

# GAC Advice Response Form for Applicants



The Governmental Advisory Committee (GAC) has issued advice to the ICANN Board of Directors regarding New gTLD applications. Please see Section IV of the [GAC London Communiqué](#) for the full list of advice on individual strings, categories of strings, and strings that may warrant further GAC consideration.

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Please note: This form will be publicly posted.

## Respondent:

Applicant Name	Kosher Marketing Assets LLC
Application ID	1-1013-67544
Applied for TLD (string)	KOSHER

## Response:

Attached please find Kosher Marketing Assets LLC’s response to London GAC Advice.

August 4, 2014

VIA EMAIL to [yuval@dtnt.com](mailto:yuval@dtnt.com) & [dina.b@isoc.org.il](mailto:dina.b@isoc.org.il)

Mr. Yuval Zantkeren  
Ms. Dina Beer  
Ministry of Communications  
External Affairs Division  
[yuval@dtnt.com](mailto:yuval@dtnt.com)  
[dina.b@isoc.org.il](mailto:dina.b@isoc.org.il)

**Re: Welcome to the Governmental Advisory Committee & Invitation to Discuss .KOSHER**

Dear Mr. Zantkeren and Ms. Beer:

I write on behalf of Kosher Marketing Assets LLC (KMA), a wholly owned subsidiary of OK Kosher Certification (OK), one of the world's oldest and largest international kosher certification organizations to welcome you to the Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN).

As you are no doubt aware, OK is recognized and highly regarded as a global leader within the kosher food certification industry. OK currently provides certification services in over ninety countries on six continents, and its services are supported by more than 350 of the world's leading kosher experts.

KMA has applied to ICANN to operate the new generic top-level domain (gTLD) .KOSHER for the benefit of the entire kosher industry, including consumers, producers, vendors and certifiers of kosher food. The purpose of .KOSHER is to be a primary source of information regarding kosher laws, products, and services on the Internet. The gTLD is intended to supplement the wealth of existing informational sources, and promote the appreciation and observance of kosher laws. KMA's application is supported by over 40 kosher certification organizations, certifying rabbis, and other essential members of the kosher industry from over 20 countries worldwide.

OK and KMA are aware of your ongoing study regarding the potential for undue discrimination in the operation of .KOSHER, as expressed in the GAC London Communiqué.

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We are happy to inform you that KMA has formally committed to a fair and transparent operation of the .KOSHER gTLD. While KMA believes that minimum threshold eligibility criteria will be necessary to maintain the integrity of the space, it recognizes the diversity of kosher certification organizations and will not limit eligibility based on kosher certification methodology, whether established by OK or KMA alone.

Accordingly, KMA has included several Public Interest Commitment Specifications with its application in which KMA commits to:

- Administer registry access in a transparent way that does not give an undue preference to any registrars or registrants, including itself, and not subject registrars or registrants to an undue disadvantage;
- Not restrict the TLD to a single person or entity and/or that person's or entity's affiliates;
- Not exclude any registrants on the basis that they are competitors of KMA or its affiliates; and
- Not impose the kosher certification standards or methodologies of itself or its affiliates on any registrants.

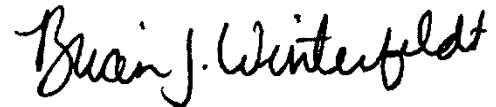
We hope that these commitments assure you that KMA will operate .KOSHER in an open manner with appropriate eligibility requirements, and administer the gTLD in a fair and transparent way.

To that end, we wish to schedule a meeting to discuss any outstanding concerns and for you to learn more about OK Kosher, Kosher Marketing Assets, and the community involvement and support for the .KOSHER gTLD application.

KMA looks forward to working with Israel's Ministry of Communications, the Governmental Advisory Committee, ICANN and its stakeholders, in order to ensure that KMA achieves its goal of operating a transparent and fair TLD with appropriate and meaningful eligibility requirements.

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Respectfully,

A handwritten signature in black ink that reads "Brian J. Winterfeldt". The signature is written in a cursive style with a prominent initial "B".

Brian J. Winterfeldt  
*Representative for Kosher Marketing Assets, LLC*

CC: ICANN Board of Directors (via Governmental Advisory Committee Response Form)

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## Respondent:

Applicant Name	DotConnectAfrica Trust
Application ID	1-1165-42560
Applied for TLD (string)	AFRICA

## Response:

This document has been prepared in response to the GAC Advice conveyed in the ICANN 50 GAC London Communiqué. DotConnectAfrica Trust (“DCA”) received the notice of GAC Advice on July 14, 2014, through the ICANN Customer Service Center Notification Portal for New gTLD applicants and was instructed to respond using this GAC Advice Applicant Response form by August 4, 2014 23:59:59.

The GAC Advice given to ICANN during ICANN 50 in London concerning the dispute over .africa, as well as other recent communications between the GAC and ICANN regarding this dispute, demonstrates both the African Union’s inappropriate efforts to determine the outcome of the applications for .africa and ICANN’s improper acquiescence to the GAC’s demands. We strongly urge ICANN not to accept this advice.

Only two applicants applied for .africa. One, UniForum/ZACR, applied at the behest of the African Union Commission (“AUC”).<sup>1</sup> The other applicant, DCA is a Mauritian non-profit organization led by Sophia Bekele Eshete.

