

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.

Respondent:

| | |
|--------------------------|----------------------|
| Applicant Name | KBE gTLD Holding Inc |
| Application ID | 1-1326-3558 |
| Applied for TLD (string) | THEATRE |

Response:

May 10, 2013

Dr. Steve Crocker, Chairman of the Board
Mr. Fadi Chehade, President and CEO
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: Applicant Response to GAC Advice: Key Brand Entertainment, Inc.

Dear Dr. Crocker and Mr. Chehade,

We thank the Board for the opportunity to engage in a productive dialogue regarding our new gTLD applications. In consideration of the GAC Advice issued in the GAC Beijing Communiqué (the “Advice”), we now respectfully respond to the Board. Herein, we provide a background of the Applicant, describe the objectives of our application and address the relevant specific portions of the Advice. As we outline below, the Applicant will at all times respond to and comply with all guidance and directives from ICANN and the Board. That said, there are portions of the Advice that are incomplete, vague and impractical and require additional guidance to effectuate compliance by applicants. For that reason, in response to the Advice, the Applicant respectfully requests that the Board utilize the multi-stakeholder model used in the past to address the issues raised and provide more detailed and actionable directives on these issues. Again, KBE is fully committed to working with the GAC and the Board to resolve these issues and

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to respond in a meaningful way to the Board’s guidance and directives with the goal of making the new gTLD effort a success for the Applicant, the GAC and the ICANN community.

Applicant Background

Key Brand Entertainment Inc. is a privately-held company in the United States, and is the sole parent entity of its wholly-owned subsidiary, KBE gTLD Holding Inc., the applicant for .theatre (collectively, “KBE” or the “Applicant”). KBE is the operator of the preeminent website for online Broadway and theater ticket sales and related services, content and information as well as one of the world’s leading developers, producers, presenters and distributors of live theatre and stage shows. As owner and operator of the industry-leading broadway.com and theater.com as well as a robust portfolio of other Broadway- and theater-related domain names, KBE offers a full range of online services and features, including consumer ticketing, group sales and complete editorial coverage of Broadway presentations in New York City and over 40 other markets. Additionally, through its Broadway Across America business, KBE serves as a leading Broadway producer and presenter of first-class touring productions in more than 40 cities across the United States, Canada, the United Kingdom and Japan. Broadway Across America brings first-class touring musicals and plays to audiences in multiple and varied markets.

Application Objectives

KBE, through its broadway.com, theater.com and Broadway Across America properties, is one of the world’s leading brands in the Broadway and theater industry. The reputation of these brands is well-recognized as authoritative sources for high-quality services, information and industry news. With that in mind, KBE applied for .theatre as an extension of its globally recognized broadway.com and other Broadway- and theater-related brands and intends to function as a Specification 9 exempt system whereby all second level domains (“SLDs”) will be for the benefit of KBE and its affiliates pursuant to the ICANN Registry Agreement.

As stated in its application, the mission of the .theatre is:

“to provide diverse internet users an enhanced online experience while enriching society with artistic and cultural diversity through high quality content, information and authentic connected experiences centered on live theater, musicals, opera, ballet and other performing arts, Broadway, and other related concepts, topics and activities.”

Further, the benefit to consumers from this brand extension and expansion of its online presence is that:

“Internet users will benefit because .theatre will provide an enhanced online experience from the existing broadway.com through its ability to build more personalized experiences for internet users seeking artistic and cultural diversity. .theatre will provide Applicant greater control over the domain as a registry operator, enabling the domain to be operated with the same exceptional values KBE has shown to users through the operation of broadway.com. Additionally, new communities can be identified and formed to connect internet users with others interested in theater and other performing arts and entertainment. Internet users will

benefit from .theatre as an extension of theater.com and broadway.com as an authoritative source of online tickets to Broadway and theater shows.”

Safeguards Applicable to all New gTLDs.

In Annex I of the Advice, the GAC identifies six safeguards that it recommends for application to all new gTLDs subject to contractual oversight: (i) WHOIS Verification and Checks, (ii) Mitigating Abusive Activity, (iii) Security Checks, (iv) Documentation, (v) Making and Handling Complaints, and (vi) Consequences.

Although KBE intends to operate closed registries, thus significantly reducing the potential for concern related to the issues addressed by the safeguards, KBE is nonetheless prepared to implement those safeguards at the appropriate time upon the ultimate determination by the Board that they are necessary for the advancement of the entire new gTLD program.

Safeguards Applicable to Strings Related to Category 1 and Category 2 New gTLDs

In Annex I of the Advice, the GAC also identifies certain safeguards it recommends for application to (i) specific strings linked to regulated or professional sectors that it has determined carry higher levels of risk associated with consumer harm (Category 1), and (ii) specific strings that it considers to be generic terms that seek exclusive registry access (Category 2). For Category 1 strings, the GAC has outlined five additional recommended safeguards for those strings related to 12 broadly defined sectors. The GAC has recommended that to advance, such strings must implement said safeguards (as outlined in points (1)-(5) on pages 8-9 of the Advice). For Category 2 strings, the GAC has identified those strings as “generic terms” seeking restricted or exclusive access and has recommended that for those applications to advance, exclusive registry access must “serve a public interest goal”.

