

## Proposed Redlines to [Applicant Guidebook](#): GAC Advice/Early Warnings

### ~~XX~~ GAC Early Warnings Overview

After applications are publicly posted, ICANN's Governmental Advisory Committee (GAC) members may issue a GAC Early Warning notice concerning an application according to the guidelines described in the sections below.<sup>1</sup> A GAC Early Warning notice provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments, for example, by potentially violating national law or raising sensitivities, which must be specified in the Early Warning notice.<sup>2</sup>

The GAC Early Warning is a notice only. It is not a formal objection, nor does it have an immediate impact on the application. However, applicants should take GAC Early Warnings seriously as these signal the likelihood that the New gTLD application could be the subject of GAC Advice (see subsection ~~xx~~) or of a formal objection (see subsection ~~xx~~) at a later stage in the process.

While definitive guidance has not been issued by the GAC on what constitutes a sensitive string, the GAC has indicated during the 2012 round that strings that could raise sensitivities include those that "purport to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)" and "those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse."<sup>3</sup> During the 2012 round, the GAC also issued advice on categories of strings which impacted several applications.<sup>4</sup> While this information is pertinent to

<sup>1</sup> For more information on the GAC Early Warnings issued during the 2012 new gTLD round, please see: <https://gac.icann.org/activity/gac-early-warnings>

<sup>2</sup> ICANN org reserves the right to extend the period given for GAC members to provide Early Warnings (above and beyond the [Community Input period](#)).

<sup>3</sup> While definitive guidance has not been issued, the GAC has indicated that strings that could raise sensitivities include those that "purport to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)" and "those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse." See "GAC indicative scorecard on new gTLD outstanding issues listed in the GAC Cartagena Communiqué" at <https://archive.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>

<sup>4</sup> In the Beijing Communiqué, the GAC advised the ICANN Board that "strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws." The GAC proposed specific safeguards that would apply to a broad category of strings related to "consumer protection, sensitive strings, and regulated markets." As a result of the advice, additional safeguards were added to Specification 11 of the Registry Agreement. For these applications, these safeguards are mandatory requirements. See <https://newgtlds.icann.org/en/applicants/gac-advice/cat1-safeguards> and <https://newgtlds.icann.org/en/applicants/gac-advice/cat2-safeguards>

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**Commented [1]:** Recommendation 30.5: The Working Group recommends that GAC Early Warnings are issued during a period that is concurrent with the Application Comment Period.<sup>200</sup> To the extent that there is a longer period given for the GAC to provide Early Warnings (above and beyond the Application Comment Period), the Applicant Guidebook must define a specific time period during which GAC Early Warnings can be issued.

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GAC advice: "strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws." And that specific safeguards should apply to a broad category of strings related to "consumer protection, sensitive strings, and regulated markets."

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the 2012 round, applicants may wish to take this information into account when determining how to respond to the GAC Early Warning.

To reduce the possibility of receiving a GAC Early Warning or GAC Advice regarding an application, all applicants are encouraged to identify potential sensitivities in advance of application submission, and to work with the relevant parties (including governments) beforehand to mitigate concerns related to the application. Note that while a GAC Early Warning is a potential indicator that an application could be the subject of GAC Advice on New gTLDs, an Early Warning is not required for the GAC to issue [Advice](#).

### ~~XX~~ Submissions of GAC Early Warning

As part of the GAC Early Warnings process, GAC members with concerns about an application will communicate their intention to submit a GAC Early Warning to the GAC Chair. The relevant GAC member(s) then complete(s) a GAC Early Warning form and submit(s) it to the GAC Chair. The completed GAC Early Warning form is sent to the ICANN Board by the GAC Chair. Note that GAC Early Warnings do not need to be consolidated by the GAC Chair before being provided to the Board.

ICANN will notify applicants of GAC Early Warnings as soon as practicable after receipt from the GAC. The GAC Early Warning notice may include a nominated point of contact for further information. Applicants that receive GAC Early Warnings are encouraged to enter dialogue directly with relevant parties (including governments) as soon as possible to address the concerns voiced in the GAC Early Warnings. A brief description of each step of the GAC Early Warnings process is below.

