1. Consent Agenda:

a. Approval of Minutes of New gTLD Program Committee Meeting of January 10 2013

Resolved (2013.02.01.NGxx), the New gTLD Program Committee approves the minutes of the 10 January 2013 Meeting of the New gTLD Program Committee.

2. Main Agenda:

a. Update on Addressing GAC Advice on Enforcing Applicants' Commitments

Whereas, applicants for new gTLDs identified certain purposes of the applied for gTLD and certain business plans that they intend to incorporate into the operation of their registry, but much of these plans are not currently anticipated to be incorporated as obligations into Registry Agreements.

Whereas, the GAC's Toronto Communiqué includes advice to ICANN that "it is necessary for all of these statements of commitment and objectives to be transformed into binding contractual commitments, subject to compliance oversight by ICANN."

Resolved (2013-02-01-NGxx), the New gTLD Program Committee directs the President and CEO to seek public comment on a proposed mechanism to address the GAC advice on these additional applicant commitments.

Rationale for Resolution 2013.02.01.NGxx

It is important to determine if it is possible to address the advice received from the GAC on this issue. Creating a mechanism through which applicants will make binding commitments to ICANN in alignment with their applications could serve to promote the

transparency and accountability of all within the ICANN community. While work still remains in developing this mechanism, it is anticipated that the creation of these binding commitments will benefit the public interest.

The work called for in this resolution will require resources to complete, though it is not anticipated that this planning work will exceed budgeted resources. If properly implemented, the introduction of a mechanism to incorporate additional binding commitments could result in a positive benefit on the security, stability and resiliency of the DNS.

2013-01-10-Minutes-New-gTLD-Committee.docx

Note: On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of incorporation, Bylaws or ICANN's Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD Program. The full scope of the Committee's authority is set forth in its charter at http://www.icann.org/en/groups/board/new-gTLD.

A Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held on 10 January 2013 at 16:00 UTC.

Committee Chairman Cherine Chalaby promptly called the meeting to order.

In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO), Chris Disspain, Bill Graham, Olga Madruga-Forti, Erika Mann, Gonzalo Navarro, Ray Plzak, George Sadowsky, Mike Silber, Judith Vazquez and Kuo-Wei Wu.

Francisco da Silva, TLG Liaison, was in attendance as non-voting liaisons to the committee.

Heather Dryden, GAC Liaison, was in attendance as an invited observer.

Thomas Narten, IETF Liaison sent apologies.

John Jeffrey (General Counsel and Secretary), Akram Atallah (Chief Operating Officer), Megan Bishop, Michelle Bright, Samantha Eisner, Dan Halloran, Jamie Hedlund, Karen Lentz, Margie Milam, Cyrus Nemazi, Amy Stathos and Christine Willett were also in attendance.

1. Main Agenda:

The Chair provided an overview of the Agenda before the Committee.

a. Reporting Structure

Christine Willett provided a review of a proposed regular reporting structure to the Committee, including a monthly status update and reporting against key milestones. A portion of that information will then be provided to the community as a part of regular external reporting.

Ray Plzak requested consideration of how the Board members that are not on the Committee could be provided with the public reporting so that the Board members are prepared and informed on issues prior to the release to the community. Ray also suggested that a definitive meeting schedule would be helpful for the Committee.

The General Counsel and Secretary reminded the Committee that at the time of its establishment, it was decided that the Board members not on the Committee would be provided with information on the Program at the same time information is provided to the public, but that process can be revisited and designed in a manner to assure that that there are no additional advantages given to Board members who receive this information prior to the community.

Ray requested that at minimum, the Board has to have clear and simultaneous communications on the release of this information, at the time that it is circulated to the community. The Board should not be surprised by the release of information.

George Sadowsky noted that the metrics are valuable for reporting, but the Committee needs to remain aware of the qualitative issues that are essential for the Committee to discuss. The reporting cannot be designed in a way that it would omit the essential issues.

The Chair confirmed that reporting on issues is part of the expected reporting. There has to be an allowance for management to do their job, so the Committee needs to be aware of their oversight role. The Chair agreed with Ray's suggestion of providing timely information to the Board.

Christine then provided a review of the sample of the report, in advance of the applicant webinar scheduled for the following day. A large focus of the report was on the status of the initial evaluation work.

Mike Silber commented that the monthly reporting is well done, but noted that there are some issues that have to be addressed by the Committee that cannot fall off of the agenda. Mike requested some information on how to track issues outside of Christine's reporting.

The President and CEO acknowledged frustration expressed by Mike, and confirmed that while Christine is busy on the operational side, ICANN has hired a Vice President of gTLD Relations, Cyrus Nemazi, to help manage some of the relationship side issues as a complement to Christine's operational role.

b. Maturing the DNS Industry

The President and CEO provided an update to the Committee on his efforts relating to his discussions with various DNS Industry leaders, including the forthcoming CEO Roundtables. Part of the work of maturing the DNS industry is related to filling out the ICANN team that can guide the New gTLD Program in a professional manner. The CEO Roundtable s will include discussions on how to raise the profile of the DNS sector, including recognizing the responsibilities and opportunities that exist.

c. Enforcing Applicant Commitments

The Chair introduced the topic is addressing GAC advice by enforcing applicant commitments. The Chair queried that this is not necessarily a topic for the New gTLD Program Committee alone, and may be appropriate for the full Board, particularly in relation to considering GAC advice.

