

GAC ADVICE RESPONSE FORM

Applicant Name: NU DOTCO, LLC

Applicant String: .GMBH

Applicant #: 1-1296-52581

Pursuant to the ICANN communication received April 18, 2013, and per Section 3.1 of the Applicant Guidebook (AGB), NU DOTCO, LLC (“NU.CO”) provides this response to the ICANN Board regarding the GAC Communiqué issued on April 11. This response is applicable to NU.CO’s application for .GMBH identified in Annex I of the GAC Communiqué under the *Corporate Identifiers* category.

Safeguards on New gTLDs

The GAC considers that Safeguards should apply to broad categories of strings...in the current or future rounds, in all languages applied for. While the GAC’s intent to divide strings into categories is a noble effort, we believe that this is a difficult, if not impossible task to undertake in a fair, consistent and transparent manner. Strings have multiple meanings, different applications to different users in different markets, etc. They do not easily fall into categories and therefore we are opposed to the categorization of strings. Neither the AGB nor the gTLD program was created with this concept in mind and in this stage of the process, this would materially impact the rules and regulations that applicants submitted to and were developed during years of bottoms up consultation within the community. Additionally, a quick review of the strings that have been included and excluded demonstrates the degree to which the GAC Advice lacks consistency and fails to reflect the kind of objective, principled basis that is fundamental to equitable implementation.

As to treatment of “future rounds”, just as ICANN is not making any commitments towards announcements of future rounds of new TLDs without evaluating the successes, failures and shortcomings of the current round, ICANN should not consider unilaterally requiring safeguards that will apply in future rounds without assessing the current safeguards in place.

Safeguards 1-6

The GAC has advised that six Safeguards should apply to all new gTLDs and be subject to contractual oversight. All of NU.CO’s applications address these six Safeguards in some form, as standard policies or procedures, some of which we have contracted for through our Registry Service Provider, Neustar. Although we have committed to implementing these Safeguards, neither the ICANN board nor the GAC should attempt to dictate the specific processes or methodologies. Registry operators should simply consult best practice and ICANN guidelines in order to implement the particular solutions that fit within the Registry’s business model.

Furthermore, four of the six Safeguards cited, seem to target areas that are specifically addressed in the 2013 Registrar Accreditation Agreement, which is in final draft version and currently posted for public comment. While our applications already address these Safeguards and our registry operations will implement them in some form, the following comments are applicable to the Safeguards:

1) WHOIS verification and checks: The WHOIS issues are addressed directly in the new 2013 RAA;

2) Mitigating abusive activities: Abuse activities are addressed in various forms in the new 2013 RAA;

3) Security checks: This is addressed in the new 2013 RAA;

4) Documentation: ICANN has a web-based process for complaints about non-responsive registrars. ICANN and registrars continue to attempt to resolve significant issues related to frivolous and harassing complaints, and it makes little sense to create two different systems. To the extent any registry involvement is necessary, it should be sufficient to provide a link to the ICANN page at: <http://reports.internic.net/cgi/registrars/problem-report.cgi>;

5) Making and Handling Complaints: ICANN has a web-based process for complaints about non-responsive registrars. ICANN and registrars continue to attempt to resolve significant issues related to frivolous and harassing complaints, and it makes little sense to create two different systems. To the extent any registry involvement is necessary, it should be sufficient to provide a link to the ICANN page at: <http://reports.internic.net/cgi/registrars/problem-report.cgi>;

6) Consequences: The WHOIS issues are addressed directly in the new 2013 RAA; ICANN has a web-based process for complaints about non-responsive registrars. ICANN and registrars continue to attempt to resolve significant issues related to frivolous and harassing complaints, and it makes little sense to create two different systems. To the extent any registry involvement is necessary, it should be sufficient to provide a link to the ICANN page at: <http://reports.internic.net/cgi/registrars/problem-report.cgi>.

Category 1 – Consumer Protection, Sensitive Strings, and Regulated Markets

The GAC advises the ICANN Board that strings that are linked to regulated or professional sectors should implement five additional safeguards. NU.CO will address each of these safeguards in general, as they apply to all of its applications:

1. *Registry Operators will include in their acceptable use policies, terms requiring registrants to comply with all applicable laws...*

In general and through NU.CO's terms of use, Registrants are obligated to comply with applicable laws relating to privacy, data collection, consumer protection, fair lending, debt collection, etc. The proposition that registrants are liable for their conduct under applicable law is not contested. The GAC Advice, however, would impose liability on registry operators with respect to registrant conduct, and require registry operators to identify the law applicable to any particular registrant, and to evaluate the conduct of a registrant against such law. Registry operators should not be in the business of law enforcement. While registries and registrars are obligated to cooperate with and assist appropriate law enforcement agencies in accordance with applicable due process requirements, "outsourcing" law enforcement to the private sector, particularly in a multi-jurisdictional global environment raises significant policy, due process, and business concerns that must be addressed. This safeguard seems to apply to all categories identified by the GAC.

