

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, Annex I, and Annex II of the [GAC Beijing 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 GAC Advice” (for example “1-111-11111 Response to GAC Advice”). All GAC Advice Responses must be received no later than 23:59:59 UTC on 10-May-2013.

Respondents:

Applicant Name	dot Diet Limited
Application ID	1-1225-36982
Applied for TLD (string)	.DIET

Applicant Name	Platinum Registry Limited
Application ID	1-1229-33615
Applied for TLD (string)	.FIT

Applicant Name	dot Health Limited
Application ID	1-1178-3236
Applied for TLD (string)	.HEALTH

Applicant Name	dot Loan Limited
Application ID	1-1222-21097
Applied for TLD (string)	.LOAN

Applicant Name	dot Money Limited
Application ID	1-1179-41884
Applied for TLD (string)	.MONEY

Applicant Name	dot Bet Limited
Application ID	1-1201-33931
Applied for TLD (string)	.BET

Applicant Name	dot Bingo Limited
Application ID	1-1207-57645
Applied for TLD (string)	.BINGO

Applicant Name	dot Poker Limited
Application ID	1-1202-1720
Applied for TLD (string)	.POKER

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Applicant Name	dot Casino Limited
Application ID	1-1203-44541
Applied for TLD (string)	.CASINO

Applicant Name	Spring Registry Limited
Application ID	1-1241-87032
Applied for TLD (string)	.CHARITY

Applicant Name	dot Game Limited
Application ID	1-1177-24251
Applied for TLD (string)	.GAME

Applicant Name	dot Movie Limited
Application ID	1-1180-29599
Applied for TLD (string)	.MOVIE

Applicant Name	dot Music Limited
Application ID	1-1175-68062
Applied for TLD (string)	.MUSIC

Applicant Name	Diamond Registry Limited
Application ID	1-1224-46400
Applied for TLD (string)	.FASHION

Applicant Name	dot Support Limited
Application ID	1-1210-70457
Applied for TLD (string)	.DOWNLOAD

Applicant Name	dot Sale Limited
Application ID	1-1235-38087
Applied for TLD (string)	.SALE

Applicant Name	dot News Limited
Application ID	1-1172-3099
Applied for TLD (string)	.NEWS

Applicant Name	dot Accountant Limited
Application ID	1-1240-93305
Applied for TLD (string)	.ACCOUNTANT

Applicant Name	Silver Registry Limited
Application ID	1-1183-17612
Applied for TLD (string)	.LAW

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Applicant Name	dot Wine Limited
Application ID	1-1223-37711
Applied for TLD (string)	.WINE

Applicant Name	dot App Limited
Application ID	1-1182-25681
Applied for TLD (string)	.APP

Applicant Name	Star Registry Limited
Application ID	1-1231-63687
Applied for TLD (string)	.PLAY

Applicant Name	Bronze Registry Limited
Application ID	1-1217-96477
Applied for TLD (string)	.BOOK

Response:

Famous Four Media Limited, which represents the applicants for the above applied for strings appreciates the opportunity to respond to the GAC advice offered on new gTLDs as communicated through the GAC Communiqué Delivered on 11 April 2013. The GAC advice offered is broad and unprecedented. In some cases, many of the items touch on policies that we had already planned on incorporating into our applications.

One area where we remain concerned is the broad brush used by the GAC in placing strings into categories without having considered individual applicant's plans for operating these strings.

We agree that certain strings warrant closer examination because of the nature of the domains that will be registered in the relevant gTLD. The operator of the registry needs to be held to the highest standard and should be beyond reproach in how they have or will operate a business.

That is why we have designed and will implement a robust set of policies and procedures to ensure that registrants and end users experience a world class TLD with enhanced safeguards worthy of the endeavors of the registry. Unfortunately, we don't know if the GAC members who raised concerns with these strings examined specific applications to see how they intend to operate.

We have invested significant time and resources developing our application to operate the relevant gTLD and are focused on a safe and secure operation of the TLD once awarded. In particular, we have put a tremendous amount of time into developing

additional rights protection mechanisms as well as establishing policies and procedures for preventing and mitigating malicious activity.

