

**ICANN NEW gTLD PROGRAM COMMITTEE SUBMISSION NO. 2014-04-03-XX**

**TO:** ICANN New gTLD Program Committee

**TITLE:** GAC Advice in Singapore Communiqué on .WINE and .VIN Applications

**PROPOSED ACTIONS:** For Committee Consideration and Approval

**EXECUTIVE SUMMARY:**

On 22 March 2104, ICANN’s Board New gTLD Program Committee (NGPC) “accept[ed] the GAC advice identified in the GAC Register of Advice as 2013-09-09-wine and vin” and, consistent with that advice, directed “that the applications for .WINE and .VIN should proceed through the normal evaluation process.” As part of its deliberations on the Governmental Advisory Committee’s (GAC) advice on .VIN and .WINE, the NGPC considered independent analysis of French Law Professor Jerome Passa on the legally complex and politically sensitive matter (“Independent legal Analysis”). In its Singapore Communiqué, the GAC noted that with respect to NGPC Resolution 2014.03.22.NG01 concerning .WINE and .VIN, there appears to be t least one process violation and procedural error, including in relation to Bylaws Article XI-A, Section 1 subsection 6, in the final deliberation by the NGPC. Specifically, the GAC suggests that the NGPC violated ICANN’s Bylaws in failing to provide the GAC with the opportunity to comment on the Independent Legal Analysis before the NGPC accepted the GAC Advice on the .WINE and .VIN applications.

ICANN did not seek the Independent Legal Analysis as External Expert Advice pursuant to Article XI-A or any other portion of the Bylaws. Accordingly, no Bylaws provision has been violated.

While there is not a process violation or procedural error under the Bylaws, consistent with ICANN’s commitment to transparency, ICANN attached the legal analysis to NGPC Resolution 2014.03.22.NG01. For ease of reference, ICANN will formally provide a copy of the legal analysis to the GAC.

In recognition of the GAC's advice re .WINE and .VIN in its Singapore Communiqué that “concerned GAC members believe the applicants and interested parties should be encouraged to continue their negotiations with a view to reach an agreement on the matter”, it is recommended that ICANN not proceed with contracting for the applications for .WINE and .VIN for a minimum of 60 days from the date of publication of these resolutions in order to provide additional time for the relevant impacted parties to negotiate, which they are encouraged to do.

**PROPOSED RESOLUTION:**

Resolution text superseded by NGPC Resolutions 2014.04.04.NG01 - 2014.04.04.NG04: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04apr14-en.htm#1.a>

Resolution text superseded. Refer to the following for the adopted text of the resolution: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04apr14-en.htm#1.a>

Resolution text superseded by NGPC Resolutions 2014.04.04.NG01 - 2014.04.04.NG04: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04apr14-en.htm#1.a>

**PROPOSED RATIONALE:**

Rationale text superseded by Rationale to NGPC Resolutions 2014.04.04.NG01 - 2014.04.04.NG04: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04apr14-en.htm#1.a.rationale>

Rationale text superseded by Rationale to NGPC Resolutions 2014.04.04.NG01 - 2014.04.04.NG04:  
<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04apr14-en.htm#1.a.rationale>

Rationale text superseded by Rationale to NGPC Resolutions 2014.04.04.NG01 -  
2014.04.04.NG04: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04apr14-en.htm#1.a.rationale>

Rationale text superseded by Rationale to NGPC Resolutions 2014.04.04.NG01 - 2014.04.04.NG04:  
<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04apr14-en.htm#1.a.rationale>

Rationale text superseded by Rationale to NGPC Resolutions 2014.04.04.NG01 -  
2014.04.04.NG04: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04apr14-en.htm#1.a.rationale>



**ANNEX 1**

Pages 9/46 - 29/46 removed from document. Privileged & Confidential.

