

## 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 Los Angeles 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 Los Angeles GAC Advice” (for example “1-111-11111 Response to Los Angeles GAC Advice”). All GAC Advice Responses to the GAC Los Angeles Communiqué must be received no later than 23:59:59 UTC on 17-November-2014.

### Respondent:

Applicant Name	Application ID	Applied for TLD (string)
Lone Maple, LLC	1-1343-89689	app
Baxter Tigers, LLC	1-1344-70608	art
Foggy Way, LLC	1-1359-21671	bet
Binky Sky, LLC	1-1382-33633	casino
Corn Lake, LLC	1-1384-49318	charity
Cotton Fields, LLC	1-1407-41397	corp
Trixy Canyon, LLC	1-1411-59458	cpa
Romeo Birch, LLC	1-1605-75916	data
Brice Trail, LLC	1-1430-52453	doctor
Little Birch, LLC	1-1434-1370	eco
Over Keep, LLC	1-1465-93738	free
Foggy Beach, LLC	1-1470-40168	games
Extra Dynamite, LLC	1-1477-91047	gmbh
Baxter Sunset, LLC	1-1271-68369	inc
Foggy North, LLC	1-1546-93002	llc
Lone Hollow, LLC	1-1556-47497	mba
Steel Hill, LLC	1-1561-23663	medical
New Frostbite, LLC	1-1570-42842	movie
Victor Cross, LLC	1-1571-12951	music
Hidden Bloom, LLC	1-1573-27315	news
Tin Dale, LLC	1-1593-8224	radio
Little Galley, LLC	1-1622-67844	school
Snow Beach, LLC	1-1633-36635	show
Foggy Sunset, LLC	1-1619-92115	spa
Blue Tigers, LLC	1-1641-67063	theater
Sugar Station, LLC	1-1648-61876	tours
Holly Shadow, LLC	1-1538-23177	vin
June Station, LLC	1-1515-14214	wine

Donuts appreciates the opportunity to provide feedback to the ICANN Board regarding the Governmental Advisory Committee's Los Angeles Communiqué, dated 15 October 2014.

## **Election of Chair and Vice Chairs**

Donuts congratulates Thomas Schneider of Switzerland and welcomes him as the newly elected Chair of the GAC. We further congratulate Olga Cavelli (Argentina), Henri Kassen (Namibia), and Gema Campillos Gonzalez (Spain) on their election as Vice Chairs.

Donuts also thanks Heather Dryden for her long and distinguished service as Chair.

## **Safeguard Advice Applicable to all new gTLDs and Category 1 (consumer protection, sensitive strings and regulated markets) and Category 2 (restricted registration policies) strings**

Donuts appreciates the GAC's ongoing interest in potential safeguards, and provides the following comment to the Board regarding the specifics of GAC advice:

*a. The GAC strongly advises the ICANN Board to focus its attention on the following:*

- *Implementation of WHOIS-Related Safeguards*

*...Complete the Pilot study on WHOIS accuracy, including assessment of identity validation, and share the findings in a timely manner for review at the ICANN 52 meeting;*

and

*...Initiate steps towards Phase 3 (identity verification) of WHOIS, including undertaking a cost-benefit analysis of implementation options;*

and

*Commit to defining the process to address and resolve inaccurate WHOIS records and respond to non-compliance reports.*

Donuts welcomes further study of WHOIS-related issues and agrees to help define a process for resolving inaccurate WHOIS records. However, we again urge a cautious and deliberative approach to the concept of WHOIS verification and validation, as any such measures are exceedingly challenging.

Indeed, in the preliminary findings paper<sup>1</sup> describing the pilot introduction of the WHOIS Accuracy Reporting System (ARS), even researchers acknowledged the difficulty of verification and validation. The study:

*"...examines accuracy levels by applying syntactic validation and operation validation tests to a Registrant's postal address, email, and telephone numbers listed in a WHOIS record."*

But the study did not attempt to apply identity validation techniques,

**"...because the complexity and costs of validating identities is in any sample size is too prohibitive."** (emphasis added)

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<sup>1</sup> <https://www.icann.org/news/announcement-2014-10-10-en>

Donuts, therefore, respectfully advises the Board to examine carefully the real-world feasibility of any proposed verification and validation methodologies proposed for WHOIS. Furthermore, given the significant burdens such a program could impose on registries and registrars, it will be essential that any new policy in that area apply equally to all TLDs, rather than simply to new gTLDs from the most recent round. To impose new gTLD validation and verification standards would only serve to deepen the chasm between highly regulated new gTLDs and lightly regulated legacy gTLDs.

The GAC further advised that the Board:

1. *Reconsider the NGPC's determination not to require the verification and validation of credentials of registrants for the highly regulated Category 1 new gTLDs. The GAC believes that for the limited number of strings in highly regulated market sectors, the potential burdens are justified by the benefits to consumers; reconsider the requirement to consult with relevant authorities in case of doubt about the authenticity of credentials; and reconsider the requirement to conduct periodic post-registration checks to ensure that Registrants continue to possess valid credentials; and*
2. *Ensure the issues (verification/ validation; post-registration checks; consultation with authorities) are addressed in the review process for any subsequent rounds of new gTLDs.*

Donuts respectfully reiterates its previous concerns regarding verification and validation of credentials.