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 and raises the same issues addressed above in #1. Again, our general terms of use, in conjunction with NU.CO's Registry-Registrar Agreement, specifically require registrars to inform their registrants that they must comply with our Acceptable Use Policy.

3. *Registry Operators will require registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law and recognized industry standards.*

Privacy and data security requirements are established by national and local law, and vary dramatically from country to country. It is entirely reasonable to expect registry operators to handle data they collect and maintain to comply with applicable data privacy and security laws. It is reasonable to require registrants to be transparent about their data collection and processing practices, but in most situations it is unreasonable to expect registry operators to pass judgment on what law applies to a registrant's conduct and whether or not that conduct is consistent with applicable law.

4. *Establish a working relationship with the relevant regulatory bodies, including developing a strategy to mitigate as much as possible the risks of fraudulent, and other illegal, activities.*

NU.CO believes it is important to mitigate fraud and illegal activities. To the extent that there are identifiable and relevant regulatory bodies that are open and willing to participate with the Registry operator, it should be encouraged, but it should not be a mandatory requirement. There are enforcement issues and many complications that arise. Who does one work with when a string has multiple meaning and thus multiple

regulatory bodies? What happens if the regulatory body is not cooperative? What if there are competing regulatory bodies with opposite agendas? Who do you work with when you couldn't possibly satisfy both bodies? For these reasons and many others, we feel this Safeguard is impractical and not applicable for all new gTLDs.

- 5. Registrants must be required by the registry operators to notify to them a single point of contact which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.*

This safeguard seems to apply to all categories identified by the GAC and is yet another Safeguard that is addressed in the 2013 RAA. The other important factor for the GAC to be mindful of is that Registrants are truly customers of the Registrars, not directly of the Registry. The trust and relationship between the Registry and Registrar is important in our business and one that would be impacted by introducing additional layers of customer contact at the Registry level, in so far as customer service is involved.

The GAC further advises the Board (additional Category 1 Safeguards):

The GAC further advises the board that some of the above strings may require further targeted safeguards to address specific risks:

- 6. At the time of registration, the registry operator must verify and validate the registrants' authorisations, charters, licenses and/or other related credentials for participation in that 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. The registry operator must conduct periodic post---registration checks to ensure registrants' validity and compliance with the above requirements in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve.*

NU.CO believes these safeguards may apply to some applicants in very specific cases. Particularly, to the extent an applicant has indicated that second level-domains in a particular TLD will be limited to licensed providers of product or services, it would be appropriate to expect an applicant to propose policies designed to enforce such limitations. In three additional safeguards above, however, the GAC is not giving advice related to applicant accountability. Instead it is creating general policy based on the overly broad and simplistic assertion that all of these strings relate to market sectors that have clear and/or regulated entry requirements.

Whether or not any of these Safeguards can be implemented in a practical manner is very much in doubt. Most Registrants for domains are individuals, unaffiliated to regulated bodies and operating without “charters or licenses”. Usually, they’re just people with an extremely basic idea in their head and a desire to register a domain just in case they ever work out that idea.

In principle, the entire concept of these Safeguards is fundamentally flawed in that these are criteria that are being created and introduced after the commencement of the initial evaluation process and subsequent even to the PIC process (which in itself was introduced long after the application window had closed). The development of this proposal completely negates ICANN’s bottom-up, multi-stakeholder model. If the ICANN Board approved any one of these three safeguards, ICANN’s consensus driven policy making would be completely undermined.

Furthermore, NU.CO applied for new gTLDs under the assumption that we were applying for generic TLDs. These three Safeguards 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. This is not what the new gTLD program was intended for and the sponsored TLD rounds have long come and gone. These three additional Safeguards would have material adverse effects on nearly every applicant and should be rejected unless the applicant applied for the new gTLD with these Safeguards already built in.

Finally, the GAC does not identify which strings should be subject to these safeguards. The Advice is not specific and leaves applicants to speculate as to who this should apply to. No applicant can implement these safeguards without subjective interpretation of the GAC Advice.

Category 2 – Restricted Registration Policies

The GAC advises the ICANN Board as to restricted access:

All of NU.CO’s applications propose strings are operated in an open manner. However, this is our personal preference and philosophy. This is not and should not be a policy as it would be newly introduced at this very late stage in the program. We refer again to our comments above regarding timing and introduction of policies in a top-down, non-consensus driven approach as being completely opposed to the fundamentals upon which the ICANN community has been built.

Conclusion

NU.CO respects the GAC’s role within ICANN and particularly their role in the multi-stakeholder policy development process. As described in our response, NU.CO agrees that there are certain Safeguards that we have agreed to implement because they were already part of our Registry policies and operational procedures. These could mostly be considered best practices. The other Safeguards suggested which create new categories and convert new generic TLDs into

sponsored TLDs should be rejected by the Board. These are not best practices, rather a unilateral attempt by the GAC to create policy, without community consensus.

Should the ICANN Board have any questions regarding NU.CO's response to GAC Advice related to any of our applications, do not hesitate to contact us.