

Mr. Peter Dengate Thrush  
Chairman of the Board  
ICANN

Nairobi, 10 March 2010

RE: GAC COMMENTS ON NEW gTLDs AND DAG v3

Dear Peter,

The GAC acknowledges the positive effects that a carefully-built program for the introduction of new gTLDs can produce in terms of:

- a) stimulating competition and innovation in the Internet domain space;
- b) facilitating the online presence of communities;
- c) creating new opportunities for businesses – both large and small – to enhance their online identities, develop domestic and global marketing strategies, and introduce new services.

While noting the widespread concern that the introduction of new gTLDs is not happening as early as originally envisaged, the GAC nonetheless expects ICANN to ensure that the opening up of the gTLD space is undertaken in a way that does not compromise the resilience and integrity of the DNS and serves the global public interest. All significant outstanding community issues of concern must therefore be resolved or mitigated before the first steps are taken to implement the new gTLD application framework, consistent with Article 9.3 of the Affirmation of Commitments.

The GAC reiterates the importance of addressing comprehensively the following four overarching issues:

1. The root scaling implications arising from the scale and rate of change of any introduction of new gTLDs at the same time as other changes - notably deployment of DNSSEC in the root, the introduction of IDNs and IPv6 transition - and the rate of these changes, must have no negative impact on the resilience, security and stability of the DNS. Each round of applications should encompass an appropriate number of strings that will not raise any concern in that regard.
2. More action must be taken to ensure that the introduction of new gTLDs does not lead to a concomitant increase in malicious conduct and abuse of the DNS. Improvements in ICANN's post-delegation monitoring and enforcement of the commitments made by delegated operator registries and registrars are warranted.

3. It is important to ensure that intellectual property rights are properly respected in the new gTLD space consistent with national and international law and standards. The GAC expects that the proposed Trademark Clearing House should be made available to all trademark owners, irrespective of the legal regime they operate under, and that an effective and sustainable Uniform Rapid Suspension (URS), with appropriate remedies, and a Post Delegation Dispute Resolution Policy are established to ensure appropriate trade mark protection. While these initiatives are broadly welcomed therefore in serving to help address the concerns of brand owners, the GAC believes that they require further refining. In particular, “substantive examination” should be re-defined so that registrations examined on “absolute grounds” are included in order to ensure broader availability of the URS.
4. The urgent need for economic studies to be concluded which assess whether the benefits of new gTLDs are likely to outweigh any costs to users and to assess whether any registry operator can or will be able to exercise market power with respect to any existing or new gTLD, before any changes are made to the current policy requiring vertical separation between registries and registrars. Economic studies should also distinguish demand for new name registrations versus defensive registrations by current brand holders.

The GAC awaits the publication of the documents currently being prepared by ICANN relating to the above overarching issues and will provide additional comments on these.

The GAC will also wish to comment on the detailed communication strategies for the new gTLD program for all regions, including developing country markets

The GAC also wishes to state its position and views on the following specific issues:

1. The GAC restates the advice contained in the Chair’s letter of 18 August 2009 which states: “*Strings that are a meaningful representation or abbreviation of a country name or territory name should not be allowed in the gTLD space*”. The GAC interprets para 2.2 of the GAC gTLD principles that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccTLD PDP , and other geographical strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

2. The GAC believes the proposed objection mechanisms should be improved, including to ensure that objection fees are cost-based rather than set at a high deterrence level; and that objections to individual applications submitted by individual governments are not subject to payment of a fee. It is also important that GAC members can provide advice directly to the ICANN Board as foreseen in the by-laws, and not be required to subject objections to an independent third party service provider.
3. The GAC urges that mechanisms be established for the resolution of post-delegation deviation from conditions for government approval of or non-objection to the use of a geographical name. The GAC is of the view that this could be achieved with the inclusion of a clause in the registry agreement requiring that in the case of a dispute between a relevant Government and the registry operator, ICANN must comply with a legally binding decision in the relevant jurisdiction. However, in case of the need for approval or non-objection from multiple governments, proper mechanisms for resolving post delegation disputes must be detailed.
4. The GAC supports the proposal to allow two character strings for most scripts used for IDN TLDs and advises that further analysis be undertaken of the one character issue.
5. The GAC draws attention to the need to explore further the regime applicable to single registrant TLDs should they be authorised.

The GAC urges that ICANN ensure that the resolution of competing string applications does not give rise to auction-derived surpluses, but is decided on the respective value of the applications for end users.

6. The GAC is of the view that the definition of geographical strings continues to be insufficient and is not in line with GAC gTLD principles paras 2.2 and 2.7. For example, commonly used abbreviations or regions not listed in ISO 3166-2 should also be considered as geographical names.

Finally, the GAC reiterates the importance of fully exploring the potential benefits of further categories (or track differentiation) that could simplify rather than add complexity to the management of the new TLD program and in that way help to accelerate the new gTLD program. In particular, the GAC believes that:

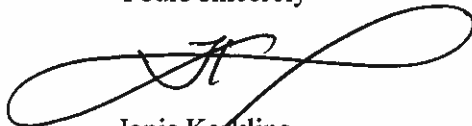
i) this could create greater flexibility in the application procedures to address the needs of a diversity of categories or types of string - including common nouns (e.g., “music”), cultural/linguistic communities, brand names and geographical strings<sup>1</sup> - would likely make application processes more predictable and create greater efficiencies for ICANN, both in ASCII and IDN spaces;

ii.) Taking into account that applicants and users of new TLDs of a high public interest for a specific community, such as city TLDs or country-region and other geographical TLDs<sup>2</sup>, may expect the legal framework of the territory in which the community is located to be applicable to the TLD, ICANN should allow for ways to respect the specific legal framework under which the respective community is operating in the TLD regime. This will also help ICANN, the applicants and national or local public authorities to avoid the risk of large scale legal challenges.

iii) instead of the currently proposed single-fee requirement, a cost-based structure of fees appropriate to each category of TLD would a) prevent cross subsidisation and b) better reflect the project scale, logistical requirements and financial position of local community and developing country stakeholders who should not be disenfranchised from the new TLD round.

The GAC trusts that the above considerations will be fully taken into account by the ICANN Board and the community and is looking forward to further dialogue.

Yours sincerely



Janis Karklins  
Chairman of the Governmental Advisory Committee,  
Ambassador of Latvia to France

<sup>1</sup> Subject to the provisions of article 2.2 of the GAC principles regarding new gTLDs, March 2007

<sup>2</sup> Subject to the provisions of article 2.2 of the GAC principles regarding new gTLDs, March 2007