, the GAC's Category 1 Safeguard Advice presents some implementation concerns. The NGPC began a dialogue with the GAC during the ICANN 47 meeting in Durban. After hearing the concerns of the GAC in Durban and discussing the implementation issues, the NGPC is developing a potential path forward for implementing the Category 1 safeguard advice in anticipation of an intersessional meeting with the GAC..
25. 2013-04-11-Safeguards – Categories -1 (Communiqué Annex I, Category 1, Item 6)	For Category 1 strings that have regulated entry requirements in multiple jurisdictions, at the time of registration, the registry operator must verify and validate the registrants' authorizations, charters, licenses and/or other related credentials for participation in that sector.	At its 2 July 2013 meeting, the NGPC adopted a resolution to defer entering into registry agreements with applicants who have applied for TLD strings listed in the GAC's Category 1 Safeguard Advice, pending a dialogue with the GAC. As noted by the community during the public comment period on the GAC's safeguard advice, the GAC's Category 1 Safeguard Advice presents some implementation concerns. The NGPC began a dialogue with the GAC during the ICANN 47 meeting in Durban. After hearing the concerns of the GAC in Durban and discussing the implementation issues, the NGPC is developing a potential path forward for implementing the Category 1 safeguard advice in anticipation of an intersessional meeting with the GAC..

GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
26. 2013-04-11-Safeguards – Categories -1 (Communiqué Annex I, Category 1, Item 7)	For Category 1 strings that have regulated entry requirements in multiple jurisdictions, 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.	At its 2 July 2013 meeting, the NGPC adopted a resolution to defer entering into registry agreements with applicants who have applied for TLD strings listed in the GAC's Category 1 Safeguard Advice, pending a dialogue with the GAC. As noted by the community during the public comment period on the GAC's safeguard advice, the GAC's Category 1 Safeguard Advice presents some implementation concerns. The NGPC began a dialogue with the GAC during the ICANN 47 meeting in Durban. After hearing the concerns of the GAC in Durban and discussing the implementation issues, the NGPC is developing a potential path forward for implementing the Category 1 safeguard advice in anticipation of an intersessional meeting with the GAC..
27. 2013-04-11-Safeguards – Categories -1 (Communiqué Annex I, Category 1, Item 8)	For Category 1 strings that have regulated entry requirements in multiple jurisdictions, 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.	At its 2 July 2013 meeting, the NGPC adopted a resolution to defer entering into registry agreements with applicants who have applied for TLD strings listed in the GAC's Category 1 Safeguard Advice, pending a dialogue with the GAC. As noted by the community during the public comment period on the GAC's safeguard advice, the GAC's Category 1 Safeguard Advice presents some implementation concerns. The NGPC began a dialogue with the GAC during the ICANN 47 meeting in Durban. After hearing the concerns of the GAC in Durban and discussing the implementation issues, the NGPC is developing a potential path forward for implementing the Category 1 safeguard advice in anticipation of an intersessional meeting with the GAC..

GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
28. 2013-04-11-Safeguards – Categories -2 (Communiqué Annex I, Category 2, Item 1)	As an exception to the general rule that the gTLD domain name space is operated in an open manner registration may be restricted, in particular for strings mentioned under category 1 above. In these cases, the registration restrictions should be appropriate for the types of risks associated with the TLD. The registry operator should administer access in these kinds of registries in a transparent way that does not give an undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage.	At its 2 July 2013 meeting, the NGPC adopted a resolution to defer entering into registry agreements with applicants who have applied for TLD strings listed in the GAC's Category 1 Safeguard Advice, pending a dialogue with the GAC. 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 states that it applies "in particular for strings mentioned under Category 1." As noted by the community during the public comment period on the GAC's safeguard advice, the GAC's Category 1 Safeguard Advice presents some implementation concerns. The NGPC began a dialogue with the GAC during the ICANN 47 meeting in Durban. After hearing the concerns of the GAC in Durban and discussing the implementation issues, the NGPC is developing a potential path forward for implementing the Category 1 safeguard advice in anticipation of an intersessional meeting with the GAC..

