

From: On Behalf Of Peter Dengate Thrush
Sent: Saturday, March 05, 2011 12:50 PM
To: Heather Dryden
Cc: ICANN Board of Directors
Subject: [icann-board] Documenting the Board/GAC Brussels consultation

Dear Heather,

On behalf of the Board of Directors of ICANN, I would like to formally thank the ICANN's Governmental Advisory Committee for participating in the first intersessional Board/GAC meetings, held in Brussels on 28 February and 1 March 2011, regarding ICANN's proposed implementation of the new gTLD program.

We appreciate the preparatory work and time commitment of the GAC Members in participating in these discussions. We also look forward to continuing to work with you on the best ways to evaluate and implement changes to the program resulting from your advice, in the consultation scheduled to be held at the Silicon Valley ICANN Meetings to be held in San Francisco later this month. We are still holding the 17 March consultation slot open and look forward to adding the other day to these consultations following on from your recent offer to be available for this additional time.

The Board looks forward to continuing to collaborate with the GAC in order to conclude the consultation process on the new gTLD program during the Silicon Valley/San Francisco Meeting.

The Board has made a good faith effort toward narrowing the outstanding issues as evidenced by the production of Board Papers, and the subsequent use of the GAC scorecard to frame and shape the issues. The clarity gained during these efforts has significantly reduced the amount of work that needs to be done in order to reach agreement on most issues.

We have included the ICANN Board's response to the GAC scorecard entitled 'Board Notes GAC Actionable Scorecard, attached. We have provided this response, to set out information regarding the Board's evaluation of the GAC advice, which has been summarized within your scorecard. We look forward to discussing this with you further as part of the evaluation. The issues that you have raised are responded to point-by-point.

While discussion in Brussels confirmed that we would work together to clarify implementation of the issues marked as "1(b)", a narrowed focus in San Francisco on the issues that are still in contention would be a best use of the Board and GAC's time during the two days of consultations, and should represent the final stages in our required consultation. Accordingly, we propose focusing there on those items marked with a "2", in the Board's response to the Scorecard attached. Those items marked 1(b) might result in follow on discussions with the GAC regarding implementation in the time leading up to the launch of the program, but do not appear that they will require the same consultation that we have triggered on the "2"'s since we are not in fundamental disagreement on those items categorized as 1(b)'s.

Our breakdown of the Scorecard shows a total of 80 subparts, including a total of 25 - 1As; 28 - 1Bs; 23 - 2s; 4 - TBDs. In terms of the 12 sections identified by the GAC, we have 2s in five of them - sections 2, 4, 5, 6 and 8. We do not have any 2s in sections 1, 3, 7, 9, 10, 11 and 12, although in section 10 we have three TBDs. A table of this breakdown is also attached.

We look forward to hearing from your preferred date for a second day of consultation, during the Silicon Valley/ San Francisco ICANN Meeting.

Again, our thanks for a very productive meeting.

Sincerely,

Peter Dengate Thrush
Chairman of the Board of Directors,
Internet Corporation for Assigned Names and Numbers

ICANN Board Notes on the GAC New gTLDs Scorecard

4 March 2011

This document contains the ICANN Board's notes on the "GAC indicative scorecard on new gTLD outstanding issues" of 23 February 2011. Each GAC scorecard item is noted with a "1A", "1B", or "2":

- "1A" indicates that the Board's position is consistent with GAC advice as described in the Scorecard.
- "1B" indicates that the Board's position is consistent with GAC advice as described in the Scorecard in principle, with some revisions to be made.
- "2" indicates that the Board's current position is not consistent with GAC advice as described in the Scorecard, and further discussion with the GAC in San Francisco is required.

Item #	GAC Scorecard Actionable Item	Position	Notes
1.	The objection procedures including the requirements for governments to pay fees		
1.	Delete the procedures related to "Limited Public Interest Objections" in Module 3.	1B	The GAC indicated in Brussels that its concern relates to requiring governments to use this objection process. The Board and GAC therefore agreed that it would be consistent with GAC advice to leave the provision for Limited Public Interest Objections in the Guidebook for general purposes, but the GAC (as a whole) would not be obligated to use the objection process in order to give advice.
2.	Procedures for the review of sensitive strings		
2.1.1	1. String Evaluation and Objections	1B	A procedure for GAC review will be

