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## AT-LARGE ADVISORY COMMITTEE

### Statement of the ALAC

#### On the GAC New gTLD Scorecard

##### Introduction

By the Staff of ICANN

Evan Leibovitch, Co-Vice chair of the At-Large Advisory Committee originally composed this statement based on archived documents and notes which the ALAC have released in the past few months, as well as input from working team colleagues.

A draft version of the ALAC Statement on the GAC New gTLD Scorecard was posted for discussion on an At-Large Community [wiki page](#) on 18 March 2011 and announced on an At-Large Group Skype Chat during the 40<sup>th</sup> ICANN Meeting held in San Francisco. Following a call for comments, Evan Leibovitch drafted a first version of the ALAC Statement on the GAC New gTLD Scorecard on 22 March which was discussed during an ALAC Executive Committee call on 24 March. Following this call, significant community input, as well as a table created by Cheryl Langdon-Orr, Co-Vice-Chair of the At-Large Advisory Committee, were incorporated into the first version, thus creating the second version (the present document).

On 24 March 2011, a further call for comments was posted on the ALAC-Announce list.

On 28 March 2011, the At-Large Staff transmitted the statement to Heather Dryden, Chair of the GAC; Jeremy Beale, GAC Chief Executive Secretary; Peter Dengate-Thrush, Chairman of the Board; and the Board Secretary, with a note saying that the document was currently undergoing ALAC ratification.

End of Introduction]

The original version of this document is the English text available at [www.atlarge.icann.org/correspondence](http://www.atlarge.icann.org/correspondence). Where a difference of interpretation exists or is perceived to exist between a non-English edition of this document and the original text, the original shall prevail.

## Statement of the ALAC on the GAC New gTLD Scorecard

### Background

The At-Large Advisory Committee (ALAC) welcomes the opportunity to provide a response to the "GAC Scorecard" related to new gTLD creation (available at <http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>).

The ALAC has always had significant challenges regarding both the processes taken to produce the current gTLD Applicant Guidebook (AG) as well as its result. We share the GAC's frustration in dealing with this process and appreciate its direct approach to asserting its views in the Scorecard.

Preliminary analysis of the Scorecard, based on the ALAC work within the Rec6 Working Group and previous work, resulted in a collection of policy available at [ALAC - February 2011 - GAC-Board Meeting](#).

At the GAC/ALAC meeting of March 13, 2011 during ICANN Meeting 40, the GAC specifically requested a redacted formal response from the ALAC to the above-stated Scorecard. During the scheduled ALAC report to the ICANN Board on March 18, the Chair of the ICANN Board also requested this report, to be created within one week of the end of ICANN Meeting 40. In the days following the ICANN Meeting 40 meeting, other stakeholders have also requested similar feedback.

During the week of the San Francisco meeting and in the subsequent week, the ALAC solicited community members for input on the Scorecard to augment existing policy positions. At-Large Vice-Chair Evan Leibovitch prepared a draft statement March 22 that was put forward for community comments. Mailing lists, a public teleconference, web-site comment areas and an active on-line chat were used to receive input which has been incorporated into the statement below.

We have chosen to address the Scorecard by "theme" as opposed to line-by-line, in part because of the compressed timeline required for this Response but also because some themes are spread between multiple Scorecard items (which will be denoted as (#1), etc in the analysis below).

**It must be emphasized that, because of the extremely compressed time-line allowed for this response, the ALAC has not received as much community feedback that such a statement might normally warrant. While its authors have solicited comment and ALAC endorsement, this statement is still subject to review and possible refinement pending broader At-Large distribution.** If the language below is seen as too sharp, the reader is asked to accept our apologies -- but also to understand that we have had both little time and few words with which to express our concerns.

A condensed version of the response that has been re-formatted in a Scorecard table for convenience and alignment with previous Board practice is included in the Appendix. Readers should consider the full response to be the primary and more complete version of this Statement.

## Theme 1: Objection Procedure

### Scorecard items 1, 2.1, 12

The ALAC agrees with the GAC request for the complete elimination of the AG module related to the method of objecting to TLD strings considered widely obscene. Despite broad and prolonged demonstrated community opposition -- most recently through the cross-community "Rec 6" Working Group -- ICANN clings to a needlessly complex, expensive and adversarial process requiring an outsourced "Dispute Resolution Service Provider", an "Independent Objector", and forcing the ICANN Board to either make or delegate judgements of comparative morality. At the At-Large Summit held during the Mexico City ICANN meeting in March 2009, the ALAC explicitly stated that the current process is "unacceptable" and serves counter to the public interest. ICANN's obsession with a judicial, adversarial process provides a barrier to legitimate objections and needless expense to TLD applicants defending against trivial, unsustainable objections. We continue to hold that position and have responded accordingly to subsequent AG revisions which have maintained this unfortunate procedure.

We believe that the experience of the .XXX domain approval -- a decision with which the ALAC agrees, counter to the GAC advice -- offers a useful point of reference. The public interest is best served by being reasonably liberal in string acceptance, lest ICANN be drawn into unfamiliar territory of content-based judgements. The threat of national blocking of domains will exist, as it already does in the case of second-level domains and even occasionally for top-level domains. Sovereign countries can and will exercise national policy, which could even mean blocking domains that ICANN might accept as benign. As the GAC has been generally silent on existing cases of domain blocking as threats to Internet stability, we are cautious regarding ongoing threats of this kind. The global Internet-using public interest is badly served in being deprived of a TLD string (and a potential community focal point) simply because of the perceived insult of a small number of national governments. The Internet does not exist to only provide information that pleases everyone.