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<sup>1</sup> The AUC became a member of the GAC in June 2012, apparently in response to advice from ICANN in March 2012, informing the AUC that it could “play a prominent role in determining the outcome of any application for these top-level domain name strings [i.e., .africa, .afrique and .afrikia]” by acting through the GAC. See Letter from Stephen Crocker to Commissioner Elham Ibrahim dated March 8, 2012, pages 2-3, 6-7 (Responses to Requests 1 & 8). In November 2012, a mere five months after taking ICANN’s advice and joining the GAC, the AUC orchestrated the issuance of a GAC early

ICANN halted the processing of DCA’s application in June 2013 on the basis of advice from the GAC – rendered at the request of the AUC, but contested by the Kenyan GAC representatives – to reject DCA’s application because it allegedly did not have enough governmental support. DCA subsequently initiated an Independent Review Process (“IRP”) challenging ICANN’s acceptance of that advice. The IRP is currently ongoing.

In order to preserve DCA’s right to be heard and its right to meaningful relief should it prevail in the IRP, the IRP Panel issued an interim order directing ICANN not to take any further action on the UniForum/ZACR application, since delegation of .africa to ZACR would effectively deny DCA any remedy whatsoever. In response, the AUC has once again begun using the GAC to pressure ICANN to take actions favoring its own candidate for .africa, UniForum/ZACR.

It was in this context that the GAC provided its advice as two numbered items, advising the ICANN Board:

1. “...to provide timely communication to the affected parties, in particular to provide clarity on the process and possible timelines;” and
2. “...that, following the release of the IRP recommendation, the Board should act expeditiously in prioritizing their deliberations and delegate .africa pursuant to the registry agreement signed between ICANN and ZACR.”<sup>2</sup>

Remarkably, in the GAC’s view, “the affected parties” to the IRP are not DCA and ICANN, the actual parties to the IRP, but the GAC, the AUC, and UniForum/ZACR. Indeed, ever since the Panel issued its order on interim measures, the GAC has been sending a steady message to ICANN that it must ensure that the IRP does nothing to interfere with the presumptive delegation of .africa to UniForum/ZACR. Thus, the GAC’s second item of advice urges ICANN to “expeditiously” delegate .africa to UniForum/ZACR as soon as the IRP is completed, regardless of what the IRP Panel recommends.

ICANN can and must reject this advice.

## **I. The GAC’s Advice That ICANN “Provide Timely Communication” To Non-Parties To The .africa IRP**

It is surprising for the GAC to advise ICANN to keep the so-called “affected parties” informed of what is going on in the .africa IRP, since all documents filed in the IRP and decisions made by the IRP Panel are posted to ICANN’s website<sup>3</sup> (as well as DCA’s

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warning against DCA’s application for .africa, and succeeded in obtaining so-called GAC advice against DCA’s application in April 2013.

<sup>2</sup> GAC Communique – London, United Kingdom (25 June 2014), Section IV (3)(a).

<sup>3</sup> ICANN undertakes to publish the pleadings and decisions relating to all IRPs—as well as all litigations involving ICANN—on its website. Pleadings and decisions from DCA

website<sup>4</sup>). The AUC and UniForum/ZACR have only to monitor these sites in order to be fully informed as to the status of the IRP.

To the extent that the GAC is advising ICANN to provide confidential information to the AUC and UniForum/ZACR concerning this proceeding, such advice is highly inappropriate and jeopardizes the integrity of the IRP proceedings. The IRP is independent of ICANN and the GAC, and neither the AUC nor UniForum/ZACR has any right to confidential information concerning this dispute resolution process.

Indeed, the AUC and UniForum would do better to keep track of what is posted on ICANN's and DCA's websites concerning the IRP, since ICANN staff members have provided information that is incorrect.<sup>5</sup>

In fact, ICANN, in its communications with the AUC, has provided very misleading information concerning the nature of the IRP. ICANN has given every indication that it agrees with the AUC that the IRP is merely a dilatory tactic to push back what is treated as the inevitable delegation of .africa to ZACR:

- On June 15, 2014, ICANN CEO Fadi Chehadé wrote to Dr. Elham Ibrahim, the AUC Infrastructure and Energy Commissioner indicating that

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v. ICANN may be found at the following site:

<https://www.icann.org/resources/pages/dca-v-icann-2013-12-11-en>.

<sup>4</sup> DCA has also committed to post all pleadings, decisions and non-confidential communications relating to the IRP on its website, available here: <http://www.dotconnectafrica.org/icann-related-2/independent-review-process-dca-vs-icann/>.

<sup>5</sup> For example, on the afternoon of June 21, 2014, during ICANN 50 in London, ICANN staff erroneously informed the AUC representatives present that discussions relating to DCA v. ICANN began in October 2013 and that the first memorial was not filed until May 2014. *See* Transcript, GAC Meeting on New gTLDs - Compliance and Implementation of GAC Safeguard Advice (21 June 2014), pages 4-5. In fact, following a CEP process which began in late August 2013, the Notice of IRP was filed on October 24, 2013, and DCA's Amended Notice of IRP was submitted on January 10, 2014. By May 2014, the IRP panel was already constituted and it enjoined ICANN from further delegating .africa to ZACR on May 12, 2014.

Likewise, ICANN staff erroneously informed the GAC that the IRP is a three-party process, when in fact the IRP is strictly between the ICANN Board and the party challenging Board action. Most remarkably, ICANN staff was unsure where to direct GAC members to find the complete rules relevant to the IRP process. *See id.* at pages 9, 31.

