New gTLD Program Committee Members,

Attached below please find the Notice of the following New gTLD committee meeting:

18 June 2013 – NGPC Meeting at 13:00 UTC – This Committee meeting is estimated to last 90 minutes.
http://www.timeanddate.com/worldclock/fixedtime.html?msg=New+gTLD+Committee+meeting&iso=20130618T13

Some other time zones:
18 June 2013 - 6:00 AM PDT Los Angeles
18 June 2013 – 9:00 AM EDT Washington, D.C.
18 June 2013 – 3:00 PM CEST Brussels

Consent Agenda:
1) Approval of Minutes
Main Agenda:
1) Discussion of safeguard advice items applying to all strings
2) Category 2 advice (restricted and exclusive registries)
3) ALAC Statement on TMCH
4) Any Other Business

MATERIALS -- All Materials will be available on Contact Information Redacted **, if you have trouble with access, please let us know and we will work with you to assure that you can use the BoardVantage Portal for this meeting.**

If you have any questions, or we can be of assistance to you, please let us know.

If call information is required, it will be distributed separately

If you have any questions, or we can be of assistance to you, please let us know.

John Jeffrey

General Counsel & Secretary, ICANN

John.Jeffrey@icann.org <John.Jeffrey@icann.org>

<mailto:John.Jeffrey@icann.org <mailto:John.Jeffrey@icann.org> >

Contact Information Redacted

ICANN NGPC PAPER NO. 2013.06.18.2a

TITLE: **GAC Advice in Beijing Communiqué regarding Safeguard Advice Applicable to All New gTLDs**

PROPOSED ACTION: **For NGPC Review and Discussion**

EXECUTIVE SUMMARY:

At its meeting in Amsterdam on 18 May 2013, the NGPC agreed to a framework that organizes individual advice from the GAC's Beijing Communiqué into discrete groupings to allow the NGPC to prioritize its work. In the Beijing Communiqué, the GAC proposed six (6) safeguards that should apply to all new gTLDs and be subject to contractual oversight. The six elements of the safeguard advice address: (1) WHOIS verifications and checks, (2) mitigating abusive activities, (3) security checks, (4) documentation, (5) making and handling complaints and (6) consequences.

The NGPC is being asked to discuss accepting and implementing this safeguard advice. This proposal, attached to this Briefing Paper as Annex 1, is an attempt to resolve GAC advice in a manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible. In some cases, the proposal recommends that ICANN (instead of registry operators) will implement the advice to address the GAC's concerns. In other cases, the proposal recommends that new provisions be included in the New gTLD Registry Agreement to require the registry operators to implement the advice. Where the proposal suggests that the advice be implemented through the New gTLD Registry Agreement, the Public Interest Commitments in Specification 11 could be revised to include these new requirements. Attached to this Briefing Paper as Annex II is a proposed draft of Specification 11 to include the safeguard advice. The PIC would be included in every New gTLD Registry Agreement.

This proposal only addresses safeguard advice applicable to all new gTLDs. Other categories of safeguard advice will be addressed in separate briefing papers, including at future meetings.

STAFF RECOMMENDATION:

Staff recommends the NGPC engage in a discussion to consider the proposed method of addressing the GAC's safeguard advice in the Beijing Communiqué. Staff is not recommending the NGPC take formal action at this time.

Signature Block:

Submitted by: Jamie Hedlund

Position: Vice President of Stakeholder Engagement for North America

Date Noted: 12 June 2013

Email: jamie.hedlund@icann.org

Annex I

Draft Proposal for Implementation of GAC Safeguards Applicable to All New gTLDs

12 June 2013

The following is a draft proposal for how ICANN could implement the "GAC Safeguards Applicable to All New gTLDs." This is an unapproved draft subject to further NGPC consideration.

1. WHOIS Verification and Checks

ICANN is concluding its development of a WHOIS tool that gives it the ability to check false, incomplete or inaccurate WHOIS data as the Board previously directed staff in Board Resolutions 2012.11.08.01 - 2012.11.08.02 to begin to "proactively identify potentially inaccurate gTLD data registration in gTLD registry and registrar services, explore using automated tools, and forward potentially inaccurate records to gTLD registrars for action; and 2) publicly report on the resulting actions to encourage improved accuracy." <http://www.icann.org/en/groups/board/documents/resolutions-08nov12-en.htm>

Given these ongoing activities, ICANN (instead of Registry Operators) is well positioned to implement the GAC's advice that checks identifying registrations in a gTLD with deliberately false, inaccurate or incomplete WHOIS data be conducted at least twice a year. ICANN will also maintain statistical reports that identify the number of inaccurate WHOIS records identified. This undertaking by ICANN would not require ICANN to provide special certifications to Registry Operators certifying the accuracy of any WHOIS data. Instead, ICANN would perform periodic spot checks of WHOIS data across registries in an effort to identify potentailly inaccurate records. The WHOIS verification and checks would be focused on the current version of WHOIS requirements, but would eventually boraden to include directory services.