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	<p>Procedure Amend the following procedures related to the Initial Evaluation called for in Module 2 to include review by governments, via the GAC. At the beginning of the Initial Evaluation Period, ICANN will provide the GAC with a detailed summary of all new gTLD applications. Any GAC member may raise an objection to a proposed string for any reason. The GAC will consider any objection raised by a GAC member or members, and agree on advice to forward to the ICANN Board.</p>		<p>incorporated into the new gTLD process. The GAC may review the posted applications and provide advice to the ICANN Board. As discussed with the GAC, such advice would be provided within the 45-day period after posting of applications, with documentation according to accountability and transparency principles including whether the advice from the GAC is supported by a consensus of GAC members (which should include identification of the governments raising/supporting the objection).</p>
2.1.2	<p>GAC advice could also suggest measures to mitigate GAC concerns. For example, the GAC could advise that additional scrutiny and conditions should apply to strings that could impact on public trust (e.g. '.bank').</p>	2	<p>If the GAC were to provide suggested changes to mitigate concerns, we are concerned that the advice would lead to ad hoc changes to the evaluation process based on subjective assessments.</p>
2.1.3	<p>In the event the Board determines to take an action that is not consistent with GAC advice pursuant to Article XI Section 2.1 j and k, the Board will provide a rationale for its decision.</p>	1A	

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<p>2.2</p>	<p>2. Expand Categories of Community-based Strings Amend the provisions and procedures contained in Modules 1 and 3 to clarify the following:</p>		
<p>2.2.1</p>	<p>“Community-based strings” include those that purport to represent or that embody a particular group of people or interests based on historical, cultural or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non exhaustive). In addition, those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse, should also be considered “community-based” strings.</p>	<p>2</p>	<p>Any community is eligible to designate its application as community-based. Bona fide community applicants are eligible for preference in the event of contention for a string.</p> <p>Also, ICANN has provided a community objection process in the event that there is "substantial opposition to it from a significant portion of the community." (A community objection may be lodged against any application, whether or not it is designated as community-based.)</p> <p>The GAC's list of groups and sectors appears to be an example of the kinds of communities that may be able to achieve standing to raise a community objection.</p>

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			ICANN will review the standards for the community objection process to ensure that they are appropriate. Revised standards will be included in the forthcoming version of the Applicant Guidebook.
2.2.2	Applicants seeking such strings should be required to affirmatively identify them as “community-based strings” and must demonstrate their affiliation with the affected community, the specific purpose of the proposed TLD, and –when opportune evidence of support or non-objection from the relevant authority/ies that the applicant is the appropriate or agreed entity for purposes of managing the TLD.	2	<p>The GAC’s suggestion would require applicants to designate themselves as a community, even if they might not be.</p> <p>Strings may have many meanings, not all of which might implicate a community.</p> <p>Reducing the context for how strings may be used is contrary to an important goal of the new gTLD program, which is to help encourage competition, innovation and consumer choice.</p>
2.2.3	In the event the proposed string is either too broad to effectively identify a single entity as the relevant authority or appropriate manager, or is sufficiently contentious that an appropriate manager cannot be identified and/or agreed, the application should be rejected.	2	<p>The community objection process is intended to deal with applications where "there is substantial opposition" to the application "from a significant portion of the community."</p> <p>This GAC advice seems to suggest that</p>

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			<p>unless everyone can agree on an appropriate applicant for a given string then the string should not be approved. Again, this seems contrary to the goal of increasing competition and providing additional choice to all consumers.</p> <p>Further, the phrase "sufficiently contentious" is vague and it is unclear who the GAC is suggesting would need to agree on an "appropriate manager." Thus, this suggestion does not seem to be workable in light of the goals of the new gTLD program.</p>
2.2.4	The requirement that objectors must demonstrate "material detriment to the broader Internet community" should be amended to reflect simply "material detriment", as the former represents an extremely vague standard that may prove impossible to satisfy.	1B	Staff will return with revised wording to address this concern.
2.2.5	Individual governments that choose to file objections to any proposed "community-based" string should not be required to pay fees.	1B	ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections in some circumstances (subject to constraints

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			imposed by budget and other considerations).
3.	Root Zone Scaling		
3.1.1	The Board should continue implementing a monitoring and alerting system and ensure a) that ICANN can react predictably and quickly when there are indicators that new additions and changes are straining the root zone system, and	1A	<p>Root zone monitoring systems are currently in place. ICANN will work with root zone operators to identify relevant reporting metrics and establish a process to report such metrics to the GAC and the Internet community.</p> <p>Furthermore, a process will be implemented that enables the delegation of TLDs to be slowed or stopped in the event there is a strain to the root zone system.</p> <p>ICANN also commits to review the effects of the new gTLD program on the operations of the root zone system, and defer the delegations in the second round until it is determined that the delegations in the first round did not jeopardize root zone system security or stability.</p>
3.1.2	b) that the processes and possible resulting restorative measures that flow from its results are fully described in the Application		See 3.1.1 above.