## ANNEX 2

### Timeline of GAC Advice on .Wine/.Vin<sup>1</sup> (1 April 2014)

- 11 April 2013: In the [Beijing Communiqué](#), the GAC advises the Board not to proceed beyond Initial Evaluation for the applied-for strings .wine and .vin.
- 19 April 2013: [Letter](#) from Bernard Farges, President, National Appellation of Origin Wines and Brandy Producers (CNAOC). “CNAOC would like to bring its’ support to the position expressed by the GAC’s Communiqué in Beijing concerning the strings ‘.wine’ and ‘.vin’.” CNAOC calls for the strings to be included in the Category 1 Safeguards, and suggests that the issue be examined further by the GAC in Durban.
- 23 April 2013: [Letter](#) from Riccardo Ricci Curbastro, President, European Federation of Origin Wines (EFOW). “EFOW would like to bring its’ support to the position expressed by the GAC’s Communiqué in Beijing concerning the strings ‘.wine’ and ‘.vin’.” EFOW calls for the strings to be included in the Category 1 Safeguards, and suggests that the issue be examined further by the GAC in Durban.
- 26 April 2013: [Letter](#) from Jean-Luc Barbier, General Director Comité Champagne CIVC. “The CIVC strongly supports the position expressed by the GAC’s Communiqué in Beijing concerning the strings “.wine” and “.vin”. CIVC is not opposed to the attribution of new gTLDs as such. Nevertheless, considering the prejudice that these two new domains may cause to the Intellectual Property Rights (IPRs) Champagne, it would like to stress the necessity for ICANN Board to take into consideration the request of the GAC and not proceed beyond Initial Evaluation with the examination of the applications it has received.”
- 22 May 2013: ICANN [publishes](#) applicant responses to the GAC’s Beijing Communiqué, which includes applicant responses on .wine/.vin GAC advice.
- 4 June 2013: The NGPC [accepts](#) the advice in the Beijing Communiqué and determines that at that time, ICANN will not proceed beyond initial evaluation of the identified strings.

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<sup>1</sup> Includes a chronology of GAC advice, NGPC actions, and correspondence concerning .wine and .vin beginning with the GAC’s issuance of the Beijing Communiqué in April 2013.

- 20 June 2013: [Letter](#) from Tom LaFaille, Director of International Trade Policy Wine Institute. “We respectfully urge you to reject any aspect of GAC advice designating .wine or .vin as ‘geographic’ names.”
- 18 July 2013: In the [Durban Communiqué](#), the GAC advises the Board that it continued to consider .wine and .vin, but due to the complexity of the matter, it needed 30 more days to conclude on the matter.
- 8 August 2013: [Letter](#) from Bruce Cakebread, President Napa Valley Vintners Board of Directors. “[W]e urge ICANN to take into consideration the advice received from its Governmental Advisory Committee and not proceed with these strings beyond initial evaluation.”
- 19 August 2013: [Letter](#) from Riccardo Ricci Curbastro, President of European Federation of Origin Wines, and Bernard Farges, President of Vignerons d’Appellation d’Origine, expressing concern over extension of first level domain names for .vin and .wine. “[W]e are not opposed to it but rather that we would welcome these developments as long as the protection of wines with a geographical indication would be guaranteed.”
- 28 August 2013: ICANN [publishes](#) applicant responses to GAC advice, which includes applicant responses on .wine/.vin GAC advice.
- 29 August 2013: [Letter](#) from Ron Goerler, Jr., President, Long Island Wine Council, recommending that the Board take into consideration the Beijing GAC Advice and not proceed beyond Initial Evaluation. “We believe it is imperative that adequate safeguards along the lines of those proposed in Annex I of the GAC Communiqué of April 11, 2013, be put in place to protect wine growing place names before approving the ‘wine’ and ‘vin’ strings.”
- 9 September 2013: [Letter](#)<sup>2</sup> from the GAC Chair to the Board, advising the Board that there is no consensus advice on additional safeguards for .wine/.vin (with reference to Module 3.1.1 of the AGB), and “advises that the applicants should proceed through the normal evaluation process.” The advice notes that the “crux of the matter relates to the handling of geographical indications, for which there is a range of views among the GAC membership,” and “[t]here is no international agreement among governments about how to treat geographical indications and, as a consequence, no basis for an agreement in the GAC on safeguards that would offer additional protections.” The advice suggests that “[t]he GAC or its

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<sup>2</sup> The date on the GAC advice letter from the GAC Chair indicates 9 September 2013, but it was not received until 11 September 2013. Because the final letter was not available until 11 September, it was not considered as part of the NGPC’s action on 10 September 2013.

members may communicate further details to the Board as to the nature of the differences in views.”

- 10 September 2013: The NGPC [accepts](#) the advice in the Durban Communiqué concerning .wine/.vin and notes that it stands ready to hear the final advice from the GAC. The NGPC also acknowledges receipt an email from the GAC Chair on 10 September indicating that the GAC finalized its consideration of the strings, and that it will consider this advice at a subsequent meeting.
- 12 September 2013: [Letter](#) from Neelie Kroes, Vice-President of the European Commission, stating that “[T]here has not been any consensus decision overruling the advice given in Beijing.” Vice-President Kroes further states:

[O]ur position on substance also remains firm; under no circumstance can we agree having .wine and .vin on the internet, without sufficient safeguards which efficiently protect the rights and interest of both GI right holders and consumers of wine and wine products. The more general safeguards expressed in Annex 1 of the Beijing Communiqué are not specific enough to allow companies unrelated to the wine sector, and therefore not acquainted with the specificities of the global wine market and the importance of GIs, to run the two strings in a safe manner.

