
Chapter 3: Objections Procedures

In its Final Report on the Introduction of New Generic Top-Level Domains, the GNSO recommended that standards be developed to protect certain rights and interests within the New gTLD Program (see Recommendations 2, 3, 6, and 20).¹³² The GNSO also recommended that, “Dispute resolution and challenge processes must be established prior to the start of the process” (see Recommendation 12). In the GAC Principles regarding New gTLDs, Principle 3.3 stated, “If individual GAC members or other governments express formal concerns about any issues related to new gTLDs, the ICANN Board should fully consider those concerns and clearly explain how it will address them.”¹³³

In support of the guidance from the GNSO and the GAC, Module 3 of the Applicant Guidebook defined two processes: the GAC Advice process and the Objections and Dispute Resolution process. Through the GAC Advice process, the GAC could provide advice on new gTLDs to the ICANN Board concerning specific applications. Through the Objections process, parties with standing had the opportunity to file formal objections with designated third-party dispute resolution providers on specific applications based on the following grounds: (i) String Confusion; (ii) Legal Rights; (iii) Limited Public Interest; and (iv) Community.

The GAC issued advice to the ICANN Board through multiple GAC Communiqués beginning with the 11 April 2013 Beijing Communiqué.¹³⁴ The advice that the GAC issued included advice on specific applications, for broad categories of (applied-for) strings, and for all applications. Section 3.1: GAC Advice of this report discusses the various GAC Advice and how the ICANN Board addressed the advice.

There were 263 formal objections filed across the four objection grounds on 205 new gTLD applications. Objections were considered by experts in a dispute resolution proceeding defined in the AGB and supplemented by the dispute resolution service providers’ own procedures. There were challenges in implementing some of the dispute resolution standards because the objection standards were new and untested concepts in this round of new gTLD applications. Section 3.2: Objections and Dispute Resolution of this report discusses the various objection grounds and standards as well as the dispute resolution process.

¹³² ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>

¹³³ Governmental Advisory Committee. (28 March 2007) GAC Principles Regarding New gTLDs. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/gac-principles-regarding-new-gtlds-28mar07-en.pdf>

¹³⁴ Governmental Advisory Committee. (11 April 2013) GAC Communiqué – Beijing, People’s Republic of China. Retrieved from <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>

3.1 GAC Advice

3.1.1 Introduction

The GAC Advice process detailed in the Applicant Guidebook described how ICANN’s Governmental Advisory Committee (GAC) could provide the ICANN Board with Advice regarding new gTLDs that the GAC thought might be problematic. In advance of the issuance of GAC Advice, the GAC Early Warning process enabled members of the GAC to notify an applicant that its application was seen as potentially sensitive or problematic by one or more governments. This section of the Program Implementation Review report discusses the following aspects of GAC Advice:

- GAC Early Warning
- GAC Advice

3.1.2 Relevant Guidance

The following guidance is relevant to the topic of GAC Advice and will be discussed in further detail in Sections 3.1.3 and 3.1.4 of this report:

- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process¹³⁵
- Applicant Guidebook, Section 3.1: GAC Advice on New gTLDs
- ICANN Board New gTLD Program Committee Resolution 2014.06.04.NG01 (4 June 2013): Consideration of Non-Safeguard Advice in the GAC’s Beijing Communiqué¹³⁶
- ICANN Board New gTLD Program Committee Resolution 2013.09.10.NG03 (10 September 2013): GAC Communiqué Durban – Scorecard¹³⁷
- ICANN Board New gTLD Program Committee Resolution 2013.09.28.NG02 (28 September 2013): Remaining Items from Beijing and Durban GAC Advice¹³⁸
- ICANN Board New gTLD Program Committee Resolution 2014.02.05.NG01 (5 February 2014): Remaining Items from Beijing, Durban and Buenos Aires GAC Advice: Updates and Actions¹³⁹
- ICANN Board New gTLD Program Committee Resolution 2013.04.04.NG01-2013.04.04.NG04 (4 April 2014): Applications for .vin and .wine/GAC Communiqué Singapore¹⁴⁰

¹³⁵ ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

¹³⁶ ICANN. (4 June 2013) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-04-en#1.a>

¹³⁷ ICANN. (10 September 2013) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-09-10-en#2.c>

¹³⁸ ICANN. (28 September 2013) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-09-28-en#2.a>

¹³⁹ ICANN. (5 February 2014) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a>

¹⁴⁰ ICANN. (4 April 2014) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-04-04-en>

- ICANN Board New gTLD Program Committee Resolution 2014.05.04.NG02 (14 May 2014): Remaining Items from Beijing, Durban, Buenos Aires, and Singapore GAC Advice¹⁴¹
- ICANN Board New gTLD Program Committee Resolution 2014.05.04.NG03 (14 May 2014): GAC Advice on .AMAZON (and related IDNs)¹⁴²
- ICANN Board New gTLD Program Committee Resolution 2014.09.08.NG02 (8 September 2014): Remaining Items from Beijing, Durban, Buenos Aires, Singapore, and London GAC Advice¹⁴³
- ICANN Board New gTLD Program Committee Resolution 2015.06.21.NG02 (21 June 2015): GAC Category 2 Safeguard Advice – Exclusive Generic TLDs¹⁴⁴

3.1.3 Background

The ICANN Bylaws define several Advisory Committees that provide advice to the ICANN Board. The GAC is one of these committees.

The ICANN Bylaws, Article XI, state:¹⁴⁵

The Governmental Advisory Committee should 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.

As an Advisory Committee, the GAC has a set of Operating Principles, which define GAC Advice as follows:¹⁴⁶

Principle 47

The GAC works on the basis of seeking consensus among its membership. Consistent with United Nations practice, consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. Where consensus is not possible, the Chair shall convey the full range of views expressed by members to the ICANN Board.

¹⁴¹ ICANN. (14 May 2014) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.a>

¹⁴² ICANN. (14 May 2014) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b>

¹⁴³ ICANN. (8 September 2014) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-09-08-en#1.b>

¹⁴⁴ ICANN. (21 June 2015) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a>

¹⁴⁵ ICANN. (Amended 30 July 2014) Bylaws for Internet Corporation for Assigned Names and Numbers, Article XI: Advisory Committees. Retrieved from <https://www.icann.org/resources/pages/governance/bylaws-en#XI>

¹⁴⁶ ICANN Governmental Advisory Committee. (October 2011) Governmental Advisory Committee (GAC) - Operating Principles: Article XII – Provision of Advice to the ICANN Board. Retrieved from <https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles#GACOperatingPrinciples-XII>

Principle 48

The GAC may deliver advice on any other matter within the functions and responsibilities of ICANN, at the request of the ICANN Board or on its own initiative. The ICANN Board shall consider any advice from the GAC prior to taking action.

Within the context of the New gTLD Program, the AGB described the role of the GAC in issuing GAC Early Warning and GAC Advice.

The GAC Early Warning process enabled individual governments within the GAC to notify an applicant that its application was seen as potentially sensitive or problematic by one or more governments.¹⁴⁷ If an applicant received an Early Warning, the applicant could use this information to work with the concerned government(s) or could withdraw the application within 21 days of the issuance of the Early Warning for an 80% refund of the application fee.¹⁴⁸

GAC Early Warnings were issued for 187 applications on 20 November 2012.¹⁴⁹ Two of the 187 applications that received GAC Early Warning withdrew their applications within 21 days of receiving GAC Early Warning and received the 80% refund.

The GAC Advice process was “intended to address applications that [were] identified by governments to be problematic, e.g., that potentially violate[d] national law or raise[d] sensitivities.”¹⁵⁰ The design of GAC Advice within the New gTLD Program supported the concept of GAC Advice, as defined in the ICANN Bylaws,¹⁵¹ and the GAC Operating Principles by providing an opportunity for the GAC to issue advice on ICANN’s activities as they related to the concerns of governments.¹⁵²

The GAC issued its first advice on new gTLD applications in its 11 April 2013 Beijing Communiqué to the ICANN Board. In addition to advice on specific applications affecting 23 applications, the Beijing Communiqué contained advice on broad categories of strings affecting 491 applications, as well as Advice on topics affecting all applications.¹⁵³ As of the publication date of this report, six additional communiqués have included further Advice on the new gTLDs.