ICANN did not approve of DCA v. ICANN<sup>6</sup> and promising to proceed expeditiously with delegating .africa to ZACR and the AUC as soon as would appear appropriate following the IRP.<sup>7</sup>

- During the ICANN Press Conference on June 24, 2014, Mr. Chehadé publicly cast the IRP as a battle waged by DCA’s founder Sophia Bekele against the entire African Union, obscuring the actual parties and issues in the IRP.<sup>8</sup>
- At the ICANN Public Forum on June 26, 2014, Mike Silber of the ICANN Board publicly championed the current CEO of ZACR, “my friend Lucky Masilela” in his tirade against the DCA v. ICANN IRP, agreeing with Masilela that “It’s unfortunate that [ZACR’s] effort has been hamstrung by initiatives which are not positive” and assuring him that ICANN is working expeditiously to resolve the IRP and avoid further delay in delegating .africa to ZACR.<sup>9</sup>

In reality, the IRP is an independent process created in order to adjudicate the rights that DCA has asserted in its Notice of IRP, and in particular, the right to have its application treated fairly, transparently, and with due diligence by ICANN in accordance with ICANN’s Bylaws, Article of Incorporation, and the gTLD Applicant Guidebook.

ICANN does not have the right to simply delegate .africa to ZACR – or to promise to do so in its dealings with the AUC – unless and until the IRP Panel tasked with evaluating DCA’s claims has completed its mission *and the ICANN Board has acted on the Panel’s decision*, whatever that decision may be and regardless of whether the AUC views that decision as favorable to itself or to ZACR.

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<sup>6</sup> Letter from Fadi Chehadé to Commissioner Ibrahim dated June 15, 2014 (“Even when challenges are not well taken (such as the way that we view the .AFRICA IRP…) (ICANN is also frustrated…)”).

<sup>7</sup> *Id.* (“You have my commitment that our Global Domains Division team and all other necessary teams at ICANN will work expeditiously with ZACR to bring the .AFRICA TLD to delegation and launch, just as soon as it is appropriate for that work to proceed. I am excited to see the opportunities that the launch of the .AFRICA TLD will bring to the constituents of the AUC, and we look forward to working with you in the future.”).

<sup>8</sup> ICANN Press Conference (June 24, 2014), *available at* <https://www.youtube.com/watch?v=QsGZolSaJQA&feature=youtu.be> (“Similarly, we have the case of “.africa” where a single applicant has filed an IRP. She decided that this is her right and we should let her pursue her right even if the whole African Union has a different view. Her right is to say I don’t agree with the decision”).

<sup>9</sup> Transcript, ICANN Public Forum (June 26, 2014), page 24 (“We’re working with staff to monitor the process, and staff has committed to doing everything that they can to try and speed up the process; that this not be held up any longer than is absolutely necessary.”).



## II. The GAC’s Advice That ICANN “Act Expeditiously” To Delegate .africa To ZACR On Release Of The IRP Recommendation

The GAC’s advice that ICANN should simply delegate .africa to ZACR once the IRP has been completed (regardless of what the Panel decides) is highly inappropriate. It assumes that the IRP concerning .africa is mere window dressing, an empty formality put in place so that ICANN can claim that it is meeting its obligations of transparency and accountability, but which will have no effect whatsoever on the presumptive delegation of .africa to the party favored by the GAC.

However, pursuant to ICANN’s Bylaws and the rules applicable to the IRP, the Board must give due consideration to and act on the Panel’s decision.<sup>10</sup> Indeed, it is DCA’s position that the IRP Panel’s decision is binding on ICANN.<sup>11</sup> Thus, ICANN cannot simply delegate .africa to ZACR as the GAC urges it to do. ICANN must comply with the Panel’s decision.

## III. Additional Observations: Education of GAC Representatives on the ICANN Process Which they Are Intended to Comment and Advise Upon

It is our understanding that GAC representatives are officials sent by their own governments on the assumption that they are or will become sufficiently knowledgeable in the ICANN processes to provide educated feedback to ICANN on how its processes relate to the laws and international agreements of each government.<sup>12</sup> Where the New

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<sup>10</sup> ICANN Bylaws, Article IV §3(21) (“...the Board shall consider the IRP Panel declaration at the Board’s next meeting. The declarations of the IRP Panel, and the Board’s subsequent action on those declarations, are final and have precedential value”). See also, DCA’s Submission on Procedural Issues (May 5, 2014), ¶¶ 27-28, 34-44, available at <https://www.icann.org/en/system/files/files/dca-submission-procedural-issues-05may14-en.pdf> (discussing in detail why the language of the Bylaws and ICANN’s Supplementary Procedures for IRPs indicate that the IRP declaration is final and binding on both DCA and ICANN.).

<sup>11</sup> See DCA’s Submission on Procedural Issues (May 5, 2014), available at <https://www.icann.org/en/system/files/files/dca-submission-procedural-issues-05may14-en.pdf>; DCA’s Response to the Panel’s Questions on Procedural Issues (May 20, 2014), available at <https://www.icann.org/en/system/files/files/dca-response-procedural-issues-20may14-en.pdf>. All pleadings are also available at <http://www.dotconnectafrica.org/icann-related-2/independent-review-process-dca-vs-icann/>.

