



## New gTLD Program Explanatory Memorandum

### Withdrawal of Government Support for Registry – Post delegation options

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#### **Background – New gTLD Program**

Since ICANN was founded ten years ago as a not-for-profit, multi-stakeholder organization dedicated to coordinating the Internet's addressing system, one of its foundational principles, recognized by the United States and other governments, has been to promote competition in the domain-name marketplace while ensuring Internet security and stability. The expansion of the generic top-level domains (gTLDs) will allow for more innovation, choice and change to the Internet's addressing system, now represented by 21 gTLDs.

The decision to introduce new gTLDs followed a detailed and lengthy consultation process with all constituencies of the global Internet community represented by a wide variety of stakeholders – governments, individuals, civil society, business and intellectual property constituencies, and the technology community. Also contributing were ICANN's Governmental Advisory Committee (GAC), At-Large Advisory Committee (ALAC), Country Code Names Supporting Organization (ccNSO), and Security and Stability Advisory Committee (SSAC). The consultation process resulted in a policy on the introduction of New gTLDs completed by the Generic Names Supporting Organization (GNSO) in 2007, and adopted by ICANN's Board in June, 2008.

This explanatory memorandum is part of a series of documents published by ICANN to assist the global Internet community in understanding the requirements and processes presented in the Applicant Guidebook, currently in draft form. Since late 2008, ICANN staff has been sharing the program development progress with the Internet community through a series of public comment fora on the applicant guidebook drafts and supporting documents. To date, there have been over 250 consultation days on critical program materials. The comments received continue to be carefully evaluated and used to further refine the program and inform development of the final version of the Applicant Guidebook.

For current information, timelines and activities related to the New gTLD Program, please go to <http://www.icann.org/en/topics/new-gtld-program.htm>.

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

1. This corrected version was posted on 4 June 2010. On May 31 an earlier version was posted by mistake. There are no major content changes.

## Summary of Key Points in this Paper

- As a guiding principle, it is considered important that a government or relevant public authority be able to show through a defined process that a registry operator has deviated from the conditions of original support or non-objection.
- The Registry Agreement will be amended to include a GAC recommended clause requiring that, in the case of a dispute between a relevant government and registry operator, ICANN must comply with a legally binding decision in the relevant jurisdiction.
- The processes and remedies of the Registry Restrictions Dispute Resolution Procedure (RRDRP)<sup>1</sup> are available to governments as written in cases where the geographical name is applied for as a community-based TLD.
- Government approval will be required in cases of change of control, registry transition to a successor operator, and upon agreement renewal.

## INTRODUCTION

At the Nairobi meeting the Board resolved (2010.03.12.25), that ICANN shall also consider whether the Registry Restrictions Dispute Resolution Procedure (or a similar post-delegation dispute resolution procedure) could be implemented for use by government-supported TLD operators where the government withdraws its support of the TLD.

Under the proposed new gTLD process, applications for strings that are sub-national names; capital city names; and city names intending to represent the city require a letter of support or non-objection from the relevant government or public authority. This requirement was developed in response to paragraph 2.2 of the *GAC principles regarding new gTLDs* <[http://gac.icann.org/system/files/gTLD\\_principles\\_0.pdf](http://gac.icann.org/system/files/gTLD_principles_0.pdf)>, which states: ““ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities””.

The [GAC communiqué](#) from Nairobi (10 March 2010) provided the following interpretation of paragraph 2.2 “strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccTLD PDP, and other geographical

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<sup>1</sup> The remedies that can be recommended to ICANN under this procedure include:

- Remedial measures for the registry to employ to ensure against allowing future registrations that do not comply with community-based restrictions;
- Suspension of accepting new domain name registrations in the gTLD until such time as violation(s) is cured; or, in extraordinary circumstances;
- Providing for the termination of a registry agreement.

strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.”

On the basis of this interpretation, which is consistent with input received from the ccNSO, country and territory names will not be available in the new gTLD process, pending the outcome of the IDN ccPDP.

The following information is relevant for those strings, considered geographic names in the context of new gTLDs, which require support or non-objection from the relevant government or public authority and as such the withdrawal of government support is a foreseeable possibility.

## **DISCUSSION**

In a letter to the Board dated [21 November 2009](#), the ccNSO noted that the approach to country and territory names in Draft Applicant Guidebook v3 “... fails to address the multitude of post-delegation issues ICANN is likely to face in connection with the introduction of country/territory designations in the gTLD space. Notwithstanding more than 25 years of experience assigning country-codes using principles reflected in RFC 1591, these issues can still become considerable points of contention in the existing ccTLD space, yet there has been no analysis suggesting that ICANN/IANA has adequate mechanisms for handling these complissues in the context of country/territory designations as gTLDs.”

While noting that the ccNSO’s concern relates to country and territory names, the points raised are still considered relevant to this paper.

In a letter to the Board dated 10 March 2010, the GAC “... urges that mechanisms be established for the resolution of post-delegation deviation from conditions for government approval of or non-objection to the use of a geographical name”, and suggested “... that this could be achieved with the inclusion of a clause in the registry agreement requiring that in the case of a dispute between a relevant Government and the registry operator, ICANN must comply with a legally binding decision in the relevant jurisdiction.”

In the new gTLD space, the starting point for an applicant for a string representing a geographic name as defined in version 4 of the Applicant Guidebook is that it requires the support, or non-objection, of the relevant government or public authority. The letter of support or non-objection is to be provided with the application and must demonstrate the government’s or public authority’s understanding of the string being requested and its intended use as a gTLD. Applicants and governments will be reminded that the applicant must be willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees.

