

# 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	United TLD Holdco Ltd.
Application ID	1 - 1255 - 39674
Applied for TLD (string)	GIVES

## Response:

Pursuant to Section 3.1 of the Applicant Guidebook (AGB), United TLD Holdco, Ltd. (“United TLD”) provides this response to the ICANN Board regarding the Safeguard Advice for New gTLDs (the “GAC Advice”) applicable to United TLD’s application for .GIVES, identified in Annex I in the GAC Communiqué issued in Beijing on April 11, 2013.

## General

Annex I begins with the general statement that “[t]he GAC considers that Safeguards should apply to broad categories of strings...in the current or future rounds, in all languages applied for.” While we understand the concept of dividing strings into categories, United TLD cautions ICANN not to create safeguards simply because a TLD may or may not fall into a particular broad category. Many strings have dual or different meanings to different users in different markets so they may not easily fall into categories. For example, a “fan”, in English, can mean a supporter of an idea, team, cause, or celebrity but it also refers to a product that circulates air for cooling. Categorizing strings for purposes of safeguards may be convenient but it may also unfairly prejudice applicants that have business models based on other intended meanings of strings.

Furthermore, ICANN should not consider developing or requiring safeguards that will apply in future rounds. At this point in time, we do not fully understand the impacts this round of new gTLDs will have on the marketplace. Consequently, ICANN should not burden future applicants with safeguards and restrictions when such restrictions may prove unnecessary and ineffective.

Finally, United TLD is in agreement with the GAC that any safeguards must be implemented in a manner that is fully respectful of human rights and fundamental freedoms, applicable laws, and not be discriminatory.

## Safeguards 1-6

The GAC has advised that six general Safeguards should apply to all new gTLDs and be subject to contractual oversight: 1) WHOIS verification and checks; 2) Mitigating abusive activities; 3) Security checks; 4) Documentation (of WHOIS records and other reports); 5) Making and Handling Complaints; and 6) Consequences (for registrants who violated policies).

With respect to these six general Safeguards, United TLD wishes to highlight the fact that in each of its 26 applications for new gTLDs, including its application for .GIVES, United TLD expressly and pro-actively declared its intention to implement a version of each of these six safeguards. In addition, United TLD filed public interest commitments (PICs) for each of its 26 applications specifically committing to the implementation of these types of safeguards.

Despite our full commitment to these six Safeguards and our agreement that all registry operators should make similar commitments, United TLD warns ICANN that the GAC should not dictate the specific processes, procedures or requirements for implementing these safeguards. Registry Operators should be able to develop their own methodology within ICANN policy guideline and best practices for conducting the security checks, for example, or for maintaining statistical reports and for addressing violations of their terms of service. There is no single “best practice” for implementing these safeguards and registry operators should not be forced to adopt specific methods or processes for doing so. Innovation takes place when competition is allowed to develop different methodologies to address a problem. Therefore, United TLD agrees with GAC Advice related to these six Safeguards so long as it is allowed to develop its own specific methodology and practices for implementation.

## Category 1 Safeguards

In addition to the six general Safeguards applicable to all new gTLDs, the GAC has advised that five additional “Category 1” safeguards be implemented for strings linked to “Consumer Protection, Sensitive Strings, and Regulated Markets.” United TLD wishes to comment on each of these additional safeguards in turn with respect to .GIVES:

1. Registry Operators will include in their acceptable use policies, terms requiring registrants to comply with all applicable laws. This safeguard seems to apply to all categories identified by the GAC. United TLD has drafted its Acceptable Use (Anti-Abuse) Policy, applicable to all of its gTLDs, which includes specific language requiring registrants to comply with all applicable laws. Therefore United TLD agrees with this GAC Advice for .GIVES.
2. Registry operators will require registrars at the time of registration to notify registrants of this requirement. This safeguard also seems to apply to all categories identified by the GAC. United TLD’s Registry-Registrar Agreement specifically requires registrars to inform their registrants that they must comply with our Acceptable Use Policy applicable to all of our gTLDs. Therefore we also agree with this GAC Advice for .GIVES.
3. Registry Operators will require registrants who collect sensitive data to implement security measures commensurate with the offering of “those” services. Unfortunately, this safeguard is not specific enough and so United TLD is unable to respond with any concrete process to address the GAC concerns. For example, “sensitive health and financial data” is not