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	Guidebook before the start of the first application round.		
3.2	The Board commits to defer the launch of a second round or batch of applications unless an evaluation shows that there are indications from monitoring the root system etc. that a first (limited) round did not in any way jeopardize the security and stability of the root zone system.		See 3.1.1 above.
3.3	The Board commits to make the second round or batch of applications contingent on a clean sheet from full technical and administrative assessment of impact of the first round with recommendations which should go out to public comment for approval.		See 3.1.1 above.
3.4	The Board commits to avoid the possibility that other activities will be impacted by the possible diversion of resources to processing new gTLD applications.		ICANN commits that the operation of the IANA functions and ICANN's coordination of the root zone system will not be negatively affected.
3.5	The Board should ensure that ICANN can effectively address the specific needs of applicants from different, perhaps non-English speaking cultures, and with different legal environments.		See note on 3.4 above.

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3.6	The Board should monitor the pace and effectiveness of ICANN’s management of contract negotiations for new gTLDs in a potential situation of 200 to 300 simultaneous applications and evaluations.	1A	
3.7	The Board is confident that all relevant actors (IANA, root server operators, etc) are sufficiently informed about what is expected from them in terms of work loadings and resources in order to fulfil their respective roles, in particular the pre delegation checking, approvals, implementation of potentially 200 to 300 root zone changes a year and expected post-delegation changes.	1A	
4.	Market and Economic Impacts		
4.1	Amend the final Draft Applicant Guidebook to incorporate the following: Criteria to facilitate the weighing of the potential costs and benefits to the public in the evaluation and award of new gTLDs.	2	It is not planned that information gathered as part of the application will be used to predict the net benefit of the prospective TLD – that would be too speculative to be of real value. However, during the discussions between the GAC and the Board in Brussels, the GAC indicated that the weighing of costs and benefits should

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			instead take place as part of the new gTLD program review as specified in section 9.3 of the Affirmation of Commitments.
4.2	A requirement that new gTLD applicants provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers.	1B	As clarified through the discussions with the GAC in Brussels, ICANN will continue to explore with the GAC during the ICANN Public meeting in March 2011 what data might be included in the application to provide useful input to later economic studies and community analysis.
4.3	Due diligence or other operating restrictions to ensure that Community-based gTLDs will in fact serve their targeted communities and will not broaden their operations in a manner that makes it more likely for the registries to impose costs on existing domain owners in other TLDs.	1A	ICANN will continue to work to ensure that post-delegation dispute mechanisms adequately address this concern.
5.	Registry – Registrar Separation		
	Amend the proposed new registry agreement to restrict cross-ownership between registries and registrars, in those cases where it can be determined that the registry does have, or is likely to obtain, market power.	2	ICANN sought to implement a marketplace model that would enhance competition, opportunities for innovation and increase choice for consumers while preventing abuses in cases where the registry could wield

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			market power. While lifting restrictions on cross-ownership, ICANN reserves the right to refer issues to appropriate competition authorities if there are apparent abuses of market power. As previously resolved by the Board, registry agreements will include requirements and restrictions on any inappropriate or abusive conduct arising out of registry-registrar cross ownership, including without limitations provisions protecting against misuse of data or violations of a registry code of conduct.
6.	Protection of Rights Owners and consumer protection issue		
6.1.1	<p>1. Rights Protection: Trademark Clearing House (TC)</p> <p>The TC should be permitted to accept all types of intellectual property rights that are recognized under the national law of the country or countries under which the registry is organized or has its principal place of business. The only mandatory requirement for new registry operators will be to recognize national and supranational trademark registrations issued before June 26, 2008 and</p>	1B	ICANN will update the Applicant Guidebook to permit the Trademark Clearinghouse to include intellectual property rights for marks in addition to registered trademarks and those protected by treaty or statute. Of those marks, registry operators will be required to recognize national, supranational and marks protected by treaty and statute as eligible for their sunrise and Trademark claims services (subject to proof of use as described

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	court-validated common law trademarks.		below relating to sunrise services). The Clearinghouse must clearly note when entering the marks into the database, which marks are registered trademarks. The proposed date cut-off will not be utilized as discussed with the GAC.
6.1.2	Sunrise services and IP claims should both be mandatory for registry operators because they serve different functions with IP claims serving a useful notice function beyond the introductory phase.	2	The IRT and STI suggested an either/or approach. Please advise reasons for advocating both.
6.1.3	IP claims services and sunrise services should go beyond exact matches to include exact match plus key terms associated with goods or services identified by the mark) e.g. “Kodakonlineshop”) and typographical variations identified by the rights holder.	2	ICANN recognizes that trademark holders have an interest in receiving notification in the event that strings are registered that include their mark and a key term associated with goods or services identified by the mark. This remains an area of discussion.
6.1.4	All trademark registrations of national and supranational effect, regardless of whether	1B	All trademark registrations of national and supranational effect, regardless of