<sup>12</sup> See ICANN Bylaws, Art. XI, §2(1)(e) (“the accredited representative of a member must hold a formal official position with the member’s public administration. The term “official” includes a holder of an elected governmental office, or a person who is employed by such government...”); *id.* at Art. XI, §2(1)(a) (“The [GAC] should consider and provide advice on the activities of [ICANN] as they relate to concerns of governments, particularly where there may be an interaction between [ICANN]’s policies

gTLD Program is concerned, this role requires the representatives to understand the gTLD Applicant Guidebook, the ICANN Bylaws and the IRP process contained therein, a process which as noted is independent of both ICANN and the applicants.

In contrast to this understanding, many of the GAC members who opposed DCA's application through the April 2013 Advice were new to the ICANN system, with the African Union Commission joining as a member in June 2012 during the Prague meetings, after the application process closed in March 2012.<sup>13</sup> Based upon the discussions during ICANN 46 in Beijing and ICANN 50 in London, these new members do not appear to have been educated by ICANN on the critical documents namely, the gTLD Applicant Guidebook, the ICANN Bylaws and the IRP process which is—by contract—the only independent method of review available to any applicant under the new gTLD program.<sup>14</sup>

From the questions raised in the GAC Advice and in the available transcripts of the various GAC meetings during ICANN 50 and during past ICANN meetings, it is our deep concern that ICANN allows the GAC to intervene in ICANN's evaluation and delegation of new gTLDs without ensuring that the GAC representatives actually understand ICANN processes. A lack of proper education is the clear explanation for certain GAC members urging ICANN to truncate the IRP and/or compromise the independence of the proceeding, which is according to ICANN, an applicant's only method of legal recourse.<sup>15</sup>

Nonetheless, if the GAC representatives lack an understanding of ICANN, the onus is on ICANN itself, as the organization which created the GAC and is supposedly supported by the GAC and its policy advice, to ensure that GAC representatives are properly educated and that GAC advice is based upon thorough understandings of the ICANN policies it

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and various laws and international agreements or where they may affect public policy issues").

<sup>13</sup> See ICANN GAC Communiqué - Prague 28 June 2012, *available at* [https://gacweb.icann.org/download/attachments/27131919/FINAL\\_GAC\\_Communique\\_20120628.pdf?version=1&modificationDate=1341949563000&api=v2](https://gacweb.icann.org/download/attachments/27131919/FINAL_GAC_Communique_20120628.pdf?version=1&modificationDate=1341949563000&api=v2). The African Union Commission joined the GAC presumably at the invitation of the Chair Heather Dryden, as this is the only method for a non-state to join the GAC. See ICANN Bylaws, Art. XI, §2(1)(b) ("Membership shall also be open to...multinational governmental organizations and treaty organizations, on the invitation of the [GAC] through its Chair.").

<sup>14</sup> See gTLD Applicant Guidebook, Module 6(6) (purporting to waive all recourse to any court or other judicial forum for every applicant filing for a gTLD under the New gTLD Program "provided, that applicant may utilize any accountability mechanism set forth in ICANN's Bylaws" to instead including the IRP).

<sup>15</sup> *Id.*

comments upon. ICANN has a duty to educate the members of the Internet community at large as well as the members of the GAC themselves, as part of its obligation to act in a transparent and accountable manner.

Based upon the GAC's recent actions and advice, we raise the following questions to ICANN:

- **GAC representatives' knowledge and competence:** Is there a proper mechanism within the GAC rules to ensure individuals with the requisite knowledge and experience are recommended to represent governments? A minister of agriculture meets the requirement of "official" representation but likely would not be informed on ICANN. Likewise, even an expert understanding of computers and coding does not guarantee that an official will be familiar with ICANN's policies.
- **GAC Training:** Does the GAC have a mechanism to train its members' representatives in ICANN's rules and constitutive documents? What mechanisms does ICANN make available to GAC representatives to educate them on ICANN programs and procedures?
- **GAC Voting:** How exactly does ICANN assess whether advice was obtained by consensus? Asking members to indicate if they vote against certain consensus advice does not mean that all others are in favor of the advice. A non-vote could be an abstention. Likewise many items of GAC advice are published by way of communiqués without noting whether they are offered following consensus. What mechanism does ICANN have to communicate to the GAC and clarify challenged consensus?
- **Conflicts of Interest:** DCA is not the only applicant to publicly notify ICANN that a competing applicant is utilizing a legitimate ICANN process or organ—like the GAC—to quash its competition. Does ICANN anticipate putting in place any mechanisms to protect against the misuse of the GAC or politicization of GAC Advice by applicants to defeat competing applications?

Based upon these concerns and for the above noted reasons, we object to the GAC's advice as improper and betraying a failure on the part of ICANN to adequately educate and inform GAC representatives. We expect ICANN to decline to follow the London GAC Advice with regard to .africa, consistent with its obligations under the Bylaws and other documents governing ICANN and the IRP.

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## Respondent:

Applicant Name	United TLD Holdco Ltd.
Application ID	1-1255-37010
Applied for TLD (string)	.ENGINEER

## Response:

United TLD Holdco Ltd., trading as Rightside Registry (“Rightside”), a registry operator and applicant for new generic top level domain names (gTLDs) wishes to thank ICANN for the opportunity to comment on the communiqué issued by the Government Advisory Committee (GAC) from London, United Kingdom, on June 25, 2014 (the “GAC Communiqué”). Rightside would like to express a comment with respect to Section IV of the GAC Communiqué related to GAC Safeguard Advice to the Board.