defined nor are any factors given to measure to determine “appropriate security measures commensurate with the offering of those services.” Furthermore, what are “those services” to which the advice refers and what are the “applicable laws” and “recognized industry standards” for those services? An applicant would need specific answers to these questions in order to understand what safeguards are specifically being recommended before being able to formulate any type of response.

As a general principle United TLD believes the applicable law and recognized industry standards have been and continue to be developed and implemented by appropriate legislative, law enforcement and industry expert bodies and should not be developed by the Registry Operator. As an applicant we are committed to working with law enforcement and authorized regulators and responding to their requests in a timely and efficient manner.

4. Registry Operators will establish a working relationship with the relevant regulatory body including developing a strategy to mitigate abuse. With respect to .GIVES, there are many forms of usage for GIVES especially on a global level and we do not believe that there is a relevant regulatory body with which to we may establish a working relationship for the reasons proposed by the GAC. We do believe that it is critical to mitigate fraud and illegal activities and for that reason United TLD has developed additional protections, beyond what is required in the Applicant Guidebook and has committed to implement these additional measures. We encourage the ICANN Board to review United TLD’s application and PIC submissions for .GIVES, for insight into how we believe a self-regulation model can work and also for guidelines on what additional protections may be suggested to Registry providers.

Furthermore, what if a relevant regulatory body simply declined to work with United TLD or does not respond to our requests for collaboration? It is unclear how a registry is supposed to address that issue. It is for these reasons that United TLD believes it is unable to fully comply with this advice and advises the Board to reject such advice.

5. Registrants must be required by the Registry Operators to provide them a single point of contact for the notification of complaints or abuse. This safeguard seems to apply to all categories identified by the GAC. The biggest challenge with this safeguard requirement is that, historically, the registry operator does not engage in direct contact or communication with the registrants. Communications are almost exclusively between registrants and registrars who manage the customer relationship. Inserting the registry operations in that communication exchange will very likely result in unnecessary customer confusion. United TLD is reluctant to implement this particular safeguard for any of its strings out of respect for the registrar-registrant business relationship that has been well-established since the earliest days of commercial internet use. However, United TLD wishes to point out that it already has a point of contact for a registrant as a result of the accurate WHOIS data requirements appearing which are now more easily enforceable under the new Registrar Accreditation Agreement.

## Additional Category 1 Safeguards

The GAC Advice also notes that “some of the above strings” may require further targeted safeguards to address specific risks and adds Safeguards No. 6, No. 7, and No. 8 to the five Category 1 Safeguards described above. Despite its uncertainty to whether these Safeguards

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apply directly to United TLD's applied for TLDs, we would like to comment on the three additional Safeguards:

6. Registry Operator must verify and validate the registrant's authorizations, charters, licenses or other credentials for participation in this sector.
7. In case of doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents.
8. Registry Operator must conduct periodic post-registration checks to ensure registrants' validity and compliance with the above requirements.

United TLD believes the GAC Advice as articulated in these three additional Category 1 Safeguards should be wholly rejected for 5 reasons:

First, implementation of these Safeguards would go completely against the GAC's own Principles Regarding New gTLDs, published in March 2007 which included this principle among others:

2.5. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency, and non-discrimination. 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. Normally, therefore, no subsequent additional selection criteria should be used in the process.

United TLD believes that the GAC Advice requiring implementation of these three additional Safeguards is equivalent to imposing "subsequent additional selection criteria" after the initiation of the evaluation process and therefore must be rejected.