In this light, we strongly endorse the demand of (#1) to completely eliminate the existing AG's Module 3 relating to what is now obscurely called "Limited Public Interest" objections. As a replacement we endorse (#2.1) *with the following conditions*:

1. A similar objection mechanism must exist for non-governmental organizations to launch objections (either a better-resourced branch of the ALAC, a revised version of the Independent Objector, or something similar).
2. The GAC (and other bodies able to raise objections) should satisfy the broader community that objections it will raise -- as a global advisory body -- reflect a reasonable consensus between members and do not just reflect the whim of a small number of advocates.

3. The community must be given due process to "object to the objection", and offer arguments counter to the recommendation to reject a string.
4. If the objector does not pay a fee to object, the applicant must not be charged a fee to respond.
5. Neither the Board nor ICANN staff can raise an objection without it being vetted by one of the above processes.
6. All objection processes must be transparent; specifically, anonymous objections are explicitly NOT allowed.
7. The Board must have ultimate decision making authority with the unimpeded right to override objection advice; as ICANN's Bylaws already allow, it may contract external expertise to advise on principles of international law and treaty.
8. Split decisions -- in which even rough consensus between the GAC, ALAC and other stakeholders is impossible -- should weigh in favour of approving the string under objection. Globally blocking a TLD string on public interest grounds requires, in our view, consensus that the very existence of the string damages the public interest.
9. Insult or disrespect alone should not be suitable grounds for a successful objection.

In agreeing with (#12), we also believe that it is simple common sense to be able to alert TLD applicants, as early in the application process as possible, to potential objections. Furthermore, applicants should be given the ability to suspend the application process (i.e. a "time out") while such disputes may be resolved at such an early stage. Applicants, having entered such good-faith negotiations with potential objectors, should be able to make changes to their applications in order to comply with a negotiated settlement. Alternatively, an applicant should have the option to withdraw its application in good faith, and be reimbursed their application fee (less reasonable expenses incurred in the objection process and administration to that stage).

At all stages the emphasis must be on achieving consensus and amicable resolution rather than confrontation and adversarial processes. We are reminded of Lawrence Strickling's keynote address during the Opening Ceremony of ICANN's recently concluded 40th meeting:

*"Choosing between competing interests, rather than insisting on consensus, is destructive of the multi-stakeholder process because it devalues this incentive for everyone to work together."*

## Theme 2: Trademark-Based Reserved Strings

### Scorecard items 6, 7

We agree that a well-functioning trademark protection regime serves the public interest. Substantial portions of the Internet-using public have encountered attempts to misrepresent brands; indeed the execution of "phishing" *requires* a bad actor posing as a trustworthy one. To that end, the ALAC fully supported the broad community consensus recommendations of ICANN's Special Trademark Issues (STI) working group. We are totally in favour of activity that prevents any misrepresentation of known trade names -- including names that may not be conventionally registered as trademarks because they are used in other contexts (such as Commonwealth countries' recognition of common-law marks or aboriginal shared wisdom).

However, the At-Large community has been alarmed by what has become an environment of trademark obsession from some ICANN actors. The original "IRT" group chartered by the Board, which shunned community participation, went far beyond reasonable trademark protections and would have empowered ICANN to enforce protections well beyond that afforded by existing law or treaty. Extension of protection to prevent strings which were "similar" to marks, for instance, was a clear example of stepping outside of common sense and into the realm of stifling competition and choice. It is unfortunate that such anti-public-interest foolishness, attempted by the IRT but rebuffed by the STI recommendations, has crept back into the GAC Scorecard. The assertion of these extreme measures as in the public interest and serving consumer protection is baseless and almost offensive.

Indeed, we find it unfortunate that such a disproportionate part of the Scorecard itself has been given to this issue, offering detailed remedies while the rest of the Scorecard deals in high-level concepts. While we share many of the GAC's concerns in this area, we believe that a sense of fair play and reasonableness is paramount, as well as a sense of proportion regarding Intellectual Property issues being but one part of the public interest related to Internet domains.

In this regard, our approach to the Scorecard is mixed.

We support the Scorecard's name-protection measures which are consistent with the STI consensus recommendations, subject to the ALAC minority report on the STI.

- ⤴ All of (#6.1), **except for (#6.1.3)** and including (#6.1.7) **so long as such use of the Trademark Clearinghouse does not delay registrations**
- ⤴ Simplified complaint format (#6.2.2)
- ⤴ Decisions should not require full panels (#6.2.3)
- ⤴ Six month deadline for filing an appeal (#6.2.10.2)

- ⤴ A successful complainant should have first right of refusal for transfer (#6.2.12)
- ⤴ We would accept a "loser pays" regime (#6.2.8) **in specific cases only if it is shown that the loser has a history of repeated bad-faith infringement**

However, we draw the line at measures that go beyond protection of public trust and confidence, but are designed to lower standards of protection, reduce due process and to "bully" potentially legitimate strings; these are measures in the Scorecard that, in our opinion, are against reasonableness, due process, community consensus and the public interest. **In these instances we disagree with the following components of the Scorecard position and support the ICANN Board's response:**

- ⤴ Sunrise services and IP claims should go beyond exact matches (#6.1.3)
- ⤴ Removal of reference to "substantive evaluation" (#6.2.4)
- ⤴ Elimination of reasonable due process (#6.2.5, 6.2.9)
- ⤴ Reducing standards of proof to not require "clear and convincing evidence" (#6.2.6)
- ⤴ Elimination of a requirement of bad faith when determining URS action (#6.2.7)
- ⤴ Requirement of a separate rationale for filing of appeal (#6.2.10.1)
- ⤴ Extend URS beyond exact matches to allow compound words (#6.2.13)

We also note specifically that the Post Delegation Dispute Resolution Procedures (#6.3) was not the product of the STI community consensus, but a disgraced remnant of the IRT effort that was demonstrated to act counter to the public interest and against overall Internet domain stability. The problems it seeks to remedy can be addressed by the UDRP mechanisms and sufficient enforcement of agreements. We strongly oppose the re-introduction of the PDDRP and ask the GAC to re-evaluate its consideration of the public good in this matter.