We also believe that by limiting the Board consideration of the GAC advice to only the New gTLD Program Committee, the Board is depriving itself of key resources who could contribute to a meaningful discussion about what are considered issues of public policy versus what might be coined “operational advice.” Having Board Members with operational experience could beneficially inform other Board Members about what the practical limitations of some of the advice might be.

In this response, we reference our responses to the relevant paragraphs of the GAC advice. Where we make no comment, either we believe that the relevant aspect of the GAC advice is not relevant to our applied for string, or there is no comment to make.

c. Strings for Further GAC Consideration

In addition to this safeguard advice, that GAC has identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban

*i. 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*

OUR RESPONSE

The applicant has already sent a separate response pertaining to our application for .date to the Board for consideration. As it relates to our application for .wine, we would make the following comments:

- We did not receive any Early Warnings related to the application for .wine (1-1223-37711) so we were quite surprised and taken back that the GAC has asked for ours and other applications for .wine being held back. Since the publication of the GAC advice on April 11, we have not received any formal correspondence from ICANN or the GAC as to why the GAC has asked for a hold on this application. This raises a very important concern that we hope the ICANN Board shares.
- The ICANN Board should be concerned with issues of fundamental fairness and transparency in the GAC Early Warning and Objection Process.

- As an applicant in the new gTLD program, we have subjected ourselves to following the rules and procedures that govern the program, including the GAC Early Warning and Advice procedures. It is impossible for an applicant to effectively discuss the potential issues with the .wine application with the GAC or individual members of the GAC if they themselves do not engage in good faith notice and discussions with applicants. We think the lack of rationale provided for this portion of the advice is fundamentally unfair.
- Applied for applications were revealed on June 13, 2012. The GAC issued Early Warning in November. During those 5 months of deliberations, not one country stepped forward and raised an issue with our application for .wine.
- Since November, another 5 months passed with no indications from the GAC or individual countries that there were concerns with our application for .wine. On April 11 2013, we like everyone else, received the Communiqué asking for additional delays to our application.
- This case of Advice is unfortunate because it came without warning or explanation. That is not what the ICANN Board envisioned and certainly not what applicants expected after paying fees and submitting applications. It is also contrary to the express wording of the Applicant Guidebook at paragraph 3.1 which provides *“The receipt of 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).”*

Ultimately our hope is through the ICANN Board consultation with the GAC, the GAC would communicate its rationale for delaying our application so that we may be presented with the opportunity to allay any concerns. Absent that, we ask the ICANN Board to exercise its authority as outlined in the ICANN Bylaws and Applicant Guidebook and not delay the processing of our application for .wine by rejecting the GAC advice on this application.

e. Community Support for Applications
The GAC advises the Board:

i. 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.

OUR RESPONSE

We do not fully understand this advice. If the GAC is asking the ICANN Board to pick one applicant over another because of community support outside of the Community Priority Criteria or Community Objection process, we believe that this is not in accordance with the new gTLD process or within the powers of the ICANN Board. Our understanding of the program is that applicants are being evaluated on 3 important components 1) Background Checks, 2) Technical Capability and 3) Financial Wherewithal. If an applicant passes those criteria and is not subject to any objections or contentions, they would be awarded the string.

Unlike some previous rounds, this application round is not a “beauty contest” where applications are judged against each other.

If a community had issues with a particular application, there were several opportunities available to them through the new gTLD program. 1) They could have filed their own application as a standard application or they could have applied as a community priority application and upon successfully fulfilling the ICANN designated criteria for a community, been awarded the TLD. 2) They could have filed a formal objection against an application. 3) They could have petitioned the Independent Objector to file a formal objection, or 4) They could have petitioned the ALAC to file a formal objection. There were plenty of opportunities for communities to apply for their own strings or alternatively, weigh in and oppose competing applications, but in many cases, the communities did not.