Second, applicants, including United TLD, submitted their new gTLD applications believing that that they would be operating, managing and distributing generic TLDs. These three Safeguards completely change the nature of the new TLDs from being generic and widely available, to being "sponsored" TLDs restricted only to those individuals who must prove their status or credentials entitling them to register domain names with certain extensions. These three Safeguards are patently adverse to the core purpose of the new gTLD program and ICANN's mission generally which is to promote consumer choice and competition. Adoption of these three additional Safeguards would have material adverse effect on nearly every applicant and must be rejected. It's also important to note that these GAC recommended safeguards might have a discriminatory effect on users in some developing nations whose governments do not have regulatory bodies or keep databases from which a registrar could verify certifications or credentials. The GAC Advice should not have the effect of putting developing countries at a disadvantage because they do not have infrastructures necessary to enable validation or verification.

Third, the GAC Advice related to the additional safeguards is not specific enough. The GAC does not identify which strings should be subject to these safeguards. Further, the GAC fails to identify the "specific risks" it refers to or which "clear and/or regulated entry requirements" it means. Without a great deal more specifics with respect to the strings being referenced, the

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harms being addressed, or the requirements being recommended, no applicant can implement these safeguards.

Fourth, the GAC Advice related to the additional safeguards is unworkable in practice. In Safeguard No. 6, for example, why would a registry operator verify and validate “charters” and “licenses” for the registration of a domain name in .GIVES, when the use of the domain name is not known? A registrant may use the domain as a corporate website (Microsoft.gives) or as an organizational site (seattleschools.gives), where there is no license or charter to operate in that sector. Finally, with respect to Safeguard 8, registry operators cannot conduct post-registration checks to insure registrants’ validity and compliance with any “GIVES” requirements when the requirements are not tenable.

Finally, the spirit and actual letter of the GAC Advice related to these additional safeguards comes in a manner and form that is completely antithetical and contrary to ICANN’s bottom-up, multi-stakeholder, consensus-driven policy development process. Because the proposed safeguards, if implemented, would effectively change how new gTLDs are managed, sold, distributed, registered, operated, and used in the marketplace, the GAC Advice is tantamount to making “top-down,” dictatorial, non-consensus, policy which undermines the entire ICANN model. If ICANN chose to adopt any one of these three safeguards, ICANN would lose all legitimacy.

## Category 2 – Restricted Registration Policies

In addition to Category 1 Safeguards, the GAC has also issued GAC Advice related to restricted registration policies.

United TLD believes that the domain name space should be operated in an open manner and that consumer choice and access is of paramount importance for the success of all new gTLDs. Any unduly burdensome restrictions on registrants or registrars should be avoided. Placing registration requirements or restrictions on some new gTLDs and not others will unfairly prejudice these new gTLDs when launched into the consumer marketplace. United TLD plans to offer .GIVES as an open domain name without restricted or exclusive access in order to allow registrants to create innovative and specialized products and services that connect with their audience (for example, “gulfcoast.GIVES”). We envision websites that could be created by students and faculty members in colleges and universities who study charity and giving related fields of study (for example, “whyexxon.GIVES”). We also foresee job-related websites related to .GIVES (for example, “chicagojobs.GIVES”). These examples are just some of the many ways United TLD believes registrants will use this extension to create value for consumers who identify with giving and charity disciplines and professions. Restrictive registration policies on .GIVES would place this string at a disadvantage to one without hobbled by such restrictions.

## Conclusion

United TLD respects ICANN’s multi-stakeholder policy development process and the role that the GAC plays in this process. As detailed above, United TLD agrees to implement the five general Safeguards and Category 1 Safeguards 1 and 2 for .GIVES and its other applied for strings. For the reasons given, however, United TLD is unable to adopt GAC Advice for Category 1 Safeguards 3-8 and urges the Board to reject the advice related to these Safeguards as well.

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Should the ICANN Board have any questions regarding United TLD's response to GAC Advice related to our .GIVES application, please do not hesitate to contact us for more informatio