

行政院及所屬各機關出國報告

(出國類別：會議)

## 出席「網際網路名稱與號碼指配機構」 (ICANN)第 40 次會議報告書

出國人員：

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派赴國家：美國舊金山

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## 壹、前言

網際網路名稱與號碼指配機構(ICANN)第 40 次會議於 100 年 3 月 14 日至 18 日在美國舊金山舉行，由 ICANN 主辦，計有來自 130 個國家之商業利益團體、民間團體、政府機構、網際網路服務供應商、註冊管理機構、受理註冊機構、網址註冊人及技術團體等約 1,700 位與會者參與本次盛會。

我國代表團係由交通部郵電司司長鄧添來擔任團長，團員包括交通部郵電司、國家通訊傳播委員會、外交部、財團法人台灣網路資訊中心(Taiwan Network Information Center, TWNIC)、NII 產業發展協進會及網路中文資訊股份有限公司等單位代表。交通部、國家通訊傳播委員會及外交部等人員主要出席政府諮詢委員會(Governmental Advisory Committee, GAC)，GAC 會議於 100 年 3 月 12 日至 17 日間召開（會議議程如附件 1），計有 45 個會員國及 2 個觀察會員與會，TWNIC 等其他團員則參與國碼名稱支援組織(ccNSO)，同屬性名稱支援組織(GNSO)等 ICANN 相關會議。

ICANN 於本次會議規劃多場次議程與各網路社群討論開放新頂級網域域名(New gTLDs)申請的議題，特別是與政府諮詢委員會的溝通。在本次舊金山會議前，ICANN 董事會即於 100 年 2 月 28 日至 3 月 2 日與各國政府諮詢委員會代表先行於比利時布魯塞爾召開諮詢會議，以消弭彼此間的歧見，議題包括反對機制、字串審核、根伺服器承載能力、智慧財產權、市場經濟與衝擊、Registry/Registrar 區隔與整合、消費者保護，及地理名稱開放申請等進行討論。ICANN 董事會希望能於下次新加坡會議時完成 New gTLD 開放申請辦法的相關程序，以正式通過本案。

本次 ICANN 會議特別邀請到美國前總統柯林頓蒞臨演說，他讚許 ICANN 的多元參與模式，並強調就業機會與資訊科技兼的連結，ICANN 在美國柯林頓政府的大力支持下於 1998 年正式成

立，以鼓勵全球各網路社群參與討論網路的未來發展。柯林頓於周三晚間的演講吸引 1,300 餘人到場聆聽。

ICANN 與美國商務部間的國際網路位址分配機構(Internet Assigned Numbers Authority, IANA)合約將於 100 年 9 月 30 日到期，美國商務部已於 2 月底發布 Notice of Inquiry，公開徵詢公眾意見，開始著手 IANA 合約的續約工作，這是 ICANN 自成立以來第五次續約。相關資訊可參考：  
[http://www.ntia.doc.gov/frnotices/2011/fr\\_ianafunctionsnoi\\_02252011.pdf](http://www.ntia.doc.gov/frnotices/2011/fr_ianafunctionsnoi_02252011.pdf)。

關於責任制和透明度審核小組(Accountability & Transparency Review Team, ATRT)所提 27 項建議事項，ICANN 董事會將要求 ICANN 工作人員依此擬訂相關執行計畫。這些建議事項包含了董事會(包括提名委員會選舉機制)、政府諮詢委員會、公眾意見徵詢與政策擬訂、及董事會決策的審核機制等面向。

在 ICANN/GAC 會議中則主要就以下議程（會議公報如附件 2）進行討論：

- (1) 與同屬性名稱支援組織(Generic Names Supporting Organization, GNSO)會談，就雙方未來如何能更有效率及協調運作進行討論。
- (2) 與一般會員諮詢委員會(At-Large Advisory Committee, ALAC)會談，包括就新頂級網域域名(New gTLDs)議題，及雙方未來如何能更有效率及協調運作進行討論。
- (3) 與 IP 位址 WHOIS 查詢工具檢視小組會談，就該小組可運作範圍及未來工作計畫進行意見交換。
- (4) 與網路安全及穩定諮詢委員會(Security and Stability Advisory Committee, SSAC)主席與根伺服器諮詢委員

會(Root Server System Advisory Committee, RSSAC)副主席會談，三方均同意應就網域名稱系統安全與穩定方面加強合作。

- (5) 與 ICANN 董事會就新頂級網域域名(New gTLDs)進行討論，並開放與公眾進行意見交流。
- (6) 與董事會討論 ICM 公司申請註冊「.XXX」頂級域名。
- (7) 責任制和透明度審核小組 (Accountability & Transparency Review Team, ATRT)報告。
- (8) ICANN 董事會與 GAC 聯合工作小組就 GAC 與 ICANN 未來扮演角色議題。
- (9) 選舉 GAC 副主席
- (10) 新任 GAC 秘書處將由荷蘭、挪威及巴西政府共同擔任。

下次 ICANN 會議預定於 2011 年 6 月 18 至 24 日於新加坡舉行。

本報告首先說明 ICANN 組織最新現況，次就本次會議重要議題及內容進行說明，最後就本次會議內容提出相關建議。





## 二、 ICANN 組成單位之功能

### (一) ICANN 董事會

依 2002 年 12 月 15 日 ICANN 通過之新版組織章程，ICANN 董事會係由 15 位具投票權之理事組成，其中 8 位董事由任命委員會選出，另由位址支援組織 (ASO)、同屬性名稱支援組織 (GNSO)、國碼名稱支援組織 (ccNSO) 各選出 2 位，總裁為當然董事。任期 3 年，每年改選部分董事。此外，6 位不具投票權之聯絡人則分由根伺服器系統諮詢委員會 (RSSAC)、網路安全及穩定諮詢委員會 (SSAC)、政府諮詢委員會 (GAC)、一般會員諮詢委員會 (ALAC)、技術聯絡人小組 (TLG) 及網際網路工程任務小組 (IETF) 指派。目前董事會成員現有 21 位。

1. **Peter Dengate Thrush**, 董事會主席 (January 2005 - June 2011)
2. **Steve Crocker**, 董事會副主席 (November 2008 - October 2011)
3. **Rod Beckstrom**, ICANN 總裁兼執行長
4. **Sebastien Bachollet** (December 2010 – 2013 )
5. **Cherine Chalaby** (December 2010 – 2013)
6. **Bertrand de La Chapelle** (December 2010 – 2013)
7. **Heather Dryden** (June 2010 - 2013)
8. **Rita Rodin Johnston** (June 2006 – June 2011)
9. **Erika Mann** (December 2010 – 2013)
10. **Ram Mohan**, 網路安全及穩定諮詢委員會聯絡人
11. **Thomas Narten**, 網際網路工程任務小組聯絡人
12. **Gonzalo Navarro**, (October 2009 –October 2012)
13. **Raymond A.Plzak** (May 2009 - April 2012)
14. **Rajasekhar Ramaraj** (December 2006 - October 2012)
15. **George Sadowsky**, (October 2009 –October 2012)

16. **Reinhard Scholl**, TLG 小組聯絡人
17. **Mike Silber** (May 2009- October 2012)
18. **Bruce Tokin** (June 2007 - 2012)
19. **Katim Touray** (November 2008- October 2011)
20. **Suzanne Woolf**, 根伺服器系統諮詢委員會聯絡人
21. **Kuo-Wei Wu** (吳國維) (April 2010 - 2012)

## (二) ICANN 支援組織

目前 ICANN 下設有 3 個支援組織，各支援組織 (Supporting Organization) 均有其特定之功能，為 ICANN 在各專責領域之主要政策建議來源及諮詢單位。謹簡介如下：

### (1) 位址支援組織 (ASO)

ASO 負責向 ICANN 提出有關 IP 位址運作、指配、及管理之政策性建言，其著重於識別單一 Internet 上各種電腦之 IP 位址系統，如 128.9.128.127，係根據 ICANN 與各區域網際網路登記註冊管理機構 (RIR) 洽簽之 MoU 所設立之組織。目前按區域所設立之 RIR，分別有負責北美洲區域之 ARIN、歐洲區域之 RIPE NCC、拉丁美洲區域之 LACNIC、亞洲區域之 APNIC 及非洲區域之 AFRNIC。一般 RIR 基本的位址分配政策係依區域需要及視未來一年內位址可能需求情形來分配位址區塊 (Address Block)。

### (2) 國碼名稱支援組織 (ccNSO)

ccNSO 負責向 ICANN 提出有關 ccTLD (諸如：.us, .uk, .it, .tw, .cn, .jp, .hk 等) 之政策性建言，ccNSO 係由 ccTLD 管理者組成，下設評議會 (Council) 管理相關政策制定程序。該組織業於於羅馬會議期間 (2004 年

3 月 1 日) 正式宣布成立。

### **(3) 同屬性名稱支援組織(GNSO)**

GNSO 負責向 ICANN 提出有關同屬性頂級域名之政策性建言，係由 gTLD 登記註冊管理機構、智慧財產權團體、商業團體、學術機構及消費者團體所組成，下設評議會(Council)管理相關政策制定程序。

## **(三) ICANN 諮詢委員會**

諮詢委員會為一正式諮詢體，由來自 Internet 社群 (community)代表組成，負責向 ICANN 作政策性之建言，ICANN 組織章程明定設立不同之諮詢委員會，諮詢委員會不代表 ICANN 行使職權，惟向 ICANN 理事會提出其研究報告及建言。目前 ICANN 理事會設有 4 諮詢委員會，謹簡介如下：

### **(1) 政府諮詢委員會(GAC)**

GAC 為一由國家級政府、國際論壇承認之經濟體、多國政府組織及條約組織(treaty organizations)代表所組成之諮詢委員會，其功能為向 ICANN 董事會表達政府單位之關切事項，GAC 以論壇方式討論政府之權益及關切議題 (interests and concerns)，包含消費者權益；GAC 不代表 ICANN 行使職權，惟向 ICANN 董事會提出其研究報告及建言。

### **(2) 網路安全及穩定諮詢委員會(SSAC)**

SSAC 係負責就網域名稱及位址指配系統之安全及完整性向 ICANN 董事會提出建言，包括安全架構之擬定、與網際網路技術社群及重要 DNS 管理者、業者之溝通協調、風險分析評估等。

