

# 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 Singapore 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 Singapore GAC Advice” (for example “1-111-11111 Response to Singapore GAC Advice”). All GAC Advice Responses to the GAC Singapore Communiqué must be received no later than 23:59:59 UTC on 02-May-2014.

## Respondent:

Applicant Name	Foggy Sunset, LLC
Application ID	1-1619-92115
Applied for TLD (string)	.SPA

## Response:

Thank you for the opportunity to comment on the Governmental Advisory Committee’s Communiqué – Singapore, dated 27 March 2014.<sup>1</sup>

Donuts addresses the GAC’s advice with regard to three of its applied-for gTLDs: .SPA, .VIN and .WINE.

### .SPA

Donuts is pleased to read that the GAC has finalized its consideration of this string, which means it has no further intention for action on this TLD. As such, the GAC has not offered consensus advice to the ICANN Board to block the progress of the .SPA applications. Therefore, as required by the Applicant Guidebook (AGB), the .SPA applications should proceed with no delay. As we have communicated to the Board, while we respect the concerns raised by the City of Spa and the Belgian Government, we are confident that we have thoroughly addressed those issues, and that Donuts’ .SPA application is in full compliance with both the letter and the spirit of the rules set forth for the new gTLD Program.

Specifically, the GAC, in its advice, said:

*Regarding the applications for .spa, the GAC understands that the relevant parties in these discussions are the city of Spa and the applicants. The GAC has finalised its consideration of the .spa string and welcomes the report that an agreement has been reached between the city of Spa and one of the applicants.*

This follows the ICANN Board’s own letter of February to the GAC, in which chair Steve Crocker wrote:

*The[.SPA] application was posted more than 18 months ago and received no early warnings or objections. As there is no provision in the Applicant Guidebook for an indefinite hold, the NGPC*

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<sup>1</sup> Amended version posted on 16 April 2014

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*seeks an understanding as to the anticipated timeline leading to the issuance of final GAC advice on these applications.*

Donuts therefore looks forward to the expeditious processing of its and the competing applications for the .SPA TLD.

Donuts notes the GAC's "welcoming" of an agreement between one applicant and the City of Spa. As we noted in our letter to the Board of 18 March 2014:

*...the Memorandum of Understanding reached between the City of Spa and the other applicant for .SPA cannot, and should not, be given any weight in the determination of which registry wins the right to operate the domain. Nothing in the Guidebook permits outside stakeholders to pick winners and losers in the application process, and to allow that to occur here, where the two applicants are not at all similarly situated, would set an extremely negative precedent. The multipart process in place for resolving contention sets is the result of years of development through the multistakeholder process and should not be subverted based on the request of a single stakeholder.*

"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 City 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.

## **.WINE and .VIN**

The disposition of applications for .WINE and .VIN have been at issue now for some time.

For recent historical context, on 9 September 2013, GAC Chair Heather Dryden informed the ICANN Board that **"the GAC advises the ICANN Board** that the GAC has finalized its consideration of the strings .wine and .vin and **further advises** that the applications should proceed through the normal evaluation process."<sup>2</sup>

On 22 March 2014, based on the letter from GAC Chair Dryden, the lack of consensus GAC advice to the contrary, as well as an independent legal analysis of the .WINE and .VIN applications, the NGPC directed the ICANN staff to process the .WINE and .VIN applications through the normal application procedure.<sup>3</sup>

The legal expert—commissioned by ICANN—found that "[a]s regards the applications for the assignment of the new gTLDs '.vin' and '.wine' filed by the Donuts company, there is no rule of the

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<sup>2</sup> <https://www.icann.org/en/news/correspondence/dryden-to-crocker-09sep13-en>

<sup>3</sup> Resolved (2014.03.22.NG01), the NGPC accepts the GAC advice identified in the GAC Register of Advice as 2013-09-09-wine and vin, and directs the President and CEO, or his designee, that the applications for .WINE and .VIN should proceed through the normal evaluation process: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-22mar14-en.htm#1.a>

law of geographical indications, nor any general principle which obliges ICANN to reject the applications or accept the applications under certain specific conditions."