- 28 September 2013: In another iteration of the [Scorecard](#), the NGPC acknowledges receipt of the GAC advice in the 9 September 2013 letter from the GAC Chair, and indicates that it stands ready to hear from the GAC or its members as to the nature of the differences in views expressed in the advice while the NGPC is analyzing the community input received.
- 7 November 2013: [Letter](#) from Neelie Kroes, Vice-President of the European Commission, asking that no decisions be made on the .WINE and .VIN applications “until an agreement is reached between applicants and right-holders and a solution is commonly presented to ICANN by both parties as an example of good cooperation.” Vice President Kroes also stated that additional safeguards are required and offered some options for a solution:

A very large number of GAC members favour introducing specific safeguards. This includes not only the Commission and EU Member States but also Mexico, Argentina, Peru and Chile. This request, from countries representing the greater part of global wine production,

is based on legitimate concerns which could have important legal, economic and political implications. By contrast, three GAC members (US, Australia, New Zealand), possibly because they have obtained safeguards for trademarks that are used by wine producers in these countries (rather than GIs) oppose it. The Beijing consensus advice was that further consideration was needed regarding the .wine and .vin strings and that the Board should be advised not to proceed beyond initial evaluation. There is no reason why this advice should be overruled, especially if some solution can be found between the parties.

If the GAC is unable to find consensus on the basis of the above-mentioned solutions, it is not acceptable that the default recommendation should be that the GAC recommends delegation of the strings, which would mean siding with the position of those three members. This would de-facto create an unacceptable bias in the GAC advice either in favour of some members or in favour of delegation as such, despite clear objections. The only possible default in case of no GAC consensus should be no advice. This is why the current discussion around .wine and .vin also raises questions concerning decision-making procedures in the GAC, preparation of meetings by the secretariat, the role of the chair and the possibility and conditions for GAC members to vote.

- 19 November 2013: ICANN facilitates a dialogue between the applicant for .VIN and the affected non-governmental parties.
- 20 November 2013: The [Buenos Aires Communiqué](#) states that “Some members are of the view, after prolonged and careful consideration, that the existing safeguards outlined in the GAC’s Beijing Communiqué and implemented by the ICANN Board are appropriate and sufficient to deal with the potential for misuse of the .wine and .vin new gTLDs.” The Communiqué also states that “Other members consider that delegation of .wine and .vin strings should remain on hold until either sufficient additional safeguards to protect GIs are put into place in these strings to protect the consumers and businesses that rely on such GIs; or common ground has been reached for the worldwide protection of GIs via international fora and wide array of major trade agreements.” The GAC suggests that the Board may “wish to seek a clear understanding of the legally complex and politically sensitive background on this matter in order to consider the appropriate next steps in

the process of delegating the two strings. GAC members may wish to write to the Board to further elaborate their views.”

- 17 December 2013: [Letter](#) from Andrew Maurer, Assistant Secretary Spectrum, Treaties and Internet Governance, Department of Communications, Australia. Notes that existing safeguards in Beijing Communiqué are sufficient to address potential for misuse of .vin and .wine. In the absence of GAC consensus “it is the Australian government’s view that the applications for .wine and .vin should be allowed to proceed.”
- 14 January 2014: ICANN [publishes](#) applicant responses to GAC advice in the Buenos Aires Communiqué, which includes applicant responses on the .wine/.vin GAC advice.
- 30 January 2014: [Letter](#) from Lawrence E. Strickling, Assistant Secretary for Communications and Information, United States Department of Commerce, expressing the position of the U.S. that “existing safeguards and developed by the GAC and accepted by the ICANN Board provide sufficient protections to mitigate against possible abuses in domain name registrations at the second level in .wine and .vin.” The letter notes that the U.S. “supports the delegation of the new gTLD application for .wine and .vin without additional safeguards or negotiations, beyond the safeguards previously adopted by the ICANN Board.”
- 3 February 2014: [Letter](#) from Linda Corugedo Steneberg, on behalf of the EU, EU Member States, Norway, and Switzerland, stating that “[I]t is worth stressing again that during the Beijing Meeting there was a consensus to put on hold the delegation of .wine and .vin (see Beijing GAC Communiqué) contrary to many strings which were listed under safeguards 1 and 2 sections of the Communiqué.”

Given the lack of common ground on GIs across different jurisdictions, and the possibility that the registry of .vin and .wine might be a corporation under a national regulatory regime which does not guarantee sufficient protection for GIs, the general safeguards fall short in granting effective protection to GI right holders.

[T]he EU firmly recommends putting the delegation of these new gTLDs on hold until . . . bilateral negotiations between GI right holders and applicants reach a successful outcome. In the event these such necessary negotiations are effectively undermined or prevented for any reason, we would conclude that the Board has no option other than to reject the applications because

the harm their operation as TLDs may cause to wine GI right holders, producers and consumers worldwide.