**Regarding Post-delegation disputes (#7):** The ALAC agrees with the GAC position.

**Regarding consumer protection measures (#6.4, except for #6.4.4, see below):** The ALAC strongly agrees with the GAC positions (though we also agree with the "due care" response from the Board related to #6.4.2). At-Large has long indicated to ICANN dissatisfaction with enforcement efforts, and re-enforces the sentiments behind (#4.2.3).

### Theme 3: Special Categories of Applications

#### Scorecard items 2.2, 6.4.4, 8, 10

Shunning widespread community request, ICANN has not budged from its long-standing position of only two categories of applications -- "regular" and "community". This is despite the fact that GNSO policy on gTLDs allows for categorization, and also explicitly allows for differential pricing for different categories.

The GAC Scorecard, in our view, simply adds one more strong voice to the need for categorization to what already exists. While arguments have been made -- and should be heeded -- about the concern that categorization mechanisms would be subverted for financial gain (also known as "gamed"), the ALAC holds the view that such concerns are not sufficient to resist implementation of new necessary categories. Even if gaming succeeds, in our view it is preferable to inadvertently let a few applications "slip through the cracks" than to deny the public service and innovation possible through creating a small number of new categories. We also believe that the potential for gaming would be reduced through ongoing monitoring by ICANN.

The ALAC view of categories indicated in the Scorecard as are follows:

**Regarding extension of the "community" designation to industry sectors (#2.2, 6.4.4):** In principle, the ALAC endorses the GAC position of wanting a special status for TLD names which indicate entire sectors which may be subject to regulation (such as .bank, .pharma, .lawyer). We are unclear about what form of extended evaluation is expected for such applications, and how the evaluation criteria are to be verified and enforced post-delegation. At-Large members have been following the High Security TLD Working Group and applaud its efforts; however its work seems too highly focused only on the financial services industry and might be overkill for other sectors. We are also concerned about the limits of such a designation; for instance, would ".shop" -- a real application-in-waiting -- be affected, since many countries regulate retail sales? We understand the public-protection aspects of such a recommendation but are unsure if its execution is sufficiently evolved to be implementable without incurring significant delay to the new gTLD process. Perhaps this "category" of TLD applications should be delayed until appropriate public-interest concerns and solutions are studied before implementation.

We note that the Board has directed ICANN staff to review some of these issues; the ALAC looks forward to seeing the results of that work

**Regarding geographic names (#8):** The ALAC supports the rights of political entities (countries, states, provinces, incorporated cities and counties) to be able to register their names, similarly to trademarks, in the Trademark Clearinghouse, in all appropriate languages and IDN scripts. Anyone wanting to use such names should get appropriate clearances, and be subject to the same name-protection scheme as afforded to trademark owners. However, it is unreasonable for political entities to protect every possible variation (i.e., to

give the United States government assumed rights to ".america") or colloquial description (is New York entitled to ".bigapple"?). We agree with the ICANN Board response of relying on pre-determined names.

We note the current work progress within the ccNSO on Delegation and Re-Delegation in relation to the matters raised by the Board, and we look forward to seeing the result of that work.

**Regarding applicants from developing economies requiring relief (#10):** The ALAC has long been of firm belief that ICANN should offer a beneficial pricing to applicants who meet rigid criteria regarding location, local ownership, community service and financial need. We continue to charter and encourage the "JAS" working group to explore ways to reduce barriers within the ICANN application framework, and advocate cost reduction for eligible applicants. The effort of ICANN to empower applications from all parts of the world must not be one of charity; it must not pit applicants against each other to demonstrate who is most "worthy" for a limited pool of subsidy funds. ICANN staff's refusal to even discuss the concept of differential pricing, reflecting an inappropriate philosophical approach to the issue, has seriously impeded efforts to research potential areas of cost saving within the current application framework. And while the Board response to (#10) is to await the final work of the JAS, we note that it has already explicitly rejected early JAS appeals for lowered pricing at the Trondheim meeting. We are certain this posture is inimical to the global public interest for an Internet ecology that is representative of the peoples of the world, and we strongly endorse the GAC's effort to request the ICANN Board to reconsider this regressive and anti-competitive position. We also encourage ongoing monitoring of the costs to administer the gTLD program to determine where price reductions may be enabled for these applicants while maintaining general principles of overall cost-recovery (see Theme 4 below).