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	<p>examined on substantive or relative grounds, must be eligible to participate in the pre-launch sunrise mechanisms.</p>		<p>whether examined on substantive or relative grounds, will be eligible for inclusion in the Trademark Clearinghouse and for the Sunrise/TM Claims service subject to the following.</p> <p>Registries that utilize a sunrise process must require submission of evidence of use of the mark by holders of all trademark registrations, regardless of the jurisdiction of registration.</p> <p>Use of the trademark may be demonstrated by providing a declaration from the trademark holder along with one specimen of current use. Further discussion should take place relating to proof of use.</p>
6.1.5	<p>Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.</p>	1A	
6.1.6	<p>The IP claims service should notify the potential domain name registrant of the rights</p>	1A	<p>Agreed. Note: the notification to the rights holder will be sent promptly after</p>

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	holder's claim and also notify the rights holder of the registrant's application for the domain name.		the potential registrant has acknowledged the IP Claim and proceeds with the application to register the name.
6.1.7.1	The TC should continue after the initial launch of each gTLD.	2	The Trademark Clearinghouse will be an ongoing operation. The Sunrise and TM Claims service will operate only at launch (in accordance with the recommendations of the IRT and the STI). Trademark holders will continue to be able to subscribe to "watch" services that will be able to utilize the Centralized Zone File Access system to be able to efficiently monitor registrations across multiple gTLDs.
6.1.7.2	Rights holders, registries and registrars should all contribute to the cost of the TC because they all benefit from it.	1B	Rights holders will pay the Trademark Clearinghouse when the rights holders register their marks, and the registry will pay when administering its sunrise/trademark claims service.
6.2.1	<p>2. Rights Protection: Uniform Rapid Suspension (URS):</p> <p>Significantly reduce the timescales. See attached table for proposed changes.</p>	1A	

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6.2.2	The complaint should be simplified by replacing the 5,000 word free text limit + unlimited attachments [para 1.2] with a simple pro forma standardised wording with the opportunity for not more than 500 words of freeform text and limit the attachments to copies of the offending website.	1A	Note: The word limit will not apply to respondents.
6.2.3	Decisions should be taken by a suitably qualified 'Examiner' and not require panel appointments.	1A	Examiners will be appointed by the URS Provider. Only one Examiner will be appointed per URS proceeding.
6.2.4	Where the complaint is based upon a valid registration, the requirement that the jurisdiction of registration incorporate substantive examination (paras 1.2f (i) and 8.1a) should be removed.	1B	<p>There is no requirement that any registration of a trademark must include substantive evaluation.</p> <p>Each trademark registration must be supported by evidence of use in order to be the basis of a URS complaint.</p> <p>Use of the trademark may be demonstrated by providing a declaration from the trademark holder along with one specimen of current use. Further discussion should take place relating to proof of use.</p>

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6.2.5	If, as is expected in the majority of cases, there is no response from the registrant, the default should be in favour of the complainant and the website locked. The examination of possible defences in default cases according to para 8.4(2) would otherwise give an unjustified privilege to the non-cooperating defendant.	1B	An examiner will review the merits of each complaint to ensure that the standard is met, even in the event of a default. The examiner will not be required to imagine possible defenses – this provision will be removed from the Guidebook.
6.2.6	The standard of proof (para 8.2) should be lowered from “clear and convincing evidence” to a preponderance of evidence”.	2	The principle of the URS is that it should only apply to clear-cut cases of abuse. "Clear and convincing" is the burden of proof that was recommended by the IRT and endorsed by the STI.
6.2.7	The “bad faith” requirement in paras 1.2f), 1.2g) and 8.1c) is not acceptable. Complainants will in only rare cases prevail in URS proceedings if the standards to be fulfilled by registrants are lax. Correspondingly, the factors listed in paras 5.7a) (“bona fide”) and b) “been commonly known by the domain name”) can hardly allow a domain name owner to prevail over the holders of colliding trademarks.	2	The standard applied for the URS is based on the UDRP standard. Both require a finding of bad faith.
6.2.8	A ‘loser pays’ mechanism should be added.	2	A loser pays mechanism was

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			investigated, but ultimately was not adopted. The UDRP does not have a loser-pays mechanism. It is unlikely that complainants would ever be able to effectively collect based on clear-cut cases of abuse, since the names in question will already have been suspended. Notwithstanding, ICANN will monitor URS procedures once launched to see whether a loser pays mechanism or some other methodology to reimburse mark holders is feasible.
6.2.9	Registrants who have lost five or more URS proceedings should be deemed to have waived the opportunity to respond to future URS complaints (this amendment corresponds to the “two strikes” provision which applies to rights holders).	2	Due process principles require that every registrant should always have the opportunity to present a defense.
6.2.10.1	However, there should be a clear rationale for appeal by the complainant.	2	The Board has asked the GAC to clarify if it intended to refer to "complainant" (as opposed to respondent) in this statement. Every appeal will be decided de novo, and therefore the appeal process does not require a separate evaluation of the rationale for filing the appeal.