The COO noted that ICANN's response to the GAC's Communiqué from Toronto, which addressed this issue, so some guidance from the Committee would be of value.

Heather Dryden noted the import of this issue for the GAC, and the need to have a strong response for the GAC.

Chris Disspain noted that though there is a need to respond to the GAC, there should not be a rush to a solution, and the proposed mechanisms provided by staff required significant discussion. Commitments cannot be made to the GAC that cannot be met. However, the Committee could surely signal that it is committed to work on this issue. Chris proposed that the issue be handled more in depth at the Los Angeles Board workshop.

Bill Graham cautioned that there has to be rapid response to the GAC, but further discussion on a potential resolution could wait for the 20 days until the workshop. Mike Silber agreed.

Ray Plzak agreed with Chris's proposal on a communication to the GAC, and noted that it was premature to take any action towards a resolution. Erika Mann agreed with Ray's comment.

George Sadowsky concurred that the Committee is not ready to take action on this issue, and work needs to be done to best implement a response to the GAC advice.

The General Counsel and Secretary noted that there were some great ideas arising out of this discussion that can be considered. First, formal resolution on a solution is not necessary to respond to the GAC. Second, the full Board must determine if GAC advice is being accepted, which will require more work towards a proposal. John suggested the identification of a member of the Committee to serve as a shepherd for this issue through the Board, in preparation for a more fulsome discussion at the Board's upcoming workshop.

Chris Disspain volunteered to serve as the shepherd.

Olga Madruga-Forti noted that it is important to empower the staff to come back with proposed solutions, using guidance provided by the Committee.

The Chair expressed his agreement on the direction noted by the Committee, and it will be considered at the workshop in Los Angeles. He noted that he will coordinate with the Chair of the Board on providing a response to the GAC at this issue.

d. Closed Generic Strings

Karen Lentz made a presentation to the Committee on the issue emerging on closed generic strings. Much of the discussion has focused on the Code of Conduct, which is part of the Registry Agreement that concerns nondiscriminatory access that registries are required to offer to registries regarding selling registrations in the TLDs. This is a separate issue from who is allowed to register a name in a TLD. There are certain applications identified where, because of the string applied for and what the applicant has said in the application about how they intend to use it, there's a concern that the registration policy for domain names in the TLD is not appropriate. The Code of Conduct does not address eligibility requirements that a registry might have or who can register domain names. Under the current rules, there's nothing that would prevent the use of closed generics, which is focused on the issue of who can register a name. There is the

need for some clarity on this issue in the community. By way of background the policy recommendations that serve as the basis for the New gTLD Program did not address the question of who is allowed to register in a TLD. It would be difficult to try to create rules for or definition of a closed generic string at this time.

The Chair inquired about the role of exemptions to the Code of Conduct as it relates to the closed generic issue.

Karen clarified that the exemption provision is a separate from the issue of how generic strings are used. The exemption is for the purpose of identifying those who don't plan to offer registrations externally, and only serves as an exemption from having to offer the TLD to all registrars. The exemption has nothing to do with an ICANN decision, for example, on whether an exempted registry may limit the actual registrations in the TLD.

Mike Silber noted that the global public interest also guides ICANN, and that has to be factored in. Many of the Board members will be uncomfortable approving TLDs that are seen as a land grab, as opposed to expansion of the DNS.

George Sadowsky agreed with the clarification of the two issues as presented by Karen, but noted that there should be consideration of whether registrants are allowed to look at qualifications for registering in TLDs. The global public interest has to be considered, and there has to be consideration of who decides how this is considered when faced with an application for an exemption. Some of the applicants have clearly already considered that they wish to seek an exemption, and some of these may go directly against the spirit of the creation of the exemption. We have to address this issue now.

Erika Mann commented that she approaches this issue differently. It's important to clarify the definition of the public interest. This is a separate endeavor from understanding generic strings, which can be considered breaking apart those that are within a regulated sector and those which are not. It's important to look for viable solutions, such as consideration of a misuse of dominance provision. The Committee would benefit from additional discussion on this topic at the workshop.

Olga Madruga-Forti thanked Karen for her paper and summary. Olga noted that there seems to be some consensus in the Committee that this is a problem that has to be dealt with, and noted that there may be some concerns of competition policy that should be incorporated into the consideration of the global public interest.

Gonzalo Navarro noted that this issue is not going to be resolved now and that the conversation deserves more time.

Heather Dryden contributed that some GAC members have identified concerns related to these issue. Further conversation is welcomed.

The Chair summarized that that Committee needs more time and clarity on this issue. A serious discussion is to follow in Los Angeles.

The COO noted that we have to be careful in how we address this situation, as the applications have been presented based on what is in the Guidebook, and we need to be aware of changes that could affect their applications. We have to give careful consideration to this issue.

e. Consumer Choice Review

Ray Plzak introduced the topic of the Consumer Choice review that is required under the Affirmation of Commitments, noting that it is necessary to begin preparations for that review. The issue is raised as appoint of information.

The Chair called the meeting to a close.