2. Mitigating Abusive Activity

ICANN will include a provision in the proposed New gTLD Registry Agreement <http://newgtlds.icann.org/en/applicants/agb/base-agreement-specs-29apr13-en.pdf> obligating Registry Operators to include a provision in their Registry-Registrar Agreements that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

Paragraph 2 of the PIC Specification attached as Annex II includes language to implement the GAC advice. Because the Registry Operator does not have a direct contractual relationship with the Registered Name Holder, the language proposed in the PIC Specification would require the Registry Operator to include a provision in its Registry-Registrar Agreement, which in turn requires Registrars to include a provision in their Registration Agreements prohibiting Registered Name Holders from engaging in the abusive activity listed in the GAC advice.

3. Security Checks

ICANN will include a provision in the proposed New gTLD Registry Agreement requiring Registry Operators periodically to conduct a technical analysis to assess whether domains in its gTLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. The provision will also require Registry Operators to maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operators will maintain these reports for the agreed contracted period and provide them to ICANN upon request.

Because there are multiple ways for a Registry Operator to implement the required security checks, ICANN will solicit community participation in a task force or through a policy development process in the GNSO, as appropriate, to develop the framework

for Registry Operators to respond to identified security risks that pose an actual risk of harm, notification procedures, and appropriate consequences, including a process for suspending domain names until the matter is resolved, while respecting privacy and confidentiality. The language include in Paragraph 3 of the attached PIC Specification provides the general guidelines for what Registry Operators must do, but omits the specific details from the contractual language to allow for the future development and evolution of the parameters for conducting security checks. This will permit Registry Operators to enter into agreements as soon as possible, while allowing for a careful and fulsome consideration by the community on the implementation details.

4. Documentation

As detailed in #1 above, ICANN will maintain statistical reports that identify the number of inaccurate WHOIS records identified as part of the checks to identify registrations with deliberately false, inaccurate or incomplete WHOIS data. Also, as detailed in #3 above, Registry Operators will be required to maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operators will maintain these reports for the agreed contracted period and provide them to ICANN upon request.

5. Making and Handling Complaints

Registry Operators will be required to ensure that there is a mechanism for making complaints to the Registry Operator regarding malicious conduct in the TLD. Section 4.1 of Specification 6 of the proposed New gTLD Registry Agreement provides that, "Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquires related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details." Also, Section 2.8 of the proposed New gTLD Registry Agreement provides that a, "Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD."

ICANN operates the WHOIS Data Problem Reports System <http://www.icann.org/en/resources/compliance/complaints/whois/inaccuracy-form>, which is a mechanism for making complaints that WHOIS information is inaccurate.

6. Consequences

As indicated in #2 above, ICANN will include a provision in the proposed New gTLD Registry Agreement obligating Registry Operators to include a provision in their Registry-Registrar Agreements that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

Consequences for the demonstrated provision of false WHOIS information are set forth in Section 3.7.7.2 of the 2013 RAA <http://www.icann.org/en/resources/registrars/raa/proposed-agreement-22apr13-en.pdf>: "A Registered Name Holder's willful provision of inaccurate or unreliable information, its willful failure to update information provided to Registrar within seven (7) days of any change, or its failure to respond for over fifteen (15) days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration shall constitute a material breach of the Registered Name Holder-registrar contract and be a basis for suspension and/or cancellation of the Registered Name registration." Paragraph 1 of the proposed PIC Specification includes a requirement that Registry Operator will use only ICANN accredited registrars that are party to the 2013 RAA so that these consequences are contractually required.

Annex II

[DRAFT] Proposed PIC Spec Implementation of GAC Safeguards Applicable to all New gTLDs
(12 June 2013)

The following is a preliminary draft reference version of the Beijing GAC safeguards advice for safeguards applicable to all new gTLDs implemented as Public Interest Commitments – for discussion only.

Specification 11
Public Interest Commitments

1. Registry Operator will use only ICANN accredited registrars that are party to the Registrar Accreditation Agreement approved by the ICANN Board of Directors on _____ ___, 2013 in registering domain names. A list of such registrars shall be maintained by ICANN on ICANN's website.

2. Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

3. Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.