### **(3) 根伺服器諮詢委員會(RSSAC)**

RSSAC 係負責向 ICANN 董事會提出有關網域名稱根伺服器運作之建言，包含主機硬體容量、作業系統、名稱伺服器軟體版本、網路連結、硬體環境、安全問題及系統效率、可靠度等。

### **(4) 一般會員諮詢委員會(ALAC)**

ALAC 代表網際網路個別使用者向 ICANN 提出建言。

## 參、ICANN/GAC 第 40 次會議

### 一、會議時間、地點及議程

(1) 時間：2011 年 3 月 11 日至 3 月 20 日。

(2) 地點：美國舊金山。

(3) 行程：

| 日期       | 行程  |
|----------|---|
| 3 月 11 日 | 由桃園機場出發，直飛抵達美國舊金山，<br>團員入宿 Stratford Hotel              |
| 3 月 12 日 | 辦理報到並出席 ICANN/GAC 相關會議                                  |
| 3 月 13 日 | 出席 ICANN/GAC 相關會議                                       |
| 3 月 14 日 | 出席 ICANN 開幕典禮，聽取 ICANN 總裁相關報告與<br>ICANN 工作人員就各項政策所提之說明。 |
| 3 月 15 日 | 出席 ICANN/GAC 與 ICANN 董事會諮商會議                            |
| 3 月 16 日 | 出席 ICANN/GAC 相關會議                                       |
| 3 月 17 日 | 出席 ICANN/GAC 與 ICANN 董事會諮商會議                            |
| 3 月 18 日 | 參加 ICANN 閉幕大會，聽取各項報告。                                   |
| 3 月 19 日 | 自美國舊金山搭機  |
| 3 月 20 日 | 返抵我國桃園機場  |

(4) ICANN/GAC 第 40 次會議議程：如附件 1。

### 二、主要討論議題

ICANN 會議包括董事會議、公眾論壇、各支援組織及諮詢委員會會議，如：政府諮詢委員會等，茲簡述重要會議內容如下：

## (一) 政府諮詢委員會(GAC)會議

網際網路名稱與號碼指配機構(ICANN)/政府諮詢委員會(GAC)於 2011 年 3 月 12 日至 17 日在美國舊金山召開。本次會議計有美國、英國、法國、歐盟、義大利、加拿大、挪威、瑞典、巴西、新加坡及日本等 45 位代表與會、2 位觀察會員與會。

本次 GAC 會議討論事項包括與 ICANN 董事會分別就新頂級網域域名(New gTLDs)開放議題及 ICM 公司申請註冊「.XXX」頂級域名案進行諮商、與同屬性名稱支援組織(Generic Names Supporting Organization, GNSO)及一般會員諮詢委員會(At-Large Advisory Committee, ALAC)討論新頂級網域域名(New gTLDs)議題、責任制和透明度審核小組(Accountability & Transparency Review Team, ATRT)工作報告、GAC 新任秘書處成立運作及選舉 GAC 副主席等。相關議題摘要如下：

### 1. 與同屬性名稱支援組織 (Generic Names Supporting Organization, GNSO)會談

GAC 與 GNSO 就雙方未來如何能更有效率及協調運作進行討論，GAC 回應表示願依責任制和透明度審核小組(Accountability & Transparency Review Team, ATRT)所提之建議與 GNSO 就可能合作模式進行討論。

### 2. 與一般會員諮詢委員會(At-Large Advisory Committee, ALAC)會談

GAC 與 ALAC 就新頂級網域域名(New gTLDs)議題，及雙方未來如何能更有效率及協調運作進行討論，ALAC 提出增進開發中國家參與之方式，特別是在向 ICANN 申請相關翻譯等支援及設備方面。另 GAC 與 ALAC 雙方同意未來在消費者保

護議題方面加強合作。

3. 與 IP 位址 WHOIS 查詢工具檢視小組會談

GAC 與該檢視小組會談，雙方就該小組可運作範圍及未來工作計畫進行意見交換。GAC 表示願加強互動交流，並於下次新加坡會議時進行更深入會談（相關資料如附件 3）。

4. 與網路安全及穩定諮詢委員會(Security and Stability Advisory Committee, SSAC)主席與根伺服器諮詢委員會(Root Server System Advisory Committee, RSSAC)副主席會談

GAC 與 SSAC 主席及 RSSAC 副主席三方均同意應就網域名稱系統安全與穩定方面加強合作，但由於本次會談時間有限，GAC 表示願於下次新加坡會議時再與其會談。

5. 與 ICANN 董事會就新頂級網域域名(New gTLDs)進行討論，並開放與公眾進行意見交流

(1) GAC 與 ICANN 董事會就今年 2 月 28 日至 3 月 2 日布魯塞爾諮商會議所討論新頂級網域域名(New gTLDs)關切議題，包括字串檢視程序、市場與經濟衝擊、Registry/Registrar 區隔、域名持有者與消費者保護、及地理名稱使用等議題（如附件 4）續進行討論，並於本次舊金山會議期間安排與 ICANN 董事會及相關利益團體公開討論，以聆聽各方意見。

(2) 針對今年 3 月 4 日 ICANN 董事會所回復之書面意見，GAC 已於本次會議期間續提出 GAC 回應意見及疑義，目前仍尚待 ICANN 董事會再正式回應，以利 GAC 能於會後儘快就關切議題再作盤點檢視。GAC 希望能在下次新加坡會議前檢視修正版之申請指導書(DAG)，藉以了解最後被 ICANN 採納意見之情形。

(3) GAC 建議申請指導書(DAG)應就幾項議題進行考量，例如成本應

合理及豁免措失，以提高開發中國家參與 new gTLD 申請之機會，包括不限於新字串之申請或是提出反對意見程序。GAC 並建議所有申請相關文件或公告等應提供英、法、西、中等語言譯本，以利全球網路申請使用者參閱。

(4) GAC 承諾將持續提供 ICANN 建議，以助未來 new gTLD 之開放申請能符合公眾利益。

#### 6. 與董事會討論 ICM 公司申請註冊「.XXX」頂級域名

同去年 12 月哥倫比亞會議決議，GAC 重申維持威靈頓公報所提出之立場，對於開放「.XXX」之色情網站專屬頂級域名表達反對意見。未來倘開放部分國家將採取直接阻擋「.XXX」域名進入，GAC 建議 ICANN 董事會應關注此舉可能影響整體域名系統之解析與穩定性（GAC 立場如附件 5）。

#### 7. 責任制和透明度審核小組 (Accountability & Transparency Review Team, ATRT) 報告

GAC 已檢視 ATRT 於去年底所提出之報告，表示願意就報告中所提之評估及執行建議協助 ICANN。GAC 並同意報告中所提 GAC 應藉由與 ICANN 董事會所組成之聯合工作小組（Joint Working Group, JWG）強化 GAC 於 ICANN 中所扮演的角色。

#### 8. ICANN 董事會與 GAC 聯合工作小組就 GAC 與 ICANN 未來扮演角色議題

GAC 感謝 ICANN 董事會本年 3 月 9 日函請就責任制和透明度審核小組 (Accountability & Transparency Review Team, ATRT) 所提建議提出 GAC 回應意見；但囿於時間有限，聯合小組會議將延至下次新加坡



會議再行討論。工作小組將持續合作，同時 GAC 將把近期與 ICANN 董事會互動現況更新至報告內容，以便小組於下次新加坡會議前提出報告。

#### 9. GAC 副主席選舉結果

GAC 副主席職缺則由新加坡資訊通信發展管理局 (Information Development Authority of Singapore, IDA) 負責網路資源管理之代表林春獅 (Mr.Lim Choon-Sai) 擔任，並且自 100 年 3 月 18 日起生效。

#### 10. GAC 秘書處

GAC 全體會員感謝印度自 2006 年起即擔任 GAC 秘書相關作業事宜，未來新任 GAC 秘書處將由荷蘭、挪威及巴西政府共同擔任。

#### 結語

GAC 誠摯感謝在美國舊金山會議期間所有與 GAC 會議之所有社群，GAC 下次會議將在新加坡舉行之 ICANN 會議期間召開。

## (二) 國碼名稱支援組織 (ccNSO) 會議

ccNSO 本次討論議題相當多，摘要如下。

Delegation & Re-delegation 工作小組於本次會期提出結案報告，建議 ccNSO 委員會初步應針對國碼頂級網域名稱管理單位之委任及重新委任，研議 "Framework of Interpretation"，該小組也建議 ccNSO 針對停用之國碼頂級網域名稱，應進行相關政策擬訂或優先考慮 "Framework of Interpretation"。為此，ccNSO 委員會決議成立一跨 ccNSO 及政府諮詢委員會 (GAC) 的 Framework of Interpretation 工作小組，研議相關政策，提供 IANA 與 ICANN 董事會明確的指導，以闡述現行有關國碼頂級網域名稱管理單位之委任及重新委任之政策及程序。相關報告內容可參閱：  
<http://svsf40.icann.org/meetings/siliconvalley2011/presentation-drdwg-15mar11-en.pdf>

依據統計，截至 ICANN 舊金山會議前，計有 34 個國際化頂級國碼網域名稱 (IDN ccTLD) 的申請案件，已有 27 個置入全球根伺服器，還有 9 個通過審查的字串正在進行 IANA 委任審查作業。在本次 ccNSO 會議中討論幾項速審申請辦法中所產生的問題，其中保加利亞與希臘應邀簡報所申請之 IDN ccTLD 未能通過字串審查階段，主要的原因在於字串的混淆，他們質疑字串審查程序的透明度，希望能修訂相關審查作業辦法內容。因此 ccNSO 委員會要求 IDN ccPDP 第一工作小組儘速在現有速審申請辦法框架中，研議相關準則，以改善字串混淆評估的可預測性。

關於 ccNSO 與 GNSO 聯合 IDN 工作小組提出結案報告草案，藉由檢視過去相關工作小組報告及政策或辦法，特別整理出三項共同關切議題，包括單一字元國際化頂級網域名稱 (Single Character IDN TLDs)、國際化頂級網域名稱之異體字 (IDN TLD