Above all, KBE is fully committed to working with the ICANN community, its leadership and all relevant stakeholders to make the new gTLD program a success. Likewise, KBE intends to protect consumers at all costs and to move toward achieving such a “public interest goal” as deemed necessary by the GAC and, ultimately, the Board. As mentioned, KBE will at all times respond to and comply with all guidance and directives from ICANN and the Board in this regard but in order to meaningfully move toward implementation of those safeguards, the applicants must be provided with more detailed advice on these issues in general and how the Advice will impact their strings specifically in order to make the implementation of those safeguards actionable.

First, the current Advice provided by the GAC is not actionable at this time. It is overly broad, vague and practically impossible to implement. There are no stated mechanisms or procedures that enable applicants to incorporate the Advice into their action plans. The language and concepts used to articulate the Category 1 safeguards and utilized in the operative terms of the Category 2 strings (specifically, to “serve a public interest goal”) with regard to closed generics has not been defined, interpreted or commented on in a meaningful way that would allow applicants to implement or comply with such Advice. KBE is more than willing to comply with any GAC and Board directives but compliance with them must be feasible. In the event that the GAC further clarifies the specific guidance and the implementation process KBE will respond and act accordingly.

Second, the Advice is inconsistent with the rules, policies and procedures contained in the Applicant Guidebook (“AGB”) and the open multi-stakeholder process that created it. The AGB embodied the rules for application for new gTLDs and the iterative process of the AGB was documented along the way. The final AGB published prior to the application window closing did not differentiate between open versus closed business models or mention “closed generics”. In fact, the debate leading up to the final version of the AGB, one which included extensive input from the ICANN community including GAC constituents, contemplated the validity of different registry and business models (e.g. sponsored, open, community, etc.) as well as the idea of restricting and even disallowing “closed generics”. Ultimately, the GNSO and the Board decided against creating such distinctions with the understanding that the business model and operation of the gTLD would be determined by the applicant. As long as the application passed evaluation pursuant to the AGB criteria and complied with the Registry Agreement, the business model and operating rules of that gTLD (including whether the applied-for string was to be “open” or “closed”) were to be determined by the applicant. That version of the AGB, as the governing body’s authoritative guidance, was relied on by all applicants in deciding to submit their applications and invest in the new gTLD program. At this time, there is no basis for revisiting such debate and doing so now only undermines the legitimacy of the multi-stakeholder rulemaking process that ICANN has always supported. KBE relied in good faith on the process and the authoritative guidance and information available to it at the time of application. KBE and all applicants have made significant investments and taken positions in reliance on that guidance and information, which if changed retroactively would negatively impact the new gTLD program, its applicants and ICANN.

Third, the Advice does not provide any remediation or resolution measures for applicants in the event that they are unable to comply with said Advice. As mentioned above, this circumstance was not addressed in the AGB and there is no guidance on how a Category 2 applicant that cannot “serve the public interest” can remediate or resolve their application. Given the costs associated with remediation of the application and operating a remediated registry, applicants must be provided with guidance on this issue in order to plan accordingly. Again, KBE intends to fully comply with any directives of the Board on this issue but there have been none to date. Once clarity has been provided from the Board, KBE will act accordingly.

Lastly, KBE feels it necessary to respond to the GAC’s reference to .theatre as a closed generic that should “serve a public interest goal”. There are constant challenges that KBE and other legitimate industry participants face as operators of online content and sales properties and that the general public faces as consumers of their content and services. The most difficult of these is competition with unlicensed and unauthorized ticket sellers who impersonate legitimate third parties (e.g. shows, venues, actors, etc.) and by leveraging their goodwill drive traffic away from legitimate sources. These unscrupulous actors impersonate intellectual property rights holders and mislead the public and their actions are extremely damaging to the shows and venues, legitimate ticket resellers, the theater industry, and ultimately (and most importantly) the public as a whole. The problem is pervasive not only in the United States but globally. Policing it is increasingly difficult given the sophistication of infringers, counterfeiters and scalpers. The lack of enforcement of existing laws globally is complicated by the sheer number of shows, venues and other theater-affiliated stakeholders, all of whom are targets of infringers and counterfeiters. This practice is rampant in the theater industry and undermines and infringes upon the trademark and other intellectual property rights of legitimate constituents of the

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theater industry. Through its gTLDs, KBE seeks to serve the public interest by protecting intellectual property rights holders, the industry, and, most importantly, the general public from this predatory behavior.

Conclusion

We cannot emphasize enough that KBE is fully prepared to comply with all directives from the Board related to these issues. That said, no applicant can move forward without additional input from the GAC and the Board on these issues.

We now respectfully request that the Board provide clarification, additional guidance and/or actionable directives on: (i) the ultimate determination that the safeguards articulated in the Advice are necessary for the advancement of the entire new gTLD program, (ii) how such safeguards will be applicable and enforceable to all applicants in a fair, reasonable and actionable way; and (iii) the process by which such safeguards and their applications will be implemented, remediated and/or enforced from an administrative and operational perspective.

In the event of any continuing concerns or your need for a formal dialogue with us, we would welcome a further discussion.

Thank you for your time and consideration on this matter and we look forward to and hope for meaningful progress on these issues.

Sincerely,

Matt Kupchin
Co-CEO, Interactive Division