

01 July 2024

Nicolas D. Caballero
Chair, ICANN Governmental Advisory Committee (GAC)

RE: ICANN80 Kigali GAC Communiqué and Initial Feedback for Consideration

Dear Nicolas,

I am writing to acknowledge receipt of the [ICANN80 Kigali GAC Communiqué](#) and to provide the Board's initial feedback on the Advice contained therein. The Board would like to thank the GAC for an informative exchange, concerning a number of topics impacting the community, during the [Joint Meeting of the ICANN Board and GAC](#) on 10 June 2024. The Board also extends its appreciation and gratitude to the GAC for its dedication to producing this Communiqué.

The Board notes that the ICANN80 Kigali GAC Communiqué contains:

- Two matters of Consensus Advice, which cover the Applicant Support Program (ASP) and Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs.
- Two matters of Follow-up on Previous Advice, which cover the ASP and Urgent Requests for Disclosure of Registration Data.
- Eight "issues of importance," such as Transparency, GNSO Statements of Interest (SOIs) and Code of Ethics, Registry Voluntary Commitments (RVCs) / Public Interest Commitments (PICs) in New gTLDs, New gTLDs Subsequent Procedures Implementation Review Team (IRT), DNS Abuse, DNSSEC, Registration Data Request Service (RDRS), Registration Data Accuracy, and Support for the Privacy and Proxy Services Accreditation Implementation Review Team.

The Board understands that the GAC Leadership is meeting on 3 July 2024, and would like to provide initial feedback on the two matters of Consensus Advice for the GAC Leadership's consideration to ensure timely progress in addressing the Advice. Specifically, the Board is concerned that failure to move expeditiously to resolve any potential differences between the Board and the GAC on these points imperils the timeline for launch of the ASP, and for the next round of the New gTLD Program overall.

Applicant Support Program

Advice item 1.a.i

The GAC has advised the Board to: "take final decisions on successful Applicant Support Program (ASP) applicants, who applied within the twelve month time period, at the conclusion of

that period as opposed to on a first come, first served basis. This would mean that no preference is given to applicants who applied earlier in the twelve month period, and will help ensure underserved regions are not at a disadvantage through the ASP.”

The Board understands that the GAC is concerned that processing support applications as they are submitted could disadvantage potential applicants from underserved regions, who may be less aware of the program and/or require more time than others to prepare their application. The Board is aligned with the GAC regarding the need to ensure that applicants from underserved regions are able to benefit from the ASP. However, the Board also is concerned that the GAC’s advice to hold off evaluations for up to 12 months would severely disadvantage supported applicants in the overall New gTLD Program process.

The Board notes that the approach advised by the GAC relates to recommendations and implementation guidance from the [GNSO Guidance Process \(GGP\) on the ASP](#). The Board is grateful for the GAC’s active participation in the GGP that was tasked with, among other things, defining metrics of success and developing a method for allocating financial support in a scenario where there is inadequate funding for qualified applicants. Weighing all the issues and views, the GGP recommended (GR #9) that ICANN org “communicate the results of evaluation process and allow applicants to know their range of support allocations as early as possible in a transparent manner.” The GGP noted that early notification to qualified applicants would enable prospective gTLD applicants to secure supplementary funding and support to begin preparing their applications, and to take advantage of other aspects of the program, such as pro-bono assistance coordinated by ICANN.

The GGP also deliberated on three options for allocating financial support: 1) ICANN org requesting additional funding; 2) Allocation based on fairness/equality while not hindering the efficiency of the process; and 3) Prioritization. The GGP noted that prioritization would require subjective judgements and the group “agreed that it would be helpful for ICANN org to provide an early indication of support for all qualified applicants.”

In addition, in the scenario where 100 applicants qualify for support and ICANN org has a budget to support 45, waiting until the end of the 12-month ASP evaluation period does not solve how to allocate funds if more applicants qualify than funds are available. This was a task that the GGP for ASP undertook, ultimately recommending (GR#7) that a “minimum level of support” should be set. Additionally, allocation on a geographic basis to prioritize “underserved” may be seen as contrary to [SubPro Final Report](#) Rec 17.1, “...the [ASP] should continue to be open to applicants regardless of their location as long as they meet other program criteria...”

The Board is concerned that—if the GAC Advice is implemented as-is—supported applicants would only have approximately four months from notification that they have received financial

support before the opening of the gTLD application submission period. Having such short notice before the opening of the Next Round might jeopardize a supported applicant’s ability to access supplementary financial and non-financial support, to negotiate with a Registry Service Provider (RSP), and to have sufficient time to prepare a high-quality gTLD application. This shortened timeframe may risk a main objective of ASP, which is to make the New gTLD Program more accessible to applicants that need support.

In addition, the proposed changes would require significant changes to the ASP Handbook, which has been vetted both by the [ASP-IRT Sub-track](#) and put out for [Public Comment](#). These changes also would require significant adjustments to the near-finished ASP Application System and to the [Request-for-Proposal \(RFP\)](#) and contract with the Support Applicant Review Panel (SARP) vendor. All of this would likely delay the launch of the ASP, which is scheduled for Q4 2024, and, in turn, undermine the objective of providing extended support for qualified applicants ahead of the opening of the Next Round.

Advice Item 1.a.ii

The GAC has also advised the Board to: “invite members of the community with relevant expertise to monitor and participate in the ASP Application Evaluation process that will result in final decisions on ASP application outcomes. The GAC signals its willingness to fully participate in this process.”