Variants)、以及普遍接受的國際化頂級域域名稱(Universal Acceptance of IDN TLDs)，並提出可能之解決方案。相關文件可參閱

<http://ccnso.icann.org/workinggroups/jig-final-report-single-character-idns-08mar11-en.pdf> 及

<http://ccnso.icann.org/workinggroups/jig-idn-tld-variant-policies-initial-report-08mar11-en.pdf>

IDN ccPDP 第二工作小組簡述其討論進展，包括開放 IDN ccTLD 申請之後，如何修訂 ICANN 相關章程，IDN ccTLD 管理單位的 ccNSO 會員資格以及其權利義務，特別是投票數問題，是根據一個國家/地區一票，還是一個 IANA code 一票，還有待後續討論。

關於國名使用問題，ccNSO 委員會擬籌組一研究小組，邀請 GNSO、GAC 及 ALAC 共同參與，通盤研議現行及提案之關於國名的 gTLD、(IDN) ccTLD 字串分配與委任的政策，彙整出不同的類型，像是國際化頂級國碼域名、各種語言中的國名呈現方式、或非正式國名的國家名稱使用等。使用國名作為 gTLD 的字串，在 ICANN 社群中一直具爭議性，況且現行的 New gTLD 申請辦法草案中，並未完全禁止申請國名作為頂級網域名稱。因此，該研究小組將於 ICANN 舊金山會議後，著手進行相關討論，並計畫於下次 ICANN 新加坡會議完成初步之報告草案。

ccNSO 委員會因原主席澳洲籍 Chris Disppain 被推薦擔任 ICANN 董事一職，空缺由英國籍 Lesley Cowley 接任，加拿大籍 Byron Holland 及日本籍 Hiro Hotta 擔任副主席，其餘包括荷蘭籍 Roelof Meijer 及紐西蘭籍 Keith Davidson 等人也於本次會議獲選擔任委員。

### (三) ICANN 理事會

本次會議 ICANN 理事會議之重要決議摘要如下：

雖然董事會與 GAC 對 new gTLD 議題仍未完全達成共識（目前初步暫定未來對申請者除例行評估作業外，將開放 60 天接受各方意見，倘各國政府或 GAC 反對可提出異議（early warning）以進行協商討論）。董事會訂於今年 4 月 15 日前回復 GAC 最終意見，並開放為期 1 個月的公眾諮詢，5 月 30 日提出最終版的申請指導手冊，預計今年 6 月完成開放 new gTLDs 相關作業程序。

董事會決議同意通過 ICM 註冊「.XXX」頂級域名(色情網站專屬域名)申請案，本案各界意見正反不一，GAC 會員國多數持反對立場。

原訂今年 6 月於亞洲地區約旦安曼舉行下次會議，但因該國目前局勢不明，決議變更至新加坡舉行。

另宣布 2012 年 10 月會議將於加拿大多倫多舉行，會議總費用以美金 201 萬元為上限。

董事會已檢視並採納責任制和透明度審核小組 (Accountability & Transparency Review Team, ATRT) 報告去年底所提出之 27 項建議報告，認為將有助於達成 ICANN 責任制和透明度之目標，董事會指示 ICANN 工作人員應與相關支援組織 (Supporting Organizations) 及諮詢委員會 (Advisory Committees) 合作並完成細部執行計畫內容。

## 肆、心得與建議

- 一、本次 ICANN/GAC 會議主要以 New gTLD 及開放「.XXX」頂級域名為主要討論議題，其中又以 New gTLD 為討論重心，GAC 及 ICANN 董事會均對此一議題提出諸多看法及建議，我國宜就後續開放之相關作業程序等密切關注。
- 二、本次國碼名稱支援組織（ccNSO）會議著重多項國際化頂級國碼域名後續議題的討論，特別是國名或地理名稱的使用，宜持續關注相關議題之發展。
- 三、我國已於去（99）年 6 月取得「.台灣」國際化頂級國碼網域名稱，並於同年 10 月正式開放註冊服務，對於未來在 ccNSO 會員資格與相關權利義務之討論宜持續關注，以確保我國之權益。
- 四、IPv4 資源耗盡之問題為各國所重視，國際網路位址分配機構 (Internet Assigned Numbers Authority, IANA) 於 2011 年 2 月 3 日將最後 5 個 IPv4 /8 網段位址同時發給全球 5 個洲際區域網路資訊中心 (Regional Internet Registry, RIR)，目前已經沒有 IPv4 位址可以分配給各 RIR，僅 RIR 仍保有尚未發放的網路位址，故我國應及時導入 IPv6，以避免網路位址不足，且 IPv6 具有大量( $2^{128}$ )位址、安全機制、服務品質及點對點應用之特性，已為網際網路的未來提供了一個明確的方向。我國應觀察國際間因應做法，並與國際相關社群進行交流與合作，以作為我國推展網路 IPv6 化之參考。
- 五、由於 ICANN 決議對於網際網路之發展影響深遠，據會場資訊本次會議計有約 1,700 位人員出席與會，為 ICANN 歷年會議出席參與人數最踴躍之一，約有來自 130 個國家之商業利益團體、民間團體、政府機構、網際網路服務供應商、註冊管

理機構、受理註冊機構等代表參加，GAC 會議期間常態維持約數十個會員團體與會。為確保我國網際網路社群之權益並與會員國建立長久關係，宜持續參與 ICANN/GAC 相關會議，希望藉由參與及討論，即時掌握網際網路最新發展趨勢，並與其他會員國建立友好關係，維持意見交流及資訊交換管道，以促進網路互通與合作，確保我國網際網路社群之權益和未來發展。

## 附件

1. GAC 2011 舊金山會議議程
2. GAC 2011 舊金山會議公報
3. WHOIS 查詢工具檢視小組資料
4. GAC 與 ICANN 董事會就新頂級網域域名(New gTLDs) 議題討論
5. GAC 對於開放「.XXX」色情網站專屬頂級域名之立場

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# 附件 1



**Draft GAC meeting agenda, San Francisco 2011**

V3      March 13, 2011

|                       |         |               |   |
|-----------------------|---------|---------------|---|
| Saturday,<br>March 12 | Plenary | 14:00 – 14:15 | Introductions and overview of San Francisco agenda  |
|                       |         | 14.15 – 15.00 | Process for GAC outstanding issues on new gTLDs (closed)  |
|                       |         | 15:00 - 16:00 | Meeting with Board on new gTLD consultation process   |
|                       |         | 16.00 – 16.30 | Coffee break  |
|                       |         | 16.30 – 18.00 | New gTLDs GAC outstanding issues (closed)   |
| Sunday,<br>March 13   | Plenary | 9.00 – 12.00  | New gTLDs & preps for meeting with the ALAC (closed)  |
|                       |         | 12.00 – 14.00 | Lunch   |
|                       |         | 14.00 – 15.30 | meet with the ALAC (open)   |
|                       |         | 15.30 – 16.00 | Update from WHOIS Review Team (open)  |
|                       |         | 16.00 – 16.30 | Coffee break  |
|                       |         | 16.30 – 17.30 | New gTLDs & preps for meeting with the GNSO (closed)  |
|                       |         | 17.30 – 18.30 | Meet with the GNSO (open)   |
| Monday,<br>March 14   | ICANN   | 9.00 – 10.30  | Opening and President's Report  |
|                       |         | 11.00 – 12.30 | Preparations for Board/ GAC Consultation on ICM Registry application (California East Room, 2 <sup>nd</sup> floor) (closed) |
|                       |         | 12.30 – 14.00 | Lunch   |
|                       |         | 14.00 – 15.00 | New gTLDs (Colonial room) (closed)  |
|                       |         | 15.00 – 17.30 | New gTLDs Program: Public discussion on the issues identified by GAC (Grand Ballroom)                                       |
|                       |         | 17.30 – 19.00 | New gTLDs (Colonial room) (closed)  |
| Tuesday,<br>March 15  | Plenary | all day       | Board/GAC consultations on GAC new gTLD outstanding issues  |
|                       |         | evening       | music night   |

|                        |         |   |   |
|------------------------|---------|---|---|
| Wednesday,<br>March 16 | Plenary | 9.00 – 09.15<br><br>09:15 – 10:00<br><br>10:00 - 10:30<br>10.30 – 11.30<br><br>11.30 – 12:30<br>12:30 – 14:00<br>14:00 – 17:00<br>16:00 – 16:30<br>17:00 – 18:00<br><br>evening | Thank you to Indian secretariat staff & new host countries; welcome to new secretariat staff & ICANN liaisons (open)<br>election of vice-chair; next steps for ATRT recommendations & Board/GAC JWG (closed)<br>coffee break<br>Preparations for Board/GAC consultation on ICM Registry application (closed)<br>new gTLDs (closed)<br>lunch break (GAC Members Commonwealth mtg.)<br>new gTLDs (closed)<br>coffee break<br>confirming draft Communiqué (closed)<br>- new gTLD text to be finalized on Thur.(online?)<br>Bill Clinton to speak (ballroom); gala dinner |
| Thursday,<br>March 17  | Plenary | 08:30 – 09:00<br><br>09:00 – 09:30<br><br>09:30– 12:30<br>12:30 – 14:00<br>14:00 – 15:00<br><br>15:00 – 15:30   | Meet with the Board to discuss ICM registry bylaws consultation process (closed)<br>Board/GAC Bylaws consultation on ICM Registry application for dot-xxx (open)<br>Board/GAC consultations on new gTLDs (open)<br>lunch<br>Board/GAC consultations on new gTLDs cont'd (open)<br>Wrap-up: Board/GAC new gTLD SF consultations (open)   |
| Friday,<br>March 18    | ICANN   | morning   | Reports of SOs & ACs to the Board; ICANN public Board meeting   |

# 附件 2





## **Governmental Advisory Committee**

San Francisco, 18 March 2011

### **GAC Communiqué – San Francisco**

#### **I. Introduction**

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in San Francisco, during March 12 - 17, 2011. Forty five GAC members and 2 observers participated in the meeting. The Governmental Advisory Committee thanks ICANN for supporting the GAC meeting and extends its appreciation.