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6.2.10.2	The time for filing an appeal in default cases must be reduced from 2 years to not more than 6 months.	2	The IRT originally suggested a URS without any appeal process. The STI suggested the inclusion of an appeal process (without any mention of a limitation on the ability to seek relief from a default). In response to comments, the Applicant Guidebook was revised to include a two-year limitation period on the opportunity to seek relief from a default.
6.2.10.3	In addition, the examination of possible defences in default cases according to para 8.4(2) means an unjustified privilege of the non-cooperating defendant.	1A	
6.2.11	The URS filing fee should be US\$200-US\$300 and minor administrative deficiencies should not result in dismissal of the URS complaint.	1B	ICANN will negotiate with URS service providers for the best prices and services. The fee range mentioned will be a target.
6.2.12	A successful complainant should have the right of first refusal for transfer of the disputed domain name after the suspension period so that the complainant is not forced to pursue a UDRP proceeding to secure a transfer.	1A	A successful complainant should have the right of first refusal to register the disputed domain name after the expiration of the registration period and any extension of the suspension period. This right of first refusal upon expiration will not diminish the registration period, or the period of time available for the registrant to seek

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			relief from default, or in any other way harm the rights of any registrant.
6.2.13	The URS should go beyond 'exact' matches and should at least include exact + goods/other generic words e.g. "Kodakonlineshop".	2	As recommended by the IRT, the URS only applies to registrations that are identical or confusingly similar to protected marks as described in the Guidebook. As noted above, the URS is only intended to apply to clear-cut cases of abuse.
6.3.1	3. Rights Protection: Post-delegation Dispute Resolution Procedure (PDDRP) The standard of proof be changed from "clear and convincing evidence" to a "preponderance of evidence".	2	This was the standard developed by the IRT.
6.3.2	The second level registrations that form the underlying basis of a successful PDDRP complaint should be deleted.	2	The registrants are not parties to the proceedings, thus keeping a registrant from using the domain name or stripping the name from the registrant should be effected through an alternative proceeding, such as URS or UDRP. Note that to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with

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			a registry operator, then deletion of registrations may be a recommended remedy.
6.3.3	The requirement of “substantive examination” in para 9.2.1(i) should be deleted.	1B	<p>There is no requirement that any registration of a trademark must include substantive evaluation.</p> <p>Each trademark registration must be supported by evidence of use in order to be the basis of a PDDRP complaint.</p> <p>Use of the trademark may be demonstrated by providing a declaration from the trademark holder along with one specimen of current use. Further discussion should take place relating to proof of use.</p>
6.3.4	A new para 6.1 a) be added: “being identical to the complainant’s mark in relation to goods and services which are identical to those for which the complainant’s mark is registered. This would not apply if the registrant has a better right to the mark. In particular the registrant will in normal circumstances have a better right if the mark has been registered prior to the registration of the complainant’s mark.”	(?)	(Clarification from the GAC requested.)

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6.3.5	Regarding the second level (para 6.2), the registrant operator should be liable if he/she acts in bad faith or is grossly negligent in relation to the circumstances listed in para 6.a)-d).	2	Changing the standard from requiring "affirmative conduct" to "gross negligence" would effectively create a new policy imposing liability on registries based on actions of registrants.
6.3.6	The requirement in para 7.2.3 lit.d) that the complainant has to notify the registry operator at least 30 days prior to filing a complaint is burdensome and should be reduced to 10 days if not deleted entirely.	2	The current requirement is in place to provide the registry with a reasonable amount of time to investigate and take appropriate action if a trademark holder notifies the registry that there may be infringing names in the registry.
6.3.7	Para 19.5 should be amended as follows: "In cases where the Expert Determination decides that a registry operator is liable under the standards of the Trademark PDDRP, ICANN will impose appropriate remedies that are in line with the Determination.	1A	ICANN agrees that it will impose appropriate remedies that are "in line" with the determination. It should be noted however that ICANN is ultimately responsible for determining the appropriate remedy.
6.4.1	<p>4. Consumer Protection</p> <p>Amend the "Maintain an abuse point of contact" paragraph in the DAG to include government agencies which address consumer protection:</p>	1B	

