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TO: ICANN New gTLD Subsequent Procedures PDP Working Group
FROM: Carmen A. Catizone, MS, RPh, DPh, Executive Director/Secretary
DATE: May 17, 2017
RE: Comments in Response to GNSO Community Comment 2

The [National Association of Boards of Pharmacy](http://www.nabp.pharmacy)[®] (NABP[®]) commends the good work that the New gTLD Subsequent Procedures Policy Development Process (PDP) Working Group (WG) has put into compiling GNSO Community Comment 2 (CC2) and appreciates the opportunity to comment on these questions.

NABP is the independent, international, and impartial association that assists its member boards and jurisdictions for the purpose of protecting the public health. NABP is also the registry operator for the [.pharmacy Top-Level Domain](http://www.nabp.pharmacy) (TLD), as well as a founding member of the [Verified Top-Level Domains \(vTLD\) Consortium](http://www.nabp.pharmacy). As stated in the Consortium [charter](http://www.nabp.pharmacy), a vTLD requires verification of eligibility prior to use, adherence to standards, autonomy to take back a name, and ongoing verification. As a verified TLD, .pharmacy identifies online pharmacies and pharmacy-related websites around the globe as safe and legitimate

2.9.1

In response to CC2 question 2.9.1, which states:

The Final Issue Report suggested that in considering the public interest the WG think about concerns raised in GAC Advice on safeguards, the integration of Public Interest Commitments (PICs), and other questions around contractual commitments. Have PICs served their intended purpose? If not, what other mechanisms should be employed to serve the public interest? Please explain and provide supporting documentation to the extent possible.

NABP believes that the public interest would best be served by ensuring that new generic top-level domains (gTLDs) relating to health and medicine are operated responsibly with regard to patient safety. At a time when research conducted by NABP and others shows that 96% of websites selling prescription drugs online do so illegally – many of them selling unapproved, substandard, and counterfeit medicine – voluntary commitments may not go far enough. It is crucial that registries within the health and medical marketplace have mandatory policies in place to screen online drug sellers and other health practitioner websites for proper credentials.

Furthermore, NABP agrees with the position of the vTLD Consortium that subsequent procedures for new gTLDs should require the registry to operate as a verified TLD if it: 1. is linked to regulated or professional sectors; 2. is likely to invoke a level of implied trust from consumers; or 3. has implications for consumer safety and wellbeing. Verified TLDs contribute to improved consumer protection through registrant verification prior to domain name use and through ongoing monitoring of the domain space for compliance with registry standards.

3.1.9

In response to CC2 question 3.1.9, which states:

Many community members have highlighted the high costs of objections. Do you believe that the costs of objections created a negative impact on their usage? If so, do you have suggestions for improving this issue? Are there issues beyond cost that might impact access, by various parties, to objections?

NABP recommends that the cost of a community-based objection be reduced to avoid being an obstacle preventing communities from filing objections. According to the recent Council of Europe report, “Applications to ICANN for Community-Based New Generic Top Level Domains (gTLDs): Opportunities and Challenges from a Human Rights Perspective,” the cost to file a community-based objection during the 2012 round amounted to “hundreds of thousands of dollars for a single objection.” The amount was even higher if the objector opted for a three-person panel of evaluators. This expense is prohibitive – especially for legitimate long-standing nonprofit communities. As stated in the Council of Europe report: “non-profits were severely limited in filing objections due to the excessive costs.” NABP supports to Council of Europe report recommendation to ICANN to “lower the costs for Community Objection” for legitimate industry associations and communities.

Further complicating the matter is that the cost to file a community-based objection was not clear because it was based on variables including the time the evaluators took to consider the matter. Nor is an approximate cost disclosed in the Applicant Guidebook. NABP supports the Council of Europe report recommendation to ICANN to “provide clarity on the expected costs for Community Objection.” It should be possible to at least provide guidance on approximate costs based on an assessment of experiences of round 1.

Rules pertaining to the objector’s standing contributed to the cost of a community-based objection being prohibitive. Established institutions associated with a clearly-defined community could file a community-based objection only as an individual organization, not jointly with other organizations in the same community. If the objector’s goal is to prove substantial opposition from a significant portion of the community, it seems logical for ICANN to allow an objection to be filed jointly by organizations within the community. For this reason, NABP supports the Council of Europe report recommendation to ICANN to “assess whether it is desirable and feasible to open up the possibility to collectively file a Community Objection.”

3.1.11

In response to CC2 question 3.1.11, which asks:

What improvements and clarifications should be made to GAC Advice procedures? What mitigation mechanisms are needed to respond to GAC Advice? How can timelines be made more precise?

NABP believes there was a lack of clarity and predictability with the issuance and implementation of GAC Advice that should be avoided in subsequent procedures. Introducing additional requirements in the form of GAC Advice for certain applicants midway through the evaluation process was highly disruptive and caused considerable delays and a great deal of uncertainty as to what the next steps would be and when they would take place.