We urge the ICANN Board to keep in mind one key facet of the program: in a contention set, an applicant who achieves the community priority designation automatically is awarded the string. In all other cases, absent mutual agreement, contentions must be resolved by the last resort auction.

f. Singular and plural versions of the same string as a TLD

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 ICANN Board to:***

- i. Reconsider its decision to allow singular and plural versions of the same strings.*

OUR RESPONSE

We agree with ICANN CEO Fadi Chehadé and the ICANN Board’s collective responses to these questions in Beijing, that the independent panels have ruled and it would not be appropriate for either ICANN or the Board to overturn these decisions.

g. Protections for Intergovernmental Organisations

The GAC stresses that the IGOs perform an important global public mission with public funds, they are the creations of government under international law, and their names and acronyms warrant special protection in an expanded DNS. Such protection, which the GAC has previously advised, should be a priority.

This recognizes that IGOs are in an objectively different category to other rights holders, warranting special protection by ICANN in the DNS, while also preserving sufficient flexibility for workable implementation.

The GAC is mindful of outstanding implementation issues and commits to actively working with IGOs, the Board, and ICANN Staff to find a workable and timely way forward.

*Pending the resolution of these implementation issues, the **GAC reiterates its advice to the ICANN Board that:***

- i. appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch.*

OUR RESPONSE

We consider the Protection of Intergovernmental Organization (“IGO”) names to be very important. As part of our applications, we committed to implementing a program to protect IGO’s, well before any ICANN Board or GNSO action on this issue.

As the GNSO is currently devising a policy related to this issue, the applicant will implement any GNSO recommendations made in this very important area. Absent the timely conclusion of the GNSO work, each Applicant will use strings registered as second level domains in the .int gTLD as the basis for this protection. To register in the .int domain, the Registrants must be an IGO that meets the requirements found in RFC 1591. The .int domain is used for registering organizations established by international treaties between or among national governments and which are widely considered to have independent international legal personality. Thus, the names of these organizations, as with geographic names, can lend an official imprimatur, and if misused, be a source of public confusion or deception.

In addition to the mandated and additional reservation of geographic names as provided for in response to Question 22, each Applicant will reserve, and thereby prevent registration of, all names that are registered as second level domains in the most recent .int zone as of 1st November 2012. By doing so, the relevant Applicant will extend additional protection to IGOs that comply with the current eligibility requirements for the .int gTLD as defined at <http://www.iana.org/domains/int/policy/>, and that have obtained a second-level registration in the .int zone.

As regards acronyms, we have already agreed with the Chair of the GAC representative, in a letter of 29 January 2013, stating that:

“we also understand that the GAC is working towards generating a refined list of IGOs that is likely to be different from the composition of the .Int zone file. We understand this list shall be comprised of the acronyms of IGOs established under an international treaty between or among national governments. We are pleased to inform you that FFM would be pleased to commit to the protection of such a list in the manner detailed above or to work with the GAC in a manner

that best ensures protection and release of IGO names on said list. Moreover, FFM would be pleased to make itself available to the GAC to discuss procedures for the protection and release of IGO names at the GAC's convenience."

We have not yet had sight of the list.

3. WHOIS

The GAC urges the ICANN Board to:

- a. 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 GAC stands ready to respond to any questions with regard to the GAC Principles.

The GAC also expects its views to be incorporated into whatever subsequent policy development process might be initiated once the Expert Working Group concludes its efforts.

OUR RESPONSE

The applicant understands that the results of the Expert Working Group will be subject to the GNSO policy making process. As such, each Applicant will abide by and decisions that come from that process.

5. Public Interest Commitments Specifications

The GAC requests:

- b. more information on the Public Interest Commitments Specifications on the basis of the questions listed in annex II.*

OUR RESPONSE

At the time of the drafting of this response, the PIC Specification and accompanying PICDRP is still in draft form. We are eager to hear the Board's answers to these very important questions.

ANNEX I

Safeguards on New gTLDs

The GAC considers that Safeguards should apply to broad categories of strings. For clarity, this means

any application for a relevant string in the current or future rounds, in all languages applied for.

