The Internet Corporation for Assigned Names and Numbers

ICANN

February 19, 2016

Thomas Schneider
Chair, ICANN Governmental Advisory Committee

Re: GAC Buenos Aires Communiqué Safeguard Advice

Dear Mr. Schneider:

Thank you for your letter dated 29 January 2016 regarding the New gTLD Program Committee's (NGPC's) consideration of the GAC Buenos Aires Communiqué Safeguard Advice. Below please find the Board's responses to the questions raised in your letter.

GAC Question 1. There does not appear to have been any formal communication of this resolution [2015.10.18.NG02] to the GAC. Is it the Board's intention to make such a formal communication? It may be helpful to do so in the interests of community transparency.

Board Response: Consistent with ICANN's commitment to transparency, all Board and Board Committee Resolutions, including Resolution 2015.10.18.NG02, are posted publicly. This resolution was posted on 21 October 2015 at https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-10-18-en#2.b. It is also attached to this letter for your convenience.

GAC Question 2 Part 1. The scorecard of Board action on GAC advice since the Beijing Communiqué (referenced in the NGPC resolution) seems to indicate that all GAC advice since then has been accepted in some form or another. As you may be aware, a recent GAC internal review of GAC advice effectiveness found this not to be the case, a conclusion supported by GAC members at the Dublin meeting. With regard to the scorecard system used by the Board, the GAC made a clear and explicit request for the scorecard to include: *a) what elements of GAC advice have been implemented; b) what remains a work in progress; and c) what has not been accepted for implementation, with a clear rationale for not being accepted."* Moreover this scorecard should comply with the following: *"In any instances of complete or partial rejection of the Advice, the GAC urges the NGPC to clarify the milestones intended to be followed in order to seek a potentially "mutually acceptable solution" as mandated by ICANN's Bylaws."*

The current scorecard does not appear to meet these criteria.

Board Response**:** The NGPC has considered all of the GAC's advice. (*See* https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-18oct15-en.pdf and https://www.icann.org/en/system/files/files/gac-advice-scorecard-07oct15-en.pdf). Where indicated that the NGPC accepted items of GAC advice, the NGPC intended to convey that it accepted all of the GAC's advice. If the NGPC intended to completely or partially reject any items of GAC advice, it would clearly convey that decision to the GAC. If the GAC would like to describe where it believes the NGPC has

rejected (partially or completely) the GAC's advice, it would be happy to consider the GAC's view and rationale.

In reviewing the various GAC Communiqués since Beijing (April 2013), the Board notes that on several occasions the GAC raised the issue of safeguards for Category 1 strings. In particular, the GAC Communiqués reference the Category 1 Safeguard advice regarding verification and validation of potential registrants' authorizations, charters, licenses and/or other related credentials for participation in certain gTLDs associated with regulated sectors. The Board notes that the New gTLD Program Committee (NGPC) expressed some concerns about implementing this advice. Although the NGPC did not formally specify or reference the Process for Consultations between the Board and the GAC that should be followed if the Board has concerns about GAC advice, the process was followed. The process requires the Board to provide a written response to the GAC indicating its concerns and a preliminary indication of whether the Board intends to take such advice into account among other things. The process also requires the Board's response to be the subject of an exchange between the Board and the GAC.

As part of the first step of the process, in a letter dated 29 October 2013, the Board Chair (on behalf of the NGPC) informed the GAC how it would implement the Category 1 Safeguard advice. Having explained in the rationale included in the letter that there were implementation difficulties, the NGPC informed the GAC that it could implement the advice by modifying the text of the Category 1 Safeguards as appropriate to meet the spirit and intent of the GAC's advice in a manner that allowed the requirements to be implemented as public interest commitments in Specification 11 of the New gTLD Registry Agreement ("PIC Spec"). The PIC Spec and a rationale explaining the modifications were included in the letter to the GAC. The Board provided the GAC this letter in advance of ICANN 48 in Buenos Aires so that it could be the subject of exchange with the GAC during the Board-GAC meeting.

The NGPC's concerns and the approach to implement the GAC's advice described in the 29 October 2013 letter were the subject of an in-person dialogue with the GAC during ICANN 48. Additionally, the implementation of the Category 1 Safeguard advice was the subject of various written responses from the NGPC (13 June 2014 and 2 September 2014) in response to questions from the GAC seeking clarification of implementation of the safeguard advice, and a teleconference between some members of the GAC and the NGPC on 13 January 2015.

The Board recognizes that the agreed Process for Consultations was not formally observed in this instance. The Board looks forward to discussions regarding potential improvements within the reconstituted BGRI-WG as proposed in the GAC's letter of 29 January 2016.

GAC Question 2 Part 2: With regard to the most recent GAC advice, the GAC Buenos Aires and Dublin Communiqués requested that:

(1) The NGPC create a list of commended PIC examples; and

(2) "Relevant stakeholders should be identified and encouraged to devise a set of PICs…"

The Board scorecard states that in response to (1) a general list of all PICs is being created. This is clearly not the same as creating a "list of commended" PIC examples that could serve as best practice examples. Regarding (2) the NGPC simply refers to forwarding a somewhat related third-party proposal to GNSO and ALAC. This is clearly inconsistent with the GAC advice on this issue, which requested action by the NGPC to "identify" and "encourage" relevant stakeholders to devise a set of PICs that work well.

