



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Communications
and Information
Washington, D.C. 20230

FEB 04 2014

Dr. Stephen D. Crocker
Chairman of the Board
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Dear Dr. Crocker:

I am writing to express the appreciation of the United States for the work that the Internet Corporation for Assigned Names and Numbers (ICANN) has done to respond to the Advice of the Governmental Advisory Committee (GAC) on new generic top level domain names (gTLDs), as set forth primarily in the Beijing Communiqué. The New gTLD Program Committee's (NGPC) efforts to take the GAC advice and address it via actionable provisions in new gTLD Registry Agreements is a good example of governments having a meaningful voice inside ICANN. However, as can be the case when translating GAC Advice to contractual provisions, the NGPC made adjustments to the GAC Advice that the United States believes could cause enforcement problems and as such merit further discussion. The National Telecommunications and Information Administration (NTIA), on behalf of the United States, is planning on raising these concerns for discussion at the March GAC meeting in Singapore and requests that ICANN take this fact into account before moving forward with applications for strings impacted by the relevant portions of GAC advice, as described below.

The NGPC has changed the GAC-conveyed concept of "verification and validation" to "representation" in Category 1 Safeguard #6, 7, and 8 to be sensitive to the diversity of regulatory schemes around the world and assure that discrimination does not inadvertently result. However, the concept of "representation" is different from the affirmative obligation for the registry operator to verify or validate the credentials of domain name registrants that indicate participation in certain professional or regulated sectors, as the GAC requested. While noting the NGPC rationale, we continue to believe that there are a handful of the strings associated closely with industries that are highly regulated at local, national and global levels that may raise certain consumer expectations and thus warrant the higher standard reflected in Safeguards #6, 7, and 8, as proposed by the GAC. Cognizant of the various business models presented in competing applications, we think this issue should be addressed regardless of the registry operators selected.

With respect to Category 1 Safeguard #3, the GAC advice points to recognized industry standards, in addition to applicable law, as a guide for registry operators managing strings representing professional and regulated sectors that collect sensitive health and financial data. The NGPC, however, highlighted concerns regarding requiring adherence to recognized industry standards given the number of sectors implicated by the GAC advice in this category. NTIA recognizes that implementation through contractual requirements in general terms could be challenging, but believes the GAC clearly intended for ICANN to require contracted parties to adhere to relevant recognized industry standards, in particular when it comes to protecting sensitive financial and health data. In certain instances, the industry standard may be the most relevant governing standard consistent with the broader multistakeholder model. Accordingly,

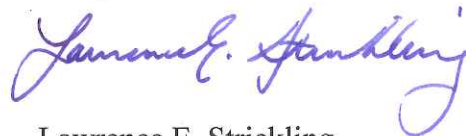
the United States will raise this issue at the March GAC meeting for further discussion and action.

We also want to reiterate our belief that it is important that gTLD registry operators using restricted registrations policies, other than brand and certain other gTLDs, avoid granting undue preference to any particular party or subjecting potential registrants to any undue disadvantage. We recognize that Sections C and D of Specification 11 attempt to address these concerns and will look forward to the NGPC's answer to the GAC's related question on this issue from the Buenos Aires meeting. Stakeholders have raised concerns with us about the lack of clarity on the status of this issue regarding a number of applications for generic terms, some of which were included in the non-exhaustive list in the GAC Beijing Communique (e.g., .weather) and some that were not (e.g., .kosher).

Lastly, a shared understanding of contract enforcement systems is crucial as the new gTLD program moves into the next phase. The Registry Agreement indicates that ICANN would either handle enforcement itself or via a new Public Interest Commitment Dispute Resolution Process (PICDRP).¹ ICANN needs to provide clarity around when the PICDRP comes into play versus when ICANN can act directly to resolve disputes. We are evaluating the final PICDRP process, published on ICANN's website December 19, 2013. As a preliminary matter, we have questions related to the timeliness of the processes which we calculate from beginning to end may take almost three months. In the case of criminal activity (e.g., botnet case) this time frame may be too long. Also, given that the standard for filing a complaint is harm, ICANN should clarify that governments could file based on their role in representing the public. In addition, we also do not see a specific opportunity for a complainant to provide subsequent information if the first attempt to register a concern is incomplete because of administrative or clerical reasons. ICANN should also provide all stakeholders more information on the selection process for the PICDRP Standing Panel.

In closing, I would like to once again acknowledge the work of ICANN and the general commitment, in particular of the NGPC, to treat seriously the GAC advice on new gTLDs. As mentioned above, NTIA will be raising the issues detailed in this letter at the GAC meeting in Singapore with the goal of getting speedy resolution on outstanding items. In addition, we will recommend that cross community discussion begin in earnest on how the safeguards that are being applied to new gTLDs can be applied to existing gTLDs.

Sincerely,



Lawrence E. Strickling

¹ Specification 11, Public Interest Commitments, ¶¶ 2 and 3, Base Registry Agreement updated January 9, 2014.