

In order to ensure that the New gTLD Program would not only contribute to competition, consumer choice and consumer trust in the Domain Name System (DNS), it was important that new gTLDs ~~to be~~ delegated ~~in a way that was~~ not ~~be~~ confusing or harmful either to the DNS or to potential users. While the ICANN initial assessment of applications for new gTLDs was intended to assess whether new gTLD strings applied for might adversely affect DNS security or stability, there was also the possibility for the Government Advisory Committee (GAC) to provide formal advice to the ICANN Board or early warnings to applicants that certain new gTLD applications might be confusing or harmful and that advance indications of such would stop those applications at an early stage (thus permitting the applicant to recuperate the bulk of the application fee) or ~~be limited on public policy grounds.~~[1]

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The CCT ~~R~~review ~~T~~eam assessed whether GAC formal advice or GAC early warnings (GAC EW) influenced or affected the new gTLD applications by ensuring that delegations that might be confusing or harmful were stopped or limited. GAC formal advice or GAC EW had an influence on a number of new gTLD applications and in particular ~~GAC EW was instrumental in withdrawals of applications involving geographic names and in the introduction of public interest commitments (PICs).~~ The latter were either for specific cases related to consumer protection or applicable law (GAC EW), or where general GAC advice suggested the addition of PICs.

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Specifically, ~~the R~~review ~~T~~eam looked at the number of GAC EW that were directly related to withdrawn applications, the reasons for those ~~withdrawals~~, and whether any GAC EW were directly responsible for applications being put on hold and the reasons. Of the total number of applications, 575 were withdrawn[2] by the applicants. Of the 187 applications that received GAC EW advice, ~~as of December 2016~~ 899 were delegated and 645 were withdrawn (but the majority of withdrawn cases involved multiples of the same string – see details in the annex). Most substantive withdrawals related to conflicts with geographic names: for example, Guangzhou (2); .roma and .zulu. This is a limited number and the majority of withdrawals do not appear to be directly related to the GAC EW per se but to multiple applications for the same name.

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Another aspect reviewed was whether GAC advice resulted in the addition of public interest commitments (PICs) intended to reduce potential harm to consumers and whether GAC advice ~~or~~ resulted in any other changes to new gTLD applications. Of the 84 delegated gTLDs that received GAC EWs, 50 added PICs, ~~–~~ primarily for sensitive or regulated sectors like: .tax; .doctor; .casino etc. Thus it could be said ~~that the GAC EW advice in these cases~~ encouraged the applicants to add PICs intended to help to protect consumers.

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The last aspect addressed ~~was whether any GAC EW or formal advice prevented~~ stopped the delegation of ~~a~~ gTLDs. ~~In~~it was seen that at least in one case GAC advice (regarding .africa) prevented the delegation of a new gTLD string, although that ~~it~~ has been the subject of an appeal to the ~~court system~~ and involved a geographic name. The cases of .halal and

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- Commented [16]: Some may have also voluntarily withdrawn.
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- Commented [19]: Stan's comment: Which Court System?

.islam also involved GAC EW advice and are now the subject of IRP proceedings. In a 4 November 2013 letter from the Organization of Islamic Cooperation (OIC) to the GAC Chair, the OIC requested that its letter be considered an "official opposition of the Member States of the OIC towards probable authorization by the GAC allowing the use of [...] .ISLAM and .HALAL by any entity not representing the collective voice of the Muslim people." In a 7 February 2014 letter, ICANN noted to the applicant that there seems to be a conflict between the commitments made in the applicant's letters and the concerns raised in letters to ICANN urging ICANN not to delegate the strings. Given these circumstances, the NGPC stated that it would not address the applications further until such time as the noted conflicts have been resolved. (I wouldn't add all this to the text of the report but if others feel that it is necessary to include all the information I would put it in a footnote - someone in ICANN staff should double check whether the information supplied was confidential or limited) but at the date of this report they are on hold, not yet finally resolved.

Commented [20]: Not correct

The early warnings provided by GAC members helped applicants to improve their applications and chances of success either by ensuring that potential conflicts with public policy or public interest were avoided, that contentious cases could be withdrawn with reimbursement of 80% of the application cost to the applicant[3] or that PICs were included to increase likelihood of consumer protection. The CCT review team finds that clear and timely early warning advice[4] from the GAC helped applicants to avoid potential public policy problems, corrected national or legal problems, or caused the even withdrawal of an the application (thus permitting the applicant to recuperating a significant percentage of the application fee and avoiding further future costs) and to improve the acceptability and viability of their future applicationsgTLDs. On the other hand, where general GAC advice was provided by means of communiques to the ICANN Board, it was sometimes not as easy to apply to the direct cases[5].