At issue is what occurs if the government withdraws its support for the TLD, either due to its failure to live up to its commitments made in obtaining government approval or for some other reason. What follows is a description of several options for addressing this issue along with

reasoning behind whether that option should be adopted. In addition to these options, there is nothing to prevent a Government or public authority conditioning the granting of their approval of TLD requests to the TLD operator and so can influence policy making in a manner appropriate and acceptable to the government for that TLD. For example, if the geographic name gTLD designates itself as a community TLD it will have restrictions in its agreement consistent with the restrictions associated with its community-based designation. If the TLD strays from those obligations to represent the community (through registration restrictions, for example), the government can lodge an objection in the post delegation dispute process and the registry can be ordered to comply with the restrictions in the agreement or face sanctions. To ensure this path is available, the government could condition its approval of the TLD application upon the TLD identifying itself as a community TLD so that the government could lodge an objection if the registry operator does not live up to its obligations.

## **OPTIONS**

### **Government Withdrawing Its Support Can Cause Termination or Transfer of Registry**

Both the GAC and the ccNSO comments suggest that a mechanism must be in place in the event that a government withdraws its support of a geographic TLD to address the concerns of the government. The government may withdraw its support for a variety of reasons, for example the registry fails to live up to the registration restrictions or amends the reserved names agreed to with the government. Those restrictions may have been a pre-requisite to government approval of the gTLD.

The relevant government or public authority could request (in the form of a letter to ICANN) the termination of the TLD operation or the change of control to an entity designated by the government because the current operator is in breach of its agreement with the government. However, as a guiding principle, it is considered important that a government or relevant public authority be able to show through a defined process that a registry operator has deviated from the conditions of original support or non-objection.

For example, this option could be considered similar to a request for re-delegation, performed in accordance with principles contained in RFC1591. The government's view is one element of considering such a request; another important consideration is evidence of support from the local Internet community for any request for re-delegation.

This option is not recommended as it lacks adequate safeguards, particularly for the registry operator, and could be subject to abuse.

### **GAC Recommendation: Registry Agreement Clause**

The GAC has urged that mechanisms be established for the resolution of post-delegation deviation from conditions for government approval of or non-objection to the use of a geographical name, and suggested that this could be achieved by the inclusion of a clause in the

registry agreement requiring that in the case of a dispute between a relevant Government and the registry operator, ICANN must comply with a legally binding decision in the relevant jurisdiction.

The GAC's suggestion to include a clause in the registry agreement is acceptable given that a legal process has been undertaken to resolve the dispute between the government and the registry.

### **Registry Restrictions Dispute Resolution Procedure**

The Registry Restrictions Dispute Resolution Procedure (RRDRP) is an avenue of recourse available to governments and public authorities to address non-compliance of the registry operator with the community restrictions proposed in the application. Currently, the community restrictions could relate to who will be eligible to register, what strings will be available for registration and how domains may be used.

The remedies available under this procedure include:

- Remedial measures for the registry to employ to ensure against allowing future registrations that do not comply with community-based restrictions;
- Monetary sanctions;
- Suspension of accepting new domain name registrations in the gTLD until such time as violation(s) is cured; or, in extraordinary circumstances;
- Providing for the termination of a registry agreement.

Governments may resist such a process, claiming that because they have a sovereign right over a name, as evidenced by the requirement for their support, they should be able to withdraw their support at any time. However, the RRDRP is considered a fair way in which to manage disputes while ensuring that the government or public authority does not have the unilateral ability to withdraw their support and demand a change of operator outside of a legal process.

Given the GAC's previous concerns that governments should not be required to pay a fee associated with an objection during the application process, it is anticipated that the GAC will raise concerns that governments should not be required to pay a fee to file a complaint under the RRDRP; however, given that the prevailing party will be refunded its dispute fees, this may alleviate some of the concern. Further, it is anticipated that the RRDRP would be more cost effective than pursuing legal action through local courts.

An Explanatory Memorandum has been posted on the RRDRP and is available at: <http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm>.

### **Reconfirm support or non-objection at the time of contract renewal**

To confirm the government's continuing support for the registry, a further option is to seek the government's support (or perhaps at least its non-objection) on contract renewal. Currently,

contract renewal is every 10 years, but this length could be shortened to 5 years to increase the vulnerability of operators of country-name gTLDs to losing their right to operate the gTLD should they not maintain the favor of those in control of the government.

### **Registry Transition Processes**

These processes are being developed and will ensure that the relevant government or public authority does support, or does not object, to the new registry where transition is required for a geographic TLD (as defined in the Applicant Guidebook). An explanatory memorandum on this topic has also been published for public comment: <http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm>.

### **RECOMMENDATIONS**

As a guiding principle, it is considered important that a government or relevant public authority be able to show through a defined process that a registry operator has deviated from the conditions of original support or non-objection. Both the GAC's recommendation for a contract clause addition, and the RRDRP meet this principle and are recommended as the solutions to resolving post-delegation disputes that may arise between the relevant government and public authority that supported, or did not object to, the geographic name new gTLD application.

- I. The registry agreement will include the GAC recommended clause.
- II. The processes and remedies of the Registry Restrictions Dispute Resolution Procedure (RRDRP)<sup>2</sup> are available to governments as written in cases where the geographical name is applied for as a community-based TLD.
- III. Government approval will be required in cases of change of control, registry transition to a successor operator, and upon agreement renewal.
- IV. Withdrawal of government or relevant public authority support for the registry will not result in an automatic re-delegation or termination.

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<sup>2</sup> The remedies that can be recommended to ICANN under this procedure include:

- Remedial measures for the registry to employ to ensure against allowing future registrations that do not comply with community-based restrictions;
- Suspension of accepting new domain name registrations in the gTLD until such time as violation(s) is cured; or, in extraordinary circumstances;
- Providing for the termination of a registry agreement.