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6.4.2	A registry operator must assist law enforcement, government agencies and agencies endorsed by governments with their enquiries about abuse complaints concerning all names registered in the TLD, including taking timely action, as required, to resolve abuse issues.	1B	ICANN agrees that the registry operator must assist appropriately in law enforcement investigations. There might be a difference between local and International law enforcement agencies. There is a question about whether this requirement would be stronger than what is already required by law. Changes to the Guidebook will be made after consideration of those issues.
6.4.3	Ensure that ICANN's contract compliance function is adequately resourced to build confidence in ICANN's ability to enforce agreements between ICANN and registries and registrars.	1A	Augment ICANN's contractual compliance function with additional resources to support the program of contracts between ICANN and the registries and registrars.
6.4.4	Vetting of certain strings gTLD strings which relate to any generally regulated industry (e.g. .bank, .dentist, .law) should be subject to more intensive vetting than other non-geographical gTLDs.	2	ICANN has requested clarification from the GAC of the intended meaning of "generally regulated industries", but generally believes that <i>a priori</i> categorization of strings is inherently problematic.
7.	Post-Delegation Disputes		
7.1	Change the wording in the sample letter of Government support in AG back to the wording in DAGv4 and keeping the new	1B	ICANN will modify the suggested wording of the letter of support or non-objection, and make clear its

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	<p>paragraph 7.13 of the new gTLD registry agreement with the changed wording from “may implement” to “will comply”. E.g change the wording from “may implement” back to “will comply” with a legally binding decision in the relevant jurisdiction.</p>		<p>commitments to governments in additional text of the Applicant Guidebook. However, the registry agreement will continue to indicate that ICANN "may implement" instead of "will comply" with such decisions for legal reasons. As discussed previously with the GAC, ICANN’s commitment to comply with legally binding decisions is made to governments, not to registries, Therefore, it is not necessarily in the interests of ICANN, or of governments, to place that obligation in registry agreements, giving registry operators the ability, and perhaps duty, to force ICANN to implement decisions in every case. (ICANN has a mechanism to enforce its contracts with registry operators.)</p>
<p>7.2</p>	<p>In addition describe in the AG that ICANN will comply with a legally binding decision in the relevant jurisdiction where there has been a dispute between the relevant government or public authority and registry operator.</p>	<p>1B</p>	<p>The suggestion to change "court decision" to "legally binding decision" requires further discussion as it may in some cases amount to a redelegation request. Also, there could be multiple jurisdictions that have given their support to one application (e.g., multiple "Springfield"s), thus, it may not</p>

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			be appropriate to implement a particular action based on one such decision.
8.	Use of geographic names:		
8.1.1.1	1. Definition of geographic names Implement a free of charge objection mechanism would allow governments to protect their interest	1B	ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections in some circumstances (subject to constraints imposed by budget and other considerations).
8.1.1.2	and to define names that are to be considered geographic names.	2	The process relies on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government. Governments and other representatives of communities will continue to be able to utilize the community objection process to address attempted misappropriation of community labels. ICANN will continue to explore the possibility of pre-identifying using additional authoritative lists of geographic identifiers that are published by recognized global organizations.
8.1.2	This implies that ICANN will exclude an	1B	ICANN will continue to rely on pre-

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	<p>applied for string from entering the new gTLD process when the government formally states that this string is considered to be a name for which this country is commonly known as.</p>		<p>existing lists of geographic names for determining which strings require the support or non-objection of a government. This is in the interest of providing a transparent and predictable process for all parties. (See related note above.)</p>
8.1.3	<p>Review the proposal in the DAG in order to ensure that this potential [city name applicants avoiding government support requirement by stating that use is for non-community purposes] does not arise. Provide further explanations on statements that applicants are required to provide a description/purpose for the TLD, and to adhere to the terms and condition of submitting an application including confirming that all statements and representations contained in the application are true and accurate.</p>	2	<p>There are post-delegation mechanisms to address this situation. In addition, the "early warning" opportunity will offer an additional means to indicate community objections.</p>
8.1.4	<p>Governments should not be required to pay a fee for raising objections to new gTLD applications. Implement a free objection mechanism would allow governments to protect their interest.</p>	1B	<p>ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections in some circumstances (subject to constraints imposed by budget and other</p>

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			considerations).
8.2.1	<p>2. Further requirements regarding geographic names</p> <p>The GAC clarifies that it is a question of national sovereignty to decide which level of government or which administration is responsible for the filing of letters of support or non-objection. There may be countries that require that such documentation has to be filed by the central government - also for regional geoTLDs; in other countries the responsibility for filing letters of support may rest with sub-national level administrations even if the name of the capital is concerned. GAC requests some clarification on this in the next version of the Applicants Guidebook.</p>	1A	<p>This principle is agreed, and this can be clarified in the Guidebook. ICANN invites governments to identify appropriate points of contact on this issue.</p>
8.2.2	<p>According to the current DAG applications will be suspended (pending resolution by the applicants), if there is more than one application for a string representing a certain geographic name, and the applications have requisite government approvals. The GAC understands such a position for applications that have support of different administrations or governmental entities. In such circumstances it is not considered appropriate</p>	1B	<p>ICANN will continue to suspend processing of applications with inconsistent/conflicting support, but will allow multiple applicants all endorsed by the same authority to go forward, when requested by the government.</p> <p>This area needs further discussion on the potential situations that could lead</p>