#### **Theme 4: Operational Readiness and Scalability**

##### **Scorecard item 3**

The ALAC shares all of the GAC concerns and recommendations related to ICANN's readiness to expand the Root Zone, sufficiently to accommodate the large expansion of gTLDs envisioned by the number of current applications-in-waiting. We note that only the vested interests within ICANN are pushing for a massive round of simultaneous applications and approvals. The ALAC advises a more staggered approach, with a steady timetable of approvals and delegations. Doing so would be consistent with the controls advocated in the GAC's September 23rd 2010 letter to the ICANN Board. It would also allow for the kind of careful technical monitoring (and appropriate resource allocation) demanded by the GAC recommendations, and would also have the side-benefit of providing more precise cost calculations for administering the approval/delegation process. Such calculations will be of great value to the efforts to determine what cost reductions are possible for applicants to whom current pricing is an unreasonable obstacle to entry (#10, Theme 3 above). We believe that a regular timetable of rounds should be implemented, and propose that new application rounds take place at predictable intervals so as to ease pressure on the first round.



## Theme 5: Business and Market Considerations

### Scorecard items 4, 5

**Regarding market and economic impact (#4):** The ALAC believes that the market and the public interest is best served by a variety of strings and (well regulated) business models. ICANN should not be in the business of evaluating business models beyond their sustainability (which is an Internet stability issue). Applications much have contingency plans of what to do in case of registry failure, and ICANN must have similar default plans that result in minimal disruption for owners of domains in financially failing TLDs. However, we believe that "public benefit" declarations within TLD applications will be of dubious benefit, and in any case subject to substantial modification (and difficulty of enforcement) post-delegation. We have already seen registries such as .pro significantly alter their business models from what existed at launch -- while perhaps unfortunate, such market-driven practice cannot and should not be unduly constrained. The only exceptions to this are community applications, in which we support the GAC call for *"Due diligence or other operating restrictions to ensure that Community-based gTLDs will in fact serve their targeted communities"*.

**Regarding cross-ownership between registries and registrars (#5):** The At-Large Community was an active member of the ICANN Vertical Integration Working Group. Our participants in that group were as split in their opinions as the working group was in general when it failed to reach a consensus recommendation.

The above notwithstanding, the ALAC makes a number of recommendations to be considered regardless of the final cross-ownership regime:

- ⤴ With the objective of a globally accessible and contiguous Internet, the At-Large strongly favours cultural and IDN TLDs in the root. For this reason, mechanisms should be in place to ensure that cultural and IDN TLDs are not disadvantaged by the rules. Specifically, there is a fear that under some regimes, the requirement to use ICANN accredited registrars and to not self-distribute could jeopardise TLDs that will have a specific regional focus or those using less common scripts or languages. The lack of registrar interest or registrar capability could potentially impact the viability of just those new TLDs that we most want to succeed.
- ⤴ On applications for single-registrar TLDs that are not community applications, for which allocation policy is made by the registry (generally known as "dot-brands") the At-Large community is divided. Some believe that dot-brands are not in the public interest. Others believe that allocation is acceptable for unique coined brand names (ie, .exxon or .persil) but not for brands that are also generic words (i.e., .shell or .tide). The ALAC recommends that this particular form of application has not been sufficiently thought out to determine its impact on the public. Our preference is to postpone the allocation of dot-brands until the gTLD string evaluation process has demonstrated more maturity, gained greater awareness by the community and been studied in regard to public-interest aspects. (A

staggered TLD release approach, as recommended above in Theme 4, facilitates and hastens such study)

- ⤴ Compliance is a critical part of gTLD deployment. It is essential that the rules surrounding the new gTLDs be sufficiently clear and reasonably enforceable; and that ICANN put in place mechanisms to ensure reasonable compliance. The enforcement mechanisms must be sufficiently public that third-party scrutiny and whistle-blowers are welcomed to augment official investigative efforts.

## **Theme 6: Legal Considerations**

### **Scorecard items 9, 11**

**Regarding the ability of applicants to seek legal redress (#9):** The ALAC understands and appreciates the desire of ICANN to reduce its legal exposure by asking for waivers from legal redress by applicants. However, we note the GAC Scorecard statement that such requests may be legally difficult. The ALAC considers this issue to be more of a legal matter than one of policy, and will not offer an opinion on it.

**Regarding the role of law enforcement in the due diligence evaluation of applicants (#11):** The ALAC generally supports the GAC position on this issue. Public confidence requires that the criminal background of applicants should be a factor in TLD evaluation, especially in the case of sensitive strings that connote services or communities requiring enhanced trust (i.e., medical and financial services). We absolutely endorse the requirement (and ongoing auditing) of accurate WHOIS data for all registrants, as well as the request for transparency and public availability of results of the due diligence process for applicants.

Our only substantive disagreement with the GAC proposal is with two words; the singling out of drug crimes. We are far more concerned with crimes that, by their definition, involve harm to others such as fraud, harassment, identity theft, hate crimes and crimes of violence (whether Internet-related or not). All of these are more applicable to user trust than minor drug infractions.

## Appendix: Board Response Cross-Reference Table

This condensed version of the themed text has been re-formatted in a Scorecard table for convenience and alignment with previous Board practice. Readers should consider the themed version to be the primary and more complete version of this Statement.

This document contains the ICANN Board's notes on the "GAC indicative scorecard on new gTLD outstanding issues" of 23 February and subsequent discussion at ICANN #40 in San Francisco March 2011. Each GAC scorecard item is noted with a "1A", "1B", or "2" under the Board position, as reflecting the current ICANN Board position at the date of this the original document on which this table is based (March 4, 2011), to the best of our knowledge. Since the 1A, 1B and 2 notation is used by the Board to describe its response to the GAC scorecard, the ALAC uses the following notation for its own response:

- ✧ **The ALAC agrees with the GAC position**
- ✧ **The ALAC agrees conditionally with the GAC position:** the conditions under which it agrees with the GAC position are listed.
- ✧ **The ALAC does not agree with the GAC position:** this may not mean that it necessarily agrees with the Board position, but it has its own position
- ✧ **The ALAC has its own position:** The ALAC disagrees with both the GAC and the Board's position
- ✧ **The ALAC has a mixed position:** The ALAC has not come to consensus or does not believe it has enough knowledge to form a position on this.