### Section IV.2. Safeguard Advice

Rightside continues to value the GAC’s advice regarding the implementation of safeguards for certain applied for new gTLDs (“Category 1” new gTLDs) and applauds ICANN’s embraced proposal that the safeguards be implemented through the use of public interest commitments (PICs) to be adopted by the respective registry operators. Rightside believes that these PICs, in conjunction with the strong PIC Dispute Resolution Process that has been designed through close collaboration between ICANN staff and the stakeholder community, will result in the operation of safe and secure name spaces for Category 1 new gTLDs.

Rightside and other registries preparing to offer Category 1 new gTLDs have made the relevant changes to their respective Registry-Registrar Agreements (RRA) which have been reviewed and approved by ICANN and by the Registrar Stakeholder Group (RrSG). Registrars and registrants will know and understand their additional responsibilities with respect to using domain names with Category 1 new gTLD extensions.

Requiring registries to verify and validate credentials of registrants for domain names in regulated or highly regulated industries at the time of registration is not possible or

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commercially practicable in most cases. For example, for .ENGINEER, there are numerous types of engineers (software engineer, chemical engineer, naval engineer, automotive engineer, etc.) and engineering disciplines, many of which do not require service providers to possess professional credentials. However, Rightside and other registries preparing to offer Category 1 new gTLDs, have made the relevant and necessary changes to their respective Registry-Registrar Agreements (RRA) so that registrars and registrants will know and understand their additional responsibilities with respect to using domain names having these extensions.

Furthermore, Rightside would like to note for the GAC that although the PIC Dispute Resolution Process (PICDRP) is yet untested, that does not presuppose that it will be ineffective when initiated. The PICDRP was developed with input from all community stakeholders and is modeled off other well-established dispute resolution procedures previously adopted by ICANN. Although ICANN may decline to impose any remedial measure, it does not stand to reason that they would do so if a Registry Operator failed to comply with a compliance notice. That certainly has not been the case with prior compliance notices. Finally, Rightside does not see any "loophole" in the current PICDRP. Invocation of the alternative dispute resolution process within the Registry Agreement does not allow Registry Operators to avoid compliance with its PICs. Rather the ADR only insures that ICANN cannot take action that is not permitted under the terms of the Registry Agreement.

Rightside remains committed to operating safe and secure namespaces for each of its new gTLDs including those that are subject to Category 1 GAC Advice. We ask the GAC to be patient with the PICs, the PICDRP and the rights protection mechanisms implemented by registry operators in the new gTLD program and allow time for these protections to demonstrate their effectiveness in the marketplace.

We thank the GAC for its support and input into the new gTLD program and welcome the opportunity to engage GAC members on any further issues of concern.

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## Respondent:

Applicant Name	TLDDOT GmbH
Application ID	1-1273-63351
Applied for TLD (string)	GMBH

## Response:

TLDDOT GmbH for .GMBH® Comments on New gTLD Board Committee Consideration of GAC Safeguard Advice

We welcome the opportunity to submit this reply to some of the comments in response to ICANN’s request for comments on Section IV.1.b and Annex I of the GAC’s London Communiqué which refers to the GAC Advice on safeguards applicable to new generic top-level domain names (gTLDs).

Our reply refers to comments made to the “Additional Category 1 Safeguards” where the GAC Advice notes that “some of the above strings” may require further targeted safeguards to address specific risks and adds Safeguards No. 6, No. 7, and No. 8 to the five Category 1 Safeguards introduced in the first part of the GAC Advice:

### 1. GAC Members and Member States must take Responsibility

For the many strings which concern only a few precisely defined national legal frameworks, such as some corporate identifiers, the ICANN Board must take responsibility to consult with the GAC in order to facilitate an appropriate and responsible execution of the GAC Advice.

Otherwise situations will emerge in which applicants

a) refuse the GAC Advice Safeguards after succeeding as winners of string contention resolutions and

b) are located in jurisdictions where a GAC member or member state has no power to execute the GAC Advice.

This would potentially create .XXX like legal situations and by this harm to ICANN.

## 2. gTLDs must echo existing Legislation

The same rules and legal frameworks that apply for the use of particular strings targeting regulated sectors in the offline world MUST also apply in the online and new gTLD world.

Attempts of applicants to classify Corporate Identifiers such as LLC, LTD or GMBH or other regulated industry's strings as generic or dictionary terms without any protection with the sole goal to satisfy their investors' interests and maximize profits are obvious attempts to avoid any commitments to the public interest. The same applies for phony free speech or fairness arguments.

These attempts are also counterproductive to the strategic plan of ICANN to improve the perception of the domain name industry, instead contribute to damage the image of the DNS industry.

We also reiterate our comments made to the attached GAC Advice in the Singapore Communiqué.

Berlin 04 August 2013



Dirk Krischenowski  
Managing Director

TLDDOT GmbH (.GmbH Top-Level-Domain)  
Akazienstraße 2  
10823 Berlin  
www.dotgmbh.de

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## ATTACHMENT

### Response to Singapore GAC Advice:

We are the only community-based applicant for the extension .GMBH and are being supported by the GMBH community including the respective governments of the countries where GMBH is a corporate identifier. We would like to comment to the GAC Singapore communiqué as follows:

# GAC Advice Response Form for Applicants



We appreciate the re-iteration of recommendations for category 1 strings, which denotes the insufficient protections created by the non-binding nature of public interest commitments (PICs) and the necessity for verification of registrant data for Category 1 strings. We also echo our past comments made to the GAC Early Warnings and GAC Advices.