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	<p>for ICANN to determine the most relevant governmental entity; the same applies, if one string represents different geographic regions or cities. Some governments, however, may prefer not to select amongst applicants and support every application that fulfils certain requirements. Such a policy may facilitate decisions in some administrations and avoid time-consuming calls for tenders. GAC encourages ICANN to process those applications as other competing applications that apply for the same string.</p>		<p>to redelegation requests.</p>
<p>9.</p>	<p align="center">Legal Recourse for Applications:</p>		
<p>9.</p>	<p>Seek legal advice in major jurisdiction whether such a provision might cause legal conflicts – in particular but not limited to US and European competition laws. If ICANN explains that it has already examined these legal questions carefully and considering the results of these examinations still adheres to that provision, GAC will no longer insist on its position. However, the GAC expects that ICANN will continue to adhere to the rule of law and follow broad principles of natural justice. For example, if ICANN deviates from its agreed processes in coming to a decision,</p>	<p>1A</p>	<p>As discussed with the GAC, ICANN has examined these legal questions carefully and considering the results of these examinations still adheres to this provision. ICANN will clarify in the Applicant Guidebook that: if ICANN deviates from its agreed processes in coming to a decision, ICANN's internal accountability mechanisms will allow complaints to be heard.</p>

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	<p>the GAC expects that ICANN will provide an appropriate mechanism for any complaints to be heard.</p>		
10.	Providing opportunities for all stakeholders including those from developing countries		
10.1	<p>Main issues</p> <p>1. Cost Considerations</p> <p>Set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude stakeholders from developing countries from participating in the new gTLD process.</p>	TBD	<p>ICANN’s Board recognized the importance of an inclusive New gTLD Program and issued a Resolution forming a Joint Working Group (JAS WG) which is underway. ICANN would like to receive the report of the JAS WG as soon as possible. JAS WG is requested to provide a possible deadline for his work during the ICANN meeting in SFO allowing the Board to act.</p> <p>It is noted that one of the challenges in developing support mechanisms for applicants is to ensure that such support is actually received by those applicants with the most need, rather than being used advantageously by other participants. This issue has also been taken into account in the work of the JAS WG.</p>

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			The minimum technical requirements for operating a registry are expected to be consistent across applications.
10.2.1	2. Language diversity Key documents produced by ICANN must be available in all UN languages within a reasonable period in advance of the launch of the gTLD round.	1A	Some documents are already available in the 6 UN languages. The Final Application Guidebook will be also in due course, and the web site will be organize to find easily all the documents available in each language.
10.2.2	The GAC strongly recommends that the communications strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority.	1A	
10.3	3. Technical and logistics support	1B	ICANN has agreed to provide certain mechanisms for technical and logistical support, such as assisting with matching needs to providers. ICANN is also considering setting up regional help desks to provide more responsive and relevant technical support to new gTLD applicants in developing countries.
10.4	4. Outreach – as per Joint AC/SO recommendations	1A	
10.5	5. Joint AC/SO Working Group on support for	TBD	This item from the GAC Scorecard

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	<p>new gTLD applicants. GAC urged ICANN to adopt recommendations of the Joint AC/SO Working Group.</p>		<p>appears to reflect the interim report of the JAS WG. ICANN is awaiting their final report. (ICANN would like to receive the report of the JAS WG as soon as possible.)</p>
<p>10.6</p>	<p>6. Applications from Governments or National authorities (especially municipal councils and provincial authorities) – special consideration for applications from developing countries The GAC commented that the new gTLD process should meet the global public interest consistent with the Affirmation of Commitments. It therefore urged ICANN to set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude developing country stakeholders from participating in the new gTLD-process. Key documents should be available in all UN languages. The GAC urges that the communications and outreach strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority.</p> <p>ii. Nairobi Communiqué The GAC believed that instead of the then</p>	<p>TBD</p>	<p>This set of issues overlaps with and is addressed in the other items in this section.</p>

