Jonathan Robinson
Chair, GNSO Council

24 November 2014

Re: ICANN Board Resolution Concerning Planning for Future gTLD Application Rounds

Dear Jonathan:

On 17 November 2014, the ICANN Board met, and among other things, adopted resolutions concerning planning for future gTLD application rounds. As part of its action, the Board acknowledged the effort and progress within the GNSO to identify areas where the GNSO believes that policy advice can be clarified or where it wishes to provide additional policy advice applicable to future application rounds.

As requested in the GNSO Council's June 2014 resolution, the Board is pleased to provide input into the GNSO Council's discussion to identify areas that the Board believes may be appropriate for discussion in an evaluation of the current gTLD application round and for possible adjustments for subsequent application procedures. Attached to this letter are the Board's initial inputs into the important work being undertaken by the GNSO.

The Board looks forward to the results of this work to ensure that key policy areas are addressed for future rounds.

Regards,

Steve Crocker
Chairman, ICANN Board

Los Angeles Offices: 12025 Waterfront Drive, Suite 300 • Los Angeles, CA 90094 • **USA** • **T** +1 310 301 5800 • **F** +1 310 823 8649

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Annex A: Initial Input on Areas for Possible Policy Work

[Include Annex A from Board Resolutions 2014.11.17.10 – 2014.11.17.12]

Annex A: Initial Input on Areas for Possible Policy Work

	Area	Description and Rationale
1	Community considerations	Community considerations are relevant to multiple elements of the gTLD application and evaluation process, including objection mechanisms, contention resolution, and enforcement of community-related registry policies. Implementation guidance from the GNSO describes the handling of community considerations in objection processes as well as calling for priority to be awarded to applications claiming to support communities in cases of contention. The difficulty of defining a community, determining whether a claimed community is appropriately scoped for participation in a global process, and multiple other factors relating to communities means that a complex analysis is undertaken in each case to determine what type of treatment is appropriate in a given instance. Additional policy work in this area could be considered.
2	Special case considerations	Existing policy advice is broadly applicable e.g., policy advice specified requirements to be applied to all applied-for strings. Other than the community considerations noted above, policy advice does not provide a basis for differing requirements for certain types of applications, TLD uses, or business models. Following the publication of the applications received during the application period, issues were raised to the NGPC concerning development of rules for special cases. Examples include: a. the discussion of "closed generic" applications. The NGPC requested guidance from the GNSO on this topic on 2 Feb 13, if it wished to provide such guidance; the GNSO provided a response on 7 Mar 13. b. consideration of a ".brand" category and applicable requirements. The NGPC passed a resolution on 26 March 14 on this issue, also providing the GNSO Council an opportunity to advise on whether the proposed amendment was inconsistent with the letter and intent of GNSO Policy. The GNSO provided its response on 9 May 14. c. GAC advice also included recommendations relating to "categories" of strings (e.g., sensitive strings or strings relating to regulated markets) and requirements that should be applied to these strings.

	Area	Description and Rationale
		Additional policy work on identifying particular cases of strings, applications, or TLD registration models, and whether any such should be recognized as requiring particular treatment, could be undertaken.
3	Rights protections at the second level	Existing policy advice specifies that strings must not infringe the existing legal rights of others. As part of the implementation of the New gTLD Program, a number of rights protection mechanisms applicable to domain name registrations at the second level were created. The GNSO's Special Trademark Issues (STI) working group gave advice on the proposed mechanisms of the Trademark Clearinghouse and Uniform Rapid Suspension (URS); however, these mechanisms have not been the subject of policy development in the GNSO process. An April 2012 NGPC resolution requested the GNSO to consider whether additional work on defensive registrations at the second level should be undertaken. The GNSO Council has requested an issues report to be delivered in 2015 on the status of all rights protection mechanisms.
4	String similarity	Existing policy advice provides that confusingly similar strings should not be delegated as TLDs. This was implemented in a process incorporating use of an algorithm and human review for visual similarity, and an objection process for any claimed form of similarity. Individual panels reviewed string confusion objections and issued these decisions, which varied according to the analysis of the panel in question. The NGPC discussed a possible review mechanism for perceived inconsistent string confusion objection expert determinations, and directed that it be posted for public comment. The NGPC passed a resolution in June 2013 providing for no changes in the objection process relating to decisions on singular and plural versions of strings, and subsequently approved a resolution identifying two expert determinations as not in the best interest of the New gTLD Program and the Internet community, and requiring a three-member expert panel to re-evaluate the materials and determinations and render a final determination. Due to perceived inconsistency in process results as well as questions about the means used for determining what is confusingly similar (e.g., assessing similarity between singular and plural strings), this is an area where further

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		policy guidance could be provided.
5	Registry agreement terms	The base Registry Agreement was drafted based on existing policy advice on contractual conditions; for example, requiring the use of ICANN-accredited registrars. Subsequently, additional discussions and negotiations resulted in additional terms to the agreement. It may be appropriate for the GNSO to consider whether additional requirements relating to contractual conditions should be applied, or existing requirements updated in light of new market conditions or practices, for example, the presence of vertical integration, and adoption of a Code of Conduct.
6	Public interest guidance	The New gTLD Program was developed in the spirit of advancing the public interest; however, existing policy advice does not define the application of "public interest" analysis as a guideline for evaluation determinations on individual applications. Issues such as those identified in GAC advice on safeguards, the development of Public Interest Commitments (PICs), and associated questions of contractual commitment and enforcement may be an area for policy development.
7	Applicant support program	Existing policy implementation guidelines provide that ICANN may develop a fee reduction scheme to aid applicants from economies classified by the UN as least developed. An applicant support program was included in the application process for this round; however, additional policy guidance on the construction and rules of this program could be sought.
8	Name collision	The NGPC passed a resolution on 30 Jul 14 directing staff to work with the GNSO to consider whether policy work on developing a long-term plan to manage gTLD name collision issues should be undertaken.
9	IGO/INGO Protections	At the top level: The Applicant Guidebook approved by the Board in 2011 incorporated text concerning protection for specific requested Red Cross and IOC names for the top level only during the initial application round, "until the GNSO and GAC develop policy advice based on the global public interest." In April 2012, the NGPC passed a resolution acknowledging receipt of GNSO policy advice on extending certain protections to the Red Cross/Red Crescent and the International Olympic Committee names at the top level but directing no changes to the Guidebook for the current application round. At the second level: In September 2012, the NGPC

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	requested input from the GNSO on any advice the Board should take into account in considering second level protections for IOC and Red Cross/Red Crescent names, via a reserved list. The GNSO provided its response in February 2013. In April 2014, the Board passed a resolution adopting certain of the GNSO recommendations on the Protection of IGO-INGO Identifiers in All gTLDs (those identified as not inconsistent with GAC advice), and indicated that it would consider the remaining recommendations and facilitate discussions among the relevant parties to reconcile any remaining differences between the policy recommendations and the GAC advice on the topic. On 16 June 14, the NGPC provided a letter giving the GNSO an opportunity to consider modifying some of the policy recommendations that conflict with the GAC advice pursuant to the GNSO Operating Procedures. The GNSO provided a response on 7 October 14. In June 2014 the GNSO voted to initiate a new PDP on Curative Rights Protections for IGO/INGOs. This PDP is underway and is related to the topic.