Text in italics is quoted directly from the original "themed" document.

SC#	GAC Scorecard Actionable Item	Board	ALAC Notes / Position
1.	<b>The objection procedures including the requirements for governments to pay fees</b>		<b>The ALAC agrees with the GAC position</b>
1.	Delete the procedures related to "Limited Public Interest Objections" in Module 3.	<b>1B</b>	<b>The ALAC agrees conditionally with the GAC position</b>  <b>Refer to Theme 1:</b>  <i>"...completely eliminate the existing AG's Module 3</i>

			<i>relating to what is now obscurely called "Limited Public Interest" objections..."</i>
2.	<b>Procedures for the review of sensitive strings</b>		
2.1.1	<p><b>1. String Evaluation and Objections Procedure</b></p> <p>Amend the following procedures related to the Initial Evaluation called for in Module 2 to include review &lt;snipped&gt;</p>	1B	<p><b>The ALAC agrees conditionally with the GAC position</b></p> <p><b>Refer to Theme 1:</b></p> <p><i>"As a replacement we endorse (#2.1) including but not limited to:</i></p> <ul style="list-style-type: none"> <li>• <i>A similar objection mechanism for non-governmental organizations</i></li> <li>• <i>Due process to "object to the objection", and offer arguments counter to the recommendation to reject a string exists.</i></li> <li>• <i>All objection processes must be transparent; specifically, anonymous objections are explicitly NOT allowed</i></li> <li>• <i>The Board must have ultimate decision making authority with the unimpeded right to override objection advice; as ICANN's Bylaws already allow, expert advice can be sought.</i></li> <li>• <i>Insult or disrespect alone should not be suitable grounds for a successful objection."</i></li> </ul>
2.1.2	GAC advice could also suggest measures to mitigate GAC concerns. For example, the GAC could advise that additional scrutiny and conditions should apply to	2	<p><b>The ALAC agrees conditionally with the GAC position.</b></p> <p><b>Refer to Theme 3:</b></p> <p><i>"In principle, the ALAC endorses the GAC position of wanting a special status for TLD names which indicate entire sectors which may be subject to regulation (such as .bank, .pharma, .lawyer). We are</i></p>

	strings that could impact on public trust (e.g. '.bank').		<i>unclear about what form of extended evaluation is expected for such applications, and how the evaluation criteria are to be verified and enforced post-delegation.</i>
2.1.3	In the event the Board determines to take an action that is not consistent with GAC advice pursuant to Article XI Section 2.1 j and k, the Board will provide a rationale for its decision.	<b>1A</b>	<b>The ALAC agrees with the GAC position (which is also agreed to by the Board)</b>
2.2 2.2.1 2.2.2 2.2.3 2.2.4 2.2.5	<b>2. Expand Categories of Community-based Strings</b>  Amend the provisions and procedures contained in Modules 1 and 3 to clarify the following: [...]	<b>2</b> <b>1B</b> <b>1B</b> <b>1B</b>	<b>The ALAC agrees conditionally with the GAC positions</b>  <b>Refer to Theme 3:</b>  <i>"In principle, the ALAC endorses the GAC position of wanting a special status for TLD names which indicate entire sectors which may be subject to regulation (such as .bank, .pharma, .lawyer). We are unclear about what form of extended evaluation is expected for such applications, and how the evaluation criteria are to be verified and enforced post-delegation. We are also concerned about the limits of such a designation; for instance, would ".shop" -- a real application-in-waiting -- be affected, since many countries regulate retail sales? We understand the public-protection aspects of such a recommendation but are unsure if its execution is sufficiently evolved to be implementable without incurring significant delay to the new gTLD process. Perhaps this "category" of TLD applications should be delayed until appropriate public-interest concerns and solutions are studied before implementation.</i>  <i>We note that the Board has directed ICANN staff to</i>

			<i>review some of these issues; the ALAC looks forward to seeing the results of that work.</i>
3.	<b>Root Zone Scaling</b>		
3.1.1 3.1.2 3.3 3.4 3.5 3.6 3.7	The Board should continue implementing a monitoring and alerting system and ensure a) that ICANN can react predictably and quickly when there are indicators that new additions and changes are straining the root zone system, and	<b>1A</b>	<p><b>The ALAC agrees with the GAC position (which is also agreed to by the Board)</b></p> <p><b>Refer to Theme 4:</b></p> <p><i>“The ALAC shares all of the GAC concerns and recommendations related to ICANN’s readiness to expand the Root Zone, sufficiently to accommodate the large expansion of gTLDs envisioned by the number of current applications-in-waiting. We note that only the vested interests within ICANN are pushing for a massive round of simultaneous applications and approvals. The ALAC advises a more staggered approach, with a steady timetable of approvals and delegations. Doing so would be consistent with the controls advocated in the GAC’s September 23rd letter to the ICANN Board. It would also allow for the kind of careful technical monitoring (and appropriate resource allocation) demanded by the GAC recommendations, and would also have the side-benefit of providing more precise cost calculations for administering the approval/delegation process. Such calculations will be of great value to the efforts to determine what cost reductions are possible for applicants to whom current pricing is an unreasonable obstacle to entry.”</i></p>
4.	<b>Market and Economic Impacts</b>		
4.1	Amend the final Draft Applicant Guidebook to incorporate the following:  Criteria to facilitate the weighing of the potential	<b>2</b>	<p><b>The ALAC agrees conditionally with the GAC positions</b></p> <p><b>Refer to Theme 5:</b></p> <p><b><i>“Regarding market and economic impact (#4): The ALAC believes that the market and the public interest</i></b></p>