ICANN NGPC PAPER NO. 2013.06.18.2b

TITLE: **GAC Advice in Beijing Communiqué regarding Safeguard Advice Applicable to Category 2 Strings**

PROPOSED ACTION: **For NGPC Review and Discussion**

EXECUTIVE SUMMARY:

At its meeting in Amsterdam on 18 May 2013, the NGPC agreed to a framework that organizes individual advice from the GAC's Beijing Communiqué into discrete groupings to allow the NGPC to prioritize its work. In the Beijing Communiqué, the GAC provided "Category 2" safeguard advice regarding "Exclusive Access". Specifically, the GAC advised that: "For strings representing generic terms, exclusive registry access should serve a public interest goal."

The NGPC is being asked to discuss accepting this safeguard advice and implementing it through the Public Interest Commitments ("PIC") Specification in the New gTLD Registry Agreement. The proposal to include the Category 2 safeguards in the PIC Specification, attached to this Informational Paper as Annex 1, is an attempt to resolve GAC advice in a manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

To address the advice, the proposed PIC Specification includes a provision that would require TLDs to operate in a transparent manner consistent with general principles of openness and non-discrimination. Additionally, the proposed PIC Specification includes a provision to preclude registry operators from implementing exclusive registry access by imposing eligibility criteria that limit registration of a generic string exclusively to a single person or entity (and their affiliates, which is defined in the New gTLD Registry Agreement to include employees). Any applicant agreeing to these provisions could move forward with executing the New gTLD Registry Agreement. The PIC would be included in every New gTLD Registry Agreement. A definition for the term "generic string" is included in the PIC Specification so that it is clear whether the PIC Specification requirements are applicable.

This proposal only addresses Category 2 advice. Other categories of safeguard advice will be addressed in separate briefing papers, including at future meetings.

STAFF RECOMMENDATION:

Staff recommends the NGPC engage in a discussion to consider the proposed method of addressing the GAC's safeguard advice in the Beijing Communiqué. Staff notes that many commentators suggest that it is challenging to find consensus on what exactly constitutes the public interest. Staff recommends that applicants be required to respond by a specified date indicating whether (a) the applicant is prepared to accept the proposed PIC Specification that precludes exclusive registry access or (b) the applicant is unwilling to accept the proposed PIC Specification because the applicant intends to implement exclusive registry access. Staff recommends that if these responses demonstrate that there are applicants that wish to implement exclusive registry access by imposing eligibility criteria that limit registration of a generic string exclusively to a single person or entity (and their affiliates), the NGPC engage in dialog with the GAC seeking clarification regarding the appropriate definition of "public interest goal" for purposes of determining whether exclusive registry access serves a public interest goal.

Staff is not recommending the NGPC take formal action at this time.

Signature Block:

Submitted by:

Position:

Date Noted: 17 June 2013

Email:

Annex I

[DRAFT] Proposed PIC Spec Implementation of GAC Category 2 Safeguards
(17 June 2013)

The following is a preliminary draft reference version of the Beijing GAC safeguards advice for Category 2 safeguards implemented as Public Interest Commitments – for discussion only.

Specification 11
Public Interest Commitments (for Category 2 Safeguard Advice)

1. Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.

2. Registry Operator of a "Generic String" TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person's or entity's Affiliates. "Generic String" means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.

'Explanatory summary of the implementation approach proposed by staff for addressing GAC Beijing Advice on exclusive access policies for strings with generic terms'

The GAC advised that: "For strings representing generic terms, exclusive registry access should serve a public interest goal."

Staff recommends implementation of the following approach:

1. Define exclusive registry access as limiting registration of a generic string exclusively to a single person or entity (and their affiliates, which is defined in the New gTLD Registry Agreement to include employees).

2. Require all applicants to respond by a specified date indicating whether (a) the applicant is prepared to accept the proposed PIC Specification that precludes exclusive registry access or (b) the applicant is unwilling to accept the proposed PIC Specification because the applicant intends to implement exclusive registry access.

3.

For applicants not seeking to impose exclusive registry access	***For applicants seeking to impose exclusive registry access***
Move forward with the contracting process with the goal of entering into a New gTLD Registry Agreement	Defer moving forward with the contracting process, pending dialog with the GAC seeking clarification regarding the appropriate definition of "public interest goal" for purposes of determining whether exclusive registry access serves a public interest goal.
Include in the PIC Specification a definition for the term "generic string" so that it is clear whether the PIC Specification requirements are applicable.	Based on the outcome of dialog with the GAC, determine how to proceed
Prohibit the applicant from imposing exclusive registry access, pending the outcome of dialog with the GAC described in the next column.	