As the ICANN Board has itself noted, even well intentioned efforts toward validating domain name registrants carry the potential for significant and adverse unintended consequences. In the case, for example, of .DOCTOR, such a generic term has far wider utility than application to credentialed physicians. As ICANN Board member Chris Disspain noted in the New gTLD Program Committee meeting with the GAC in Buenos Aires (emphasis added):

*"...in many, many countries, the term "doctor" is used as a name of businesses. A computer doctor. If you -- There are often -- It's a term that is used. **It's not a regulated term.** It's a term that is used in business names, in company names for people who fix things. And there is no prohibition on the use of that term."*

Indeed, "doctor" can refer to other types of academic credentials—Doctor of Philosophy, Juris Doctor, or Doctor of Dental Surgery, for example. Some registrants use "doctor" names to review medical doctors or provide directories of medical doctors. They are not licensed medical practitioners, but certainly have the right to continue to use the DNS to provide important information in a lawful manner. Fulfilling the GAC's request therefore would discriminate against and disenfranchise minority users of the generic term.

Further, in the United States, for example, it would violate the tenets of the First Amendment for the government to say that only certain people could engage in speech unless "reasonable" time, place or manner restrictions were narrowly tailored toward certain government goals. With .DOCTOR, the laudable goal is to prevent unlicensed individuals from holding themselves out as licensed medical doctors, thereby causing consumer confusion. It would be *unreasonable*, however, for the government or ICANN to reach that objective by saying that only licensed medical doctors could use the generic term "doctor" while at the same time discriminating against all other very legitimate uses of the term. Such a problem deserves confrontation, but not by creating new problems by needlessly restricting free expression and lawful speech.

**This and other examples make it clear that not only is it not advisable to attempt to regulate speech through gTLD registration restriction, trying to do so literally halfway through an in-progress, successful program would disrupt public participation and create an unreasonable level of confusion.** (Emphasis added)

## **GAC's and ALAC's discussion regarding safeguard protection**

Donuts notes the GAC's exchange with the ALAC in Los Angeles, where the ALAC stated its desire to persuade ICANN to halt contracting and/or delegation of new gTLDs that fall within Category 1 of the GAC's safeguard advice<sup>2</sup>, presumably to subject gTLDs not yet under contract to more stringent requirements. Some members of the GAC expressed ongoing sympathy with the ALAC's position<sup>3</sup>.

While Donuts recognizes and appreciates the GAC's and ALAC's continued concern regarding safeguards, it's critical to recognize that policymaking for new gTLD application and delegation was concluded long ago, and many affected gTLDs have already executed their Registry Agreements with ICANN.<sup>4</sup> Freezing a subset of applications during contracting and delegation when policies have been finalized and other applications have been able to proceed would result in disparate and unfair treatment of registry operators, which is both unfair and a violation of ICANN's bylaws, and would introduce inconsistencies across ICANN Registry Agreements.

Heeding the ALAC's request, therefore, would be inappropriate and a breach of the Applicant Guidebook (AGB) at this stage of the program. If the ALAC wishes to apply certain criteria to any gTLDs, including a subset of all gTLDs, it can do so only (i) if the policies fall within the category of issues covered by Specification 1 of the Registry Agreement (i.e., so-called "Consensus Policy" within the "Picket Fence") and (ii) through the GNSO Policy Development Process (PDP), which would fittingly involve consultation from all impacted parties. If the community, collectively, elects to more heavily regulate specific categories of strings, it is imperative to do so via this avenue instead of freezing and unilaterally regulating strings in an *ad hoc* fashion.

We note that in May 2014, following receipt of third-party correspondence, ICANN froze a subset of health-related applications *outside of established process* to consider whether additional safeguards were appropriate. At its June 9 meeting, the ICANN Board determined that no resolution should be taken on the matter, and such strings were allowed to proceed using the existing framework for Category 1 safeguards.

Additionally, similar ideas were previously brought forward by the ALAC through a proposal to institute mandatory Policy Advisory Boards for strings identified within the GAC Category 1 Advice. When the topic was raised during the ALAC meeting with the ICANN Board during the ICANN 49 Public Meeting in Singapore, the Board, appropriately, advised the ALAC that introduction of new safeguards must pass through the PDP. As stated by Board member Bruce Tonkin:

*"There is a provision in the bylaws that the ALAC can actually start a policy development process, starting with an issues report. Use that. Because this whole area of regulated industry, categories, it is very complicated and it is absolutely what the policy development process is designed to do to address those issues. That's where that should go."*

Cherine Chalaby, chair of the NGPC, echoed this position, affirming that implementation of additional safeguards must necessarily result from consensus policy. We support the Board's approach and

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<sup>2</sup> <http://www.atlarge.icann.org/correspondence/correspondence-16oct14-en.htm>

<sup>3</sup> <http://la51.icann.org/en/schedule/tue-gac/transcript-gac-alac-14oct14-en>

<sup>4</sup> Further, importantly, applicants relied on a clear understanding of AGB rules (the result of policymaking finality) when resolving contention—rules that should not be changed mid-stream.

urge it to continue to uphold this responsibility, and to reject other attempts by parts of the community to subvert established process or turn the NGPC into a policy development body.

Donuts urges the ICANN Board to comply with ICANN's Mission Statement and Core Values, and the terms of Specification 1 of the Registry and Registrar agreements; to carefully consider the implications of the ALAC's recommendations both in terms of ICANN's policy development process and end-user predictability; and to refer the ALAC's advice to the GNSO to proceed through a potential PDP.

### **Conclusion**

Donuts thanks the Board for its consideration of this comment.