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 Durban Communique 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 to the GAC Durban Communiqué must be received no later than 23:59:59 UTC on 23-August-2013.

Respondent:

Applicant Name	Application ID	Applied for TLD (string)
Knob Town, LLC	1-1340-40734	accountants
Lone Maple, LLC	1-1343-89689	app
Spring Frostbite, LLC	1-1342-7920	architect
Baxter Tigers, LLC	1-1344-70608	art
Baxter Hill, LLC	1-1345-27582	associates
Victor North, LLC	1-1348-99321	attorney
Holly Castle, LLC	1-1349-23181	audio
Auburn Hollow, LLC	1-1350-42613	band
Foggy Way, LLC	1-1359-21671	bet
Sand Cedar, LLC	1-1360-70873	bingo
Double Bloom, LLC	1-1361-60591	book
Goose North, LLC	1-1365-11798	broadway
Spring North, LLC	1-1364-8001	broker
Delta Mill, LLC	1-1375-20218	capital
Goose Cross, LLC	1-1374-92093	care
Delta Lake, LLC	1-1381-76948	cash
Binky Sky, LLC	1-1382-33633	casino
Corn Lake, LLC	1-1384-49318	charity
Snow Sky, LLC	1-1389-12139	city
Black Corner, LLC	1-1390-429	claims
Goose Park, LLC	1-1392-58392	clinic
Dash Cedar, LLC	1-1393-18458	cloud
Cotton Fields, LLC	1-1407-41397	corp
Trixy Canyon, LLC	1-1411-59458	cpa
Snow Shadow, LLC	1-1410-93823	credit
Binky Frostbite, LLC	1-1412-63109	creditcard
Romeo Birch, LLC	1-1605-75916	data

Puff House, LLC	1-1418-57248	degree
Tin Birch, LLC	1-1421-91857	dental
Outer Lake, LLC	1-1422-97537	dentist
Black Avenue, LLC	1-1425-38025	design
Pioneer Hill, LLC	1-1426-25607	diet
Dash Park, LLC	1-1427-39640	digital
Holly Hill, LLC	1-1431-6328	discount
Brice Trail, LLC	1-1430-52453	doctor
Little Birch, LLC	1-1434-1370	eco
Romeo Canyon, LLC	1-1436-74788	engineering
Spring Falls, LLC	1-1445-68403	exchange
Atomic Pipe, LLC	1-1448-73190	fail
Goose Glen, LLC	1-1449-26710	fan
Big Dynamite, LLC	1-1455-48217	fashion
Outer Avenue, LLC	1-1452-20905	film
Cotton Cypress, LLC	1-1454-18725	finance
Just Cover, LLC	1-1453-71764	financial
Brice Orchard, LLC	1-1457-79967	fitness
Over Keep, LLC	1-1465-93738	free
John Castle, LLC	1-1467-34522	fund
Foggy Beach, LLC	1-1470-40168	games
Extra Dynamite, LLC	1-1477-91047	gmbh
Pioneer Tigers, LLC	1-1481-2922	gratis
Corn Sunset, LLC	1-1486-63504	gripe
Goose Fest, LLC	1-1489-82287	health
Silver Glen, LLC	1-1492-32589	healthcare
Baxter Sunset, LLC	1-1271-68369	inc
Auburn Park, LLC	1-1512-20834	insurance
Pioneer Willow, LLC	1-1516-617	insure
Holly Glen, LLC	1-1521-75718	investments
Goose Gardens, LLC	1-1522-61364	juegos
Corn Dynamite, LLC	1-1523-55821	law
Atomic Station, LLC	1-1531-96078	lawyer
Victor Trail, LLC	1-1540-49920	lease
Blue Falls, LLC	1-1536-79233	legal
Big Fest, LLC	1-1542-96415	limited
Foggy North, LLC	1-1546-93002	llc
June Woods, LLC	1-1544-18264	loans
Over Corner, LLC	1-1550-65638	ltd
Victor Way, LLC	1-1553-52336	market
Lone Hollow, LLC	1-1556-47497	mba

Grand Glen, LLC	1-1560-69674	media
Steel Hill, LLC	1-1561-23663	medical
Outer McCook, LLC	1-1567-79679	money
Outer Gardens, LLC	1-1564-75367	mortgage
New Frostbite, LLC	1-1570-42842	movie
Victor Cross, LLC	1-1571-12951	music
Hidden Bloom, LLC	1-1573-27315	news
Bitter Frostbite, LLC	1-1574-83272	online
Foggy Sky, LLC	1-1585-29698	pictures
Binky Mill, LLC	1-1587-4615	poker
Tin Dale, LLC	1-1593-8224	radio
Dash Bloom, LLC	1-1598-77594	realty
New Cypress, LLC	1-1606-68851	reisen
Half Bloom, LLC	1-1617-57149	sale
Delta Orchard, LLC	1-1624-75239	sarl
Little Galley, LLC	1-1622-67844	school
Outer Moon, LLC	1-1627-1624	schule
Snow Beach, LLC	1-1633-36635	show
Over Birch, LLC	1-1621-97265	software
Dog Bloom, LLC	1-1596-35125	sucks
Tin Avenue, LLC	1-1569-96051	surgery
Storm Orchard, LLC	1-1562-9879	tax
Blue Tigers, LLC	1-1641-67063	theater
Sugar Station, LLC	1-1648-61876	tours
Koko Moon, LLC	1-1655-79604	town
Pioneer Orchard, LLC	1-1650-66027	toys
Little Manor, LLC	1-1654-94203	trading
Little Station, LLC	1-1651-77163	university
Wild Dale, LLC	1-1642-14231	vet
Lone Tigers, LLC	1-1480-90854	video
Hidden Way, LLC	1-1508-57100	wtf

