

## 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.

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.

### 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.