¹⁴⁷ ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 1.1.2.4: GAC Early Warning. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

¹⁴⁸ ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 1.5.1: gTLD Evaluation Fee. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

¹⁴⁹ Governmental Advisory Committee. GAC Early Warnings. Retrieved from <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings>

¹⁵⁰ ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 3.1: GAC Advice on New gTLDs. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

¹⁵¹ ICANN. (Amended 30 July 2014) Bylaws for Internet Corporation for Assigned Names and Numbers, Article XI: Advisory Committees. Retrieved from <https://www.icann.org/resources/pages/governance/bylaws-en#XI>

¹⁵² Governmental Advisory Committee. (October 2011) Governmental Advisory Committee (GAC) - Operating Principles: Article XII – Provision of Advice to the ICANN Board. Retrieved from <https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles#GACOperatingPrinciples-XII>

¹⁵³ Governmental Advisory Committee. (11 April 2013) GAC Communiqué – Beijing, People’s Republic of China. Retrieved from <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>

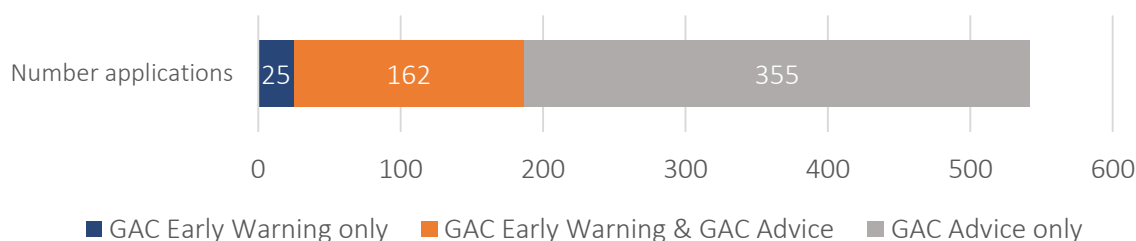
3.1.4 Assessment

3.1.4.1 GAC EARLY WARNING

Early Warning and Advice Correlation

Section 1.1.2.4 of the AGB described the GAC Early Warning process as a potential indicator that an “application could be the subject of GAC Advice on New gTLDs.” Indeed, there was some correlation between Early Warnings and Advice, but not all applications that received Advice had received an Early Warning. While only 187 applications received Early Warnings, 517 applications were subject to GAC Advice. Over 300 applications that were subject to GAC Advice did not receive any Early Warning. Based on this data, if the intent of the Early Warning process was to provide applicants with predictability, that intent was achieved in only 38% of cases. Figure 3.1.i provides a summary of applications that received GAC Early Warning and GAC Advice.

Figure 3.1.i: Applications with GAC Early Warning and GAC Advice



Standard Form

Early Warnings were issued using a standard form, which included rationale and possible remediation steps from the government that issued the Early Warning. ICANN assisted the GAC in its development of the form. Each government provided rationale in the Early Warning, and sometimes included possible remediation steps to help applicants to act on the Early Warnings. Some applicants cited conversations with governments as a reason for requesting changes to their applications.¹⁵⁴

GAC Advice was communicated to the ICANN Board through communiqués.

¹⁵⁴ L. Christou, Cruise Lines International Association. (18 June 2015) Letter from Lorrie Christou to Cherine Chalaby. Retrieved from <https://www.icann.org/en/system/files/correspondence/christou-to-chalaby-18jun15-en.pdf>

3.1.4.2 GAC ADVICE

GAC Advice Issued

Section 3.1 of the AGB described three possible forms of GAC Advice:

- I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.*
- II. The GAC advises ICANN that there are concerns about a particular application “dot-example.” The ICANN Board is expected to enter into a dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.*
- III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.*

All three possible forms of GAC Advice described in Section 3.1 of the AGB refer to GAC Advice issued on applications. The GAC Communiqués also included advice on categories of strings impacting several applications and on topics that impacted all applications (e.g., protection of IGO acronyms, protection of Red Cross/Red Crescent names).

Outside of the GAC Advice that impacted all applications, GAC Advice issued to-date has affected a total of 517 applications. Of this total, 26 applications received application-specific GAC Advice, and 491 were subjected to GAC Advice on broad categories of strings.

Of the 26 applications that received application-specific GAC Advice, the GAC issued advice according to Section 3.1.i of the AGB on six applications. The NGPC considered the advice in accordance with the AGB, which stated that such advice would “create a strong presumption for the ICANN Board that the application[s] should not be approved.” Two applications received GAC Advice according to Section 3.1.ii of the AGB. The ICANN Board also acted in accordance with the AGB regarding these two applications and entered into dialogue with the GAC to better understand the nature of the concerns. For the remaining 18 applications, the GAC requested additional time for further consideration or noted the concerns of specific governments. After the advice was issued, ICANN provided applicants with the opportunity to submit a response to the ICANN Board (in this case, the NGPC). The NGPC considered the advice and applicant responses, and then the NGPC addressed the advice on an application-by-application basis.

Table 3.1.i provides a summary of the 26 applications that received application-specific GAC Advice.

Table 3.1.i: Summary of the 26 Applications that Received Application-Specific GAC Advice

Type of Applications	Number of Applications
AGB Section 3.1 part I (consensus)	6
AGB Section 3.1 part II (expressed concerns)	2
AGB Section 3.1 part III (remediation suggested)	0
Other application-specific advice ¹⁵⁵	18
Total	26

In addition to the application-specific GAC Advice described in the AGB, the GAC’s Beijing Communiqué included safeguard advice applicable to broad categories of strings. Annex 1 of the Beijing Communiqué stated, “strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws.”¹⁵⁶ The GAC proposed specific safeguards that would apply to a broad category of strings related to “consumer protection, sensitive strings, and regulated markets.” The Annex listed specific strings, referred to as “Category 1” strings.

The GAC also provided advice relating to restricted registration policies referred to as “Category 2” advice in Annex 1 of the Beijing Communiqué. Part 1 of Category 2 advice stated that for strings mentioned under Category 1, “the registration restrictions should be appropriate for the types of risks associated with the TLD” and that “[t]he registry operator should administer access in these kinds of registries in a transparent way that does not give undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage.”

Part 2 of Category 2 advice stated that, “For strings representing generic terms, exclusive registry access should serve a public interest goal.”¹⁵⁷ The Annex also included a list of strings that the GAC considered to be generic, where the applicant was proposing to provide exclusive registry access. These strings are referred to as “Category 2” strings.

There were a total of 491 applications and 212 strings specified in the GAC Category 1 and 2 lists. Figures 3.1.ii and 3.2.iii show the distribution of the applications and strings affected by GAC Category 1 and 2 Advice.

¹⁵⁵ In some instances, the GAC advised ICANN that it required additional time to finalize any potential GAC Advice.