Donuts, the parent of the applicants for the above-listed gTLDs, appreciates the opportunity to comment on the GAC's Durban Communique related to its Category 1 Safeguard Advice. Donuts believes significant protections for these TLDs—including the mandatory public interest commitments advocated by the GAC, and supported by Donuts—are already in place and additional restrictive safeguards are unnecessary. In order to preserve the integrity of the program, new gTLDs should not be restricted upfront or otherwise subject to discriminatory access. We must protect against the danger of majority uses of a term overwhelming minority uses. Finally, applicant reliance on the Applicant Guidebook (AGB), and the previous rejection by the Board of TLD categories, should compel the GAC and Board to act with haste in moving these TLDs through the process. Finally, any additional discussions related to any further possible safeguards must involve applicants.

Response:

Donuts is committed to maintaining an open Internet without restrictions on free expression and lawful usage of generic terms. Donuts believes there should be non-discriminatory access to our gTLDs without improper restrictions.

Significant Protections For New gTLDs Are Already In Place

Donuts is concerned about the potential for abusive use of registrations in our wide and varied set of gTLDs. As such, our company strongly supports the protections contained in the AGB, as well as the public interest commitments (PICs) advocated by the GAC, which include:

- Using only ICANN accredited registrars that are party to the 2013 Registrar Accreditation Agreement, as approved by the ICANN Board of Directors;
- Requiring contractual provisions prohibiting registrants from activity contrary to applicable law (including distribution of malware, operating botnets, phishing, piracy, trademark or copyright infringement, counterfeiting or other abusive practices), and providing consequences for such activities, including suspension of the name; and
- Conducting technical analyses to assess security threats, including phishing, pharming, malware and botnets, and maintaining timely reports on such threats.

Further, Donuts has taken steps to meet and exceed the already significant protection mechanisms required by the AGB. Our voluntary mechanisms include:

- Periodic audit of Whois data for accuracy;
- Remediation of inaccurate Whois data, including takedown, if warranted;
- A new Domain Protected Marks List (DPML) service for trademark protection;
- A new Claims Plus service for trademark protection;
- Terms of use that explicitly and strictly prohibit illegal or abusive activity;
- Limitations on domain proxy and privacy service;
- Published policies and procedures that define abusive activity; and
- Proper resourcing for all of the functions above.

We believe these protections, including those recommended by the GAC, are sufficient to protect the variety of interests of those who may have concerns about usage of certain terms. Accordingly, we have no current plans to amend our applications for these gTLDs. However, we would be pleased to consult with governments and others further on these matters to promptly address any issues that may arise, should we become the registry operator of these names.

New gTLDs inherently should be without pre-registration restrictions, including strings identified in Category 1. The history of the Internet and the existing namespace is that of free and lawful expression, a tradition that clearly must continue if the health of the Internet is to be preserved. Just as is the case today, there should be no "Internet Participation By Invitation Only."

Donuts further believes enforcement of the above mechanisms should be performed *ex post* instead of *ex ante*. Refusing a potential registration on the basis of the registrant's identity amounts to improper discriminatory access, a concept with which Donuts firmly disagrees.

Minority usage and content control

Donuts' approach for new gTLDs is inclusive and is not focused on content control. As most governments have made clear, the Internet should remain free from constraints on lawful expression.

Indeed, the notion of usage free from content control has been affirmed by the GAC in its own writing:

> "The GAC further shares concerns expressed by others that…the Corporation could be moving towards assuming an **ongoing management and oversight role regarding Internet content, which could be inconsistent with its technical mandate."**

Accordingly, Donuts' intentions are to assertively fulfill the ICANN mandate to increase consumer choice and competition by offering new Internet naming options to any end-user interested in putting registrations to lawful use, including the above-referenced gTLDs.

We believe it to be a dangerous precedent to restrict domain names to only those with a specific identity. gTLDs should not be limited only to the "majority" use of the term, effectively discriminating against others with legitimate claim to the term. Minority usage of certain terms should be welcomed and not frowned upon on the Internet.

The .DOCTOR TLD can be fairly used by those other than physicians. Existing peacefully in the root system now without hopelessly confusing end-users are names such as AutoDoctors.NET, TheComputerDoctor.BIZ, WorkBootDoctor.COM, and Applicance-Dr.COM. There is scant suggestion that such names be immediately removed from the root because they connote only the qualifications of a physician. Should a registrant use its domain name to falsely attempt to provide medical services without a license, however, action will be taken.