GAC Register #	Summary of GAC Advice	NGPC Response/Status Update
29. 2013-04-11-Safeguards – Categories -2 (Communiqué Annex I, Category 2, Item 2)	For strings representing generic terms, exclusive registry access should serve a public interest goal. In the current round, the GAC has identified the following non-exhaustive list of strings that it considers to be generic terms, where the applicant is currently proposing to provide exclusive registry access: .antivirus, .app, .autoinsurance, .baby, .beauty, .blog, .book, .broker, .carinsurance, .cars, .cloud, .courses, .cpa, .cruise, .data, .dvr, .financialaid, .flowers, .food, .game, .grocery, .hair, .hotel, .hotels .insurance, .jewelry, .mail, .makeup, .map, .mobile, .motorcycles, .movie, .music, .news, .phone, .salon, .search, .shop, .show, .skin, .song, .store, .tennis, .theater, .theatre, .tires, .tunes, .video, .watches, .weather, .yachts, .クラウド [cloud], .ストア [store], .セール [sale], .ファッション [fashion], .家電 [consumer electronics], .手表 [watches], .書籍 [book], .珠宝 [jewelry], .通販 [online shopping], .食品 [food] (GAC Annex I, Category 2, Item 2)	At its 25 June 2013 meeting, the NGPC adopted a resolution to respond to the GAC's safeguard advice on exclusive generic strings. The NGPC approved revisions to the Public Interest Commitment Specification in the New gTLD Registry Agreement to implement the safeguard advice for applicants not seeking to impose exclusive registry access. As directed by the NGPC, staff has deferred 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 Sec. 2.9(c) of the Registry Agreement), pending a dialogue with the GAC.

In line with the NGPC's direction, ICANN is soliciting responses from applicants who applied for strings listed in the GAC's Category 2 advice to determine whether each applicant is prepared to accept the PIC Specification that precludes exclusive registry access or whether the applicant is unwilling to accept the PIC Specification because the applicant intends to implement exclusive registry access. The NGPC will consider the applicant responses and develop a proposed path forward. |

TITLE: **ALAC Statement on the Preferential Treatment for Community Applications in String Contention**

Background Facts on Community-Based Applications (AGB § 1.2.3)

1. A community-based gTLD is "a gTLD that is operated for the benefit of a clearly delineated community."

2. Designation or non-designation of an application as community-based is entirely at the discretion of the applicant, and any applicant may designate its application as community-based.

3. The community priority evaluation (CPE) process does not answer the question of "who is a community". Rather, the CPE determines whether an applicant, who has declared itself to be a community, should be given priority over standard applications for the same string.

4. Formal objections may be filed against any application on community grounds, even if the applicant has not designated itself as community-based or declared the gTLD to be aimed at a particular community.

5. Applicants who designate themselves as community-based are required to substantiate their status by submitting certain written endorsements supporting their application.

6. Designating as a community-based application will affect the processing of the application at particular stages, and for successful community-based applicants, will require additional restrictions in the Registry Agreement to ensure that the TLD is operated in a manner consistent with its community-based designation.

Statistics on Community Applications

7. Community String Contention Statistics:

    a. Starting total of sets with 1 or more community applicants: **28**
    b. Starting number of community applications in contention: **34**

    c. Current total of contention sets with 1 or more community applicants: **27**
    d. Current number of community applications in contention: **32**
    e. Contention sets with **more than one** community applicants: **5** (.ART, .CPA, .MERCK, .MUSIC, .SHOP)

8. String Contention Statistics (overall):

    a. Starting total of contention sets: **234**
    b. Starting number of applications: **758**

    c. Current total of contention sets: **209**
    d. Current number of applications: **676**

9. List of community applications in contention:

App ID	String	Applicant
1-1097-20833	art	Dadotart, Inc.
1-1675-51302	art	EFLUX.ART, LLC
1-1035-13873	bank	fTLD Registry Services LLC
1-880-39342	corp	Dot Registry LLC
1-1911-56672	cpa	American Institute of Certified Public Accountants
1-1744-1971	cpa	CPA AUSTRALIA LTD
1-912-59314	eco	Big Room Inc.
1-1713-23699	gay	dotgay llc
1-1273-63351	gmbh	TLDDOT GmbH
1-1032-95136	hotel	HOTEL Top-Level-Domain S.a.r.l
1-1000-62742	immo	STARTING DOT
1-880-35979	inc	Dot Registry LLC
1-1035-75923	insurance	fTLD Registry Services LLC
1-1309-46695	kids	DotKids Foundation Limited
1-880-17627	llc	Dot Registry LLC
1-880-35508	llp	Dot Registry LLC
1-1192-28569	med	HEXAP SAS
1-1702-73085	merck	Merck Registry Holdings, Inc.
1-980-7217	merck	Merck KGaA
1-1888-47714	mls	The Canadian Real Estate Association
1-1115-14110	music	DotMusic / CGR E-Commerce Ltd