<p>4.2</p> <p>4.3</p>	<p>costs and benefits to the public in the evaluation and award of new gTLDs.</p> <p>A requirement that new gTLD applicants provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers.</p> <p>Due diligence or other operating restrictions to ensure that Community-based gTLDs will in fact serve their targeted communities and will not broaden their operations in a manner that makes it more likely for the registries to impose costs on existing domain owners in other TLDs.</p>	<p><b>1B</b></p> <p><b>1A</b></p>	<p><i>are best served by a variety of strings and (well regulated) business models. ICANN should not be in the business of evaluating business models beyond their sustainability (which is an Internet stability issue). Applications much have contingency plans of what to do in case of registry failure, and ICANN must have similar default plans that result in minimal disruption for owners of domains in financially failing TLDs. However, we believe that "public benefit" declarations within TLD applications will be of dubious benefit, and in any case subject to substantial modification (and difficulty of enforcement) post-delegation. We have already seen registries such as .pro significantly alter their business models from what existed at launch -- while perhaps unfortunate, such market-driven practice cannot and should not be unduly constrained. The only exception to this are self-declared community applications, in which we support the GAC call for "Due diligence or other operating restrictions to ensure that Community-based gTLDs will in fact serve their targeted communities".</i></p>
<p>5.</p>	<p><b>Registry – Registrar Separation</b></p>		
	<p>Amend the proposed new registry agreement to restrict cross-ownership between registries and registrars, in those cases where it can be determined that the</p>	<p><b>2</b></p>	<p><b>The ALAC agrees conditionally with the GAC positions</b></p> <p><b>Refer to Theme 5:</b></p> <p><b><i>“Regarding cross-ownership between registries and registrars (#5): The At-Large Community was an active member of the ICANN Vertical Integration</i></b></p>

	<p>registry does have, or is likely to obtain, market power.</p>	<p><i>Working Group. Our participants in that group were as split in their opinions as the working group was in general when it failed to reach a consensus recommendation.</i></p> <p><i>The ALAC makes a number of recommendations to be considered regardless of the final cross-ownership regime:</i></p> <ul style="list-style-type: none"> <li>• <i>With the objective of a globally accessible and contiguous Internet, the At-Large strongly favours cultural and IDN TLDs in the root. For this reason, mechanisms should be in place to ensure that cultural and IDN TLDs are not disadvantaged by the rules. A lack of registrar interest or registrar capability could potentially impact the viability of just those new TLDs that we most want to succeed.</i></li> <li>• <i>On applications for single-registrar TLDs that are not community applications, for which allocation policy is made by the registry (generally known as "dot-brands") the At-Large community is divided. The ALAC recommends that this particular form of application has not been sufficiently thought out to determine its impact on the public. Our preference is to postpone the allocation of dot-brands until the gTLD string evaluation process has demonstrated more maturity, gained greater awareness by the community and been studied in regard to public-interest aspects. (A staggered TLD release approach, as recommended above in (#4), facilitates and hastens such study)</i></li> <li>• <i>Compliance is a critical part of gTLD deployment. It is essential that the rules surrounding the new gTLDs be sufficiently</i></li> </ul>
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			<p><i>clear and reasonably enforceable; and that ICANN put in place mechanisms to ensure reasonable compliance. The enforcement mechanisms must be sufficiently public that third-party scrutiny and whistle-blowers are welcomed to augment official investigative efforts."</i></p>
6.	<p><b>Protection of Rights Owners and consumer protection issue</b></p>		<p><b>The ALAC has its own position</b></p> <p><b>Refer to Theme 2:</b></p> <p><i>"The ALAC fully supported the broad community consensus recommendations of ICANN's Special Trademark Issues (STI) working group."</i></p>
6.1.1	<p><b>Rights Protection: Trademark Clearing House (TC)</b></p>	1B	<p><b>The ALAC agrees conditionally with the GAC on part 6.1</b></p> <p><b>Refer to Theme 2:</b></p> <p><i>We support the Scorecard's name-protection measures which are consistent with the STI consensus recommendations, subject to the ALAC minority report on the STI."</i></p>
6.1.2	<p>The TC should be permitted to accept all types of intellectual property rights that are recognized under the national law of the country or countries under which the registry is organized or has its principal place of business. The only mandatory requirement for new registry operators will be to recognize national and supranational trademark registrations issued before June 26, 2008 and court-validated</p>	2	<p><i>The ALAC agrees with the GAC on part (#6.1), <b>except for (#6.1.3) including (#6.1.7.1) so long as such use of the Trademark Clearinghouse does not delay registrations</b></i></p> <p><b>The ALAC disagrees with the GAC position and agrees with the Board response for the following in 6.1</b></p> <p>△ Sunrise services and IP claims should go beyond exact matches (#6.1.3)</p>
6.1.3		2	
6.1.4		1B	
6.1.5		1A	
6.1.6		1A	
6.1.7.1		2	
6.1.7.2		1B	
6.1.7.2			