- 5 February 2014: In another iteration of the [Scorecard](#), the NGPC notes that it commissioned an analysis of the legally complex and politically sensitive background on this matter in the context of the GAC advice in order to consider the appropriate next steps of delegating .WINE and .VIN. The analysis is expected to be completed so that it can be considered by the NGPC when it meets in Singapore.
- 19 March 2014: [Letter](#) from Martin Schulz, President of the European Parliament. “The European Parliament fully supports the position expressed by the European Commission in the letter addressed to the ICANN Board on 3 February. If these discussions do not bear fruit, the European Parliament will give its full backing to the European Commission and its Member States in calling for the rejection of .vin and .wine.”
- 22 March 2014: The NGPC adopts a [resolution](#) to accept the GAC advice identified in the GAC Register of Advice as 2013-09-09-wine and vin, and directed the President and CEO that the applications for .WINE and .VIN should proceed through the normal evaluation process.
- 27 March 2014: Letter from Linda Corugedo Steneberg on behalf of the European Commission, European Union Member States, Switzerland, and Norway, stating “The action that was approved by the NGPC on 22 March and communicated on 25 March is allegedly based on GAC consensus, whereas in reality a significant number of GAC members were in consensus not to allow the .WINE and .VIN applications to proceed through evaluation until sufficient additional safeguards were in place.” The letter provides that, “There have been a series of process violations and procedural errors in arriving at this resolution. The Rationale specifically mis-states the GAC’s view, mixing a lack of GAC consensus on what safeguards should be in place with a quote from a letter which was sent to the ICANN Board without it being circulated to the GAC members prior to it being sent.” The letter requests that “in the interest of the bottom-up multistakeholder model and due respect to decision-making rules and ICANN By-laws, that the NGPC reconsiders its decision and takes into account the true opinion of the majority of the GAC members.” The letter also requests that “the NGPC reviews its decision and does not allow the strings to proceed to evaluation until negotiations have closed and sufficient safeguards are in place.” The letter outlines six points to assist the NGPC in its deliberations on these requests. The letter provides notice that the EC, the EU Member States, Switzerland and Norway requested the inclusion of specific paragraph in the Singapore GAC Singapore Communiqué to address NGPC Resolution 2014.03.22.NG01.

**Proposed Path Forward on:**  
GAC Advice on .WINE and .VIN from the GAC Singapore  
Communiqué (“Advice”)

1. Acknowledge and accept the Advice.
2. Confirm that the Board has reconsidered the matter by reviewing the issue raised by the GAC relating to contention of a possible process violation or procedural error under ICANN Bylaws Article XI-A, Section 1, subsection 6.
3. Specifically address Article XI-A of the ICANN Bylaws by citing the Legal Memorandum explaining that Article XI-A, Section 1 limits the purpose of the section to obtaining External Expert Advice on Policy Development Processes, not instances such as where independent legal analysis was sought regarding .WINE and .VIN applications. There is no provision in the Bylaws requiring the sharing of such independent legal, technical or other analysis with the GAC.
4. Confirm that ICANN will not proceed to contracting for 45 days from the date of the publication of this set of resolutions to provide the applicants and impacted parties time to negotiate in an effort to resolve their concerns, which they are encouraged to do.
5. Authorize the Chair to respond to recent letter from Linda Corugedo Steneberg (on behalf of the European Commission; European Union Member States; Switzerland; and Norway) that the Board has met and have formally responded to the GAC advice from the GAC Singapore Communiqué.



**New gTLD Program Committee Members,**

**Attached below please find Notice of the following New gTLD Program Committee Meeting:**

**3 April 2014 – NGPC Meeting at 22:00 UTC. This Committee meeting is estimated to last 90 minutes.**

**<http://www.timeanddate.com/worldclock/fixetime.html?msg=New+gTLD+Program+Committee+Meeting&iso=20140403T15&p1=137&ah=1&am=30>**

**Some other helpful time zones:**

**3 April 2014 – 3:00 p.m. PDT Los Angeles, CA**

**3 April 2014 – 6:00 p.m. EDT Washington, D.C.**

**4 April 2014 – 12:00 a.m. CET Brussels**

Main Agenda:

1. Applications for .vin and .wine
2. GAC Communiqué – Singapore

**MATERIALS – [When materials are ready you can find them here](#) on BoardVantage.**

**If you have trouble with access, please let us know and we will work with you to assure that you can use the BoardVantage Portal for this meeting.**

**If call information is required, it will be distributed separately.**

**If you have any questions, or we can be of assistance to you, please let us know.**

**John Jeffrey**

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