1-959-51046	music	.music LLC
1-901-9391	osaka	Interlink Co., Ltd.
1-1083-39123	radio	European Broadcasting Union (EBU)
1-1830-1672	shop	Commercial Connect LLC
1-890-52063	shop	GMO Registry, Inc.
1-1000-18032	ski	STARTING DOT
1-1309-81322	spa	Asia Spa and Wellness Promotion Council Limited
1-1012-71460	sport	SportAccord
1-1025-18840	taxi	Taxi Pay GmbH
1-1723-69677	tennis	TENNIS AUSTRALIA LTD
1-1033-22687	WEBS	Vistaprint Limited

10. Community Priority Evaluation (CPE) is slated to begin in late September 2013. In preparation, EIU, the primary CPE firm, has developed a set of guidelines that are based on the criteria in the Applicant Guidebook. These guidelines were developed by EIU to ensure quality and consistency in the evaluation process. On 16 August 2013, the Community Priority Evaluation Guidelines were posted for community review and input. The due date for submitting feedback on the guidelines document is 30 August 2013. All feedback will be forwarded to EIU for consideration and inclusion in their guidelines document, at their discretion. A finalized version of the CPE guidelines document will be published in early September 2013. Staff submitted the ALAC Statement on Community Applications to the public feedback forum so that EIU could take these comments into consideration.

EN

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AT-LARGE ADVISORY COMMITTE
ALAC Statement on the Preferential Treatment for Community Applications in String Contention

Introduction

Rinalia Abdul Rahim, ALAC member from the Asian, Australasian and Pacific Islands Regional At-Large Organization (APRALO) and ALAC Executive Committee member composed an initial draft of this Statement after discussion of the topic within At-Large and on the Mailing Lists

On 5 August 2013, this statement was posted on the ALAC Statement on the Preferential Treatment for Community Applications in String Contention Workspace.

On that same day, Olivier Crépin-Leblond, Chair of the ALAC, requested ICANN Policy Staff in support of the ALAC to send a Call for Comments on the draft Statement to all At-Large members via the ALAC Announce Mailing List.

On 9 August 2013, a version incorporating the comments was posted.

The Chair of the ALAC requested that ICANN Policy Staff in support of the ALAC open a five-day ratification vote on the Statement. This Statement was then sent to the Chair of the Board and the Chair of the Board's new gTLD Program Committee with a note that it was currently undergoing ALAC Ratification.

Summary

1. applications with demonstrable support, appropriate safeguards and strong emphasis on community service should be accorded preferential treatment in the new gTLD string contention resolution process.

ALAC Statement on the Preferential Treatment for Community Applications in String Contention

The ALAC notes that some of the new gTLD applications that are intended for communities and have wide public or grassroots support were not submitted as community applications. These applications are currently in contention with those that are not designed for the benefit of specific communities of interest and are driven purely by commercial considerations.

We firmly believe that applications with demonstrable support, appropriate safeguards and strong emphasis on community service should be accorded preferential treatment in the new gTLD string contention resolution process. We thus support the position of the Governmental Advisory Committee (GAC) as per its Durban Communiqué dated 18 July 2013. We call on ICANN to review all 688 applications currently in contention and provide preferential treatment to applications that meet the characteristics of community applications.

TITLE: **ALAC Statement on Community Expertise in Community Priority Evaluation**

The ALAC Statement on Community Expertise in Community Priority Evaluation expresses concerns about community-based applications in the New gTLD Program. Below is a discussion of key issues raised by the ALAC.

Qualifications of Community Priority Evaluation Review Panels

The ALAC has raised concerns that the review panels may be predisposed toward business applications and may "discriminate against applications emphasizing community service." However, the firms selected to for the review panel [i.e. Economist Intelligence Unit (EIU) and InterConnect Communications (InterConnect)] were properly vetted and are focused on an evaluation process that will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination.

The EIU was selected as the primary firm performing Community Priority Evaluation (CPE). The EIU is the business information arm of The Economist Group, publisher of The Economist. Through a global network of more than 900 analysts and contributors, the EIU continuously assesses political, economic, and business conditions in more than 200 countries, and helps executives, governments, and institutions by providing timely, reliable, and impartial analysis. The EIU was selected as a Panel Firm for the gTLD evaluation process based on a number of criteria, including:

- Being an internationally recognized firm or organization with significant demonstrated expertise in the evaluation and assessment of proposals in which the relationship of the proposal to a defined public or private community plays an important role.

- Ability to convene a linguistically and culturally diverse panel capable, in the aggregate, of evaluating applications from a wide variety of different communities.

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- Ability to exercise consistent and somewhat subjective judgment in making its evaluations in order to reach conclusions that are compelling and defensible.