We have worked for over four years with the GMBH community and oversight governing bodies to ensure that the safeguards that a corporate identifier gTLD such as .GMBH deserves are implemented properly. The verification of registrants and registrant data is a major part of this and has been documented with our application. Additionally the respective governments of Austria, Germany and Switzerland have articulated their requirements to ICANN, too. We are consistent with those requirements as well. None of our competitors has taken such in-depth efforts.

As community-based applicant we are responsible for the all over quality of the management of the corporate identifier .GMBH. The verification of the registrant and domain names, community involvement, control mechanisms and a policy council are integral part of the DNA of our application. Other applicants who were unable to delineate specific policies and mechanisms in their applications or to adhere to GAC recommendations should not be awarded category 1 strings. Their PICs should not be considered sufficient to protect a sensitive TLD like .GMBH. It is also important to note that the GAC communiqués continued to support community-based applications and their safeguards. We also reiterate that community-based applications represent by far the strongest form of binding commitment to continued protections over time and are the most closely formatted to meet GAC recommendations.

We encourage ICANN to provide the GAC with specific responses in relation to the concerns listed in the GAC Singapore communiqué. ICANN should not try to minimize the potential damage that could be done to both registrants and end-users should corporate identifier TLDs like .GMBH be awarded to irresponsible applicants.

We additionally advise ICANN that it is against competitive rules to allow applicants to upgrade their applications in order to comply with the GAC requirements. It is better for registrants and end-users not to approve any of the applications for a corporate identifier rather than to approve a cobbled application that consists of un-sufficient policies, PICs, Change Requests, Safeguards and other anti-competitive plaster.

Therefore we hope that ICANN comes up with concrete, enforceable requirements and sustainable protection mechanisms that are binding for applicants and echo the GAC's requirements and the individual GAC member responses to particular strings.

A handwritten signature in black ink, appearing to read 'Dirk Krischenowski'.

Dirk Krischenowski  
CEO and Founder

30 April 2014



# GAC Advice Response Form for Applicants



The Governmental Advisory Committee (GAC) has issued advice to the ICANN Board of Directors regarding New gTLD applications. Please see Section IV of the [GAC London Communiqué](#) for the full list of advice on individual strings, categories of strings, and strings that may warrant further GAC consideration.

Respondents should use this form to ensure their responses are appropriately tracked and routed to the ICANN Board for their consideration. Complete this form and submit it as an attachment to the ICANN Customer Service Center via your [CSC Portal](#) with the Subject, “[Application ID] Response to London GAC Advice” (for example “1-111-11111 Response to London GAC Advice”). All GAC Advice Responses to the GAC London Communiqué must be received no later than 23:59:59 UTC on 04-August-2014.

Please note: This form will be publicly posted.

## Respondent:

Applicant Name	DotKids Foundation Limited
Application ID	1-1309-46695
Applied for TLD (string)	KIDS

## Response:

Dear ICANN Board, NGPC and GAC,

The DotKids Foundation supports the GAC Advice on the protection of children (<https://gacweb.icann.org/display/GACADV/2014-06-25+Protection+of+Children>), and appreciates the opportunity to provide a response.

The United Nations Convention on the Rights of the Child (UNCRC) is an international human rights treaty that grants all children and young people (aged 17 and under) a comprehensive set of rights. The UNCRC is the most rapidly and widely ratified international human rights treaty in history, with 194 countries having ratified, accepted, or acceded to it.

The DotKids Foundation applaud the ICANN Board NGPC for its acceptance of the GAC Beijing Communiqué safeguard advice applicable to all new gTLDs which includes the emphasis on being fully respectful of human rights conventions (i.e. including the UNCRC), and the ICANN Board NGPC’s acceptance of the Buenos Aires GAC Category 1 and Category 2 Safeguard Advice, which also included the importance of protecting children and their rights consistent with the UN Convention on the Rights of the Child.

Furthermore, in the GAC Category 1 Safeguard Advice, some TLD strings pertinent to children were identified, including “.kid(s)”.

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While all new gTLDs should be fully respectful of human rights (including the UNCRC), we believe that it is especially important for TLD strings that are targeted or closely related to children, including “.kid(s)” to explicitly commit to the protection of children and their rights consistent with the UNCRC.

The proper governance of such online space is crucial in order to reduce the risks of harm and ensure that the protection of children and their rights is not compromised. Such proper governance requires the participation of the children’s rights community, including children themselves, within the governance structure, in order to ensure the best interests of the child and guard against commercial gain being the main driver, in line with the UNCRC.

Most importantly, applicants for such TLD strings who rejects or refuses to ensure that their operations and policies be consistent with the UNCRC should be disqualified.

The DotKids Foundation believes that a kids-friendly space on the internet enhances the accessibility of knowledge and can impact positively on children worldwide, but without proper safeguards, what should be a playground for kids online could become detrimental to the kids community.

The UN General Assembly adopted the UNCRC on 20 November 1989 (the 30th anniversary of its Declaration of the Rights of the Child), so 2014 marks the 25th anniversary of the UNCRC. At this historical moment for both children around the world and of the expansion of new gTLDs into the kids community space, we look to ICANN to uphold the best interests of kids around the world by ensuring that TLDs targeting or closely related to kids must fully commit to abiding by the UNCRC.

Sincerely  
DotKids Foundation

# GAC Advice Response Form for Applicants



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Please note: This form will be publicly posted.

## Respondent:

Applicant Name	Asia Spa and Wellness Promotion Council Limited
Application ID	1-1309-81322
Applied for TLD (string)	SPA

## Response:

Dear ICANN Board, NGPC and GAC,

We welcome the GAC advice on .SPA (<https://gacweb.icann.org/display/GACADV/2014-06-25+.spa>) included in the GAC London Communiqué, and appreciate the opportunity to respond.

