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Governmental Advisory Committee

8 July 2024

Tripti Sinha
Chair, ICANN Board of Directors

Subject: GAC Response to Board Letter on ICANN80 Kigali GAC Communiqué and Initial Feedback for Consideration

Dear Tripti,

Thank you very much for your recent [letter](#)¹ and initial feedback for consideration pertaining to the [GAC ICANN80 Communiqué Advice](#). This reply is intended to further our dialogue on these matters in preparation for the GAC Communiqué Clarifying call taking place in the coming weeks.

GAC Chair and Vice Chairs along with committee topic leads met on 3 July 2024 to carefully examine the letter and would like to provide the Board with some initial feedback for review and consideration prior to the upcoming GAC and Board call. This response specifically covers the considerations shared by the ICANN Board relative to:

- GAC Advice on Applicant Support Program (ASP); and
- GAC Advice on Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs.

Applicant Support Program (ASP) ICANN80 Advice

Board letter: *“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.”*

¹ [Board letter: ICANN80 Kigali GAC Communiqué and Initial Feedback for Consideration](#) - 1 July 2024

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“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 Item 1.a.ii)

“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.” (Advice Items 1.a.iii. 1.a.iv)

“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.”

GAC Response:

Noting in particular the statement regarding the Board’s “request for the GAC to consider withdrawing its ICANN80 advice as a matter of urgency”, the GAC notes further discussions are warranted between the Board and the GAC during the GAC Communiqué Clarifying Call which is due to take place shortly. The GAC does, though, share the urgency of this issue, as the GAC has endorsed the proposed opening of the ASP window later this year. The GAC also welcomes the details given of the independent analysis of these applications.

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The GAC also notes that, even though “... ASP Application System and processes that have been diligently developed over the past year”, as per Board’s response (which the GAC fully agrees with), this is not something that the GAC has only recently mentioned. On the contrary, the GAC has been flagging this issue in its comments to the Subsequent Rounds PDP WG² and to the Board³ in its input and comments since 2020, that is, for almost 4 years as of today. Thus, and despite the potential impact it might have on the timeline, the GAC is of the opinion that dealing with the issue at once, the sooner the better, is in the best interest of the ICANN community and the general public.

The GAC asks the Board to consider reinforcing its commitment (ii) from the letter as follows: “commit to identifying additional funding in the event that more than 45 qualified applications for applicant support are identified and provide such support”. Given the importance of the ASP for applicants in underserved regions⁴, and given the importance of this matter for the GAC (as expressed in the Cancun Communiqué⁵ and Washington D.C. Communiqué⁶), the GAC believes a definitive written commitment of the Board is necessary, as opposed to its "best efforts". The GAC also requests that the written commitment explicitly states that underserved regions will not be disadvantaged as a result of a ‘first come first serve’ process, and that if such a disadvantage arose, specific remedies would be sought to correct the situation.

Simultaneously, the GAC strongly reiterates, and expects that details on specific targets, metrics and budgetary figures matched with planned activities of the ASP Outreach and Communication plan be provided without further delay, as this is necessary to align with the GAC Advice and to inform further discussion with the Board.

Furthermore, the GAC notes the Board’s response to GAC advice item 1.a.i, noting that “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.” In this regard, the GAC would want to emphasize that a third party should be fully briefed by the GAC on the committee’s objectives for the ASP. The GAC observes that the Board

² [GAC Comment on Subsequent Rounds for New gTLDs Draft Final Report Public Comment Proceeding](#) - 29 September 2020

³ [GAC Comment on GNSO New gTLD Subsequent Procedures Final Outputs for ICANN Board Consideration](#) - 1 June 2021

⁴ GAC definition of underserved regions in the [GAC Underserved Regions Working Group Terms of Reference](#)

⁵ [GAC ICANN76 Cancun Communiqué](#), section IV. 1 Subsequent Rounds of New gTLDs - 20 March 2023

⁶ [GAC ICANN77 Washington D.C Communiqué](#), section V.3 GAC Advice on Applicant Support in New gTLD Applications - 20 June 2023

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expressed concerns that advice items 1.a.iii and 1.a.iv would delay the launch of the ASP. However, the GAC suggests that the potential to launch a back-end registry services platform would be a beneficial resource for applicants for the entire new gTLD program, and therefore proposes for the referenced facilitated dialogue and stakeholder consultations to be independent from the ASP specifically, so as not to cause undue delay.

On the Engagement and Outreach Plan (GAC advice item 1.a.iv) the GAC awaits a response from the Board on the development of a report outlining the results and outputs of this plan according to the stated timeline. The GAC stands ready to liaise with ICANN org regularly to support and follow the delivery of the engagement of the ASP in underserved regions.

In light of the above, the GAC requests further discussion with the ICANN Board before a decision is made to take an action that may be inconsistent with GAC Advice and to initiate and expedite the Bylaws-mandated process.

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

Board Letter: *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

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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.

GAC Response:

The GAC recognizes and greatly appreciates the Board’s support for prohibiting private auctions in the next round of the new gTLD program, while understanding the Board is considering taking steps which may be inconsistent with the ICANN77 GAC advice on the overall matter (per the 8 June 2024 ICANN [Board Resolution](#)). The GAC is awaiting written notification of this Bylaws-mandated consultation process to identify appropriate next steps.

The GAC would like to further reiterate its understanding that this topic was thoroughly discussed during the Subsequent Procedures Policy Development Process (SubPro PDP), where unfortunately no satisfactory solution could be found. It is important to recall that the GAC provided extensive written input on this topic to the SubPro PDP Working Group and to the Board in 2020⁷ and 2021⁸. The content of the ICANN80 GAC advice⁹ fundamentally is a reiteration of strong continued government concerns with the use of private auctions and on using ICANN auctions in contention sets between commercial and non-commercial entities.

As such, on private auctions, the GAC seeks, consistent with its advice, a firm commitment or Board resolution that private auctions will not be allowed in the next round of new gTLDs and memorializing such a commitment in the Applicant Guidebook (AGB), with clear consequences for non-compliant applicants.

The GAC recognizes and appreciates that the Board letter presents a possible way forward to its advice to “urgently initiate a focused community-wide discussion (including with the GAC and

⁷ [GAC Comment on Subsequent Rounds for New gTLDs Draft Final Report Public Comment Proceeding](#) - 29 September 2020

⁸ [GAC Comment on GNSO New gTLD Subsequent Procedures Final Outputs for ICANN Board Consideration](#) - 1 June 2021

⁹ [GAC ICANN80 Kigali Communiqué](#), section V.2 Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs - 17 June 2024

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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 is inconsistent with the ICANN77 Washington DC Communiqué GAC Consensus Advice” by proposing to hold a community-wide dialogue in parallel to the Bylaws-mandated Board/GAC consultation process regarding the ICANN77 advice. On this, the GAC would like to flag that substantive discussions in the Board/GAC consultation process would need to await the results from the community wide dialogue to avoid prejudging the outcome of this community consultation. In this sense, the GAC considers that such dialogue should, amongst other things, consider the alternative auction mechanisms being proposed by ALAC in its latest Advice to the Board on the matter, which could serve as a basis for a new system of ICANN auctions of last resort in the forthcoming round, which would be more responsive to the concerns raised by the GAC since 2020.

The GAC welcomes continued engagement with the ICANN Board to discuss these items and any additional questions or comments the Board may have.

Thank you for your prompt attention to these issues.

Sincerely,



Nicolas G. Caballero

Chair, Governmental Advisory Committee (GAC)

Internet Corporation for Assigned Names and Numbers (ICANN)