InterConnect will provide CPE services if there is a need for additional bandwidth to conduct the number of necessary evaluations or to provide an alternate channel to avoid conflicts of interest. InterConnect, in conjunction with the University College London brings an internationally recognized and diverse linguistics resources offering an abundance of subject matter expertise.

With respect to concerns expressed by the ALAC concerning the panel's predisposition toward business applications, the EIU is committed to an evaluation process that will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination. The EIU developed the following set of principles to achieve this aim:

- All EIU evaluators must ensure that no conflicts of interest exist.

- All EIU evaluators must undergo training and be fully cognizant of all CPE requirements as listed in the Applicant Guidebook. This process will include a pilot testing process.

- EIU evaluators are selected based on their knowledge of specific countries, regions and/or industries, as they pertain to applications. Language skills will also considered in the selection of evaluators and the assignment of specific applications.

- All applications will be evaluated and scored, in the first instance by two evaluators, working independently.

- All applications will subsequently be reviewed by members of the core project team to verify accuracy and compliance with the AGB, and to ensure consistency of approach across all applications.

- The EIU will work closely with ICANN when questions arise and when additional information may be required to evaluate an application. The EIU will fully cooperate with ICANN's quality control process.

Additionally, the EIU has developed a set of guidelines that are based on the criteria in the Applicant Guidebook. < http://newgtlds.icann.org/en/applicants/cpe/guidelines-16aug13-en.pdf>. These guidelines were developed to ensure quality and consistency in the evaluation process, and have been posted for community feedback. <http://newgtlds.icann.org/en/announcements-and-media/announcement-4-16aug13-en>. A finalized version of the CPE guidelines document will be published in early September 2013. Staff submitted the ALAC Statement on "Preferential Treatment for Community Applications in String Contention" to the community feedback forum so that EIU could take these comments and concerns into consideration.

AT-LARGE ADVISORY COMMITTEE

ALAC Statement on Community Expertise in Community Priority Evaluation

Introduction

Rinalia Abdul Rahim, ALAC member from the Asian, Australasian and Pacific Islands Regional At-Large Organization (APRALO) and ALAC Executive Committee member composed an initial draft of this Statement after discussion of the topic within At-Large and on the Mailing Lists.

On 5 August 2013, this statement was posted on the ALAC Statement on Community Expertise in Community Priority Evaluation Workspace.

On that same day, Olivier Crépin-Leblond, Chair of the ALAC, requested ICANN Policy Staff in support of the ALAC to send a Call for Comments on the draft Statement to all At-Large members via the ALAC Announce Mailing List.

On 9 August 2013, a version incorporating the comments was posted.

The Chair of the ALAC requested that ICANN Policy Staff in support of the ALAC open a five-day ratification vote on the Statement.
This Statement was then sent to the Chair of the Board and the Chair of the Board's new gTLD Program Committee with a note that it was currently undergoing ALAC Ratification.

Summary

1. The ALAC has concerns about the sufficiency of community expertise in panels that evaluate new gTLD community applications.
2. The ALAC stands ready to offer appropriate ICANN community volunteers to serve as panel members or advisors.

ALAC Statement on Community Expertise in Community Priority Evaluation

The ALAC has concerns about the sufficiency of community expertise in panels that evaluate new gTLD community applications. This concern stems from the experience gained by the failure of the new gTLD Applicant Support Program.

The Community Priority Evaluation has significant implications for communities:

Module 4 of the Applicant Guidebook specifies that the Community Priority Evaluation is applicable only for community-based applicants. The evaluation is an independent analysis which is not dependent on prior applicant review results. Any community application passing the Evaluation will "eliminate all directly contending standard applications, regardless of how well qualified the latter may be". Community applications failing the Evaluation will proceed into auction involving all contending parties where they may be at a disadvantage against fully commercial applications.

The panel tasked to conduct such an important evaluation must have sufficient and relevant community-related expertise.

As per the new gTLD Program Timeline published at http://newgtlds.icann.org/en/program-status/timelines, we note that the string contention resolution process will begin in September 2013. We also note that the Economist Intelligence Unit and InterConnect Communications have been appointed as service providers for the Community Priority Evaluation Panel, as published in the new gTLD Program Update at the ICANN Dakar Meeting in 2011.

We have concerns that these entities may have a natural familiarity and pre-disposition toward business that may discriminate against applications emphasizing community service.

The ALAC therefore calls for additional community-related expertise in the Community Priority Evaluation Panel and stands ready to offer appropriate ICANN community volunteers to serve as panel members or advisors.