¹⁵⁶ Governmental Advisory Committee. (11 April 2013) GAC Communiqué – Beijing, People’s Republic of China. Retrieved from <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>

¹⁵⁷ Governmental Advisory Committee. (11 April 2013) GAC Communiqué – Beijing, People’s Republic of China. Retrieved from <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>

Figure 3.1.ii: Distribution of the 491 Applications Affected By GAC Category 1 and 2 Advice

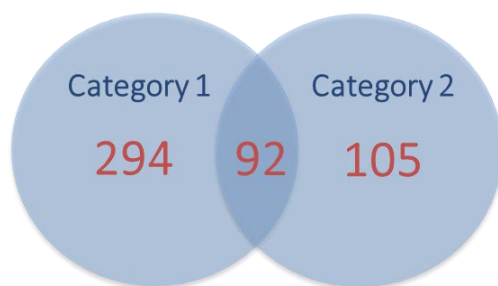
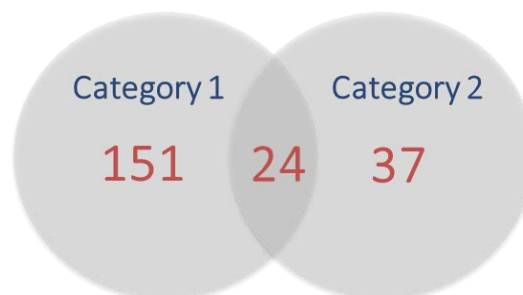


Figure 3.1.iii: Distribution of the 212 Strings Affected By GAC Category 1 and 2 Advice



Impact on Applications

AGB Section 3.1 stated, “The receipt of GAC Advice [would] not toll the processing of any application (i.e., an application [would] not be suspended but [would] continue through the states of the application process).” However, GAC Operating Principle 48 stated: “The ICANN Board shall consider any advice from the GAC prior to taking action.”¹⁵⁸ In implementation, applications affected by application-specific and Category 1 and 2 GAC Advice were not allowed to proceed to the next step in the Program until the GAC Advice was addressed. This allowed the ICANN Board time to solicit public comment,¹⁵⁹ solicit applicant responses to GAC Advice,¹⁶⁰ and consider the comments and responses received. Further, it required time for the ICANN Board to discuss the advice with the GAC and consult with the community as appropriate on implementation plans to address the advice. Finally, it prevented ICANN and the applicants from making commitments such as resolving contention or executing a Registry Agreement (RA) based on unknown circumstances.

Addressing GAC Advice

The way ICANN addressed application-specific GAC Advice was discussed above. With regards to GAC Category 1 Advice, ICANN implemented the advice through the use of public interest commitments (PICs). The PICs concept was originally developed to address GAC Advice in the Toronto Communiqué,¹⁶¹ as a mechanism for applicants to elect to transform application statements into binding contractual commitments. The implementation of GAC Category 1 Advice leveraged the PICs concept by requiring the incorporation of specific safeguards into the PIC Specification of the RAs of applications subject to GAC Category 1 Advice.¹⁶² The ICANN Board consulted with the community on

¹⁵⁸ ICANN Governmental Advisory Committee. (Amended October 2011) Principles: Article XII – Provision of Advice to the ICANN Board. Retrieved from

<https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles#GACOperatingPrinciples-XII>

¹⁵⁹ ICANN. (23 April 2013) Public Comment: New gTLD Board Committee Consideration of GAC Advice. Retrieved from

<https://www.icann.org/public-comments/gac-safeguard-advice-2013-04-23-en>

¹⁶⁰ ICANN. GAC Advice: GAC Communiqués & Applicant Responses. Retrieved from

<http://newgtlds.icann.org/en/applicants/gac-advice#communiques>

¹⁶¹ ICANN Governmental Advisory Committee. (17 October 2012) GAC Communiqué – Toronto, Canada. Retrieved from

https://gacweb.icann.org/download/attachments/27132070/FINAL_Toronto_Communique_20121017.pdf

¹⁶² ICANN. (5 February 2013) Revised New gTLD Registry Agreement Including Additional Public Interest Commitments Specification. Retrieved from <https://www.icann.org/resources/pages/base-agreement-2013-02-05-en>

the Safeguard Advice via a public comment period,¹⁶³ shared the proposed implementation framework with the GAC,¹⁶⁴ and ultimately, the implementation framework¹⁶⁵ was adopted by the NGPC on 5 February 2014.¹⁶⁶ The implementation framework classified each Category 1 string as requiring one of three levels of safeguards:

- Regulated sectors/open entry requirements in multiple jurisdictions (273 applications)
- Highly regulated sectors/closed entry requirements in multiple jurisdictions (101 applications)
- Special safeguards required (12 applications)

The adoption of the GAC Category 1 implementation framework provided predictability and consistency in terms of how Category 1 applications were processed and allowed ICANN to invite applications that previously were not allowed to move forward to the next step of the Program because of the pending GAC Advice to begin the contracting process (see Section 5.1: Contracting of this report).

To address Part 1 of GAC Category 2 Advice, on 25 June 2013, the NGPC directed staff to update the RA to include Specification 11, Section 3(d), which stated, “Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing, and adhering to clear registration policies.”¹⁶⁷

With regard to Part 2 GAC Category 2 Advice, the NGPC passed a resolution directing staff how to process applications for proposed exclusive generic TLDs on 21 June 2015.¹⁶⁸ However, in the interest of allowing affected applications to move forward in the application process towards contention resolution and contracting before the NGPC had determined how to process applications for proposed exclusive generic TLDs, on 28 September 2013, the NGPC passed a resolution directing staff “to move forward with the contracting process for applicants for strings identified in the Category 2 Safeguard Advice that are prepared to enter into the Registry Agreement as approved.”¹⁶⁹ Section 3.d of Specification 11 of the approved Registry Agreement stated that “Registry Operator of a ‘Generic String’ TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person’s or entity’s ‘Affiliates’ (as defined in Section 2.9(c) of the Registry Agreement).”¹⁷⁰ The adoption of this resolution by the NGPC allowed the

¹⁶³ ICANN. (23 April 2013) New gTLD Board Committee Consideration of GAC Safeguard Advice. Retrieved from <https://www.icann.org/public-comments/gac-safeguard-advice-2013-04-23-en>

¹⁶⁴ S. Crocker, ICANN Board of Directors. (29 October 2013) Letter from Stephen D. Crocker to Heather Dryden. Retrieved from <https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf>

¹⁶⁵ ICANN. (5 February 2014) GAC Category 1 Strings: Annex 2 - ICANN NGPC Resolution No. 2014.02.05.NG01. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf>

¹⁶⁶ ICANN. (5 February 2014) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a>

¹⁶⁷ ICANN. (2 July 2013) Registry Agreement. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-1-item-1d-02jul13-en.pdf>

¹⁶⁸ ICANN. (21 June 2015) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a>

¹⁶⁹ ICANN. (28 September 2013) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-28sep13-en.htm#2.a>

¹⁷⁰ ICANN. (9 January 2014) Registry Agreement. Retrieved from <http://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.pdf>

majority of the applications subject to GAC Category 2 Advice to move forward in the application process towards contention resolution or contracting.

On 21 June 2015, the NGPC passed a resolution requesting that the “GNSO include the issue of exclusive registry access for generic strings serving a public interest goal as part of the policy work it is planning to initiate on subsequent rounds of the New gTLD Program.”¹⁷¹ Further, the resolution directed staff to “proceed with initiating other New gTLD Program processes” for the remaining applications that proposed to provide exclusive registry access for a generic string. Exclusive generic applicants for non-contended strings or prevailing in contention resolution were given the option to submit a change request to no longer be exclusive generic TLDs, to defer their applications to the next application round of the New gTLD Program, or to withdraw their applications.

Advice on categories of strings was not contemplated by the AGB, and it presented challenges in implementation. The unanticipated form of GAC Advice and the issues that were raised were the subject of multiple conversations between the ICANN Board and the community. Ultimately, changes were made to the New gTLD Program and to the Registry Agreement (see Section 5.1: Contracting of this report), reducing the level of predictability available to applicants. It should be noted that the subject of public interest guidance was identified by the ICANN Board as a topic that may be appropriate for discussion by the GNSO.¹⁷²

3.1.5 Conclusion

Module 3 of the AGB described three forms that GAC Advice on new gTLD applications might take. For the advice that came in a form contemplated by the AGB, ICANN implemented the advice in a manner consistent with the AGB. However, the advice that impacted the vast majority of applications subject to GAC Advice did not take one of these forms. As a result, ICANN required a significant amount of time to implement the advice, as implementation involved public comment and community discussion, applicant responses to GAC Advice, and NGPC consideration of the advice. Whenever possible, ICANN developed a framework to move applications forward before the GAC Advice had been resolved (e.g., in the case of GAC Category 2 Advice), but as over 500 applications were subject to GAC Advice (excluding GAC Advice applicable to all applications) many applications were still delayed. For future rounds, engagement with the GAC should be continued in order to ensure that its input is incorporated into relevant processes as early as possible.

