

05 February 2015

Dr Steve Crocker
Chairman of the Board
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 3000
Los Angeles CA 90004-2536

Re: Release of two-character labels as second level domains in new gTLDs

Dear Dr. Crocker,

We write to raise serious concern about what appears to be a recent closed-door, unilateral decision by ICANN staff, which took place over a period of weeks, to defer action on pending requests for two-character labels. This action was apparently initiated as a result of recent [correspondence](#) you received from the Chair of the Governmental Advisory Committee—but which critically does not represent formal consensus advice or even purport to represent the opinion of the GAC as a whole—about the process implemented by ICANN staff to allow registry operators to request the use of two-character labels at the second level of new gTLDs.

This action was taken despite the October 16 Board [resolution](#) from the Los Angeles meeting that closed the loop on this issue after months of extensive discussion, public comment, and consultation with the Community, including the GAC, and that paved a way forward to allow the introduction of two-character labels at the second level of new gTLDs. This was subsequently realized on 1 December 2014, when ICANN announced the [Process for Requests for Release of Two-Character ASCII Labels](#). Many [registries](#) have since taken advantage of the process and early requestors had anticipated approval soon after the expiration of the 30 day comment period in early January 2015 as formally communicated by staff during the November 19 RySG meeting.

We respectfully ask the Board to immediately instruct staff to reinstate the 1 December 2014 process for the release of the two-character labels and to show all observers of this process that the multi-stakeholder process can work without undue influence by any stakeholder group and that contracted parties can rely on predictable, transparent processes without the risk of future interference and/or potential content control by a handful of stakeholders.

The decision by ICANN staff to defer action on pending requests raises four primary concerns:

- Further delays incurred by registry operators seeking to use two-character domains at the second level and the negative impact this has on business strategies;
- The risk of inconsistent treatment of registries since at least one registry operator, who submitted their request to use all two-character domains including those on the 3166 lists prior to the streamlined process, has already been granted approval by ICANN and thus is able to release such domains, whilst everyone else is on hold;
- The ability of a letter from the GAC, which is not consensus advice and is inconsistent with a previous GAC communique, to halt a process indefinitely; and

- The staff decision to defer the process absent any apparent direction from the Board to do so and retrospectively applying the deferment to requests that should have been approved prior to the date of the GAC correspondence being received.

You may recall the RySG [wrote](#) to you on 30 September 2014 (also attached), about the release of two-character labels. We believe that a considerable portion of this correspondence is relevant in refuting the assumptions in the GAC's most recent letter regarding national sovereignty being attached to two-character labels that correspond with or also happen to be two-letter country codes. We will not restate these reasons here, but request that both the Board and ICANN executive revisit the public record.

As you will also note, from our letter of 30 September 2014, several registry operators had already used the RSEP process to request the right to use two-character labels at the second level of their TLD—in some cases, these requests occurred more than 6 months previously. The process that was introduced by ICANN staff on 1 December 2014, instituting the Board's October 16 Resolution, provided a significantly more streamlined process and one that was welcomed by all registry operators.

The January 26 letter from some members of the GAC contains a number of requests to change the 1 December 2014 process: a process that was designed by ICANN staff in accordance with the requirements of the Registry Agreement, the GAC communique from LA, and the subsequent Board resolution.

The reasoning of the letter for why additional delay should be accepted is flawed. Neither the Community (including the Board) nor the Applicant Guidebook support rights of "national sovereignty, and the GAC Principles regarding new gTLDs" claimed by Mr. Schneider. The rights claimed in Mr. Schneider's correspondence are not supported by international law and we do not believe that ICANN processes should be used to create new and extensive rights. The GAC Principles have never been adopted as Policy by ICANN and, indeed, a number of the GAC Principles, including many relating to "national sovereignty" were specifically rejected as Policy.

Indeed, a careful look at the letter from the GAC goes far beyond just the question of two-character labels included on the ISO 3166-1 list. The letter asks the Board and staff to consider "the adscription to category 1 or 2 of the GAC Safeguard Advice" and notes that ultimately the decision to allow use of a label that is the same "or similar or deceptively similar as the ccTLDs", "rests with the government, not with ICANN." Finally, the GAC falls back once again on the GAC Principles—Principles not adopted as Policy by the ICANN Community or the Board—as giving governments the right to "dispute registrations *already done* if there are reasons to claim that the name is being used to the prejudice of its national interests *including* geographic significance." These are incredibly broad rights demanded by certain members of the GAC, rights that in most cases are not supported by their own national and international laws.

By way of reminder, the Board's October 16, 2014 Resolution clearly states that ICANN made a preliminary determination that use of two-character domain names in the new gTLD namespace "did not raise significant Security, Stability or Competition Issues." In addition, the GAC's Los Angeles Communique notes that it could not achieve consensus advice on the use of two-character names, including those on the ISO 3166-1 alpha 2 lists. The Board further authorized the President and CEO

of ICANN “to develop and implement an effective procedure for the release of two-character domains currently required to be reserved in the New gTLD Registry Agreement, taking into account the GAC’s LA advice.” The ICANN staff heeded the Board’s advice and developed a process in line with the 16 October 2014 Resolution and the requests made in the GAC’s Los Angeles Communiqué. Notably, upon its introduction, the authorization process became the only method by which registry operators could request the release of two-character labels; registry operators were instructed that they could no longer use the RSEP which had previously been used to successfully release two-character labels.

We do not believe it is appropriate to afford any stakeholder group an on-going veto over processes that affect registry operations and we are particularly concerned about the precedent this will set if the Board entertains and agrees to any of the requests. The idea that any stakeholder can continue to lobby the Board on an issue that has been, for all intents and purposes, closed after a legitimate review (that includes public comment) and determination, and expect the Board or Staff to unilaterally reverse its position is unacceptable.

In addition, in a point of time where both the public and global governments are asking for ICANN to demonstrate accountability, ICANN staff made a unilateral decision to stop a process formally instructed by the Board.. Either staff exceeded its authority by taking it upon themselves to halt processes that affect contracted parties or staff was instructed by the Board in a closed-door, non-transparent, manner at the behest of several governments and in violation of ICANN’s Bylaws.

On January 27, 2015, Assistant Secretary Larry Strickling stated “it is critical that this group conduct ‘stress testing’ of proposed solutions to safeguard against future contingencies such as attempts to influence or take over ICANN—be it the Board, staff or any stakeholder group—that are not currently possible given its contract with NTIA.” Far from showing the world that ICANN is accountable and that it is not acting at the behest of individual governments, ICANN is failing this stress test.

We look forward to the reinstatement of the 1 December 2014 process or receiving a response that addresses the concerns raised in this correspondence.