

Janis Karklins
Chairman
Governmental Advisory Committee

Paris, 8 May 2009

Dear Janis,

The GNSO Council has read your letter to ICANN CEO and President Paul Twomey dated April 24, 2009 with interest.

As you know, the current program for the introduction of new gTLDs stems from recommendations made by the GNSO and presented to the ICANN Board in September 2007. These recommendations were crafted through a bottom-up consultation process involving all the major ICANN stakeholders including the GAC. The GAC and the GNSO Council have had in-depth discussions on this topic since the Board approved the new gTLD program at its Paris meeting in June 2008. We look forward to continuing working together in this way as the new gTLD program comes to fruition.

In this spirit of collaboration and mutual discussions, the Council wishes to comment some of the points raised in your letter to Paul Twomey.

The Council understands the need to provide adequate protection for existing legal rights. Such protection is defined in GNSO Recommendation 3 and, as it pertains to geographical names, is one of the fundamental principles included in the Draft Applicant Guidebook as prepared by ICANN staff. Furthermore, Implementation Guideline P referring to Recommendation 20 states that opposition to a TLD string must be evaluated by a dispute resolution panel constituted for that purpose. In light of this, the GAC request to allow governments or the GAC itself to object to an application without going through the formal objection process may be seen as a way to circumvent this process. The Council feels there must be a level playing field for all participants in the new gTLD program and that giving certain parties privileged access to objection processes may be detrimental to the program as a whole.

The GAC letter states that geographical names are special cases deserving of special rules. The Council wishes to point out that this is already the case as geographical names are afforded special protection under the Draft Applicant Guidebook which in its final version will become the set of guidelines any prospective applicant is to follow in order to be granted the right to run a TLD by the ICANN Board.

The Council also views with some concern the GAC request to have names on specific ISO lists reserved at the second level at no cost for governments on all the new gTLDs. No such restrictions are imposed on existing gTLD registries and we feel it would be inappropriate to attempt to use the new gTLD program to introduce new contractual obligations previously not requested or deemed necessary.

Another contractual obligation suggested in your letter would allow governments to force any gTLD registry to suspend any name at the second level which the government

in question objects to. The Council is worried that this would in effect give any government veto power over any registration made at the second level, without giving the registrant in question any possibility of recourse. We believe that such veto power is inconsistent with the rights determination procedures of the UDRP, including the possibility of referring disputes to national courts. Domain names support such a wide variety of activities on the Internet that giving any entity such commanding veto power could result in unwarranted disruption to essential web services without the provider of those services being able to prevent this. Both service providers and service users (i.e. all Internet users) would thus find themselves victims of this disruption. If the domain name suspension was then found, at a later date, to have been abusive, the damage would have been done.

Furthermore, such a scheme would seem to overrule any person's natural right to defend himself if accused of improper registration of a domain name or infringement of a third party's rights through his registration of that domain name.

Once again, the Council understands the GAC's desire to provide adequate protection for geographical names and to defend governments' rights. We look forward to being able to continue working with the GAC to ensure this is done, while at the same time protecting the rights of all registrants and prospective TLD operators and providing them with equal access and opportunities to the new gTLD program. GNSO Principle A states that new gTLDs must be introduced in an orderly, timely and predictable way. Achieving this means taking the proper care to protect existing rights and prevent abuse, but it also means ensuring that privileged powers of veto or domain name suspension are not afforded any one group of stakeholders that make up the Internet community. Doing so risks delaying the program unduly and giving some better access to new TLDs than others.

Yours sincerely,

The GNSO Council.