In summary:

3.1.a Continue engagement with the GAC during the review process and the development of future procedures to ensure that its input is incorporated into relevant processes as early as possible

¹⁷¹ ICANN. (21 June 2015) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a>

¹⁷² ICANN. (17 November 2014). Annex A to Resolutions 1014.11.17.10 – 2014.11.17.12. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>

3.2 Objections and Dispute Resolution

3.2.1 Introduction

The Objections and Dispute Resolution process provided an opportunity for parties with standing to have their concerns considered by an expert or panel of experts. Objections could be filed on four defined grounds (Legal Rights, String Confusion, Community, and Limited Public Interest), each subject to their own standards. This section of the Program Implementation Review report discusses the following aspects of the Objection and Dispute Resolution process:

- Objections Grounds and Standards
- Management of Dispute Resolution Service Providers
- Objections Process
- Review Mechanism
- Independent Objector

3.2.2 Relevant Guidance

The following guidance is relevant to the topic of Objections and Dispute Resolution and will be discussed in further detail in Sections 3.2.3 and 3.2.4 of this report:

- GNSO Principle G: “The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.”¹⁷³
- GNSO Recommendation 2: “Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.”
- GNSO Recommendation 3: “Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.”
- GNSO Recommendation 6: “Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.”
- GNSO Recommendation 12: “Dispute resolution and challenge processes must be established prior to the start of the process.”
- GNSO Recommendation 20: “An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.”

¹⁷³ ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

- GNSO Implementation Guideline H*:

Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions:

- (i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and*
- (ii) a formal objection process is initiated.*

Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim.

Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P.

- GNSO Implementation Guideline H: “External dispute providers will give decisions on objections.”
- GNSO Implementation Guideline P: This Implementation Guideline provided additional information on the process, definitions, and guidelines relating to GNSO Recommendation 20 on Community Objections.
- GNSO Implementation Guideline R: “Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated.”
- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process¹⁷⁴
- Applicant Guidebook, Section 3.2: Public Objection and Dispute Resolution Procedures
- Applicant Guidebook, Section 3.3: Filing Procedures
- Applicant Guidebook, Section 3.4: Objection Processing Overview
- Applicant Guidebook, Section 3.5: Dispute Resolution Principles (Standards)
- Applicant Guidebook, Attachment to Module 3: New gTLD Dispute Resolution Procedure
- ICANN Board New gTLD Program Committee Resolution 2013.07.13.NG02 - 2013.07.13.NG04 (13 July 2013): Ombudsman Letters to Board¹⁷⁵
- ICANN Board New gTLD Program Committee Resolution 2013.06.25.NG07 (25 June 2013): Singular & Plural Versions of the Same String as a TLD¹⁷⁶
- New gTLD Program Committee resolution 2014.10.12.NG02 - 2014.10.12.NG03 (12 October 2014): Perceived Inconsistent String Confusion Expert Determinations¹⁷⁷

3.2.3 Background

GNSO Recommendation 12 stated, “Dispute resolution and challenge processes must be established prior to the start of the process.” Additionally, the GNSO Recommendations on the Introduction of

¹⁷⁴ ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

¹⁷⁵ ICANN. (13 July 2013) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-07-13-en#1.b>

¹⁷⁶ ICANN. (25 June 2013) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-25-en#2.d>

¹⁷⁷ ICANN. (12 October 2014) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b>

New Generic Top-Level Domains provided policy guidance which led to the development of the four objection grounds defined in the AGB:

- The Legal Rights Objection ground was developed in support of GNSO Recommendation 3: “Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.”
- The String Confusion Objection ground was developed in support of GNSO Recommendation 2: “Strings must not be confusingly similar to an existing top-level domain or a reserved name.”
- The Community Objection ground was developed in support of GNSO Recommendation 20: “An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.”
- The Limited Public Interest Objection ground was developed in support of GNSO Recommendation 6: “Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.”

These objection grounds provided safeguards for parties with standing to have their concerns considered by an expert or a panel of experts. The objection grounds were each subject to their own standing requirements and standards, which were developed and finalized as part of the AGB development process.

The dispute resolution proceedings were administered by three dispute resolution service providers (DRSPs), which were selected through a public call for expressions of interest:¹⁷⁸

- The International Centre for Dispute Resolution (ICDR) administered String Confusion Objections
- The Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO) administered Legal Rights Objections
- The International Centre for Expertise of the International Chamber of Commerce (ICC) administered Community Objections and Limited Public Interest Objections

For Legal Rights Objections, Community Objections, and Limited Public Interest Objections, the loss of a dispute resolution proceeding resulted in an application no longer proceeding in the Program. The loss of a dispute resolution proceeding for a String Confusion Objection filed by the registry operator of an existing TLD also resulted in an application no longer proceeding in the Program. For String Confusion Objections filed by another new gTLD applicant, the loss of a dispute resolution proceeding resulted in placement into string contention with another application.

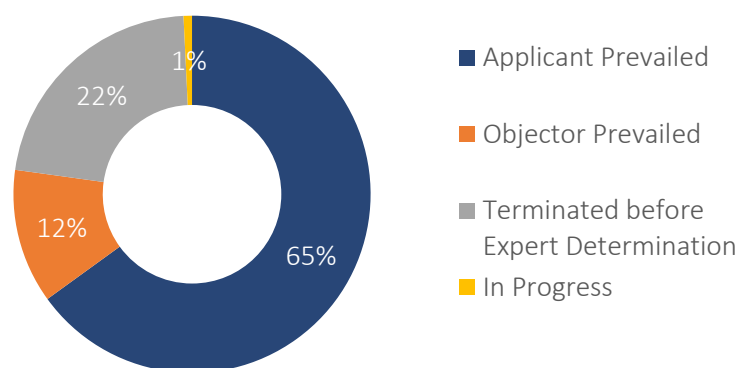
The AGB provided for an Independent Objector, who would file objections and “[act] solely in the best interests of the public who use the global internet.” The Independent Objector “[could] file objections against ‘highly objectionable’ gTLD applications to which no objection [had] been

¹⁷⁸ ICANN (2007 December 21). Announcement: ICANN Calls for Expressions of Interest from Potential Dispute Resolution Service Providers for the New gTLD Program. Retrieved from: <https://www.icann.org/news/announcement-2007-12-21-en>.

filed.”¹⁷⁹ Per Section 3.2.5 of the AGB, in order for the Independent Objector to file an objection, there had to be at least one comment in opposition to the application made in the public sphere.” The concept of the Independent Objector was introduced in draft version 2 of the AGB,¹⁸⁰ and served to prevent “obviously objectionable” applications from proceeding through the Program without objection.¹⁸¹ The Independent Objector was selected through a public RFI process.¹⁸² Alain Pellet, a professor and practitioner of law, was announced as the Independent Objector on 14 May 2012.¹⁸³

The Objection filing window opened on 13 June 2012 and closed on 13 March 2013. A total of 263 objections were filed. As of 31 July 2015, 261 objections have been completed, and two are in progress. Figure 3.2.i provides a summary of objection outcome.

Figure 3.2.i: Overall Objection Outcome



3.2.4 Assessment

3.2.4.1 OBJECTIONS GROUNDS AND STANDARDS

The AGB defined four objection grounds (Legal Rights, String Confusion, Community, and Limited Public Interest), each with their own standing requirements and principles. The DRSPs administered the dispute resolution proceedings using the principles defined in the AGB.