.ARCHITECT should not be limited to just structural architects from a specific jurisdiction. Architect is a term that represents not only structural architects, but also software architects, landscape architects, website architects and others who provide design services. Even the ICANN Board of Directors enjoys the expertise of a liaison from the Internet *Architecture* Board. In this case, however, should a registrant hold itself out as a licensed structural architect when it is not, we have the latitude to take swift action to protect the public.

Ex post vs. *ex ante* enforcement preserves free expression and preserves equal access to domain names.

Inconsistency with and following existing law regarding corporate identifiers

We observe that:

- In existing gTLDs and ccTLDs, registrants freely can add INC, CORP and other corporate identifiers in any form to their second-level registrations, or even hold those precise terms at the second level;
- We understand under United States law, usage of these terms is broadly permitted even if such terms do not correspond with a formal business filing. For example:
    - CompanyInc can be publicly used even if the organization is registered as an LLC or is otherwise not incorporated; and
    - Disney Enterprises Inc. registered MonstersInc.COM to promote its popular film, and was granted a corresponding trademark, though no such company exists; and

While intentions to protect certain interests may be honorable, ICANN cannot ignore existing law or the absence of law that prohibits fair usage. ICANN is not in the business of creating law where none

exists. The application to domain names rules that do not exist in corporate and business regulation is misguided. Why should INC magazine not be able to register Magazine.INC solely because its corporate structure is an LLC?

In situations of ambiguity for ICANN, the default position must be to follow existing law. Such law in this situation—the freedom of usage of corporate identification strings—has been established over centuries and is unambiguous in its availability to broad applicability.

Applicant Guidebook Reliance

The AGB is the contract between applicants and ICANN. Applicants relied on the terms of that agreement for preparation of their applications and in anticipation of providing predictable services to the domain name system.

As Donuts commented following the GAC's Beijing Advice, the current program was approved after many years of discussion, taking into account the GAC principles, GAC Communiqués, and the effort known as the GAC Scorecard. Ultimately, however, fairness should prevail and applicants like Donuts (which relied on Board assurances that new gTLD policy was finalized at the time of application) can't be reasonably expected to make significant last-minute changes to business plans, if even possible, to go back on prior decisions made by the Board. Even the GAC Principles on new gTLDs state: "All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, **fully available to the applicants prior to the initiation of the process**." (Emphasis added)

It is therefore critical to protect the stability and security of DNS operations to not tamper with the AGB unless in exceptional circumstances. Requiring "safeguards" at this point that amount to restrictions on free expression and access, discriminate against minority users, and already have been rejected by the Board is not such a circumstance.

Unworkability of categories

The Board itself pointed to its earlier rejection of GAC advice on this topic and that the creation of categories for restricting certain TLDs is unworkable because:

- Categories of strings are broad and undefined;
- There is no principled basis for distinguishing certain categories and strings;
- Generic terms are included in the same category as highly regulated industries;
- Some strings include segments that are both licensed and unlicensed;
- It is difficult to determine relevant regulatory agencies and self-regulatory organizations;
- Some strings refer to industries that may be sensitive or regulated in a single or a few jurisdictions only;
- Certain safeguard advice, in places, creates obligations that are vague and unimplementable; and
- These are the outcomes the Board sought to avoid by rejecting the GAC's prior advice on categories.

These points are true and reflect the months of public discussion on this topic prior to the AGB approval. It does not seem possible that the Board criticism with the restrictions can be reconciled or rationalized in some way to lead to approval of such proposals.

Inconsistencies remain in the Board application of the restrictive GAC Advice. The GAC has stated that the lists are non-exhaustive and ICANN staff has repeatedly refused to confirm whether this list is final. The GAC has told the Board it would receive no more direction from the GAC even when the Board intimated in Durban that many names might be removed from the list. The inability to arrive

at a final list after months of consideration provides further demonstration that the restrictions are unworkable.

The GAC and Board Must Proceed Quickly to Resolution and Involve Applicants In Discussions

Donuts is aware the New gTLD Program Committee (NGPC) has begun deliberations on GAC Advice from the Durban meeting, and is developing a scorecard for organizing its reply. We encourage all parties to act with dispatch and give due respect to the fact that the eight-year process leading to new gTLDs has been delayed long enough, and material harm is accruing to applicants.

Donuts strongly urges the NGPC, the GAC and the ICANN staff to consult with applicants as a part of any deliberation process regarding any additional safeguards that are being considered before any decisions or pronouncements are made. As sometimes has been the case with ICANN decision-making processes, consultation with operators and applicants prior to final decisions would have revealed difficulties that created further delay. Negotiations between only the GAC and Board could very well lead to a similar result. Any new outcomes must be the least disruptive and invasive to applicants and the program itself.

Conclusion

Donuts welcomes any additional questions the Board or GAC may have about the above-referenced applications. The overriding principles are that the reliance of applicants on the AGB should be respected, significant protections for these TLDs are already in place, and the GAC and Board should move quickly and involve applicants in discussions about potential safeguards, if applicable.