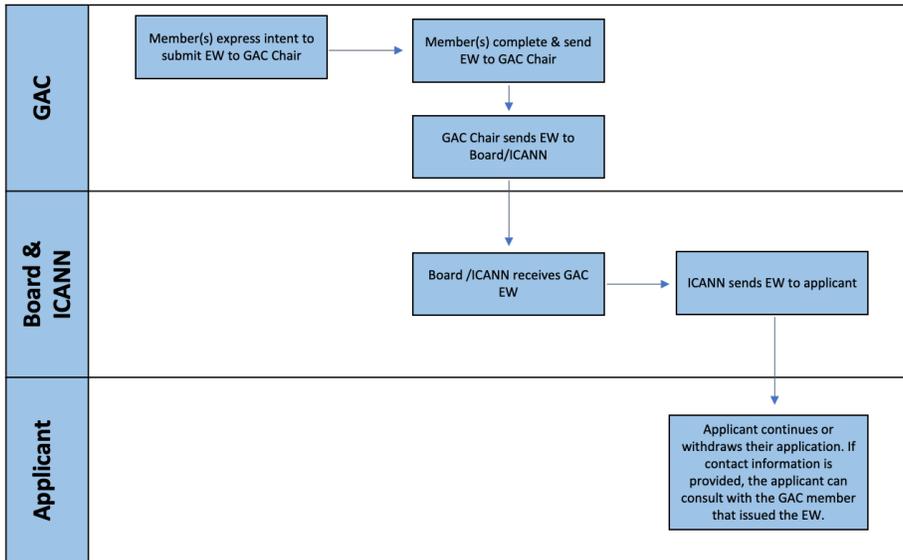
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**[XX]** Other Mechanisms for GAC Members to Submit Concerns About an Application

While the GAC Early Warning process is available for members of the GAC to submit their concerns about an application, this does not preclude governments from using other mechanisms available to the public. [These mechanisms could include, utilizing the Application Comment Forum \(ACF\)](#), to communicate concerns, or communicating directly to applicants using the contact information posted in the application, for example, to send a notification that an applied-for gTLD string might be contrary to a national law, and to try to address any concerns with the applicant. Note, however, that concerns submitted via these mechanisms do not constitute a GAC Early Warning.

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GAC consensus is not required for GAC Member Early Warnings to be issued. Governments issuing Early Warnings must include a written explanation describing why the GAC Early Warning was submitted and how the applicant may address the GAC member's concerns, if applicable, as well as identify the objecting [GAC member\(s\)](#).

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**[XX]** Options for Applicants in Addressing a GAC Early Warning

Upon receipt of a GAC Early Warning, the applicant has three options, [as set out below](#): (1) the applicant may elect to withdraw the application for a partial refund (see subsection **xx**), (2) the applicant may elect to address the GAC member's concern, or (3) the applicant may elect to do nothing and continue with the application as is.

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Commented [9]: Recommendation 30.6: Government(s) issuing Early Warning(s) must include a written explanation describing why the Early Warning was submitted and how the applicant may address the GAC member's concerns.

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**Option 1** -- To qualify for a partial refund, the applicant must [notify](#) ICANN of its election to withdraw the application. Please refer to subsection [\[xx\]](#) of the Applicant Guidebook for more information on the withdrawal process and schedule of refunds.

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**Option 2** -- Applicants that wish to continue with their application may meet with representatives from the relevant government(s) on their own accord to try to address the concern.

**Option 3** -- Applicants may also elect to not take action and continue with their application as is. While applicants are generally encouraged to engage with the relevant GAC member(s) to address any concerns raised during the early warning phase, failure to do so may or may not result in formal advice.

### [\[xx\]](#) GAC Advice on New gTLDs

ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on New gTLD applications is intended to address applications that are identified by governments to be problematic, for example, that potentially violate national law or raise sensitivities.

[\[xx\]](#) Understanding how [ICANN will provide notice to](#) applicants [if the Board](#) receives GAC Advice [about an application](#)

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**Commented [10]:** Recommendation 30.4: Section 3.1 of the 2012 Applicant Guidebook states that GAC Consensus Advice "will create a strong presumption for the ICANN Board that the application should not be approved." Noting that this language does not have a basis in the current version of the ICANN Bylaws, the Working Group recommends omitting this language in future versions of the Applicant Guidebook to bring the Applicant Guidebook in line with the Bylaws language.<sup>198</sup> The Working Group further notes that the language may have the unintended consequence of hampering the ability of the Board to facilitate a solution that mitigates concerns and is mutually acceptable to the applicant and the GAC as described in the relevant Bylaws language. Such a solution could allow an application to proceed. In place of the omitted language, the Working Group recommends including in the Applicant Guidebook a reference to applicable Bylaws provisions that describe the voting threshold for the ICANN Board to reject GAC Consensus Advice.