#### **II. Meeting with GNSO**

The GAC met with the GNSO, with discussion focusing on issues of common interest and how GAC and the GNSO could work together more effectively and consistently. The GAC expressed its desire to explore options for more routine interactions with the GNSO in line with the recommendations of the Accountability and Transparency Review Team and agreed to consider how this could be best achieved.

#### **III. Meeting with ALAC**

The GAC held an informative and valuable exchange of views with

the ALAC regarding new gTLDs which identified areas of shared concern and points of agreement in the GAC's Scorecard. The ALAC outlined the ways in which they sought to increase participation, particularly by members from developing countries. The GAC and ALAC agreed to explore how they could further improve their interactions going forward, particularly in the area of consumer protection.

#### **IV. Meeting with WHOIS Review Team**

The GAC met with the WHOIS Review Team to discuss the Review Team scope and work plan. The GAC expressed a strong interest in the work of the Review Team and looks forward to further interactions and engagement including a face to face meeting in Singapore.

#### **V. Meeting with SSAC Chair and RSSAC Vice-Chair**

The GAC met with the new Chair of the SSAC and the vice-chair of the RSSAC and agreed to develop a closer working relationship. This would be taken forward in preparation for a meeting in Singapore.

#### **VI. New gTLDs**

Following the constructive and positive discussions with the Board at the inter-sessional meeting in Brussels, the GAC appreciated the further opportunities to meet in open sessions to discuss outstanding issues related to new gTLDs. The GAC also participated in a public session to hear the views of the different ICANN constituencies and noted some additional positive proposals.

The GAC presented the Board its "current best thinking" on a majority of the Board's reactions to the Scorecard issues and will provide additional written comments at the earliest opportunity after the conclusion of the San Francisco meeting.

The GAC looks forward to receiving any input from the Board that would inform the written comments to the full range of issues and questions raised by the GAC.



Following the Board's receipt of the GAC written comments, the GAC looks forward to reviewing a revised Applicant Guidebook that indicates, via track changes, how the GAC's advice has been taken into account.

In addition to the ongoing work of the JAS, the GAC looks forward to developing country issues treated in the Scorecard being fully taken into account in the next Applicant Guidebook.

The GAC intends to continue its efforts to assist ICANN in ensuring that the final implementation program for the introduction of the new gTLDs represents true community consensus.

## **VII. Exchange with members of the ICANN Board on the ICM Registry application**

In its communiqué of the Cartagena Meeting of December 2010, the GAC reiterated its previously stated position that the Wellington Communiqué represents consensus GAC advice and still applies.

Therefore, the GAC would like to inform the board about the following key points of this advice:

- There is no active support of the GAC for the introduction of a .xxx TLD.
- While there are members, which neither endorse nor oppose the introduction of a .xxx TLD, others are emphatically opposed from a public policy perspective to the introduction of a .xxx TLD.

Furthermore, the GAC would like to inform the ICANN Board that an introduction of a .xxx TLD into the root might lead to steps taken by some governments to prohibit access to this TLD. The GAC therefore calls the Board's attention to concerns expressed by experts that such steps bear a potential risk/threat to the universal resolvability and stability of the DNS.

Moreover:

- The GAC does not consider the information provided by the

Board to have answered the GAC concerns as to whether the ICM application meets the sponsorship criteria.

- The GAC further shares concerns expressed by others that with the revised proposed ICANN-ICM Registry agreement, the Corporation could be moving towards assuming an ongoing management and oversight role regarding Internet content, which could be inconsistent with its technical mandate

The GAC looks forward to the Board clarifying the basis for its 10 December 2010 decision regarding .xxx. The GAC expects that this would include a response to the substantial objections received from the community, and reference to ICANN's role as a public benefit corporation.

#### **VIII. Recommendations of the Affirmation of Commitments "Accountability & Transparency" Review Team (ATRT)**

The GAC expressed appreciation for the significant efforts of the members of the ATRT, for the high quality of its work and for the very important recommendations published by the team at the end of 2010. The GAC confirms its willingness to assist ICANN in the evaluation and implementation of the recommendations. The GAC supports the ATRT proposal that the specific recommendations related to the role of the GAC in ICANN be addressed through the Joint Board-GAC Working Group and intends to take this issue forward at the earliest opportunity.

#### **IX. Board/ GAC Joint Working Group on the Review of the Role of the GAC at ICANN**

The GAC welcomed the March 9 2011 letter from ICANN inviting GAC comments on the recommendations from the ATRT that refer specifically to the GAC. The meeting of the JWG originally planned for San Francisco was postponed until the next ICANN meeting in Singapore, to permit the GAC and the Board to integrate recent developments in the working relationship between the GAC and the Board into the final version of the report. The work of the JWG and the implementation of the ATRT recommendations remain major

priorities for the GAC.

#### **X. ccNSO Work on Delegation, Redelegation and Retirement**

The GAC noted the ccNSO's determination to create a new Framework and Implementation Working Group to follow up on the Delegation, Redelegation and Retirement Working Group recommendations, and expects to contribute to the efforts of the new ccNSO Working Group.

#### **XI. Election of vice chair**

Mr. Choon-Sai Lim from Singapore was elected to the position of GAC Vice Chair. The decision is effective from the end of the San Francisco meeting.

#### **XII. GAC Secretariat**

The GAC expressed its appreciation and thanks to India for providing the GAC Secretariat since 2006 and welcomed the new GAC Secretariat, hosted by Brazil, The Netherlands and Norway.

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The GAC warmly thanks all those among the ICANN community who have contributed to the dialogue with the GAC in San Francisco.

The GAC will meet during the period of the 41st ICANN meeting in Singapore.



# 附件 3



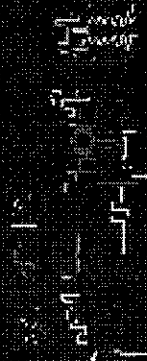


ICANN

# WHOIS POLICY REVIEW TEAM

## INVESTIGATING THE

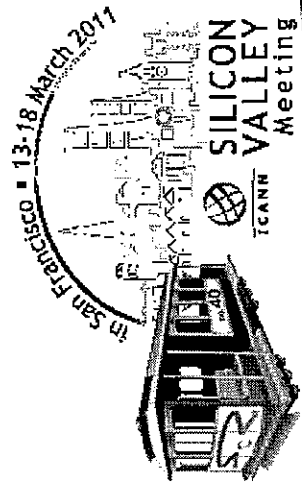
## COMMONS



ICANN

# Background

- ❖ Affirmation of Commitments
- ❖ 13 member, multistakeholder team
- ❖ Deadline: November 2011

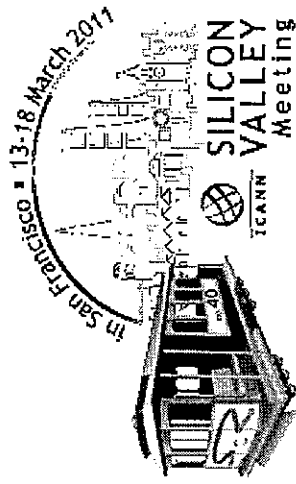


For full reference, please refer to our WIKI:  
<https://community.icann.org/display/whoisreview/WHOIS+Policy+Review+Team>



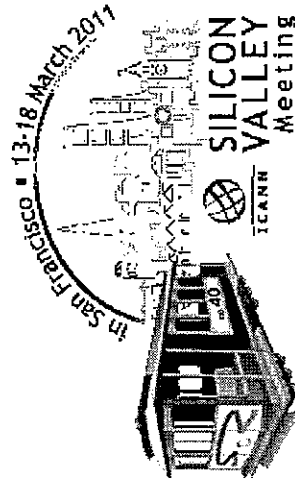
# Action & Outreach Programs

- ❖ Full transparency (confcalls open to silent observers, public meetings, email archives published, public wiki etc.)
- ❖ Promoting Community feedback
- ❖ Deliverables & calendar



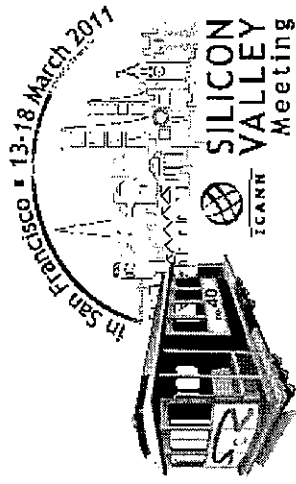
# Call for public comment

- ❖ Scope and roadmap
- ❖ Action and outreach plan
- ❖ Definitions:
  - ❖ Law enforcement
  - ❖ Applicable laws
  - ❖ Consumer



# Questions for GAC

- ❖ Status of GAC WHOIS principles
- ❖ Any additional public policy issues?
- ❖ Relevant ccTLD experience?
- ❖ Interactions with GAC



# Request for Input

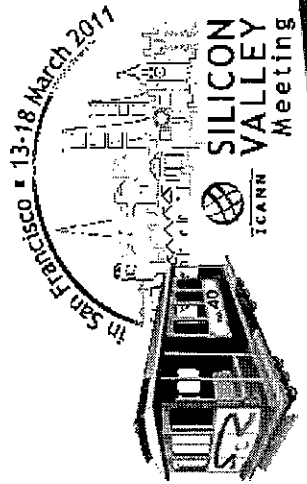
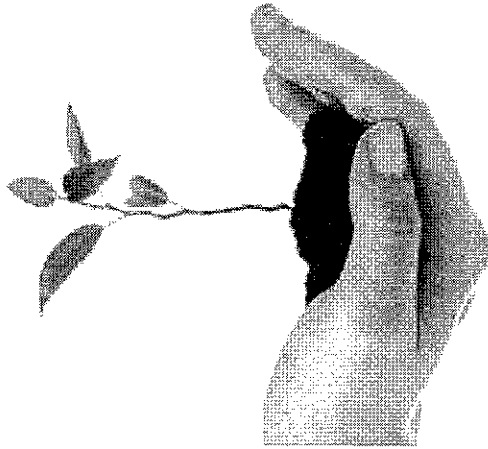
## How?