¹⁷⁹ ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 3.2.5: Independent Objector. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

¹⁸⁰ ICANN. (18 February 2009) gTLD Draft Applicant Guidebook Version 2. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/draft-rfp-clean-18feb09-en.pdf>

¹⁸¹ ICANN. (18 February 2009) New gTLD Draft Applicant Guidebook: Analysis of Public Comment. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>

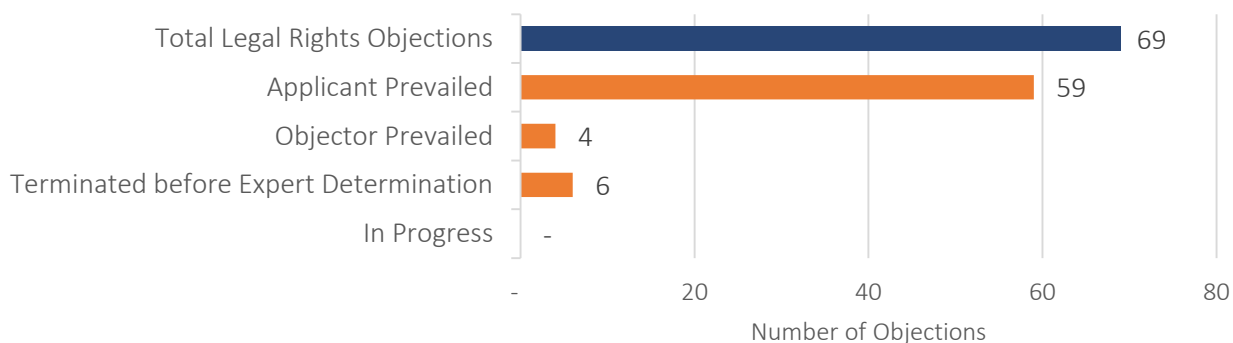
¹⁸² ICANN. (21 November 2011) Announcement: New gTLD Program: ICANN Seeks Independent Objector. Retrieved from: <https://www.icann.org/news/announcement-3-2011-11-21-en>

¹⁸³ ICANN. (14 May 2012) Announcement: Independent Objector for New gTLD Program Selected. Retrieved from <https://www.icann.org/news/announcement-2012-05-14-en>

Legal Rights Objections

AGB Section 3.2.1 defined the standard for Legal Rights Objections as, “The applied-for gTLD string infringe[d] the existing legal rights of the objector.” The standards for Legal Rights Objections were drawn from real-world disputes and were based on existing trademark and intellectual property laws. Figure 3.2.ii provides a summary of Legal Rights Objections outcome.

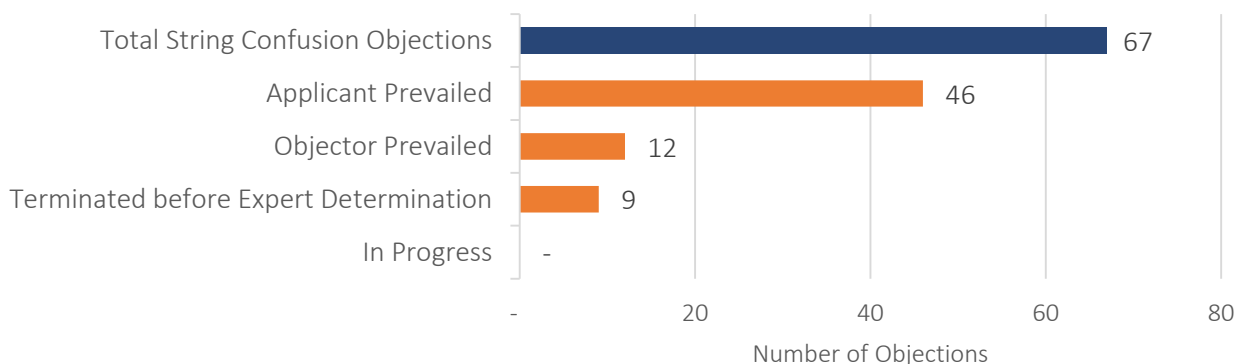
Figure 3.2.ii: Legal Rights Objections Outcomes



String Confusion Objections

AGB Section 3.2.1 defined the standard for String Confusion Objections as, “The applied-for gTLD string [was] confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.” This standard was developed to capture the intention of avoiding user confusion caused by delegation of similar TLD strings. Figure 3.2.iii provides a summary of String Confusion objection outcome.

Figure 3.2.iii: String Confusion Objection Outcomes



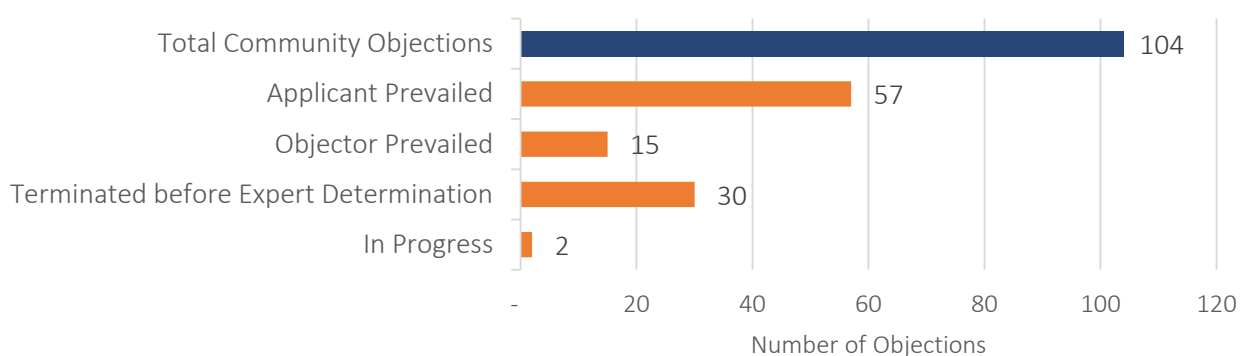
The String Confusion Objections process in this application round provided real-world examples of String Confusion Objections and outcomes. These examples could be used to aid the development of additional standards for String Confusion Objections and the String Similarity review as applicable in future rounds. (It should be noted that during this application round, the standards for String

Confusion Objections and the String Similarity review were different. Whereas the String Similarity review only assessed visual similarity, String Confusion Objections could be filed based on any type of similarity, including visual, aural, or similarity of meaning. For more information on the String Similarity review, see Section 2.3: String Similarity Evaluation of this report.)

Community Objections

AGB Section 3.2.1 defined the standard for Community Objections as “substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.” Figure 3.2.iv provides a summary of Community Objection outcomes.

Figure 3.2.iv: Community Objections Outcomes



The AGB provided for two distinct processes that related to the concept of communities: Community Objections and Community Priority Evaluation (CPE) (see Section 4.1: Community Priority Evaluation of this report). While both processes related to communities, the processes served different purposes (a community application that prevailed in CPE eliminated all directly contending standard applications, while a Community Objection could eliminate a single application). Accordingly, the standards used for consideration of applications in Community Objections and CPE were different. The subject of community considerations has been identified by the ICANN Board as a topic that may be appropriate for discussion by the GNSO.¹⁸⁴

Limited Public Interest Objections

AGB Section 3.2.1 defined the standard for Limited Public Interest Objections as, “[. . .] the applied-for gTLD string [was] contrary to generally accepted legal norms of morality and public order that [were] recognized under principles of international law.”

In relation to the standing requirements for the other grounds, the standing requirements for Limited Public Interest Objections were very inclusive. Anyone could file a Limited Public Interest Objection.