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	<p>proposal of single-fee requirement, a cost-based structure of fees appropriate to each category of TLD would:</p> <ul style="list-style-type: none"> a) prevent cross subsidization and b) better reflect the project scale, <p>This would improve logistical requirements and financial position of local community and developing country stakeholders who should not be disenfranchised from the new TLD round.</p> <p>Further the board believes that :</p> <ul style="list-style-type: none"> a. New gTLD process is developed on a cost recovery model. b. Experience gained from first round will inform decisions on fee levels, and the scope for discounts and subsidies in subsequent rounds. c. Non-financial means of support are being made available to deserving cases. i. Proposed that the following be entertained to achieve cost reduction: <ul style="list-style-type: none"> • Waiving the cost of Program Development (\$26k). • Waiving the Risk/Contingency cost (\$60k). • Lowering the application cost (\$100k) • Waiving the Registry fixed fees (\$25k 		
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	<p>per calendar year), and charge the Registry- Level Transaction Fee only (\$0.25 per domain name registration or renewal).</p> <p>ii. Proposed that the reduced cost be paid incrementally, which will give the applicants/communities from developing countries more time to raise money, and investors will be more encouraged to fund an application that passes the initial evaluation.</p> <p>iii. Believe that communities from developing countries apply for new gTLDs according to an appropriate business model taking into consideration the realities of their regions. ICANN’s commitment towards supporting gTLD applicants in communities from developing countries will be a milestone to the development of the overall Internet community in Africa and other developing regions.</p>		
<p>10.7</p>	<p>A. Other Developing world Community comments</p> <p>Rolling out new gTLD and IDNs was done in a hurry and without basis on a careful feasibility study on the impact that this rollout will have on developing countries. For some</p>	<p>1B</p>	<p>ICANN is investigating and intends to provide mechanisms for assisting with matching needs to providers, and will continue to investigate mechanisms for providing additional forms of support (such as providing documents in</p>

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	<p>representatives, this is a massive roll out of gTLDs and IDNs that will find many developing countries unprepared and unable to absorb it. There is the fear that there might be serious consequence in terms of economic impact to developing countries.</p>		<p>additional languages beyond the official U.N. languages).</p>
11.	<p style="text-align: center;">Law enforcement due diligence recommendations [to amend the Registrar Accreditation Agreement as noted in the Brussels Communiqué] (Note: ICANN will provide an update on the status of the RAA-related recommendations from law enforcement)</p>		
11.1	<p>Include other criminal convictions as criteria for disqualification, such as Internet-related crimes (felony or misdemeanor) or drugs.</p>	1B	<p>ICANN accepts the principle that screening should be as effective as possible. ICANN is willing to meet with law enforcement and other experts to ensure that all available expertise is focused on this issue. (ICANN notes however that there is no consistent definition of criminal behavior across multiple jurisdictions, and the existing proposed Applicant Guidebook consciously targets "crimes of trust".)</p>
11.2.1	<p>Assign higher weight to applicants offering the highest levels of security to minimize the potential for malicious activity, particularly for those strings that present a higher risk of serving as venues for criminal, fraudulent or illegal conduct (e.g. such as those related to</p>	1B	<p>ICANN could consider providing extra points in some aspects of the qualification evaluation scoring process. (ICANN notes however that a priori categorization of strings is inherently problematic.)</p>

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	children, health-care, financial services, etc.)		
11.3	Add domestic screening services, local to the applicant, to the international screening services.	1B	ICANN accepts the principle that screening should be as effective as possible. ICANN is willing to meet with law enforcement and other experts to ensure that all available expertise is focused on this issue. (ICANN is mindful that this particular recommendation could lead applicants to locate in certain regions in order to game the depth of domestic screening. International screening is likely to include the reports of local agencies and could therefore be duplicative.)
11.4	Add criminal background checks to the Initial Evaluation	1B	ICANN accepts the principle that screening should be as effective as possible. ICANN is willing to meet with law enforcement and other experts to ensure that all available expertise is focused on this issue. (ICANN notes that there is no consistent definition of criminal behavior across multiple jurisdictions, and the existing proposed Applicant Guidebook already addresses serious crimes of trust.)
11.5	Amend the statement that the results of due diligence efforts will not be posted to a	1B	ICANN will explore possible ways to make results public, but is concerned

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	positive commitment to make such results publicly available		that posting such information poses concerns about privacy that should be explored further.
11.6	Maintain requirements that WHOIS data be accurate and publicly available.	1A	From the Affirmation of Commitments: "ICANN additionally commits to enforcing its existing policy relating to WHOIS, subject to applicable laws. Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information."
12.	The need for an early warning to applicants whether a proposed string would be considered controversial or to raise sensitivities (including geographical names)		
12.1	Reconsider its objection to an “early warning” opportunity for governments to review potential new gTLD strings and to advise applicants whether their proposed strings would be considered controversial or to raise national sensitivities.	1B	The principle of an early warning is already included in the Guidebook. The exact process needs to be discussed further – please see the Board’s notes above with respect to the GAC’s advice on “Procedures for the review of sensitive strings.”

Item	Subpoints	1A	1B	2	?
1	1		1		
2	8	1	3	4	
3	8	8			
4	3	1	1	1	
5	1			1	
6.1	8	2	3	3	
6.2	15	5	3	7	
6.3	7	1	1	4	1
6.4	4	1	2	1	
7	2		2		
8	7	1	4	2	
9	1	1			
10	8	3	2		3
11	6	1	5		
12	1		1		
Totals	80	25	28	23	9