The GAC can provide advice to the ICANN Board on any application, as outlined in the ICANN Bylaws. While the GAC is encouraged to submit advice during the [Community Input period](#), to allow for the Board to consider the GAC's advice during the evaluation process, the GAC is not prevented from submitting advice on a particular application or aspect of the New gTLD Program at any time, however, the Board may not always be able to take action on the advice.<sup>5</sup>

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GAC Advice must clearly state that it is GAC consensus advice, include a clearly articulated rationale<sup>6</sup> [be limited to the scope set out in the applicable Bylaws provisions, and elaborate on any "interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues."](#)<sup>7</sup>

**Commented [11]:** Recommendation 30.3: As stated in the ICANN Bylaws, GAC Consensus Advice must include a clearly articulated rationale.<sup>196</sup> The Working Group recommends that GAC Consensus Advice be limited to the scope set out in the applicable Bylaws provisions and elaborate on any "interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues."

<sup>5</sup> Note that the ICANN Bylaws Section 12.2 (a) details all relevant procedures concerning GAC Consensus Advice and that this Bylaws Section determines how the Board engages with GAC Consensus Advice.

<sup>6</sup> Section 12.3. PROCEDURES of the ICANN Bylaws states: "... each Advisory Committee shall ensure that the advice provided to the Board by such Advisory Committee is communicated in a clear and unambiguous written statement, including the rationale for such advice." See <https://www.icann.org/resources/pages/governance/bylaws-en>.

<sup>7</sup> Section 12.2(a)(i) of the ICANN Bylaws states: "The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly

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Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the advice and notify the relevant applicant(s) promptly.

The Board will consider the GAC Advice on New gTLDs in accordance with the Bylaws.<sup>8</sup> Before acting on the advice, the Board may, but is not required to, consult with independent experts in cases where the issues raised in the GAC Advice are pertinent to one of the subject-matter areas of the objection procedures. Depending on the action ultimately taken by the Board on the advice, the application may not be able to proceed.

The applicant will have a period of 21 calendar days from the time the Board acknowledges receipt of the advice in which to submit a response via the application system and ICANN org will make responses available to the ICANN Board. An applicant that wishes to withdraw an application should refer to subsection [xx] of the Applicant Guidebook for more information on the withdrawal process and schedule of refunds.

An applicant could also elect to change their application, such as by proposing the addition or modification of Registry Voluntary Commitments to address GAC Consensus Advice. See section xx for more information. Relevant GAC members are strongly encouraged to make themselves available during a specified period of time for direct dialogue with applicants impacted by GAC Early Warnings, GAC Consensus Advice, or comments to determine if a mutually acceptable solution can be found.

matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues." See <https://www.icann.org/resources/pages/governance/bylaws-en>.

<sup>8</sup> Note that the ICANN Bylaws Section 12.2 (a) details all relevant procedures concerning GAC Consensus Advice and that this Bylaws Section determines how the Board engages with GAC Consensus Advice.

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**Commented [14]:** Recommendation 30.7: Applicants must be allowed to change their applications, including the addition or modification of Registry Voluntary Commitments (RVCs, formerly voluntary PICs), to address GAC Early Warnings, GAC Consensus Advice, and/or other comments from the GAC. 201 Relevant GAC members are strongly encouraged to make themselves available during a specified period of time for direct dialogue with applicants impacted by GAC Early Warnings, GAC Consensus Advice, or comments to determine if a mutually acceptable solution can be found.

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**Commented [18]:** In this section, potential applicants should be advised that Registry Voluntary Commitments are subject to public comment and to review as to whether the RVC is in scope for enforcement in accordance with ICANN's Mission and ByLaws. See clarifying statement of the GNSO Council in this regard. Applicants need to know this information when working out arrangements with the GAC.

**Commented [19]:** We have referenced the PICs/RVCs section so that we don't have to come back and update this wording if we end up with slightly different language about PICs/RVCs once we get to the end of the community consultation process.