As noted in ICANN org’s [Implementation Plan](#) and in the draft ASP Handbook reviewed by the [ASP-IRT Sub-track](#) and put out for [Public Comment](#), ICANN org is planning to contract with an independent, highly skilled third party to act as the Standing Application Review Panel (SARP) and is conducting a [Request-for-Proposal \(RFP\)](#) process in this regard. A change to this approach now would be a significant departure from established plans. The Board is also concerned about potential liability, conflict of interest, legitimacy, and other issues related to a community-based panel. The Board believes a third-party evaluator—such as one that would be used in many other types of application evaluations in the New gTLD Program—would provide a more objective, defensible, and fair review of ASP applications.

Advice Items 1.a.iii, 1.a.iv

The GAC has advised the Board to:

“iii. To initiate a facilitated dialogue, involving representatives from the GAC, GNSO and the ALAC, to assess the feasibility of leveraging (including contracting and financing the services of) a platform to which new gTLDs, supported through the ASP, could move to eventually operate their own back-end services.”

“iv. To develop a report outlining the results and outputs of the Engagement and Outreach Plan according to the stated timeline...”

The Board is concerned that these advice items, which call for a “facilitated dialogue” and “stakeholder consultations,” may pose a risk to ICANN org’s implementation timeline for the ASP—scheduled to open to receive applications in Q4 2024—in that the work required to implement the advice may draw from time and resources already committed to opening the ASP.

A Way Forward

The Board shares the GAC’s commitment to the ASP and understands and appreciates the GAC’s commitment to ensuring it is as successful as possible. However, the Board believes that adopting the GAC’s Advice on the ASP would likely require changes to the ASP Application System and processes that have been diligently developed over the past year. Adoption also would require changes to the ASP Handbook, which is nearly complete, and would likely delay the opening of the ASP itself, currently planned for Q4 2024. As such, the Board believes that staying the course of the current implementation plans is in the best interest of ICANN, the ICANN community, and prospective ASP and gTLD applicants.

The Board believes that there may be other ways to address the GAC’s concerns without significant delays to the ASP. The Board stands ready to do the following:

- **Ensuring targeted outreach and engagement** with potential ASP applicants as soon as possible to provide all potential applicants sufficient time to submit their application. This also aligns with [GGP Guidance Recommendation #1, Implementation Guidance](#) to “[t]arget potential applicants from the not-for-profit sector, social enterprises and/or community organizations from under-served and developing regions and countries. This should not exclude any entities from outreach efforts, such as private sector entities.”
- **Reviewing the ASP Handbook, communications, and engagement materials** to see if there are additional areas to simplify, with the aim of ensuring that applicants from underserved areas have the necessary information and understanding to submit applications without undue burdens. This involves developing a clear and straightforward application that is easy to understand and complete, translating the application instructions and requirements into the ICANN supported languages, accepting certain documentation in the applicant’s language, and translating original documentation as needed, etc.
- **Ensuring transparency and visibility** on the geographic distribution of ASP applications and qualified applicants. The ASP Application System is being designed to report on geographic distribution of ASP applications to show application count and region according to the application status as well as a breakdown of ASP application evaluation results by ICANN geographic region.
- **Seeking additional funding** should more than 45 applicants qualify for support. The Board will stay abreast of the number and geographic distribution of ASP applications

and qualified applicants. The Board's goal is to provide support to qualifying applicants. Should demand exceed currently budgeted resources, the Board will do its best to identify additional funding to provide such support.

The Board sees two alternative approaches to address these concerns:

- Based on the explanation above and the assurance regarding the Board's commitment to: (i) promote and facilitate submission of applications from underserved areas; and, (ii) to use best efforts to seek additional funding in the event that more than 45 qualified applications for applicant support, the Board would ask the GAC to consider withdrawing this advice as a matter of urgency. Withdrawal of the advice would enable timely release of the final ASP Handbook as well as the launch of the ASP in Q4 2024, as scheduled.
- The alternative is to expedite a [Bylaws-mandated discussion](#) with the GAC in advance of rejecting the advice, which, due to time constraints, the Board believes would need to be done intersessionally and virtually.

Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets

The Board has publicly expressed its support for prohibiting private auctions in the Next Round. However, the Board has concerns about the timeline implications with respect to the GAC's advice to: "[U]rgently initiate a focused community-wide discussion (including with the GAC and ALAC) on the resolution of contention sets, with a view to finding alternatives to private auctions and ICANN auctions of last resort, before the ICANN Board takes any action in a manner that may be inconsistent with the ICANN77 Washington D.C. Communiqué GAC Consensus Advice."

The Board notes that this issue was discussed at length during the [Subsequent Procedures Policy Development Process](#) (SubPro PDP). Despite extended consideration of this issue, the SubPro PDP was unable to achieve consensus on the matter, and the Board is not confident that additional community discussion on this topic will result in a different outcome.

To minimize the impact of this advice on the Next Round timeline, and in light of the pending [Board-GAC consultation](#), the Board intends to run these processes in parallel, with the expectation that one may inform the other. Accordingly, the Board will hold, as a matter of priority, a series of virtual webinars with the community to discuss the GAC's advice and options for the resolution of contention sets and, simultaneously, engage in the Bylaws-mandated Board-GAC consultation.

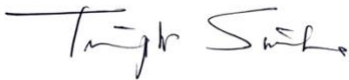
The Board understands that this may require the process to move more quickly than what would typically occur, e.g., waiting for four to six weeks to conduct a Board-GAC clarification call, followed by development of a final scorecard one month prior to the next face-to-face meeting.

However, the Board believes that staying with the typical timeline for addressing GAC advice and holding the Board-GAC consultation after any action by the Board on the advice could risk a delay to the New gTLD Program overall.

Next Steps

The Board appreciates the GAC's attention to these matters and looks forward to continued productive discussion with the GAC in the coming weeks and months. The Board also stands ready should GAC leadership like to engage in a call with the Board to discuss the Board's feedback.

Sincerely,



Tripti Sinha
Chair, ICANN Board of Directors