	common law trademarks.		
6.2.1	<b>Rights Protection: Uniform Rapid Suspension (URS):</b>	<b>1A</b>	<p><b>The ALAC agrees with the GAC position for the following in 6.2</b></p> <ul style="list-style-type: none"> <li>• Reduce timescale (#6.2.1)</li> <li>• Simplified complaint format (#6.2.2)</li> <li>• Decisions should not require full panels (#6.2.3)</li> <li>• Six month deadline for filing an appeal (#6.2.10.2)</li> <li>• A successful complainant should have first right of refusal for transfer (#6.2.12)</li> </ul> <p><b>The ALAC <i>disagrees</i> with the following components of the GAC Scorecard position. In these cases the ALAC agrees more with the Board response to the following in 6.2</b></p> <ul style="list-style-type: none"> <li>• Removal of reference to "substantive evaluation" (#6.2.4)</li> <li>• Elimination of reasonable due process (#6.2.5, 6.2.9)</li> <li>• Reducing standards of proof to not require "clear and convincing evidence" (#6.2.6)</li> <li>• Elimination of a requirement of bad faith when determining URS action (#6.2.7)</li> <li>• A "loser pays" regime (#6.2.8)</li> <li>• Requirement of a separate rationale for filing of appeal (#6.2.10.1)</li> <li>• Extend URS beyond exact matches (#6.2.13)</li> </ul>
6.2.2	Significantly reduce the timescales. See attached table for proposed changes. [...]	<b>1A</b>	
6.2.3		<b>1A</b>	
6.2.4		<b>1B</b>	
6.2.5		<b>1B</b>	
6.2.6		<b>2</b>	
6.2.7		<b>2</b>	
6.2.8		<b>2</b>	
6.2.9		<b>2</b>	
6.2.10		<b>2</b>	
.1		<b>2</b>	
6.2.10		<b>1A</b>	
.2		<b>1B</b>	
6.2.10		<b>1A</b>	
.3		<b>1A</b>	
6.2.11		<b>2</b>	
6.2.12			
6.2.13			

<p>6.3.1</p> <p>6.3.2</p> <p>6.3.3</p> <p>6.3.4</p> <p>6.3.5</p> <p>6.3.6</p> <p>6.3.7</p>	<p><b>Rights Protection: Post-delegation Dispute Resolution Procedure (PDDRP)</b></p> <p>The standard of proof be changed from “clear and convincing evidence” to a “preponderance of evidence”.</p> <p>[...]</p>	<p><b>2</b></p>	<p><b>The ALAC disagrees with the GAC position on 6.3.1 =&gt; 6.3.7.</b></p> <p><b>Refer to Theme 2:</b></p> <p><i>“Post Delegation Dispute Resolution Procedures (#6.3) was not the product of the STI community consensus, but a disgraced remnant of the IRT effort that was demonstrated to act counter to the public interest and against overall Internet domain stability. The problems it seeks to remedy can be addressed by the UDRP mechanisms and sufficient enforcement of agreements.</i></p> <p><i>We strongly oppose the re-introduction of the PDDRP and ask the GAC to re-evaluate its consideration of the public good in this matter. “</i></p>
<p>6.4.1</p> <p>6.4.2</p> <p>6.4.3</p>	<p><b>Consumer Protection</b></p> <p>Amend the "Maintain an abuse point of contact" paragraph in the DAG to include government agencies which address consumer protection:</p> <p>[...] .assist law enforcement, government agencies and agencies endorsed by governments with their enquiries about abuse complaints</p> <p>Ensure that ICANN’s contract compliance function is adequately resourced [...]</p>	<p><b>1B</b></p> <p><b>1B</b></p> <p><b>1A</b></p>	<p><b>The ALAC agrees with the GAC position</b></p> <p><b>Refer to Theme 2:</b></p> <p><i>“Regarding consumer protection measures (#6.4, except for #6.4.4, see below): The ALAC strongly agrees with the GAC positions (though we also agree with the "due care" response from the Board related to (#6.4.2). “</i></p>



	mechanism would allow governments to protect their interest		
8.1.1.2	and to define names that are to be considered geographic names. [...]	2	<p><b>The ALAC agrees conditionally with the GAC position</b></p> <p><b>Refer to Theme 3:</b></p> <p><i>“Regarding geographic names (#8): The ALAC supports the rights of political entities (countries, states, provinces, incorporated cities and counties) to be able to register their names, similarly to trademarks, in the Trademark Clearinghouse, in all appropriate languages and IDN scripts. Anyone wanting to use such names should get appropriate clearances, and be subject to the same name-protection scheme as afforded to trademark owners. However, it is unreasonable for political entities to protect every possible variation (i.e., to give the United States government assumed rights to ".america") or colloquial description (is New York entitled to ".bigapple"?). We agree with the ICANN Board response of relying on pre-determined names“</i></p> <p><i>We note the current work progress within the ccNSO on Delegation and Re-Delegation in relation to the matters raised by the Board, and we look forward to seeing the result of that work.</i></p>
8.1.2	<b>2. Further requirements regarding geographic names</b>	1B	
8.1.3	The GAC clarifies that it is a question of national sovereignty to decide	2	
8.1.4	which level of government or which administration is responsible for the filing of	1B	
8.2.1	letters of support or non-objection. There may be countries that require that such documentation has to be filed by the central government - also for regional geoTLDs; in other countries the responsibility for filing letters of support may rest with sub-national level administrations even if the name of the capital is concerned [...]	1A 1A	
8.2.2		1B	