Public forum, Wednesday 11 am-12 noon,  
ELIZABETHAN A-C

Where? <http://icann.org/en/public-comment/public-comment-201104-en.htm#whois-rt>

## When?

4 March 2011 - 17 April 2011



# 附件 4



## **GAC indicative scorecard on new gTLD outstanding issues listed in the GAC Cartagena Communiqué**

- scorecard to serve as the basis of the GAC approach to Brussels ICANN Board/GAC consultation meeting 28 February-1 March 2011

### **Introduction**

The scorecard below represents the considered efforts of the GAC to distil the key elements of consensus advice regarding the introduction of new gTLDs it has been providing the ICANN Board since March, 2007. As the GAC noted in its Cartagena Communiqué, the GAC's initial advice, presented in the form of Principles, pre-dated both the completion of the GNSO's Recommendations on new gTLDs and the ICANN Board's subsequent adoption of those Recommendations in June, 2008. The GAC has sought from the outset of its deliberations regarding the public policy aspects related to the introduction of new gTLDs to contribute to the bottom-up, consensus-based policy development process within ICANN. As per the ICANN Bylaws, the GAC provides advice directly to the ICANN Board. Once the GAC forwards its advice to the ICANN Board, the GAC understands that it is within the ICANN Board's remit to instruct ICANN staff to take the GAC's advice into account in the development of the implementation plan for the introduction of new gTLDs. The GAC therefore welcomes the opportunity presented by the ICANN Board's agreement to hold a meeting with the GAC to review its longstanding and outstanding concerns regarding ICANN's proposed implementation plan for the introduction of new gTLDs. From the GAC's perspective, the Brussels meetings are not only an appropriate but a critical next step in ensuring the perspectives of governments are fully taken into account in the ICANN private sector-led, multi-stakeholder model that ICANN represents.

### **Twelve outstanding issues**

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## **1. The objection procedures including the requirements for governments to pay fees**

### **Recommended GAC Advice:**

The GAC advises the ICANN Board to instruct ICANN staff to delete the procedures related to “Limited Public Interest Objections” in Module 3.

### **Explanation:**

Although the new heading has been renamed from “Morality and Public Order Objections”, the body of the text remains unchanged and contains the same fundamental flaws which can only be remedied through deletion.

Specifically, the requirement that governments pay fees and must be bound by determinations by the International Centre for Expertise of the International Chamber of Commerce, which will in turn be guided by the findings of “three experts recognized as eminent jurists of international reputation”, is contrary to the sovereign right of governments to interpret and apply principles of international law on a country-by-country basis. Governments cannot be bound by the determinations of private individuals or organizations on matters that pertain to national law.

The requirement is also inconsistent with the provisions in ICANN’s Bylaws that call for governments to provide public policy advice to the ICANN Board through the Governmental Advisory Committee.

Lastly, there are no “generally accepted legal norms relating to morality and public order that are recognized under international principles of law” (Module 3, Article 2, e, iii), nor is it feasible to expect that any panel of “experts” could reach a determination whether a particular proposed new gTLD string would be considered objectionable on such grounds.

## **2. Procedures for the review of sensitive strings**

### ***1. String Evaluation and Objections Procedure***

The GAC advises the ICANN Board to instruct ICANN staff to 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. 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’). 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.

**Explanation:**

This proposal meets a number of compelling goals. First it provides governments with a more appropriate mechanism than the “Limited Public Interest Objections” procedure to communicate objections via the GAC. It is also intended to diminish the potential for blocking of top level domain strings considered objectionable by governments, which harms the architecture of the DNS and undermines the goal of universal resolvability.

Affording governments the early opportunity, through the GAC, to provide advice to the ICANN Board about particular proposed strings is supportive of ICANN’s commitment to ensure that its decisions are in the global public interest and represent community consensus.

**2. *Expand Categories of Community-based Strings***

The GAC advises the ICANN Board to instruct ICANN staff to amend the provisions and procedures contained in Modules 1 and 3 to clarify the following:

1. “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.
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.
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.
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.

5. Individual governments that choose to file objections to any proposed “community-based” string should not be required to pay fees.

**Explanation:**

The proposed approach would remedy the failure in the draft Applicant Guidebook to incorporate the GAC’s previous advice that ICANN’s new gTLD process should respect the legitimate interests of governments regarding terms with national, cultural, geographic and religious significance. It also anticipates the strong possibility that there will be proposed new gTLD strings for which an appropriate manager cannot be identified and/or agreed, which should cause the application to be rejected as a community-based string. It corrects an impossibly vague standard of “detriment to the broader Internet community” with a more practical and realistic standard of “material detriment” to the community in question. Finally, this proposal recognizes the right of governments to protect their perceived national interests through the Community objections process without the obligation to pay fees.

### 3. Root Zone Scaling

**Recommended GAC Advice:**

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 b) that the processes and possible resulting restorative measures that flow from its results are fully described in the Application Guidebook before the start of the first application round.
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.
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.
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.
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.
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.
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.

#### **4. Market and Economic Impacts**

The GAC advises the ICANN Board to instruct ICANN staff to amend the final Draft Applicant Guidebook to incorporate the following:

1. Criteria to facilitate the weighing of the potential costs and benefits to the public in the evaluation and award of new gTLDs.
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.
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.

#### **Explanation:**

The economic studies conducted by Katz, Rosston and Sullivan contain important findings that the past introduction of new gTLDs provided minimal public benefits in terms of competition for existing gTLDs and relieving name scarcity. The studies further state clearly that the introduction of new gTLDs had imposed costs on intellectual property owners in diluted brand strength, defensive registrations, and other costs associated with protecting their brands.

#### **5. Registry – Registrar Separation**

The GAC advises the ICANN Board to instruct ICANN staff to 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. The GAC further advises the ICANN Board that it considers the absence of a thorough and reasoned explanation of its decision in November 2010 to reverse its earlier decision of March 2010 to maintain "strict separation of entities offering registry services and those acting as registrars" and that "no co-ownership will be allowed" to be inconsistent with its commitments under the Affirmation of Commitments.

#### **Explanation:**

The CRA International report commissioned by ICANN noted that vertical integration between registries and registrars could foster both pre-competitive and anticompetitive outcomes. As the key issue is whether a gTLD has market power, it would only be

appropriate for ICANN to relax or lift restrictions on vertical integration in cases where it is clear that a gTLD faces or will face substantial competition. Such analysis would benefit from consultations with relevant antitrust authorities.

Further, ICANN has committed to provide a thorough and reasoned explanation of ICANN decisions, the rationale thereof and the sources of data and information on which ICANN relies. This has not been done yet to explain how the Board moved from a position in March 2010, as articulated in a Board resolution, of no cross ownership, to the May 31, 2010 staff proposal contained in draft Applicant Guidebook, version 4 of de minimus (i.e., no more than 2%) cross ownership, to the November 5, 2010 decision allowing full cross ownership. ICANN staff have provided an justification for the second decision but not an explanation of why ICANN's position changed so dramatically in the space of 8 months.

## **6. Protection of Rights Owners and consumer protection issue**

### ***1. Rights Protection: Trademark Clearing House (TC)***

#### **GAC Advice**

The GAC proposes the following refining changes that significantly improve the operation and achieve the maximum impact of the TC:

- 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 court-validated common law trademarks.
- 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.
- 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.
- All trademark registrations of national and supranational effect, regardless of whether examined on substantive or relative grounds, must be eligible to participate in the pre-launch sunrise mechanisms.
- 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.
- The IP claims service should notify the potential domain name registrant of the rights holder’s claim and also notify the rights holder of the registrant’s application for the domain name.
- The TC should continue after the initial launch of each gTLD.

- Rights holders, registries and registrars should all contribute to the cost of the TC because they all benefit from it.

#### **Explanation and argument**

The GAC believes that the TC as currently framed in the Applicant Guidebook needs to be significantly improved because a) there is lack of clarity as to the modalities of the TC process and operation and b) there are problems with its applicability. While the GAC recognizes that the Trademark Clearing House (TC) mechanism was not introduced as a rights protection mechanism but as a cost reduction tool, the GAC believes it can provide effective and efficient means to enable rights holders to submit their trade mark registrations with a single entity rather than with every registry in which they may wish to obtain a second-level registration.

There is also a major inconsistency between Sunrise and IP Claims services because Sunrise services only recognize trademarks that are registered in countries conducting a so-called substantive review or examination. The consequences of this are significant in terms of eligibility. In Europe, for example, all “Community Trademarks” (i.e. any trademark which is pending registration or has been registered in the European Union as a whole rather than on a national level within the EU) and most national trademarks are excluded from the Sunrise service. These amendments would ensure that all trademark registrations could qualify for participation in the pre-launch sunrise mechanism, consistent with existing best practices (e.g. the policies for .eu, .tel, and .asia).

With regard to presentation in the Applicant Guidebook, the GAC recommends that the text could more clearly indicate (perhaps with a flow chart) at what time during the evaluation process, and by what entity, objections to potential trademark infringements should be submitted.

## **2. *Rights Protection: Uniform Rapid Suspension (URS):***

#### **GAC Advice:**

- Significantly reduce the timescales. See attached table for proposed changes.
- The URS processes should be streamlined as follows:
  - 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.
  - Decisions should be taken by a suitably qualified ‘Examiner’ and not require panel appointments..
  - 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.
  - 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.
  - o The standard of proof (para 8.2) should be lowered from “clear and convincing evidence” to a preponderance of evidence”.
- 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.
- A ‘loser pays’ mechanism should be added. In addition, 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).
- However, there should be a clear rationale for appeal by the complainant. The time for filing an appeal in default cases must be reduced from 2 years to not more than 6 months. 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.
- The URS filing fee should be US\$200-US\$300 and minor administrative deficiencies should not result in dismissal of the URS complaint.
- 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.
- The URS should go beyond ‘exact’ matches and should at least include exact + goods/other generic words e.g. “Kodakonlineshop”.

#### **Explanation and argument**

The generally acknowledged rapid escalation of the opportunity for cybersquatting caused by the proposed new gTLD round is an issue of major concern for governments in view of its likely impact on business, consumer and economic welfare, both nationally and globally. The URS mechanism was recommended specifically to tackle obvious examples of opportunistic cybersquatting by providing rights holders with a cost effective and swift remedy.