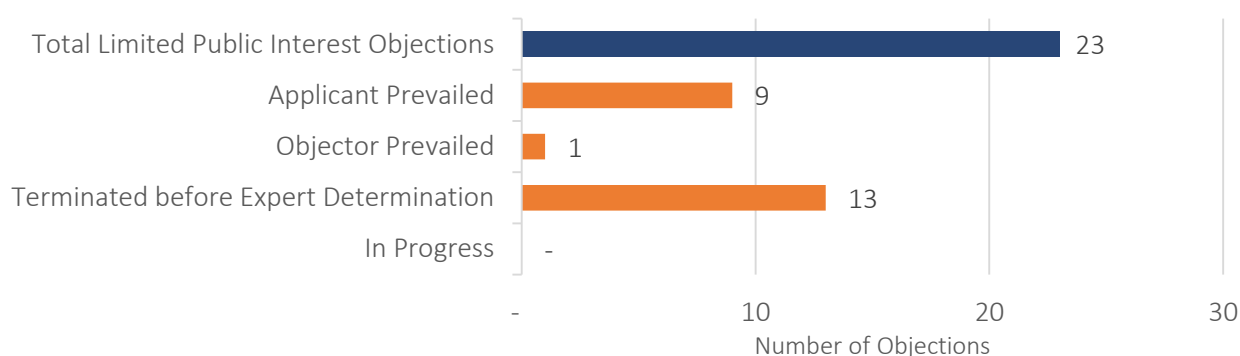
¹⁸⁴ ICANN. (17 November 2015) Annex A to Resolutions 1014.11.17.10 – 2014.11.17.12. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>

To avoid abuse of this objection grounds due to its inclusive nature, Limited Public Interest Objections were subject to a “quick look” procedure. AGB Section 3.2.2.3 stated,

Anyone may file a Limited Public Interest Objection. Due to the inclusive standing base, however, objectors are subject to a “quick look” procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time.

Despite the inclusive standing base, of the four objection grounds, the fewest Limited Public Interest Objections were filed. Figure 3.2.v provides a summary of Limited Public Interest Objection outcomes.

Figure 3.2.v: Limited Public Interest Objections Outcomes



The objection and dispute resolution processes were complex and previously untested. This round provided real-world examples of objections and determinations, so there is a stronger basis on which to develop the standards and procedures for future rounds. Additionally, concerns from both objectors and objected-to applicants that were raised through ICANN’s Accountability Mechanisms¹⁸⁵ should also be reviewed to inform any development work for the next round. Accountability Mechanisms were filed relating to objections under all of the objection grounds. Table 3.2.i provides a summary of ICANN Accountability Mechanisms filed by objection ground as of 31 July 2015.

Table 3.2.i ICANN Accountability Mechanisms Filed by Objection Ground

Ground	Approximate # of Related Accountability Mechanisms Filed
Legal Rights	8
String Confusion	10
Community	47
Limited Public Interest	3

¹⁸⁵ ICANN. (Amended 30 July 2014) Bylaws for Internet Corporation for Assigned Names and, Article IV: Accountability and Review. Retrieved from <https://www.icann.org/resources/pages/governance/bylaws-en/#IV>

3.2.4.2 MANAGEMENT OF DISPUTE RESOLUTION SERVICE PROVIDERS (DRSPS)

The dispute resolution process as included in the AGB is an independent process administered by dispute resolution service providers. These DRSPs were selected through a public call for expressions of interest¹⁸⁶ before the AGB was finalized, so that ICANN and the DRSPs could work together to finalize the guidelines and processes. Each of the DRSPs selected by ICANN was a globally recognized firm with experience in dispute resolution. See Section 8.2: Service Provider Coordination of this report for more information on these DRSPs.

Recognizing that all of the selected DRSPs are world-renowned experts in the field of dispute resolution, and to support the intent to maintain independence in the dispute resolution process, ICANN did not attempt to direct or provide the DRSPs with interpretive guidance that might unduly influence the outcomes. However, ICANN received comments from the community regarding the areas of expertise of the panelists and suggestions that the panelists lacked training on the objection standards.¹⁸⁷ Given the untested nature of the standards of the objection grounds, ICANN may wish to provide training for the DRSPs in the next round to ensure that all expert panelists have a consistent baseline understanding of the relevant objection grounds.

As provided for by the AGB,¹⁸⁸ each Dispute Resolution Service Provider (DRSP) supplemented the AGB with its own respective procedures, which were published on the various DRSPs' websites.^{189,190,191} ICANN received many questions from applicants regarding procedures that are published on the DRSPs' websites, potentially due to difficulties in finding this information on each of the DRSPs' websites or of being unsure of the relevant source for particular information. Examples of the types of questions received included fees and refunds, expert panelist selection criteria and process, and filing deadlines.

Although the DRSPs and ICANN published fee information in advance of the objection filing window,¹⁹² during the window, ICANN received questions about fees and refund amounts, feedback that fee information was not easily accessible, and in some cases, feedback that the fees charged by the DRSPs were high. To address these areas of interest, ICANN hosted a webinar¹⁹³ to provide clarification on the DRSPs' processes, procedures, and fees. However, some of these questions might

¹⁸⁶ ICANN (21 December 2007). Announcement: ICANN Calls for Expressions of Interest from Potential Dispute Resolution Service Providers for the New gTLD Program. Retrieved from <https://www.icann.org/news/announcement-2007-12-21-en>

¹⁸⁷ S. Sahjwani, J. Westerdal. (24 September 2013) Letter from Radix Registry, and Fegistry, LLC to ICANN. Retrieved from <https://www.icann.org/en/system/files/correspondence/sahjwani-westerdal-to-chalaby-et-al-24sep13-en.pdf>

¹⁸⁸ ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Attachment to Module 3: New gTLD Dispute Resolution Procedure, Article 4. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

¹⁸⁹ International Centre for Dispute Resolution (ICDR). (10 January 2012) Supplementary Procedures for String Confusion Objections (Rules). Retrieved from https://www.adr.org/cs/idcplg?IdcService=GET_FILE&dDocName=ADRSTG_017409&RevisionSelectionMethod=LatestReleased

¹⁹⁰ International Chamber of Commerce (ICC). (November 2013) ICC Rules for Expertise. Retrieved from <http://www.iccwbo.org/WorkArea/DownloadAsset.aspx?id=2147489562>

¹⁹¹ World Intellectual Property Organization (WIPO). (20 June 2011) WIPO Rules for New gTLD Dispute Resolution. Retrieved from <http://www.wipo.int/export/sites/www/amc/en/docs/wipolrorules.pdf>

¹⁹² ICANN. Objection and Dispute Resolution. Retrieved from <http://newgtlds.icann.org/en/program-status/odr>

¹⁹³ ICANN. (29 January 2013). New gTLD Objection Process. Retrieved from <http://newgtlds.icann.org/en/program-status/objection-dispute-resolution/process-29jan13-en.pdf>

have been avoided or addressed earlier in the process if ICANN had provided centralized information from all of the DRSPs about the procedures that each would follow with respect to refunds and in calculating estimated fees for those objection proceedings based on hourly rates, rather than fixed fees. Additionally, in regards to the feedback received about high fees, it should be noted that quality and expertise of the expert panelists were major factors in the selection of the DRSPs, which correlated to the amount of fees charged by the DRSPs.

For each objection filed, the expert selection process was managed by the DRSP administering the case, which used its established procedures and criteria to do so. For each case, the DRSPs selected experts in the field of dispute resolution who understood the applicable laws and how to apply them in dispute cases. These experts selected were also experienced in considering arguments presented by two sides and in making determinations based on the applicable laws and the arguments presented. Regarding expert panelist selection criteria and process, ICANN received community comments citing lack of transparency in the expert panelist selection process and in the experts' qualifications as they related to the dispute resolution proceedings.¹⁹⁴ To provide greater transparency in the process in future rounds, ICANN could ask the DRSPs to provide more information on their selection processes before Objections are filed.

Regarding filing deadlines, there were at least six instances where the outcome of an objection was impacted by the objector or applicant missing the filing deadline by several minutes.¹⁹⁵ The AGB defined precise deadlines for filing and responding to objections. Soon after the close of the objections filing window, the DRSPs agreed to provide a five-minute grace period for objection submissions. Even with this grace period, applicants/objectors were in some cases dissatisfied with the decisions made by the DRSPs in strictly adhering to the AGB-defined deadlines. Some applicants/objectors filed complaints with the ICANN Ombudsman, who reviewed the complaints and made a formal recommendation to the NGPC. The NGPC provided guidance to the DRSPs and encouraged them to use their discretion on whether to grant extensions.¹⁹⁶

Resolved (2013.07.13.NG04), in the interests of fairness and reasonableness, notwithstanding the deadlines set out in the Applicant Guidebook, in the future, the DRSPs are permitted and encouraged to use their discretion, in light of the facts and circumstances of each matter, and in cases where it is shown that the affected party is making a good faith effort to comply with the deadlines, as to whether to grant extensions, or deviate from the deadlines set forth in the Applicant Guidebook.