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The CCT Review Team suggests that, in any future expansion of the gTLDs, GAC early warning advice should provide clear, actionable and timely advance warning to potential applicants. Further improvements for potential future applicants could be introduced by providing examples in the Applicant Guidebook of potential public policy concerns and ways and means to avoid them based on the experience of the 2012 round.

Commented [29]: This sounds like a recommendation for the GAC. Are there specific recommendations that can be made in the policy process or the ICANN org?

Commented [30]: I don't see why our recommendations should not include recommendations that would include GAC as well as the policy process and ICANN itself - in this case they are all intertwined

Commented [31]: In that case, does the recommendation for providing examples in the Applicant Guidebook also apply to the GAC? It seems they would be in the best position to outline such concerns.

ANNEX I

New gTLD: GAC early warning advice and withdrawals

Total applications: 1930 Total withdrawn: 580 Total delegated: 1165 Total GAC
EW: 187

Applications with GAC EW:

84 delegated (of which 50 added PICs - primarily for sensitive or regulated sectors like .tax, .doctor, .casino etc.)

64 withdrawn

8 in PDT

6 in string contention

15 "will not proceed" (so will not be delegated I guess but not withdrawn)

- 8 "on hold"
- 2 in other situations

However these numbers are somewhat misleading as there are quite a few "multiple applications" for the same name, for example ".hotel" (7) [*not to mention ".hotels" for which there was also an application*], ".gmbh" (6) which by definition can only be delegated to one applicant and the others usually withdraw (even though the GAC EW advice applies to all).

For example for .gmbh there were 6 applications (TLDDOT-DE; Internetwire Webdevelopment-DE; New Dot Co-USA; Charleston Road-USA; GMBH registry-USA; Extra Dynamite-USA), the GAC EW is to each one so 6 GAC EW[6] and there were 5 withdrawals (TLDDOT-DE; Internetwire Webdevelopment-DE; New Dot Co-USA; Charleston Road-USA; GMBH registry-USA), while .gmbh was delegated to Extra Dynamite. The GAC EW submitted by Germany suggested that the successful applicant ensure that registrants using .gmbh were indeed legally eligible to use this and met the national requirements to do so; hence the addition of a PIC. Therefore GAC EW *per se* was not relevant to withdrawal of the 5 other contestants for .gmbh as it was ultimately delegated (with PIC added). However GAC EW was relevant regarding the inclusion of a PIC.

Another case where a GAC EW stopped one applicant but the string was delegated is the case of .swiss. Swiss Airlines and the Swiss Confederation both applied for .swiss (the latter as a community application) and the Swiss government submitted a GAC EW against Swiss Airlines on the grounds that .swiss was a geographic name, amongst others. The string was delegated to the Swiss Confederation (so of 2 applications, one withdrawn following GAC EW).

On the other hand there were clearly some withdrawals due to GAC EW and these seem primarily to be based on geographic name concerns. For example: [.Chinese characters] (#49 in the list) was withdrawn and is indicated as "geographic" (Guangzhu Wei was the applicant). There are four such cases (two in Chinese script, .roma and .zulu – although the Geographic Names Panel said that in their opinion the last string did not fall within the criteria for a geographic name).

Also, the cases of .halal and .islam are still "on hold" most likely due to the GAC EW concerns.

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[1] GAC EW advice was intended to "address applications ...identified by governments to be problematic, e.g. that potentially violate national law or raise sensitivities" Applicant Guide Book (4 June 2012)

[2] It should be noted that these include multiple cases of applications for the same string.

[3] In 2 of the 187 GAC EW cases the applications were withdrawn within 21 days of receiving the early warning, which permitted the applicants to receive the 80% refund (see ICANN Report on Program Implementation Review of 29.01.2015).

[4] GAC EW advice was provided by means of a standard form, included a rationale and means to remediate the problem (where applicable).

[5] The Program Implementation Review shows that although 187 applications received GAC EW, some 350 applications were subject to GAC advice via communiques to the ICANN Board only and did not have the same advantage of early warning, specificity or predictability.

[6]

1-1952-21459	g m bh	InterNet WireWe b	Germany	GMBH-DE-21459.pdf
1-1693-16758	g m bh	GMBH Registry LLC	Germany	GMBH-DE-16785.pdf
1-1682-34664	g m bh	Charlest on Road Registry Inc	Germany	GMBH-DE-34664.pdf
1-1477-91047	g m bh	Extra Dynamit e	Germany	GMBH-DE-91047.pdf
1-1296-52581	g m bh	NU DOT CO LLC	Germany	GMBH-DE-52581.pdf
1-1273-63351	g m bh	TLDDO T GMBH	Germany	GMBH-DE-63351.pdf