The GAC, in its Singapore advice replied, raising only procedural concerns, saying<sup>4</sup>:

*The GAC notes the NGPC Resolution 2014.03.22.NG01 concerning .wine and .vin as well as its rationale. In the final deliberation of the Board there appears to be at least one process violation and procedural error, including in relation to ByLaws Article XI--A, Section 1 subsection 6 which states:*

*"6. Opportunity to Comment. The Governmental Advisory Committee, in addition to the Supporting Organizations and other Advisory Committees, shall have an opportunity to comment upon any external advice received prior to any decision by the Board."*

***The GAC therefore advises:***

*1. That the Board reconsider the matter before delegating these strings.*

*The GAC needs to consider the above elements more fully. In the meantime concerned GAC members believe the applicants and interested parties should be encouraged to continue their negotiations with a view to reach an agreement on the matter.*

On 4 April 2014, the NGPC found that there was no process violation, but directed the ICANN staff to wait 60 days before processing the .WINE and .VIN applications and encouraged the "relevant impacted parties" to try to negotiate a resolution.<sup>5</sup>

Therefore, according to the Board's rationale and the independent legal expert's commissioned opinion, there is no reason to further toll these applications.

As encouraged by the NGPC, Donuts will continue to negotiate in good faith with certain wine growers that have raised concerns about this matter. We are incented to try to reach some accommodation to this segment of our potential customer base for the overall success of the registry. We would be in a position to do this after the 60-day period and after we sign an agreement to operate one or both of the registries. Indeed, once Donuts becomes the registry operator for either or both of these gTLDs, we will continue to discuss important commercial relationships with our customers including, but not limited to wine growers.

While we respect the concerns raised by those who argue that .WINE and .VIN pose threats to certain traditional winemaking geographic communities, the protections in place for these names will prove

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<sup>4</sup>[https://gacweb.icann.org/download/attachments/27132037/GAC\\_Amended\\_Communique\\_Singapore\\_20140327%5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2](https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore_20140327%5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2)

<sup>5</sup> Resolved (2014.04.04.NG02), upon having considered the matter set forth in the GAC Singapore Communiqué suggesting that there may have been a process violation or procedural error, the NGPC concludes that there has been no process violation or procedural error under the Bylaws.

Resolved (2014.04.04.NG03), the NGPC directs the President and CEO, or his designee, to not commence the contracting process for the applications for .WINE and .VIN for 60 days from the date of publication of these resolutions in order to provide additional time for the relevant impacted parties to negotiate, which they are encouraged to do.

See: <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04apr14-en.htm>

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more than adequate to protect the legitimate interests of all users, regardless of their geographic location. Notwithstanding, we also have proposed certain additional processes in light of the concerns raised. Regardless of whether these additional processes would be sufficient in the eyes of the critics, there are no grounds for further delay of the processing of these applications. The AGB—our contract with ICANN—is clear on this point.

As recognized by the NGPC, ICANN is likely not the appropriate venue to address complex trade negotiations on politically sensitive issues, such as the rights of Geographic Indicators.

As Andrew Maurer so stated in his 17 December 2013 letter to ICANN Chairman Steve Crocker:

*“The protective framework governing GIs has been the result of careful thought and mutual agreement from many of our governments over a number of years. It would be of serious concern if positions from the GAC effectively redesigned the concept and protections of GIs as they exist in other fora. We should not be negotiating extensions to the TRIPS agreement in the GAC, especially while the mechanisms for GI protection and infringement are more appropriately the subject of negotiations among experts in the World Intellectual Property Organization and the World Trade Organization.*”

Therefore, we urge ICANN to continue processing the .WINE and .VIN TLDs under the terms set forth in the Applicant Guidebook regardless of the outcome of any commercial negotiations between the applicants and certain wine growers. We believe that if ICANN processes the applications, there is a much greater likelihood of an agreement than if it delays processing further.

Again, thank you for the opportunity to comment on GAC advice.