The GAC advises therefore that these proposed amendments to the URS are most important. Without these amendments, the GAC believes that URS will fail to meet its stated purpose and will be rendered ineffective and useless.

In particular, the GAC considers that the current proposals are too cumbersome and lengthy to support public policy objectives of harm reduction. Surveys and consultations undertaken by GAC representatives show that few in-house trade mark counsel believe that the proposed URS system in the final DAG provides a cost effective, expedited process in clear cut cases of trade mark abuse. Furthermore, the process too closely mirrors the UDRP mechanisms which are intended to deal with more complex disputes. The URS

as currently devised does not contain sufficient deterrence to serial cybersquatters. These changes would bring the URS back into line with its original objectives as agreed by the IRT and STI by ensuring that the URS provides an effective and rapid remedy, with more streamlined processes and faster turn round of decisions.

While it is noted that the URS only covers intentional bad faith conduct, the GAC underlines that ICANN should make every effort to ensure that safeguards are in place to facilitate reinstatement as soon as possible in a genuine case of accidental rights infringement, through illness or some other legitimate absence, an individual or small/medium sized enterprise, has failed to respond within the timescale available.

### **3. *Rights Protection: Post-delegation Dispute Resolution Procedure (PDDRP)***

#### **GAC Advice:**

The GAC recommends that:

- The standard of proof be changed from “clear and convincing evidence” to a “preponderance of evidence”.
- The second level registrations that form the underlying basis of a successful PDDRP complaint should be deleted.
- The requirement of “substantive examination” in para 9.2.1(i) should be deleted.
- 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.”
- 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).
- 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.

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.  
**Explanation and Argument** These changes would ensure that the PDDRP is consistent with the requirements in a civil action for contributory trademark infringement action or unfair competition and that the abusive second level registrations are deleted after a successful PDDRP complaint.

The GAC believes that the liability criteria in the Applicant Guidebook are too lax. In particular, according to para 6, the liability of the registry operator is only triggered by behaviours such as “taking unfair advantage”, “unjustifiable impairment of the distinctive



character of the reputation of the complainant's mark" or "impermissible likelihood of confusion with the complainant's mark". The proposed changes to para 6 are therefore intended to strengthen the criteria.

The GAC considers that para 19.5 grants ICANN too much discretion in choosing the remedies it imposes on the registry operators and recommends that the remedies be consistent with the Expert Determination.

Ensuring full and effective compliance with the rules is a crucial issue post-delegation. The GAC believes therefore that ICANN needs to deploy a sufficiently large team for this purpose with an appropriate budget allocation.

#### ***4. Consumer Protection***

##### **Recommended GAC Advice:**

**Points of Contact for Abuse:** The GAC proposes the following amendment to the "Maintain an abuse point of contact" paragraph in the DAG to include government agencies which address consumer protection:

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.

**Effective Contract Compliance:** The GAC advises the Board to 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.

##### **Explanation and argument:**

There are concerns that internationally, "law enforcement" is interpreted as solely referring to police agencies, which would exclude other enforcers that do not fall under this category. Specifically stating "government agencies and agencies endorsed by a government" should (in theory) quash any ambiguity. In addition, the challenges facing ICANN's current contract compliance efforts are expected to be magnified with the introduction of an unknown number of new gTLDs.

##### **Vetting of certain strings**

The GAC proposes that 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.

##### **Explanation and argument**

The evaluation processes in the Applicant Guidebook offer safeguards to minimise abuse through for example objections on "community grounds." However, government authorities and agencies are concerned about the lack of proper safeguards provided by additional rigorous procedures for vetting applicants.

**Why does the GAC believe that there is a need to enhance consumer protection?**

National consumer protection authorities and fair trading agencies have expressed concern that the expansion of the number of gTLDs will establish certain consumer-orientated gTLDs that will be particularly prone to abuse and risk of increased opportunities for misrepresentation to consumers and generally expansion of the means for conducting online consumer fraud. Moreover, there is a perceived risk that certain gTLDs may become synonymous with criminal activity which may ultimately undermine consumer trust in online markets generally.

## **7. Post-Delegation Disputes**

The GAC advises the ICANN Board to instruct ICANN staff to amend the Applicant Guidebook in the following way:

1. Change the wording in the sample letter of Government support in AG back to the wording in DAGv4 and keeping the new 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.
2. 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.

**Explanation:**

Even though ICANN's commitment to comply with court orders or legally binding decisions by public authorities, the registry agreement between ICANN and the registry should have clear wording on this commitment to make sure that this obligation to the Government stands out as a clear and underlying premise for entering into the agreement

## **8. Use of geographic names:**

### *1. Definition of geographic names*

**Recommended GAC Advice:**

**The GAC asks ICANN to ensure that the criteria for community objections are implemented in a way that appropriately enables governments to use this instrument to protect their legal interest.**

ICANN refers to detailed explanations given in the “Final Draft Applicant Guidebook”. The GAC is of the view that the criteria for community objections do still not meet these requirements. The problem could be solved, if a free of charge objection mechanism would allow governments to protect their interest and to define names that are to be considered geographic names. This implies that ICANN will exclude an 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

**The GAC considers that the provisions in DAG4 in relation to city names carry the danger that an applicant could seek to avoid the safeguard of government support or non-objection if the applicant simply states that the intended use of the name is for non-community purposes.**

The GAC asks ICANN to review the proposal in the DAG in order to ensure that this potential does not arise. ICANN states 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.

The GAC is of the view that this statement does not reflect fully its concerns and asks for further explanations. The problem could be solved, if a free objection mechanism would allow governments to protect their interest.

**The GAC reminds the Board that governments need time to consult internally before deciding on whether or not to deliver a letter of approval or non-objection.**

ICANN explains that it has not been decided how long the application period will be open from the launching of the gTLD program and recalls that there will be a four months communications campaign prior to the launch. No further action required by now.

**The GAC reiterates its position that governments should not be required to pay a fee for raising objections to new gTLD applications.**

It is the view of the ICANN Board that governments that file objections should be required to cover costs of the objection process just like any other objector.

The problem could be solved, if a free objection mechanism would allow governments to protect their interest.

## ***2. Further requirements regarding geographic names***

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.

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 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.

## **9. Legal Recourse for Applications:**

In commenting DAG4 GAC emphasised that a denial of any legal recourse – as stipulated in the guidebook - is inappropriate. In its response the ICANN Board stated that it does not believe that ICANN should expose itself to costly lawsuits any more than is appropriate.

The GAC reiterates its concern that excluding the possibility of legal recourse might raise severe legal problems. GAC therefore urges the ICANN Board to 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, the GAC expects that ICANN will provide an appropriate mechanism for any complaints to be heard.

## **10. Providing opportunities for all stakeholders including those from developing countries**

### *Main issues*

#### **1. Cost Considerations**

“GAC urged ICANN to 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.”

GAC: new gTLD applications from municipalities and local governments in developing countries

**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. The GAC strongly recommends that the communications strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority”.

**3. Technical and logistics support**

**4. Outreach – as per Joint AC/SO recommendations**

**5. Joint AC/SO Working Group on support for new gTLD applicants.**

On 10th December 2010 the GAC through its Cartagena GAC communiqué stated as follows: “The GAC welcomed an update on the work of the Joint AC/SO Working Group on support, and encourages the Working Group to continue their efforts, particularly with regard to further outreach with developing countries” further, the GAC urged ICANN to adopt recommendations of the Joint AC/SO Working Group.

**Recommendations of the Joint AC/SO Working Group:**

Who should receive Support?

- Non-governmental Organizations (NGOs), civil society and not-for-profit organizations
- Limited Community based applications such as cultural, linguistic and ethnic
- Applications in languages whose presence on the web is limited
- Local entrepreneurs, in those markets where market constraints make normal business operations more difficult
- Applicants located in emerging economies

Type of support:

- Cost Reduction Support
- Sponsorship and other funding support
- Modifications to the financial continued operation instrument obligation
- Technical support
- Logistical support
- Obligation Technical support for applicants in operating or qualifying to operate a gTLD
- gTLD Exception to the rules requiring separation of the Registry and Registrar function

**6. Applications from Governments or National authorities (especially municipal councils and provincial authorities) – special consideration for applications from developing countries**

GAC communiqué’s on the issue:

- i. Brussels Communiqué

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.

ii. Nairobi Communiqué

The GAC believed that instead of the then proposal of single-fee requirement, a cost-based structure of fees appropriate to each category of TLD would:

- a) prevent cross subsidization and
- b) better reflect the project scale,

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.

Further the board believes that :

- 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:
  - Waiving the cost of Program Development (\$26k).
  - Waiving the Risk/Contingency cost (\$60k).
  - Lowering the application cost (\$100k)
  - Waiving the Registry fixed fees (\$25k per calendar year), and charge the Registry- Level Transaction Fee only (\$0.25 per domain name registration or renewal).
- 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.
- 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.

#### **A. Other Developing world Community comments**

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 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.

### **11. Law enforcement due diligence recommendations to amend the Registrar Accreditation Agreement as noted in the Brussels Communiqué**

The GAC advises the ICANN Board to instruct ICANN staff to amend the final Draft Applicant Guidebook as follows:

#### **Module 1:**

1. Include other criminal convictions as criteria for disqualification, such as Internet-related crimes (felony or misdemeanor) or drugs.
2. 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 children, health-care, financial services, etc.)

#### **Module 2:**

1. Add domestic screening services, local to the applicant, to the international screening services.
2. Add criminal background checks to the Initial Evaluation.
3. Amend the statement that the results of due diligence efforts will not be posted to a positive commitment to make such results publicly available
4. Maintain requirements that WHOIS data be accurate and publicly available.

#### **Explanation:**

These amendments will improve the prospects for mitigating malicious conduct and ensuring that criminal elements are hindered from using the DNS for criminal and illegal activities. The GAC also strongly encourages, and will contribute LEA expertise to this activity, further work on the high level security zone requirements.

### **12. The need for an early warning to applicants whether a proposed string would be considered controversial or to raise sensitivities (including geographical names)**

In conjunction with the GAC's proposed amendments to the Objections Procedures, to Community-based strings, and Geographic

Names, the GAC advises ICANN to 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.