Board Response: (1) In the NGPC's initial response, it stated:

> *ICANN is in the process of creating a list of the Public Interest Commitments (PICs) included the Registry Agreements for the TLDs associated with 'highly regulated' industries as identified in the NGPC's implementation framework of the GAC's Category 1 Safeguard advice. ICANN anticipates publishing this information on its website. Additionally, the NGPC acknowledges that various industry-led efforts are currently underway to establish a set of initiatives and best practices regarding registry standards of behaviour in online operations. Industry-led initiatives have focused on using a form of "trust mark" that signals to end-users that the website they are engaging with has been vetted by impartial, independent third party evaluators. The NGPC continues to monitor the progress being made in the community on these matters.*
>
> *With respect to identifying relevant stakeholders and encouraging them to devise a set of PICs that work well for the protection of public interests in new gTLDs related to 'highly regulated' sectors, the NGPC notes that on 30 September 2015, the NGPC sent to the GNSO and the ALAC a proposal from a community member to establish a highly-regulated string PICs review committee. In that letter, the NGPC noted that consistent with ICANN's bottom-up multistakeholder model, the proposal might be considered by the GNSO and the ALAC.*

While the NGPC was able to provide a list of voluntary PICs, it did not provide a list of commended PICs. The Board is not in a position to commend PICs or identify best practices unless called on to do so by community-developed recommendations. Consistent with the GAC's advice, the Board can recommend that community reviews of the current round of the New gTLD Program, and ongoing efforts to establish policies and implementation recommendations for the next round, consider whether and how to commend PICs and identify best practices.

(2) We have identified and encouraged relevant stakeholders to devise PICs. There is ongoing community-driven work in ALAC, GNSO, various new gTLD reviews. As with (1), the Board will recommend that each of these groups consider whether and how various elements of the community should devise appropriate PICs for the next round of the New gTLD Program.

GAC Question 3. With regard to industry-led initiatives, you also referred to this in your letter of 28 April 2015, and I note that there was further briefing by staff to the NGPC in September 2015, referenced at https://www.icann.org/resources/board-material/minutes-new-gtld-2015-09-28-en. Such initiatives are certainly welcomed by the GAC. However, the only specific example on which there appears to be any public record is the DNS Seal and Awards project, on which there seems to have been no activity since

2014: referenced at http://dnsseal.wiki/; and in any event this does not address the GAC's requests noted above. Is the Board able to provide any details of current industry-led initiatives, including contact details should the GAC wish to invite a briefing from those responsible?

Board Response: The Domain Name Association (DNA) recently announced its "Healthy Domain Initiative," a voluntary set of "Principles and Programs for Best Practices." According to the DNA, the initiative has the following objectives:

- "Establish a network of industry partners that communicate and collaborate with one another to create and maintain a healthy domain name ecosystem.
- Develop industry-accepted policy best practices principles and specific programs that provide tangible ways of identifying, addressing and promoting standards for healthy domains.
- Demonstrate to the regulatory community our desire to implement best practices and otherwise fulfill our stewardship obligations"

The released documents are intended to begin "a conversation and body of work that leads to:
- Voluntary best practices that continually improve the health of the DNS
- The ability to anticipate and prepare for changes in the industry
- More effective methods of addressing abuse complaints in the Internet community."

More information about the Healthy Domain Initiative can be found at http://www.thedna.org/the-dna-launches-hdi-press-release-2-16-2016/.

In addition, on 9 February 2015, Donuts and the Motion Picture Association of America (MPAA) announced a voluntary agreement to reduce online piracy. Under that agreement, the MPAA will act as a "Trusted Notifier," reporting large-scale infringing websites to Donuts. Donuts will investigate reports to determine whether the website is in fact engaged in illegal activity and decide within its discretion whether to suspend the domain.

GAC Question 4. With regard to reporting on the levels and persistence of abusive conduct, please note that GAC's advice contained in the Dublin Communiqué referred to a wide range of such conduct, including malware, botnets, phishing, pharming, piracy, trademark and/or copyright infringement, counterfeiting and fraudulent or deceptive practices.

Board Response. In response to concerns raised by the community including the GAC, ICANN has required the implementation of the following reporting requirements and safeguards against abusive conduct in the new gTLD namespace. These include security threats, such as pharming, phishing, malware, and botnets. (https://www.icann.org/en/system/files/files/resolutions-annex-1-03feb16-en.pdf). Some of the items in the GAC's list (e.g., piracy, copyright infringement, counterfeiting and fraudulent or deceptive practices unrelated to domain name registrations) appear to be outside our mandate. The Board will discuss this issue at the next available opportunity and will respond to the specific items in this piece of the advice.

<u>GAC Question 5</u>. Taking into account all of the above points, I draw the attention of the Board to the current process for consultations between the Board and the GAC including those required pursuant to Article XI Section 2.1.j of the ICANN Bylaws (attached). You will recall these were agreed following the ATRT1 Report. If the Board can clarify the steps it has taken to comply with these procedures in this instance that would be very helpful.

<u>Board Response</u>: Regarding the GAC's request to clarify steps that the Board has taken to comply with the Board-GAC consultation procedures, please see response to Question 2 above.

Sincerely,

Dr. Stephen Crocker
Chair, ICANN Board Of Directors

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