First and foremost, we urge ICANN to follow the Applicant Guidebook (AGB) in its entirety and not just selectively in its consideration on the matter. The Asia Spa and Wellness Promotion Council (ASWPC) continues to patiently and diligently follow the new gTLD process as laid out in the AGB including fully respecting the provisions for government input and taking into account GAC Advices as the new gTLD process is implemented.

We also therefore look to ICANN to uphold the integrity of the new gTLD process and to respect the provisions for taking into account government input, especially for the consideration of geographical and city names requiring government support or non-objection.

Both GAC advices on .SPA (<https://gacweb.icann.org/display/GACADV/2014-06-25+.spa> and <https://gacweb.icann.org/display/GACADV/2014-03-27-spa>) clearly state that “*the relevant parties in these discussions*” include the City of Spa.

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According to AGB:2.2.1.4.2, the determination of “*which governments are relevant*” to a geographic name requiring government support (or non-objection) is based “*on the inputs of the applicant, governments, and its own research and analysis.*”

AGB: 2.2.1.4 further stipulates that “*applied-for gTLD strings will be reviewed according to the requirements... regardless of whether the application indicates it is for a geographic name.*”

Given the above, and the fact that the ICANN Board New gTLD Program Committee (NGPC) has accepted the GAC Advice on .SPA, it is therefore only reasonable to understand that the acceptance of the GAC Advice substantiates the criteria set out in the AGB for geographic name requiring government support or non-objection.

In the discussions and finalization of the AGB, substantial discussions were had and inputs provided by the community and the GAC culminated eventually to what we currently have for this round of new gTLD implementation. Most importantly, the AGB explicitly mentions that:

*“City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.”*

More specifically, the AGB specifically recognizes that some city names may also be generic terms or brand names, yet that does not automatically mean no protection is afforded to relevant governments. The above clause also explicitly states that “*the process [i.e. the AGB new gTLD process] does provide a means for cities and applicants to work together where desired.*” Given the GAC advice, which identified the City of Spa as a relevant party and the fact that the City of Spa has explicitly expressed their desire to work together with the applicants, it is only reasonable for ICANN to uphold that the process does actually provide the means for such protection.

Finally, AGB:2.2.1.4.2 also specifies that:

*“An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:*

*(a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and*

*(b) The applied-for string is a city name as listed on official city documents.”*

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The fact that the TLD string “.SPA” *is a city name as listed on official city documents* is apparent (<http://www.villedespa.be> | <http://www.spatourisme.be>). Furthermore, the letters from the Deputy Prime Minister, Mr. Johan vande Lanotte on July 1, 2013 (<http://www.icann.org/en/news/correspondence/lanotte-to-chehade-crocker-01jul13-en.pdf>) and March 20, 2014 (<http://www.icann.org/en/news/correspondence/lanotte-to-chehade-crocker-20mar14-en.pdf>) both clearly advised that *“The Belgian law of 26 June 2003 concerning abusive registration of domain names gives the town of Spa the right to appeal against an owner of a “.spa” domain name”*.

Regarding, *“(a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name”*, it is clear from applicant statements from BOTH remaining applications for .SPA that the applicant intends to use the TLD *“primarily for purposes associated with the city name”* (even if it is not for purposes associated with the city or its citizens):

## ASWPC application (18a):

.spa is dedicated to the spa and wellness community

## Donuts (Foggy Sunset, LLC) application (18a):

There are literally hundreds of different uses of the word SPA, broadly including day spas, dental spas, garden spas, medical spas, bath spas, hot tubs, soda fountains, etc.

Note that the listed *“different uses of the word SPA... day spas, dental spas...”* are all *“primarily for purposes associated with the city name”*, that is associated with springs with curative properties. Most importantly, unlike some generic words that are also city names and used for TLD strings such as “.tours”, “.orange” and “.pink”, where the etymological origin of the word pre-dates the naming of the city, the city of Spa is the etymological origin of the word itself and is the reason why we refer to any spring with curative properties as a “Spa” today. There is a significant heritage, cultural and governmental relevance between the use of the word spa and the city name Spa.

Therefore, despite the fact neither initiative targets the city itself nor its citizen, the AGB requirements are still met, especially given that the ICANN Board NGPC has accepted the GAC advice, which identified the City of Spa as a relevant party to the issue.

A more detailed account of the situation is included in the ASWPC response to the Singapore GAC Advice on Spa:

<http://newgtlds.icann.org/sites/default/files/applicants/08may14/gac-advice-response-1-1309-81322-en.pdf>

Finally, according to AGB: 2.3.1 Geographic Names Extended Evaluation, *“In the case of an application that has been identified as a geographic name... the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation... (at least 90 calendar days from the date of the notice).”*

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This will ensure that the integrity of the new gTLD process is not compromised, and continue to be transparent, timely, predictable, non-discriminatory and in accordance with the expectations set forth in the AGB. This will also be equitable for all applicants involved as it sets the condition at the same base requirement of non-objection (not necessarily support) from the relevant government in full accordance with the definitions stipulated in the AGB.

Given that the ICANN Board NGPC has accepted the GAC Advice on .SPA, the path forward is therefore very clear based on the AGB provisions. This assures that the ICANN Board does not have to “pick a winner” and all remaining applicants for the .SPA TLD has an equal opportunity to proceed in the process based fully on the AGB.