The GAC advises the Board that all safeguards highlighted in this document as well as any other safeguard requested by the ICANN Board and/or implemented by the new gTLD registry and registrars

should:

- *be implemented in a manner that is fully respectful of human rights and fundamental freedoms as enshrined in international and, as appropriate, regional declarations, conventions, treaties and other legal instruments – including, but not limited to, the UN Universal Declaration of Human Rights.*
- *respect all substantive and procedural laws under the applicable jurisdictions.*
- *be operated in an open manner consistent with general principles of openness and non-discrimination.*

Safeguards Applicable to all New gTLDs

The GAC Advises that the following six safeguards should apply to all new gTLDs and be subject to contractual oversight.

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.

OUR RESPONSE

As a general principle, the applicant supports the goals of accurate Whois. As a responsible registry operator we take our obligations seriously but it is important to remember that the registry does not have a direct contractual relationship with the registrant, only the registrar does so many of the Whois requirements will fall to registrars.

To demonstrate our commitment to accurate Whois, we have incorporated several safeguards into our applications including:

- Each applicant will, of its own volition and no less than twice per year, perform a manual review of a random sampling of gTLD domain names in its Registry to test the accuracy of the WHOIS information. This can easily be weighted towards Registrars with the previously highest percentages of deliberately false, inaccurate or incomplete WHOIS data in previous checks. Although this will not include verifying the actual information in the WHOIS record, we will be examining the WHOIS data for prima facie evidence of inaccuracies. In the event that such evidence exists, it shall be forwarded to the sponsoring Registrar, who shall be required to address those complaints with their Registrants. Thirty days (30) after forwarding the complaint to the Registrar, we will

reexamine the current WHOIS data for names that were alleged to be inaccurate to determine if the information was corrected, the domain name was deleted, or some other action was taken. If the Registrar has failed to take any action, or it is clear that the Registrant was either unwilling or unable to correct the inaccuracies, we reserve the right to suspend the applicable domain name(s) until such time as the Registrant is able to cure the deficiencies.

- We will require in the Registry-Registrar Agreement that all accredited Registrars in this gTLD will be obliged to verify WHOIS data for each record they have registered in the gTLD twice a year. Verification can take place via email, phone or any other method to confirm the accuracy of the WHOIS data associated with the domain name. We will randomly audit WHOIS records to ensure compliance and accuracy. As part of the gTLD Abuse reporting system, users can report missing or incomplete WHOIS data via the Registry website.
- We will require as part of the RRA obligations that all accredited Registrars for the gTLD participate in the abuse prevention and mitigation procedures and policies, as well as efforts to improve the accuracy and completeness of WHOIS data. In addition, we will work to develop an economic incentive program, such as Market Development Funds for Registrars who meet certain SLAs for performance in this area.
- The Registry Backend Services Provider regularly reminds Registrars of their obligation to comply with ICANN's WHOIS Data Reminder Policy, which was adopted by ICANN as a consensus policy on 27 March 2003 (<http://www.icann.org/en/Registrars/wdrp.htm>). The Registry Backend Services Provider sends a notice to all Registrars once a year reminding them of their obligation to be diligent in validating the WHOIS information provided during the registration process, to investigate claims of fraudulent WHOIS information, and to cancel domain name registrations for which WHOIS information is determined to be invalid.

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.

OUR RESPONSE

We support these requirements and each applicant will include these in its terms of use. In practical terms, each applicant has already included them in its response to Question 28.14 which means that such activities will be monitored in practice.

*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.*

OUR RESPONSE

This applicant is planning on deploying a type of malware scanning that would accomplish this but we also understand that this is not a required element of the registry operations outlined by ICANN. We would be voluntarily deploying this technology.

*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.*

OUR RESPONSE

Statistical reports can be maintained in respect of the periodic checks we undertake. We are concerned that any requirement to provide such data should not be specific to individual registrants which could be in breach of the applicants' data protection obligations.

