

03 October 2024

Nicolas Caballero
Chair, Governmental Advisory Committee (GAC)

RE: Follow-up on 3 September 2024 Board-GAC Consultation regarding ICANN77 GAC Advice Item 4.a.i

Dear Nicolas Caballero,

I'm writing in follow up to the Board-GAC Consultation Call held on [3 September 2024](#). The Board, in its resolution of [6 June 2024](#), had initiated the Bylaws-mandated Board-GAC Consultation process to find a mutually acceptable solution regarding GAC Advice Item 4.a.i from the GAC [ICANN77 Washington, D.C. Communiqué](#), which advised the Board to:

“To take steps to avoid the use of auctions of last resort in contentions between commercial and non-commercial applications; alternative means for the resolution of such contention sets, such as drawing lots, may be explored.”

This advice is directly related to GAC Advice Item 2.a.ii from the [ICANN80 Kigali Communiqué](#), in which the GAC advised the Board to:

“To urgently 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.”

This [community-wide discussion](#) was held on 13 and 14 August 2024, and the Board considered the results of that discussion as well as the results of the 3 September 2024 Consultation Call at its workshop in Los Angeles on 6-8 September 2024.

As communicated in the [13 September 2024](#) letter to the GNSO Council and the [16 September 2024](#) blog, during the Los Angeles workshop, the Board focused its discussion on how to move forward on three items: (1) the extent to which applicants should be able to organize private agreements to resolve contention; (2) whether, and if so, how to provide less well-resourced applicants a chance to obtain a desired string if they are in a contention set; and (3) whether to rely on ICANN auctions using the ascending-clock second-price methodology to resolve contention or to adopt an alternate methodology such as Vickrey auction, or even a raffle.

Considering the GAC's advice and other diverse input received from across the ICANN Community as well as ICANN's responsibility to act in the global public interest, the Board decided to take a holistic approach to contention resolution in the Next Round. As a result, the Board aligned on a path forward:

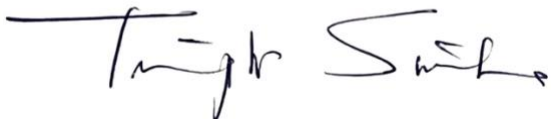
- 1. No private resolution:** Private resolution of contention sets will not be permitted during the Next Round. As pointed out in the NERA report, joint ventures constitute a form of private resolution for which "it would be necessary to allow side payments to promote good faith joint ventures". Therefore, to achieve the goal of prohibiting private resolution, the Board will have to reverse its adoption of the SubPro recommendation 20.6.
- 2. Ability to submit alternate strings:** The Board views the ability to submit an alternate string at the time of application as a path to reduce the number of contention sets, providing more applicants with the ability to operate a gTLD. This may be particularly of interest to less-well-resourced applicants who, if in contention, are less likely to prevail in an auction. The Board is aware that the SubPro PDP WG considered string changes after the application window closes but did not include a recommendation to permit this as this would "necessitate a repeat of the string similarity evaluation of all applications, causing delays and disruptions to all applications, including those that are not in contention. This would impact program timelines and costs." However, allowing applicants to submit alternate strings at the time of application, when it is unknown what strings others are applying for, would address these concerns. The approach of alternate strings provides all applicants, including less well-resourced ones, with an easy and efficient way to help avoid contention. No applicant would be obliged to submit alternate strings or to switch to their alternate as they may choose to remain in contention for their initial string. Also, a switch to an alternate string must not create a new contention set and applicants would not be allowed to join an existing contention set. The Board notes that an alternate string could not be used to escape contention sets that are formed after string similarity review or string confusion objection period, for the above reasons noted by the SubPro PDP WG.
- 3. Continue to use the 2012 ascending-clock second price auction method:** The Board agrees that auctions are a tested and effective method to allocate scarce resources and that introducing a raffle system is not preferable over the auction approach. In this context, the Board refers back to the 2008 Report 'Economic Case for Auctions in New gTLDs'. NERA also noted that "Lotteries, like private auctions could, increased the number of speculators, [and] increased the number of monetary transfers between applicants [...]".

The Board believes that, based on the Board-GAC Consultation Call and the community-wide discussion, that this path forward represents a mutually acceptable solution. The Board appreciates any further input from the GAC on whether it agrees that this represents a mutually acceptable solution.

As noted in the 13 September 2024 letter to the GNSO Council, the Board remains firmly committed to the goal of opening the Next Round application window no later than April 2026. Therefore, the Board anticipates passing a resolution to reverse its decision on policy recommendation 20.6 (as described above) in the coming weeks to avoid any delays to the implementation timeline. Once the Board has passed the resolution, the GNSO Council will have the opportunity, per Bylaws Annex A Section 9, to submit a supplemental recommendation to the Board, following the applicable procedures. Accordingly, any final determination by the Board on moving forward towards any mutually acceptable solution will take into account supplemental recommendations submitted by the GNSO Council, as applicable.

The Board appreciates the opportunity to work with the GAC on this issue and would like to point to the success of the Consultation process in finding a mutually acceptable solution. Indeed, the Board appreciates the work of the whole community on this difficult topic and the opportunity to openly engage with the GAC and the wider community as the Board moves towards conclusions on its decision on how to resolve contention sets in the Next Round.

Sincerely,



Tripti Sinha
Chair, ICANN Board of Directors