

16 December 2019

Manal Ismail
Chair, Governmental Advisory Committee
ICANN

Cc: Maarten Botterman, Becky Burr

Dear Ms. Ismail,

I write in regard to the Government Advisory Committee (GAC) communique dated 6 November 2019. The Board has received and is carefully reviewing the GAC's advice and rationale as contained in the communique, in particular, the advice not to proceed with a new round of gTLDs until after the complete implementation of the recommendations in the Competition, Consumer Trust and Consumer Choice (CCT) Review that were identified as "prerequisites" or as "high priority."

ICANN organization is supporting the Board as it prepares to meet with the GAC to discuss this item as well as the other points of advice. This communication is intended to support the preparation for that discussion by sharing some clarifying questions and some of the Board's thinking to date. You will also find attached for reference a scorecard showing the current status of the Competition, Consumer Trust, and Consumer Choice (CCT) Review Team recommendations marked as "prerequisite" and "high priority."

In particular, the Board is interested in ensuring that it understands both the scope and meaning of the GAC's statement that a new round should not proceed until "complete implementation of the recommendations." The Board supports and understands the need to address a variety of issues and to plan prudently in advance of a new round of gTLDs. Multiple reviews, including the CCT Review, have assessed – and continue to assess - the previous round and make recommendations regarding the next round. The GAC has provided – and continues to provide – advice on this topic. The Board considers all of these recommendations and advice to be important inputs into the GNSO Subsequent Procedures Policy Development Process (SubPro PDP) now underway. It is the Board's expectation that the SubPro PDP WG will duly and transparently consider the many policy-dependent CCT Review recommendations that fall squarely within the authority of ICANN's bottom-up multistakeholder policy development process.

In addition to referring policy-dependent recommendations to the community policy development process, it is the Board's responsibility to carefully consider and act upon the CCT Review Team's recommendations within its remit, taking into account the stated rationale and the desired outcomes for each, and in doing so, the Board must consider the likelihood that the recommendations will progress relevant public interest goals, identified feasibility issues, resources required for successful implementation, and other impacts each recommendation may have on all parts of the community and on the organization.

At the time the Board receives policy recommendations to guide a future application round from the SubPro PDP Working Group, the Board will also perform due diligence on these recommendations, including ensuring an understanding of how the CCT Review Team recommendations, as well as other inputs and advice, have been taken into account in developing the Final Report.

The Board accordingly seeks clarification on the GAC's advice that a subsequent new gTLD round should not proceed until "complete implementation" of CCT Review Team recommendations designated as "high priority" and "prerequisite."

First, it should be noted that this advice could be interpreted to exceed the scope of the CCT's recommendations. The Board understood the CCT Review Team's use of the term "prerequisite" to encompass those items that, in the Review Team's view, should be undertaken prior to a new round. The Board also considers the distinction between items that the CCT Review Team considers "high priority" and items that it considers "prerequisites" to be meaningful, and wonder whether the GAC intends, through its advice, to expand on the Review Team's list of "prerequisites."

Second, it may not always be straightforward to determine the extent to which implementation of a particular recommendation is "complete."

To illustrate with some examples:

- The Board accepted the CCT "prerequisite" Recommendation 30 to "Expand and improve outreach into the Global South." This is viewed as a recommendation for continuous improvement rather than something can be accomplished through a one-time initiative that could be "completed." The Board's acceptance of this recommendation was based on the expectation that ICANN should develop and deploy a program to expand and improve outreach to the Global South in parallel with ongoing policy development work. We assume that the GAC would agree with this continuous improvement approach rather than a one-time outreach program, but are not certain given the GAC's advice that all outreach activities following from the recommendation must be complete before the recommendation is considered fully implemented.
- The Board referred the CCT "prerequisite" Recommendation 25 to the GNSO's New gTLD Subsequent Procedures PDP Working Group (SubPro WG). This recommendation provides, in part, that: "To the extent voluntary commitments are permitted in future gTLD application processes, all such commitments made by a gTLD applicant must state their intended goal and be submitted during the application process so that there is sufficient opportunity for community review and time to meet the deadlines for community and Limited Public Interest objections."

This recommendation anticipates that certain requirements would be incorporated into an application process that is the product and a reflection of community-developed policy. Given the community's authority with respect to policy, we assume that the GAC's intent is that this advice should be duly taken into account by the SubPro WG – and the Board supports that goal. But even if the SubPro WG was to adopt this input as a policy recommendation, it could only be fully implemented as part of – not in advance of - the application process itself.

- Another example of this possible timing issue is Recommendation 11, which would require ICANN to conduct periodic end-user consumer surveys. This recommendation was directed to the ICANN organization and to future CCT Review Teams. Per ICANN's Bylaws, a future CCT Review can only take place following a round of the New gTLD Program. Thus, by definition, this recommendation about future CCT reviews cannot be completely implemented in advance of a new round.

In addition to seeking clarification about the GAC's views on "complete implementation" as demonstrated by the examples above, I would also like to share some initial concerns the Board has identified relating to this advice.

As you are aware, a number of the CCT Review Team recommendations in addition to those noted above have been referred to the Generic Names Supporting Organization (GNSO) or specific GNSO working groups for consideration for policy development. In these cases, the ICANN Board has asked the respective groups to consider and act on the CCT Review Team recommendations. However, to be very clear, the Board does not have the authority to compel the GNSO to adopt such recommendations. Accordingly, the Board's ability to accept GAC advice in regard to certain recommendations is entirely dependent upon the outcome of various policy development processes. Until the SubPro WG completes its work, the Board is not in a position to accept or reject GAC advice on these recommendations.

Finally, it is important to note that some of the recommendations identified as "prerequisite" and "high priority" have not yet been accepted by the Board at all. These are in a pending status for a variety of specific reasons, including significant dependencies, feasibility concerns, and concerns that the recommendations may not be the best way to achieve the underlying public policy goals.

These considerations have weighed significantly on the Board's review of this advice. The Board welcomes any further amplification or clarification the GAC may wish to offer in forthcoming meetings or communiques.

For reference, we also understand that the GNSO Council has shared its initial response to the ICANN66 GAC Communique, noting its consideration of the relevant CCT recommendations. You can find the GNSO Council response to the Board here:
<https://www.icann.org/en/system/files/correspondence/drazek-et-al-to-icann-board-27sep19-en.pdf>

As an additional reference, it may be of interest to the GAC that the public comment period on implementation plans for those CCT Review recommendations that have been accepted by the Board has recently been completed and the Board will be considering this input. You can find the relevant documents here: <https://www.icann.org/public-comments/cct-rt-implementation-plan-2019-09-11-en>

We look forward to supporting engagement of the GAC and Board on this topic.

Best regards,



Göran Marby
President and Chief Executive Officer
Internet Corporation for Assigned Names and Numbers (ICANN)