ASWPC looks to ICANN and the ICANN Board to respect the processes put forward in the AGB in its entirety in the consideration of .SPA as a geographical name requiring government support or non-objection (note that base on the AGB no “endorsement” is required), and move forward in full accordance with the AGB.

Sincerely,

William Ng  
Chairman  
Asia Spa and Wellness Promotion Council Limited (ASWPC)

## GAC Advice Response Form

The Governmental Advisory Committee (GAC) has issued advice to the ICANN Board of Directors regarding New gTLD applications and existing strings. Please see Section II of the [GAC London Communiqué](#) for the full list of advice on individual strings, categories of strings, and strings that may warrant further GAC consideration.

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### Respondent:

Applicant Name	Application ID	Applied for TLD (string)
Foggy Sunset, LLC	1-1619-92115	spa
Holly Shadow, LLC	1-1538-23177	vin
June Station, LLC	1-1515-14214	wine

Donuts appreciates the opportunity to provide feedback to the Governmental Advisory Committee’s London Communiqué, dated 25 June 2014.

### **.WINE and .VIN**

Donuts notes that while the GAC addressed the subjects of .WINE and .VIN, no agreement was reached on the matter. Donuts also notes that the NGPC has found no process violations associated with either string, and that the NGPC’s 60-day hold on the delegation of .VIN and .WINE lapsed in June.

Donuts reiterates its firm commitment to working with affected stakeholders in all nations, and to addressing their legitimate concerns. Donuts has strong business incentives to build trusting, respectful relationships with the global industry that represents the largest potential customer base for the .WINE and .VIN domains, and will continued to seek creative solutions even after delegation.

The matter of protection of geographic indicators (GIs) in .WINE and .VIN has been in discussion for some time now. The GAC, however, has not reached a regulatory solution to this difficult public policy issue. Indeed, on 12 September 2013, the GAC concluded:

“With reference to Module 3.1.1 of the Applicant Guidebook and the Durban Communiqué 2.a regarding .wine and .vin, the GAC advises the ICANN Board that the GAC has finalized its considerations of the strings .wine and .vin and further advises that the applications should proceed through the normal evaluation process.”<sup>1</sup>

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<sup>1</sup> <https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee>

Neither the Buenos Aires nor London communiqués reversed that advice, and Donuts believes the applications should continue to proceed per the processes in the Applicant Guidebook. Donuts has been in discussion with various parties with specific concerns over GIs, and continues to be open to engagement as the delegation process continues.

Donuts observes again that GIs are subject to extensive and complex trade agreements between regions and countries; as the GAC said in its Buenos Aires communiqué, some GAC members “consider that it would be inappropriate and a serious concern if the agreed international settings on GIs were to be redesigned by ICANN.”

We remind the Board that there is no GAC advice on these domains and that any additional mandatory safeguards could impact free speech, restrict trade, affect the commercial viability of the TLDs, and/or apply the law of one jurisdiction to another.

Donuts urges ICANN to move forward without further delay with the processing of .WINE and .VIN under the terms of the Applicant Guidebook, regardless of the state of any negotiations with potential registries. Registry operators and others will have stronger incentive to engage in negotiations in good faith once the delegation process is underway and moving forward under the terms of the Applicant Guidebook.

## **.SPA**

As Donuts noted in its response to the Singapore GAC Communiqué issued earlier this year, the finalization of the GAC’s consideration of .SPA should clear the way for the gTLD to progress through the delegation process per the Applicant Guidebook. Donuts notes that the GAC has not offered consensus advice to the ICANN Board to block the delegation of .SPA, and as such the Board should move forward with the delegation process under the rules set forth by the Applicant Guidebook.

While Donuts observes that the GAC seeks clarification from the Board as to whether it intends to advance .SPA “taking into consideration the GAC advice,” we reiterate that the Board should not, and cannot, under its Bylaws and the consensus policies it has approved, take into consideration a reported agreement between the Belgian village of Spa and one of the applicants for the .SPA string.

The Applicant Guidebook categorically bars outside interests, such as the village of Spa, from manipulating the new gTLD delegation process in this case. To give weight to an agreement between the village of Spa and a gTLD applicant in the delegation process—where one is not required—would have ICANN willfully subvert its Bylaws and a community-approved process for resolving contention sets between like strings. The Applicant Guidebook contains no procedures for granting such a concession and the community has been virtually unanimous regarding the need for ICANN to treat all applications fairly and objectively according to pre-established criteria.

Donuts reiterates its position in response to the Singapore Communiqué:

*“Spa is a widely use generic term that, according to the AGB and the independent geographic name evaluators, was not set forth as a geographic term but rather a generic one. As ICANN already determined, .SPA does not meet the criteria set forth for geographic names that require city endorsement (according to section 2.2.1.4.2 of the AGB).”*

Donuts has made a good-faith effort to engage with the village of Spa to provide unique protections tailored to the concerns of city officials and believes the city’s interests are well protected by the AGB requirements, the additional protections Donuts committed to for all of its TLDs, and the further safeguards Donuts voluntarily would provide for this TLD should it become the registry operator.

Therefore, nothing in the AGB (Donuts’ contract with ICANN) empowers the ICANN Board to select a “winner” in the case of competing applications based on the concerns of one government. Donuts



expects the applications to move forward swiftly to the CPE process and to contention resolution under the terms of the AGB.

**Conclusion**

Donuts thanks the Board for its consideration of this comment.