9.	<b>Legal Recourse for Applications:</b>		
9.	Seek legal advice in major jurisdiction whether such a provision might cause legal conflicts – in particular but not limited to US and European competition laws. [...]	<b>1A</b>	<p><b>The ALAC has a mixed position</b></p> <p><b>Refer to Theme 6:</b></p> <p><i>“Regarding the ability of applicants to seek legal redress (#9): The ALAC understands and appreciates the desire of ICANN to reduce its legal exposure by asking for waivers from legal redress by applicants. However, we note the GAC Scorecard statement that such requests may be legally difficult. The ALAC considers this issue to be more of a legal matter than one of policy, and will not offer an opinion on it. “</i></p>
10.	<b>Providing opportunities for all stakeholders including those from developing countries</b>		
	<b>Main issues</b>		<b>The ALAC has its own position</b>
	<b>Cost Considerations</b>		<b>Refer to Theme 3:</b>
10.1	Set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude stakeholders from participating in the new gTLD process.	<b>TBD</b>	<p><i>“Regarding applicants from developing economies requiring relief (#10): The ALAC has long been of firm belief that ICANN should offer a beneficial pricing to applicants who meet a rigid criteria regarding location, local ownership, community service and financial need. We continue to charter and encourage the "JAS" working group to explore ways to reduce barriers within the ICANN application framework, and advocate cost reduction for worthy applicants. We reject the scenario, envisioned by some ICANN stakeholders, that would establish a subsidy fund and/or engage in external fund raising. The effort of ICANN to empower applications from all parts of the world must not be one of charity; it must not pit applicants against each other to demonstrate who is most "worthy" for a limited pool of subsidy funds. ICANN staff's refusal to even discuss the concept of differential pricing, reflecting an inappropriate philosophical approach to the issue,</i></p>
10.2.1		<b>1A</b>	
10.2.1		<b>1A</b>	
10.2.1		<b>1B</b>	
10.3		<b>1A</b>	
10.4		<b>TBD</b>	
10.5		<b>TBD</b>	
10.6		<b>1B</b>	
	Language Diversity		
	Technical and logistics support		

	<p>Outreach – as per Joint AC/SO recommendations</p> <p><b>Joint AC/SO Working Group on support for new gTLD applicants.</b></p> <p><b>Applications from Governments or National authorities (especially municipal councils and provincial authorities) – special consideration for applications from developing countries</b></p> <p>The GAC commented that the new gTLD process should meet the global public interest consistent with the Affirmation of Commitments. [...]</p> <p><b>Other Developing world Community comments</b></p> <p>Rolling out new gTLD and IDNs was done in a hurry and without basis on a careful feasibility study on the impact that [...]</p>		<p><i>has seriously impeded efforts to research potential areas of cost saving within the current application framework. And while the Board response to (#10) is to await the final work of the JAS, we note that it has already explicitly rejected early JAS appeals for lowered pricing at a previous meeting. We are certain this posture is inimical to the global public interest for an Internet ecology that is representative of the peoples of the world, and we strongly endorse the GAC's effort to request the ICANN Board to reconsider this regressive and anti-competitive position. We also encourage ongoing monitoring of the costs to administer the gTLD program to determine where price reductions may be enabled for these applicants while maintaining general principles of overall cost-recovery (see scorecard #3)</i></p> <p>“</p>
11.	<b>Law enforcement due diligence recommendations</b>		
	<p>Include other criminal convictions as criteria for disqualification, such as</p>		<p><b>The ALAC agrees conditionally with the GAC position</b></p>

11.1	Internet-related crimes (felony or misdemeanour) or drugs.	<b>1B</b>	<p><b>Refer to Theme 6:</b></p> <p><i>“Regarding the role of law enforcement in the due diligence evaluation of applicants (#11): The ALAC generally supports the GAC position on this issue. Public confidence requires that the criminal background of applicants should be a factor in TLD evaluation, especially in the case of sensitive strings that connote services or communities requiring enhanced trust (ie, medical and financial services). We endorse the requirement (and ongoing auditing) of accurate WHOIS data for all registrants, as well as the request for transparency and public availability of results of the due diligence process for applicants.”</i></p> <p><i>Our only substantive disagreement with the GAC proposal is with two words; the singling out of drug crimes. We are far more concerned with crimes that, by their definition, involve harm to others such as fraud, harassment, identity theft, hate crimes and crimes of violence (whether Internet-related or not). All of these are more applicable to user trust than minor drug infractions.”</i></p>
11.2.1		<b>1B</b>	
11.3		<b>1B</b>	
11.4		<b>1B</b>	
11.5		<b>1B</b>	
11.6		<b>1A</b>	
12.	<b>The need for an early warning to applicants whether a proposed string would be considered controversial or to raise sensitivities (including geographical names)</b>		<b>The ALAC agrees with the GAC position</b>
12.1	Reconsider its objection to an “early warning” opportunity for governments to review potential new gTLD strings and to advise applicants	<b>1B</b>	<p><b>The ALAC agrees with the GAC position</b></p> <p><b>Refer to Theme 1:</b></p> <p><i>“In agreeing with (#12), we also believe that it is simple common sense to be able to alert TLD</i></p>



	<p>whether their proposed strings would be considered controversial or to raise national sensitivities.</p>		<p><i>applicants, as early in the application process as possible, to potential objections. Furthermore, applicants should be given the ability to suspend the application process (i.e., a "time out") while such disputes may be resolved at such an early stage. Applicants, having entered such good-faith negotiations with potential objectors, should be able to make minor changes to their applications in order to comply with a negotiated settlement “</i></p>
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