In light of the observations made during implementation and the NGPC's 13 July 2013 resolution, the community may wish to consider whether such discretion should be accounted for in the standard process. If discretion were permitted, it would be beneficial for the DRSPs to notify ICANN of deviations from the standard process, and for ICANN to discuss such cases with all of the DRSPs to ensure that all parties are treated consistently across providers.

¹⁹⁴ S. Sahjwani, Radix FZC et al. (1 November 2013) Letter from Radix FZC et al. to ICANN. Retrieved from <https://www.icann.org/en/system/files/correspondence/sahjwani-et-al-to-chalaby-et-al-01nov13-en.pdf>

¹⁹⁵ ICANN. (19 October 2013) Reconsideration Request 13-13:Christopher Barron. Retrieved from <https://www.icann.org/resources/pages/13-13-2014-02-13-en>

¹⁹⁶ ICANN. (13 July 2013) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-07-13-en#1.b>

3.2.4.3 OBJECTIONS PROCESS

ICANN's implementation of the Objection and Dispute Resolution processes largely aligned to the processes defined in the AGB.

Timeline

One area where implementation was not in alignment with the AGB was in terms of the timeline. The AGB anticipated that the objection filing window would last for approximately seven months, and that “The objection filing period will close following the end of the Initial Evaluation period [. . .], with a two-week window of time between the posting of the Initial Evaluation results and the close of the objection filing period.”¹⁹⁷

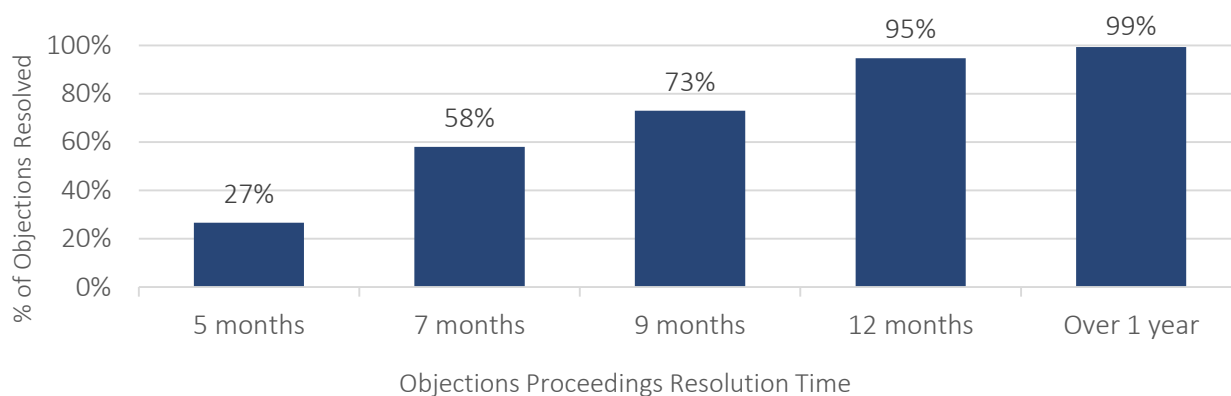
In implementation, the objection-filing window opened on 13 June 2012 and closed on 13 March 2013. This objection window of nine months exceeded the seven-month window called for in the AGB. Further, it did not provide for the two-week window of time between the posting of the IE results (which occurred on 22 March 2013) and the close of the objection filing period. While this did not align with the AGB, the AGB did not account for prioritization (see Section 1.2: Prioritization of this report) and the impact of a longer IE period on objection filing. Extending the objection filing timeframe by six additional months to beyond the completion of IE would not have supported certainty and predictability for applicants. While the first IE results were not published until 22 March 2013, the results of the String Similarity review and the publication of contention sets occurred on 26 February 2013. Ultimately, the objection filing window was extended to 13 March 2015, which allowed for a two-week period after string contention sets were published prior to the close of the objection window for concerned parties to decide whether to file String Confusion Objections.

The timeline for objections to be considered and processed was also longer than contemplated by the AGB. The AGB estimated that “[d]ispute resolution proceedings, where applicable [were] expected to be completed for all applications within approximately a 5-month time frame.”¹⁹⁸ As of 31 July 2015, 28 months after the close of the objections filing window, two objections are still pending. Over a quarter of the objections completed within five months (AGB timeline). After 12 months, 95% were complete (See Figure 3.2.vi).

¹⁹⁷ ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 1.1.2.6: Objection Filing. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

¹⁹⁸ ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 1.1.2.9: Dispute Resolution. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

Figure 3.2.vi: Objection Proceedings Completed (Cumulative)



The delays to the dispute resolution proceedings have had both operational causes (e.g., volume of objections filed and the DRSPs' processes) and causes due to the parties (e.g., negotiation and requesting stays).

Consolidation

The AGB provided that consolidation of dispute resolution cases could occur, that is, individual objections could be considered by the same expert and processed at the same time. After the DRSPs had received all objections, they could elect to consolidate certain objections (e.g., multiple objections filed against the same application on the same grounds). Section 3.4.2 of the AGB stated, "ICANN [. . .] strongly encourage[s] all of the DRSPs to consolidate matters whenever practicable," but it did not require consolidation. In this application round, the DRSP, the Panel, or the parties could suggest consolidation, but per the DRSPs' procedures, the parties had to agree in order for the cases to be consolidated. In some cases, a party may not have wished to consolidate objections, due to reasons of confidentiality or due to the specific arguments presented in their case.

In at least one instance, the parties decided to not consolidate, and the outcomes to the objections were different. ICANN received comments from the community on consolidation,^{199,200} and questioned whether consolidation could have prevented perceived conflicting determinations.²⁰¹ Mandatory consolidation of cases might increase efficiency by reducing the amount of administrative work for the DRSPs, costs for the parties, and the overall objections timeline. However, if consolidation were required, criteria would have to be defined for which cases are/are not consolidated, and consolidation might not be appropriate in all cases.

¹⁹⁹ S Hammock, United TLD Holdco Ltd. (4 November 2013) Letter from Statton Hammock to Cherine Chalaby. Retrieved from <https://www.icann.org/en/system/files/correspondence/hammock-to-chalaby-04nov13-en.pdf>

²⁰⁰ P. Young, Famous Four Media. (9 September 2013) Letter from Peter Young to Cherine Chalaby. Retrieved from <https://www.icann.org/en/system/files/correspondence/young-to-chalaby-09sep13-en.pdf>

²⁰¹ ICANN. (28 September 2013). ICANN New gTLD Program Committee Paper No. 2013.09.28.2c. Retrieved from <https://www.icann.org/en/system/files/bm/briefing-materials-1-2-28sep13-en.pdf>

Conditions

Once the Expert Panel had reached its determination, the DRSPs issued the determination directly to the parties (i.e., applicant and objector). The DRSPs also shared the determination with ICANN. ICANN accepted the determinations in that ICANN published them to the New gTLD microsite,²⁰² and processed the applications accordingly by permitting them to move forward in the application process, updating the contention set if appropriate, or updating the application status. ICANN observed that there were instances where panelists included conditions or proposed remedies in their expert determinations.^{203,204} The AGB did not contemplate such conditions and did not provide for these conditions or remedies to be considered before ICANN accepted the determinations. The community may wish to consider whether an additional opportunity for discussion of these conditions would be beneficial to the parties.