*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.*

OUR RESPONSE

We see no issue with this recommendation. As required by the Registry Agreement, each Applicant will establish and publish on its website a single abuse point of contact responsible for addressing inquiries from law enforcement and the public related to malicious and abusive matters requiring expedited attention. The relevant Applicant will provide a timely response to abuse complaints concerning all names registered in the gTLD by registrars and their resellers. The relevant Applicant will also provide such information to ICANN prior to the delegation of any domain names in the gTLD. This information shall consist of, at a minimum, a valid name, e-mail address dedicated solely to the handling of malicious conduct complaints and a telephone number and mailing

address for the primary contact. The relevant Applicant will ensure that this information will be kept accurate and up to date and will be provided to ICANN if and when changes are made. In addition, with respect to inquiries from ICANN-Accredited Registrars, the Applicant's Registry Backend Services Provider shall have an additional point of contact, as it does today, handling requests by Registrars related to abusive domain name practices. Many of the strings in our portfolio include a requirement for websites to include a seal (the Abuse Prevention and Mitigation Seal), which will allow internet users to redirect to the abuse page for the registry which will contain all the relevant information for reporting abuse.

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.

OUR RESPONSE

This entire paragraph is vague and unclear. The GAC should be required to more fully explain what the problem is they are trying to solve and the rationale behind this recommendation.

Categories

The following safeguards are intended to apply to particular categories of new gTLDs as detailed below.

Category 1

Consumer Protection, Sensitive Strings, and Regulated Markets:

The GAC Advises the ICANN Board:

• 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. The following safeguards should apply to strings that are related to these sectors:

1.
Registry operators will include in its acceptable use policy that registrants comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.
2.
Registry operators will require registrars at the time of registration to notify registrants of this requirement.
3.
Registry operators will require that registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law and

recognized industry standards.

4. Establish a working relationship with the relevant regulatory, or industry self-regulatory, bodies, including developing a strategy to mitigate as much as possible the risks of fraudulent, and other illegal, activities.

5. Registrants must be required by the registry operators to notify to them a single point of contact which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.

OUR RESPONSE

On recommendation number 5, the first part of the sentence, up to “abuse” is presumably a function of the WHOIS but when read in combination with the second part of the sentence, it is unclear what the GAC is asking for. The ICANN Board should ask for more explanation and rationale from the GAC on this point.

The GAC further advises the Board:

1. In addition, some of the above strings may require further targeted safeguards, to address specific risks, and to bring registry policies in line with arrangements in place offline. In particular, a limited subset of the above strings are associated with market sectors which have clear and/or regulated entry requirements (such as: financial, gambling, professional services, environmental, health and fitness, corporate identifiers, and charity) in multiple jurisdictions, and the additional safeguards below should apply to some of the strings in those sectors:

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

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

8. The registry operator must conduct periodic post-registration checks to ensure registrants' validity and compliance with the above requirements in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve.

OUR RESPONSE

We are extremely concerned with the recommendations in this section and ask the ICANN Board to reject them. These recommendations go well beyond our interpretation of the GAC advice as defined in the Guidebook as “the process for GAC Advice for New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.”

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As for implementation of these recommendations, there are a few operational issues which make this advice impractical.

1) Registrars, not registries have direct interface with registrants. A registry operator has no knowledge of who the registrant is until after the registration has been confirmed. It would be impossible in the 3 tiered domain registration systems for a registry to perform these checks without significantly upending the registry/registrar model.

2) These recommendations are seeking to turn registries into a police force for various licensing agencies across the globe. Yet no such requirements exist in the offline world. For example, real estate agents are not required to check the purported credentials of incoming tenants, printing companies or the operators of printed matter which carry advertisements are not required to check the credentials of those persons or entities for whom they publish adverts. There would seem to be little or no distinction between these examples and the online marketplace.

Conclusion

We appreciate the opportunity to share our thoughts on the GAC advice. As an applicant for several strings, we have no issue with some of the recommendations and firmly believe that reputable registry operators should not be protesting these themselves. That being said, there are some recommendations that go clearly beyond the scope of what GAC advice was meant to cover and we ask the ICANN board take the necessary measures to reject that advice. In addition, we hope the ICANN Board will ask the GAC for more transparency and disclosure on advice where applicants have been caught up in a process delay without any explanation.