## **Appendix: Background Material**

### **1. Intellectual Property Rights**

National governments have significant public policy concerns that the expansion of gTLDs will increase the level of fraud and abuse on the Internet, which will harm consumers, businesses, and other users of the Internet. The GAC advises the ICANN Board that the current proposed mechanisms to protect consumers and trademark rights from harm and abuse are inadequate and unacceptable. It is crucial that adequate mechanisms be adopted now -- and not after the first round of new gTLDs is introduced -- to ensure that the risk of such increased fraud and abuse is mitigated.

The GAC restates its previously articulated concerns that ICANN have in place an effective compliance program with sufficient staff and resources before ICANN launches the new gTLD program.

#### **Why is this an issue of public policy concern for the GAC?**

Trademark law protects consumers from deception and confusion and protects trademark owners' property rights from infringement. This dual basis, which is reflected in the laws of every GAC member country, mirrors the GAC's public policy concern in the rights protection issue.

The GAC acknowledges the potential commercial opportunities associated with the introduction of new gTLDs subject to a set of rules with adequate mechanisms for rights protection.

However, the GAC has nonetheless always regarded the risks to brand-owners associated with a major expansion of the gTLD space as a major public policy concern that must be carefully addressed to ensure that the opportunities and benefits outweigh the costs. In particular, many trademark owners will be forced to purchase second level defensive registrations in order to avoid misuse of their trademarks. Purchasing second level registrations will be costly and unlikely to prevent all possible misuse. The GAC notes that the significant cost burden for business arising from defensive registrations to protect brands and trade marks was described in the economic analysis undertaken by Katz, Rosston and Sullivan

The rights protection mechanisms to be established in the Applicant Guidebook are therefore crucial and must offer practical and

comprehensive approaches consistent with existing national legal frameworks and established best practice.

Once implemented in the first round of gTLD applications, ICANN should commission an independent review of the operation of the rights protections mechanisms in order to establish their effectiveness and practicability, to identify any deficiencies and scope for further improvement, and to make recommendations for public comment on how they might be changed prior to the second round of applications.

Relevant history:

### **The GAC's recent interaction with the Board on Protection of Rights Owners and consumer protection during 2010**

The GAC noted in its Nairobi communiqué the recommendations of the Special Trade Marks Issues Review Team. The GAC Chair stated in his letter dated 10 March 2010 to the ICANN Chair regarding DAGv3 that 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.*

The Chair of ICANN responded on 5 August 2010 as follows:

*The GAC comments, in concert with other comments, were taken in account in version 4 of the Applicant Guidebook that, for the first time, included the set of proposed intellectual property rights protection mechanisms. In particular, ICANN has broadened the types of trademark registrations that must be honored in offering a "Sunrise" service and all new registries employing an IP Claims service must honor trademarks registered in all jurisdictions. The types of registrations offered protections have also been broadened for the Uniform Rapid Suspension Service, one of the new post-delegation rights protection mechanisms. The Post Delegation Dispute Resolution Policy has also been amended in response to specific recommendations from the ICANN community.*

After due consideration of this response and the amendments contained in DAGv4, the GAC took the view, however, that the ICANN response to the GAC's advice and proposals were insufficient. This was communicated in the GAC Chair's letter of 23 September 2010 to the ICANN Chair, with particular reference to the Trademark Clearing House (TC) and the Uniform Rapid Suspension System (URS), as follows:

*The GAC notes with great concern that brand-owners continue to be faced with substantial and often prohibitive defensive registration costs which constitute a negative impact on their business planning and budgeting over which they have no control. Consultations by individual GAC members with business stakeholders underline how this issue remains a fundamental downside to the expansion of the gTLD space, far outweighing any perception of opportunities for innovation and customer-orientated benefits from the creation of corporate brand TLDs.*

*In the current financial and economic climate, these consultations reveal that many individual brands and businesses and media entities – some with large families of brands - find themselves without a sound business case to justify high levels of expenditure on large numbers of domain name registrations, most of which they are unlikely ever to use. Many of those that do decide to commit valuable financial resources for acquiring such defensive registrations will need to take some difficult decisions as to how to prioritise their efforts to avoid as much abuse of their trademarks as possible, in the knowledge that they will not be able to prevent all the potential abuse of their brands that the new gTLD round will facilitate.*

*This problem is exacerbated by lack of awareness: a recent survey carried out by 'World Trademark Review' showed that over 50% of respondents did not understand the implications for them of the gTLD programme.*

*The GAC remains of the view, therefore, that more concerted attention needs to be paid by ICANN to mitigate the costs to brandowners of new gTLDs arising from the need to acquire defensive registrations. The GAC urges ICANN therefore to reach out more effectively to the business community to set out both the opportunities for corporate business and the cost implications for brandholders of the expansion of the gTLD space.*

*The GAC notes the efforts to enhance through process the protection of rights owners as recounted in your letter of 5 August and developed in version 4 of the DAG.*

*In particular the GAC welcomes the expansion of the Trademark Clearing House to allow all nationally registered trademarks including those not substantially reviewed. However, the GAC shares the views of the World Intellectual Property Organisation (WIPO) that ICANN should ensure that the Trademark Clearing House operates on non-discriminatory terms and not impose a validation fee depending on the source of the trademark. The GAC also recommends that the match criteria*

for searches be extended to include results that combine a trademark and a generic term (e.g. “Kopdakkameras”).

The GAC also urges ICANN to ensure that all new rights protection mechanisms complement the existing UDRP mechanism. The GAC has serious concerns with regard to the way in which the draft Uniform Rapid Suspension System which governments had supported has evolved so as to require a much higher burden of proof while limiting marks eligible for a URS claim to only those which have been subject to substantive review or validated in the Clearing House with the associated cost and time implications. As a result, the GAC believes that the aim of achieving a light-weight mechanism has been compromised with the successive drafting of the URS, to the extent that it no longer serves as a viable alternative for rightsholders to the UDRP in securing the timely suspension of domain names.

**The ICANN Chair responded in his letter of 23 November to the GAC Chair as follows:**

*The Board understands the concerns expressed by the GAC regarding the potential costs of defensive registrations, and notes that the community spent a significant amount of time considering this issue, notably through the Implementation Recommendation Team and the Special Trademark Issues Working Group. The Board considered the many recommendations and supports the resulting protections now outlined in the Applicant Guidebook. These include:*

- *The requirement for all new registries to offer a Trademark Claims service or a sunrise period at launch.*
- *The establishment of a Trademark Clearinghouse as a central repository for rights information, creating efficiencies for TM holders, registries, and registrars.*
- *The existing Uniform Domain Name Dispute Resolution Policy (UDRP) continues to be available where complainant seeks transfer of names. Compliance with UDRP decisions is required in all new, as well as existing, gTLDs.*
- *Implementation of a Uniform Rapid Suspension (URS) system that provides a streamlined, lower-cost mechanism to suspend infringing names.*
- *The requirement for all new gTLD operators to provide access to “thick” Whois data. This access to registration data aids those seeking responsible parties as part of rights enforcement activities.*

**Following further individual GAC member national consultations with domestic rights protection agencies and stakeholders, and due consideration of**

- a) the ICANN Chair’s letter of 23 November 2010;
- b) the non-adoption in the “final” version of the DAG of the GAC’s proposals for the TC and the URS contained in the GAC Chair’s letter of 23 September 2010;

- c) the briefing the GAC received in Cartagena from ICANN staff on the changes incorporated in the “final” version of the DAG;
- and d) the GAC’s discussions in Cartagena with the GNSO;

at its meeting with the ICANN Board in Cartagena the GAC expressed that it continued to have fundamental concerns about the inadequacy of the proposed rights protection mechanisms.

Furthermore, the Cartagena communiqué stated that

*as a result of the GAC’s exchange with the GNSO, the GAC is also mindful that major stakeholder groups within ICANN (such as the Business and Intellectual Property constituencies) do not believe the most recent version of the DAG reflects their advice and concerns.*

## **2. Root Zone Scaling**

### **1. Introduction**

This scorecard summarizes the GAC’s remaining concerns that ICANN provide sufficient safeguards so that the expected scale and rate of change of introduction of new gTLDs will not have a negative impact on the security, stability and resilience of the DNS.

References are made to ICANN Chair’s letter to the GAC Chair of 23 November 2010 in response of the letter of 10th March 2010 from the GAC Chair (‘ICANN’s response’) and to and to the Draft Applicants Guidebook version 4 (‘DAG4’)

### **2. Root growth control and monitoring / early warning system**

In ICANN’s response reference is made to the intention (DAG4) to delegate 200 to 300 TLDs annually, and that in no case more than 1000 new gTLDs be added to the root zone in a year.

The GAC understands that the robustness of the root server system and the way it will react following substantive additions can only be fully understood by the practice and experience of the first round. Therefore the establishment of a monitoring system, as recommended by the community and taken on board by ICANN, is fully supported by the GAC. According to ICANN’s response “(it will) ensure that changes relating to scaling of the root management systems don’t go unnoticed prior to those changes becoming an

issue” This addresses the GAC’s advice that there should be a control mechanism to allow for the mitigation of any strain or unwanted effects of a large scale introduction of new TLDs.

However, the GAC believes that the implications and processes needed to act upon the outcome of such an early warning system need to be elaborated further in the Applicant Guidebook. The GAC accordingly now tables the following questions and proposals for the Board’s consideration:

1. What will be the modus operandi when the system issues a warning that the introduction should slow down or even stopped?
2. There should be scenarios and system responses clearly set out so that ICANN reacts predictably and quickly when there are indicators that new additions and changes are straining the root zone system. The level of detriment should be graded and described, with the resulting restorative measures outlined. These would include stopping further additions for defined periods, more intensive monitoring and in extreme cases suspension of new gTLDs.
3. Such scenarios should be described in the Applicants Guidebook with detailed explanations of how applicants will be informed about potential slowing down or even stopping of their application If the situations are defined and documented then applicants should also be advised of the consequences in certain cases.