3.2.4.4 REVIEW MECHANISM

After the expert panel reached a determination, this determination was shared with the parties and then with ICANN. ICANN accepted the determination and acted on the determination as appropriate (i.e., allowed the application to proceed, updated the application status, or updated the contention set). The AGB did not provide for a process by which ICANN or any other body could conduct a substantive review of an expert panelist's determination. ICANN received comments from the community about the lack of an appeal mechanism in the Objections process.²⁰⁵ Some parties chose to invoke ICANN Accountability Mechanisms²⁰⁶ to have their cases considered by the ICANN Board or ICANN Ombudsman. While the ICANN Accountability Mechanisms provided parties with an opportunity to challenge staff or board action or inaction in terms of procedure, these are procedures broadly applicable to ICANN's accountability in its work, and were not designed to provide an opportunity for the merits of an objections case to be reviewed. However, two of the Accountability Mechanisms invoked^{207,208} led to the NGPC's adoption of a Final Review Mechanism for a few limited objections.²⁰⁹

²⁰² See <http://newgtlds.icann.org/en/program-status/odr/determination>

²⁰³ The International Centre for Expertise of the International Chamber of Commerce. (16 November 2013) Case No. EXP/390/ICANN/7: The International Lesbian Gay Bisexual Trans and Intersex Association vs. Afiliás Limited. Retrieved from <http://newgtlds.icann.org/sites/default/files/drsp/25nov13/determination-1-1-868-8822-en.pdf>

²⁰⁴ ICANN. (13 December 2013) Reconsideration Request 13-18: ILGA. Retrieved from: <https://www.icann.org/resources/pages/13-18-2014-02-13-en>

²⁰⁵ ICANN Correspondence. (24 September 2013) Letter from Radix Registry, and Fegistry, LLC to ICANN. Retrieved from <https://www.icann.org/en/system/files/correspondence/sahjwani-westerdal-to-chalaby-et-al-24sep13-en.pdf>

²⁰⁶ ICANN. Bylaws for the Internet Corporation for Assigned Names and Numbers, Article IV: Accountability and Review. Retrieved from <https://www.icann.org/resources/pages/governance/bylaws-en>

²⁰⁷ ICANN. (4 September 2013) Reconsideration Request 13-9: Amazon EU S.á.r.l.. Retrieved from <https://www.icann.org/resources/pages/13-9-2014-02-13-en>.

²⁰⁸ ICANN. (5 September 2013) Reconsideration Request 13-10: Commercial Connect, LLC. Retrieved from <https://www.icann.org/resources/pages/13-10-2014-02-13-en>.

²⁰⁹ ICANN. (12 October 2014) ICANN Board New gTLD Program Committee Resolution 2014.10.12.NG02 – 2014.10.12.NG03: Perceived Inconsistent String Confusion Objection Expert Determinations. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b>

For these particular String Confusion Objections, the NGPC approved a review mechanism for two specific “perceived inconsistent” expert determinations, and suggested that the community consider whether a review process should be included in the next round. “[. . .] it is recommended that the development of rules and processes for future rounds of the New gTLD Program (to be developed through the multi-stakeholder process) should explore whether there is a need for a formal review process with respect to Expert Determinations.”²¹⁰

3.2.4.5 INDEPENDENT OBJECTOR (IO)

The AGB called for an Independent Objector (IO), who would “not act on behalf of any particular persons or entities, but [would act] solely in the best interests of the public who use the global Internet.” The IO had standing to file on the grounds of Limited Public Interest and Community. Additionally, “Absent extraordinary circumstances, the IO [was] not permitted to file an objection to an application where an objection [had] already been filed on the same ground.”²¹¹ Table 3.2.ii provides a summary of objections filed by the IO.

Table 3.2.ii: Independent Objector’s Objections

Total Objections Filed by IO and Admitted	23 ²¹²
Applications objected to by IO	19
Community Objections Filed by IO and Admitted	12
Limited Public Interest Objections Filed by IO and Admitted	11
Objections where IO Prevailed	5

The implementation of the IO’s processes did not align with the AGB in all cases, as the IO did not withdraw his objections in all cases when another objection to the same application on the same grounds was filed. In the context of the Objections and Dispute Resolution process, “grounds” refer to the four defined objection types (i.e., Limited Public Interest, Community, Legal Rights, and String Confusion), not to the arguments made within a specific objection.

The IO was subject to the same timeline as all objectors. The community may wish to consider providing the IO with an extended timeline, to allow him/her time to review the landscape of the objections submitted before making final decisions regarding filing of his/her objections.

Public comments were a consideration for the IO in filing objections. AGB Section 3.2.5 stated, “[. . .] the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.” However, in some instances it was unclear whether a comment made in the Application Comment Forum (see Section 1.5: Application Comments of this report) was

²¹⁰ICANN. (12 October 2014) ICANN Board New gTLD Program Committee Resolution 2014.10.12.NG02 – 2014.10.12.NG03: Rationale for Resolutions 2014.10.12.NG02 – 2014.10.12.NG03. Retrieved from

<https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b.rationale>

²¹¹ ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 3.2.4: Independent Objector. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

²¹² The IO filed 24 objections, but one of the objected-to applications withdrew before ICANN published the Dispute Announcement, so the Objection was not admitted as an Objection.

intended to object to the string/application or to be informational in nature.²¹³ The community may wish to provide additional clarification on what should be considered as a “comment in opposition.” Consideration should be taken to determine whether the IO should be required to cite the comments on which the objection is based, and whether verification of these comments should be included in the process.

3.2.5 Conclusion

The objection and dispute resolution processes served their intended purpose, “External dispute providers will give decisions on objections.”²¹⁴ ICANN received comments from the community about the lack of an appeal mechanism in the Objections process.²¹⁵ In the absence of an appeal mechanism in the Objections process, some parties chose to invoke ICANN Accountability Mechanisms²¹⁶ to have their cases considered by the ICANN Board or ICANN Ombudsman. Two of the Accountability Mechanisms invoked^{217,218} led to the NGPC’s adoption of a Final Review Mechanism for a few limited objections.²¹⁹ Consideration should be given to whether the Final Review Mechanism procedures utilized in this round or other review mechanisms should be made available in future rounds.

The intended role of the IO was to file Limited Public Interest and Community Objections in the interests of the public who use the global Internet. While the IO did act in this capacity, there are opportunities for improvement in administering the IO processes (e.g., withdrawal of the IO’s objection if another objection to the same application on the same ground was filed and how comments made in the public sphere were considered prior to the filing of an objection).

In summary:

3.2.a Explore a potential review mechanism for the next round

3.2.b Consider opportunities for improvement in administering the IO processes (e.g., withdrawal of IO objection if another objection to the same application on the same ground was filed, how comments made in the public sphere were considered prior to the filing of an objection)

²¹³ ICANN. (17 January 2014) Reconsideration Request 14-1: Medistry LLC. Retrieved from <https://www.icann.org/resources/pages/14-1-2014-02-14-en>

²¹⁴ GNSO Implementation Guideline H

²¹⁵ ICANN Correspondence. (24 September 2013) Letter from Radix Registry, and Fegistry, LLC to ICANN. Retrieved from <https://www.icann.org/en/system/files/correspondence/sahjwani-westerdal-to-chalaby-et-al-24sep13-en.pdf>

²¹⁶ ICANN. Bylaws for the Internet Corporation for Assigned Names and Numbers, Article IV: Accountability and Review. Retrieved from <https://www.icann.org/resources/pages/governance/bylaws-en>

²¹⁷ ICANN. (4 September 2013) Reconsideration Request 13-9: Amazon EU S.á.r.l.. Retrieved from <https://www.icann.org/resources/pages/13-9-2014-02-13-en>.

²¹⁸ ICANN. (5 September 2013) Reconsideration Request 13-10: Commercial Connect, LLC. Retrieved from <https://www.icann.org/resources/pages/13-10-2014-02-13-en>.

²¹⁹ ICANN. (12 October 2014) ICANN Board New gTLD Program Committee Resolution 2014.10.12.NG02 – 2014.10.12.NG03: Perceived Inconsistent String Confusion Objection Expert Determinations. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b>