To prevent delays and ambiguities in the application evaluation process, GAC Advice and the ICANN's Board's resulting policy decisions should be determined prior to the launch of New gTLD subsequent procedures. While this cannot necessarily be done in relation to individual potential TLD strings, it should be possible to do so in relation to particular categories where there may be sensitivity. Understandably issues may arise that cannot be predicted, but, with regard to policy decisions for sensitive and highly regulated strings, for example, these negotiations can be conducted in advance and should be firmly established and publicized prior to new applications being accepted.

Additionally, in freezing groups of applications by category, it was apparent that the GAC had not actually read the affected applications prior to issuing its Advice. This is evidenced by the fact that the .pharmacy application already included safeguards such as those advised by the GAC. Failure of the GAC either to read the application and/or to have a process whereby misunderstandings could be clarified resulted in a substantial delay to the processing of NABP's .pharmacy application. In subsequent rounds, if last-minute application freezes should become necessary, the GAC should ensure that it understands the application(s) in question. In addition, there should be processes introduced whereby an applicant can communicate directly with the GAC member(s) having an objection to address any misunderstandings.

3.3.3

In response to CC2 question 3.3.3, which states:

CPE [Community Priority Evaluation] was the one instance in the New gTLD Program where there was an element of a comparative evaluation and as such, there were inherently winners and losers created. Do you believe there is a need for community priority, or a similar mechanism, in subsequent procedures? Do you believe that it can be designed in such a fashion as to produce results that are predictable, consistent, and acceptable to all parties to CPE? The GNSO policy recommendations left the issue of a method for resolving contention for community claimed names to Board and the

implementation. Do you believe that a priority evaluation is the right way to handle name contention with community applicants? Should different options be explored? If so which options should be explored and why?

NABP believes that priority evaluations are the right way to handle name contention with community applicants. Contention resolution between a community-based application and an individual application should be a utilitarian decision; all else being equal, the needs of many outweigh the needs of one. In other words, a community application is more likely to serve as a public good than an individual application. That said, however, the parameters of a *community* and the public good it serves need to be more clearly defined to support consistency in implementation. With these factors in mind, NABP supports the Council of Europe report recommendation to ICANN to “Provide clarity on the public interest values community TLDs are intended to serve. . . . These public interest values should include: the protection of vulnerable groups or minorities; pluralism, diversity and inclusion; and consumer or internet user protection.”

3.3.5

In response to CC2 question 3.3.5, which states:

Besides CPE, are there other aspects of the New gTLD Program related to communities that should be considered in a more holistic fashion? For instance, in the 2012 round, the claim to support a community is largely only relevant when resolving string contention. Do you think community applications should be structured and/or evaluated differently than other applications?

NABP believes that community applications should be evaluated somewhat differently than other applications. Applicants claiming to support a community should be required to have policies in place to verify that registrants within the gTLD are bona fide members of the community represented by the gTLD. In the case of strings relating to health and medicine, for instance, it is crucial that these registries have policies in place to screen registrants for proper credentials.

3.4.1

In response to CC2 question 3.4.1, which states:

There was a perception that consistency and predictability of the string similarity evaluation needs to be improved. Do you have examples or evidence of issues? If so, do you have suggested changes to the policy recommendations or implementation that may lead to improvement? For instance, should the standard of string confusion that the evaluation panel used be updated or refined in any way?

NABP points out that string confusion may also arise when two strings are synonyms, even if they are not forms of the same word, eg, *doctor* and *physician*. If one of those gTLDs verifies and monitors the

eligibility of its registrants, imparting a level of consumer trust in the TLD, and the other gTLD does not, internet users may mistakenly assume that the latter is equally as trustworthy as the former, when it is not. Such a misunderstanding could endanger consumer safety. For this reason, NABP recommends that, where there is a verified TLD in a particular industry sector, any string matching another applied for string or an existing string (including translations thereof) in the same industry sector should have, *at a minimum*, the same or substantially similar restrictions as the verified TLD.

3.4.3

In response to CC2 question 3.4.3, which states:

The WG and the wider community have raised concerns specifically related to singles and plurals of the same word. Do you have suggestions on how to develop guidance on singles and plurals that will lead to predictable outcomes? Would providing for more predictability of outcomes unfairly prejudice the rights of applicants or others?

It is the opinion of NABP that the singular and plural forms of the same word (including translations thereof) should not be allowed to coexist in the domain name system to avoid confusion resulting from such similar strings. Applications for single/plural variations of the same string should be placed in a contention set, and applications for a single/plural variation of an existing string should not be accepted.

Allowing plural or singular versions of strings, in the next round, that have already been delegated would severely reduce the value of the existing TLD and erode the trust of consumers. The avoidance of such confusingly similar strings is especially important when an existing string represents a verified gTLD, such as .pharmacy, with policies in place to ensure the eligibility of registrants to buy and maintain domains within the gTLD. A plural version of the same string, eg, .pharmacies, would confuse consumers. Such confusion could be dangerous if the existing string is a verified TLD, imparting a level of consumer trust, and the new one is not. Consumers may mistakenly believe that the new string is as trustworthy as the original when it is not.