The GAC recommends that the control mechanism should be carefully designed and there should be clearly understood (policy) implications reflected in the Applicant Guidebook before ICANN launches the round to open up the gTLD space. In view of the widely acknowledged unpredictability of all the effects of a massive introduction of gTLDs in the root zone system, the GAC also believes that there should be an in depth evaluation of the impacts of the first introduction round on the root zone system followed by a public comment period before a decision is taken to start the second round. The monitoring system for this purpose should therefore be fully operational from the start of the first round in order to deliver the necessary relevant data before the second round starts.

Therefore the GAC requests the Board.

4. to continue implementing a monitoring system and ensure that the processes that flow from its results are fully described in the Application Guidebook before the start of the first application round;
5. not to launch a second round of applications (1) unless there are indications from monitoring the root system that the first round did not in any way jeopardize the security and stability of the root zone system.

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<sup>1</sup> assuming the first one does not exceed 200- 300 application

### 3. Operational and resource issues to avoid root change congestion and maintain continued integration of the system

The GAC expressed on several occasions its concern that the root change processes could face congestion at the operational level. ICANN's response made clear that the scaling effects can be absorbed by the root zone operators but that these effects are much more likely to be felt within the context of ICANN's internal systems, such as application processing, legal review, IANA process, etc. Therefore the GAC remains concerned as to whether both ICANN's internal systems and the resources of external actors can scale up sufficiently to meet the demands in order to process 200 to 300 applications a year.

The GAC accordingly now tables the following questions for the Board's consideration:

1. How will the necessary increase in resources be accomplished, is there flexibility to deal with changing demands, and how will ICANN avoid the possibility that other activities will be impacted by the possible diversion of resources to processing new gTLD applications?
2. How will ICANN address the specific needs of applicants from different, perhaps non-English speaking cultures, and with different legal environments?
3. How quickly would ICANN expect to complete contract negotiations for new gTLDs in a potential situation of 200 to 300 simultaneous applications and evaluations?
4. Are all the external actors (IANA, USG, root server operators, etc) sufficiently informed about what is expected from them in terms of work loadings and resources in order to fulfill their respective roles, in particular the pre-delegation checking, approvals, and implementation of potentially 200 to 300 root zone changes a year?
5. Following delegation of so many additional TLDs, what is ICANN's projection for the administrative workload for ICANN and IANA for processing requests for changes and additions to TLDs once they have been established in the root? What is ICANN's plan for resourcing these day-to-day operational functions, including staff requirements?

### 3. Geographic Names: Analysis of GAC's DAG4 comments and ICANN's answers

- a) The GAC underlines that country and territory names should be excluded from applications until the ccPDP.

The Board will not consider such applications in the first round.

- The GAC reiterates its understanding that the IDN ccPDP and the use of country and territory names are related. Therefore the question, whether country and territory names need to be excluded has to be reconsidered before the next application round.

The GAC notes that ICANN considers that the use of country and territory names in general is out of scope of the IDN ccPDP, and therefore linking the two processes does not appear appropriate. ICANN therefore suggests that it is a possibility that the use of country and territory names may be considered after the first round of gTLD applications. Modalities for subsequent rounds will be determined by ICANN based on recommendations from the ICANN community and GAC Advice. It is important that GAC restates advice on this issue; see Annex B to Nairobi Communiqué. The GACs main point was that strings that are a meaningful representation or abbreviation of a country or territory name should be treated outside the gTLD process. If they should be considered as new TLDs, they should be handled through a policy development process in ccNSO.

**b) GAC reiterated its concern about insufficient protection of geographic names.**

The Board does not refer to this concern.

For the GAC appropriate and free objection procedures would be acceptable to provide the protection of geographic names (see also c and e).

#### **4. GAC's position on "Definition of geographic names"**

The public comment period allows free of charge comments on every applied for string. Individual governments as the entire GAC can inform ICANN, which strings they consider to be geographic names. ICANN commits to process applications for strings that governments consider to be geographic names only if the respective government does support or not object to the use of that string.

GAC recalls that in cases in which geographic names correspond with generic names or brands, such a regulation would not exclude per se the use of generic names and brands as Top-Level Domains. It would, however, be in the area of responsibility of the adequate government to define requirements and safeguards to prevent the use of those Top-Level Domains as geoTLDs.

#### **5. Providing opportunity for all stakeholders including those from developing countries**

##### **SUMMARY TABLE**

##### **A. GAC & ICANN Board Positions**



| No. | Issue Topic   | GAC Position   | ICANN Board Position  | Remarks                                       |
|-----|---|--|---|---|
| 1.  | Recommendations of the Joint AC/SO Working Group                      | Supported  | Supported   | Board encouraged to adopt the recommendations |
| 2.  | Support on Technical operations and other requirements                | ICANN to set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude developing country stakeholders participating in the new gTLD-process  | <ul style="list-style-type: none"> <li>• New gTLD process is developed on a cost recovery model</li> <li>• Experience gained from first round will inform decisions on fee levels, and the scope for discounts and subsidies in subsequent rounds</li> <li>• Non-financial means of support are being made available to deserving cases.</li> </ul> |   |
| 3.  | Concerns from the Internet Government Forum (IGF), Vilnius, Lithuania | Letter from GAC to ICANN 23 <sup>rd</sup> September 2010. The GAC reiterates its strong belief that the new gTLD process should meet the global public interest in promoting a fully inclusive and diverse Internet community and infrastructure, consistent with the Affirmation of Commitments. The GAC therefore urges ICANN to set |   |   |

| No. | Issue Topic | GAC Position   | ICANN Board Position | Remarks |
|-----|-------------|--|----------------------|---------|
|     |             | <p>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. 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. The GAC strongly recommends that the communications strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority.</p> |                      |         |

**B. Developing Countries/Communities Position.**

| No. | Issue Topic                       | Community Position  | Joint SO/AC working Group Recommendation.   | ICANN Board Position  | Remarks |
|-----|-----------------------------------|---|---|---|---------|
| 1.  | Roll out of new gTLD's and IDN's. | Rolling out new gTLD's and IDNs was done in a hurry without basis on a careful feasibility study on the impact that this rollout will have on developing countries  |   | The position of ICANN is that in no way this is a massive roll out and in fact there have been only 900 applications for new gTLD for a year and only 200 of them will be reviewed. ICANN holds the position that it has been fair and inclusive in its decision and that also it will help any country in this process |         |
| 2.  | Eligibility for support           | Developing communities strongly believe that entrepreneur applicants from developing countries, where the market is not wide enough for a reasonable profit making industry, are eligible for support. The African Community believe:<br>• Entrepreneur applicants from African countries are | Who should receive Support?<br>• Governments, Municipal and local authorities from developing countries<br>• Non-governmental Organizations (NGOs), civil society and not-for-profit organizations<br>• Limited Community | ICANN board is considering the proposals from the SO/AC joint working group.  |         |

| No. | Issue Topic | Community Position   | Joint SO/AC working Group Recommendation.   | ICANN Board Position | Remarks |
|-----|-------------|--|---|----------------------|---------|
|     |             | <p>eligible for support.</p> <ul style="list-style-type: none"> <li>• Deem that Civil society, NGOs and non for profit organizations in Africa are the most in need of such support,</li> <li>• Believe that support is of utmost importance for geographic, cultural linguistic, and more generally community based applications.</li> <li>• Support to new gTLD applicants in Africa be prioritized</li> <li>• Support to be provided to applicants of new gTLDs in Africa should include, financial, linguistic, legal and technical</li> <li>• Proposed cost reduction:</li> <li>• Proposed that the reduced cost be paid incrementally,</li> <li>• Applications to be according to the</li> </ul> | <p>based applications such as cultural, linguistic and ethnic</p> <ul style="list-style-type: none"> <li>• Applications in languages whose presence on the web is limited</li> <li>• Local entrepreneurs, in those markets where market constraints make normal business operations more difficult</li> <li>• Applicants located in emerging economies</li> </ul> <p>Type of support</p> <ul style="list-style-type: none"> <li>• Cost Reduction Support</li> <li>• Sponsorship and other funding support</li> <li>• Modifications to the financial continued operation instrument obligation</li> <li>• Technical support</li> <li>• Logistical support</li> <li>• Obligation Technical</li> </ul> |                      |         |

| No. | Issue Topic | Community Position   | Joint SO/AC working Group Recommendation.   | ICANN Board Position | Remarks |
|-----|-------------|--|---|----------------------|---------|
|     |             | <p>appropriate business models.</p> <ul style="list-style-type: none"> <li>• Supplementary support and additional cost reduction for gTLDs applications from African countries.</li> </ul> | <p>support for applicants in operating or qualifying to operate a gTLD</p> <ul style="list-style-type: none"> <li>• gTLDs Exception to the rules requiring separation of the Registry and Registrar function</li> </ul> |                      |         |



# 附件 5





## Governmental Advisory Committee (GAC)

Mr. Peter Dengate Thrush  
Chairman of the Board  
ICANN

San Francisco, March 16, 2011

Dear Peter,

In its communiqué of the Cartagena Meeting of December 2010, the GAC reiterated its previously stated position that the Wellington Communiqué represents consensus GAC advice and still applies. Therefore, the GAC would like to inform the board about the following key points of this advice:

- There is no active support of the GAC for the introduction of a .xxx TLD.
- While there are members, which neither endorse nor oppose the introduction of a .xxx TLD, others are emphatically opposed from a public policy perspective to the introduction of a .xxx TLD.

Furthermore, the GAC would like to inform the ICANN Board that an introduction of a .xxx TLD into the root might lead to steps taken by some governments to prohibit access to this TLD. The GAC therefore calls the Board's attention to concerns expressed by experts that such steps bear a potential risk/threat to the universal resolvability and stability of the DNS.

Moreover:

- The GAC does not consider the information provided by the Board to have answered the GAC concerns as to whether the ICM application meets the sponsorship criteria.
- The GAC further shares concerns expressed by others that with the revised proposed ICANN-ICM Registry agreement, the Corporation could be moving towards assuming an ongoing management and oversight role regarding Internet content, which could be inconsistent with its technical mandate

The GAC looks forward to the Board clarifying the basis for its 10 December 2010 decision regarding .xxx. The GAC expects that this would include a response to the substantial objections received from the community, and reference to ICANN's role as a public benefit corporation.



Ms. Heather Dryden  
Chair, Governmental Advisory Committee.  
Senior Advisor to the Government of Canada

