Briefing Document for Board-GAC Consultation Call Re: ICANN80 GAC Advice

Monday 16 September 2024, 16:00-17:00 UTC

CONTENT

1. Context

The ICANN Bylaws require the Board to take into account public policy advice from the GAC when formulating and adopting public policy matters. (Art. 12, Sec. 2.2(x)). When the Board intends to take an action that is inconsistent with GAC advice, the Bylaws and other ICANN governing procedures, including the GAC Operating Principles, establish a consultative process between the Board and the GAC to find a mutually acceptable solution. At the core of the consultative process is the requirement that the Board notify the GAC when it intends to take an inconsistent action and explain why it is doing so. Additionally, the GAC and the Board must engage with each other in good faith to try to find a solution to their differences. If in the end the Board and the GAC cannot find a solution, the Board is required to explain in its final decision why it is not following the GAC's advice.

2. Purpose and remit of the GAC-Board consultation call

The Board-GAC consultation call on 16 September (16:00-17:00 UTC) is intended to satisfy the requirement in the [Process for Consultations between the ICANN Board of Directors ("Board") and the Governmental Advisory Committee ("GAC")](#) for the Board and GAC to have a Bylaws Consultation in the event that the Board determines, through a preliminary or interim recommendation or decision, to take an action that is not consistent with GAC advice. At issue in this Bylaws Consultation are items **1.a.i** and **1.a.ii** of the GAC's advice from its [ICANN80 Communiqué](#) regarding the Applicant Support Program.

> **1.a.i. "**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."

> **1.a.ii "**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."

On 29 July 2024, the ICANN Board [resolved](#) to initiate rejection of these two items from the ICANN80 GAC Communique regarding the Applicant Support Program. This initiates the Board-GAC consultation process, during which the Board and the GAC will work collaboratively to potentially find a mutually agreeable solution that will address the GAC's concerns.

The Board noted in its [ICANN80 GAC Advice scorecard](#) that it is concerned that making changes to the processing and evaluation of ASP applications may affirmatively harm ASP and supported applicants by significantly reducing the time they have to access resources and prepare a strong gTLD application.

The Board understands the GAC's concerns about prospective ASP applicants from under-served regions being disadvantaged if they learn about the ASP later in the application submission period, as there is a risk that support funds may be exhausted. The Board notes that the GNSO Guidance Process for ASP was tasked with devising a methodology should demand exceed available ASP resources and that the GGP guidance recommendations were adopted by the Board on 8 June 2024.

The Board understands that the GAC does not think that evaluating and providing ASP evaluation results on an ongoing basis is aligned with the goals of the Applicant Support Program and that the GAC would like a stronger Board commitment on the funding for supported applicants, should demand exceed available resources.

This consultation is intended for the Board and GAC to explore the extent to which there are other mutually agreeable measures to address the GAC's concerns while ensuring consistency with Board-adopted SubPro Final Report policy and GNSO Guidance Process recommendations.

3. Possible mutually acceptable compromise solutions[1]

The following program design elements have been identified as possible options for discussion to address some of the GAC's concerns.

Advice 1.a.i. (first come, first served basis)

Each of the below options is explored in further detail below.

- **Compromise Option 1:** Monthly reporting on geographic distribution of qualified applicants to inform adjustments in ASP Communications, Outreach & Engagement.
- **Compromise Option 2:** Review geographic distribution after 20 qualified applicants (halfway mark) to determine adjustments to ASP Communications & Outreach or whether there is a need to explore seeking additional funding.

1. Option 1 | Monthly Reporting and adjustments

On 8 June 2024 the Board approved the GNSO Guidance Process recommendations for the Applicant Support Program. GNSO Guidance Process (GGP for ASP) recommendation #1 on ASP Communications and Outreach/Awareness called for ICANN to "Increase awareness of the

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[1] This section lays out some options and is intended for the discussion. The options presented should not be considered as a limitation to the discussion and possible solution.

Applicant Support Program of the next round of gTLD applications among those who may need and could qualify for support." The GGP also provided Implementation Guidance to:

> *Target 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 from underserved and developing regions and countries, recognizing the goal is to get as many qualifying applicants as possible.*

During the 15 July 2024 ICANN80 GAC Communiqué Clarification Call with the Board, the Board requested ICANN org to present its Outreach & Engagement plan for ASP (meeting notes). The Board understands this plan and its execution to be responsive to the GGP recommendation and implementation guidance.

To address the GAC's concern about prospective ASP applicants from under-served regions learning about the ASP after support resources are exhausted, the Board offers a potential compromise for ICANN org to provide monthly reporting to the Board, GAC, and broader ICANN community to monitor the geographic distribution of qualified ASP applicants. This type of monitoring could be used to inform adjustments in the ASP communications efforts, as well as outreach and engagement activities. If paired with quarterly briefings for the GAC and the Board, monthly reporting could also provide an opportunity for members of the GAC, the Board, and broader ICANN community to lend more targeted support in raising awareness and interest in the ASP in under-represented countries or regions.

2. Option 2 | Threshold review and adjustments

A second option for addressing the GAC's concerns is to review the geographic distribution of qualified supported applicants at the halfway point (20 qualified applicants) to inform potential adjustments to the Communications and Outreach efforts and ASP funding plan.

On 24 June 2024, the Board's response to the ALAC-GAC Joint letter regarding the Applicant Support Program noted, "The Board expects that ICANN org will keep the Board informed of the number of applications received as well as level of support sought so that it is able to consider if/how additional support can be provided should this deemed to be necessary above what has been planned for to date." This option is in-line with the Board-adopted GGP guidance recommendation 7 which recommended a methodology for allocating financial support should demand exceed available resources. The GGP recommendation calls for equal distribution of funding across all qualified applicants and also "recommends that ICANN org give high priority to and make every effort to provide additional funding so that all successful applicants are supported."

Advice 1.a.ii. (community involvement in ASP evaluation process)

In its scorecard on ICANN80 GAC Advice, the Board stated that it "believes that implementing this advice would significantly increase the risks of conflicts of interest and legal challenges over the evaluation and related decision-making. The Board believes that an independent third-party panel will be best placed to conduct the evaluation." The Board also noted that ICANN org planned to contract an independent evaluator via a Request-for-Proposal (RFP) process that was already underway and that changing this approach would create significant delays to launching the ASP. The RFP for the ASP evaluation panel (Support Applicant Review Panel) included requirements for diversity based on the CCWG-Accountability WS2-Final Report definition.

The Board understands the GAC's rationale for this advice and goal of facilitating global diversification of the New gTLD Program. The Board notes that ASP Communication and Outreach efforts, per the GGP recommendation, are critical for addressing this advice. The Board also understands that the ASP eligibility criteria have been designed to facilitate diversification–both in terms of the types of supported entities that apply for a gTLD and in terms of geographic distribution. In-line with the Board-adopted SubPro Final Report policy recommendation 27.2 and the GGP recommendation 7 (see rationale), the ASP evaluation is designed on a pass/fail basis. This means that applications will not be scored or evaluated relative to each other to determine which applicants are more or most deserving of support since there is no policy basis to prioritize some applicants over others.

The Board is also concerned about the precedent that community involvement in the ASP evaluation process might set for other gTLD Program evaluations such as Community Priority Evaluation (CPE), noting that gTLD applications and evaluations are typically confidential.

> The Board expects that ICANN org will take the GAC's concerns into consideration as it selects a vendor to serve as the ASP evaluator. The Board has not been able to identify any additional options to respond to GAC advice 1.a.ii but the Board is looking forward to the consultation to better understand the GAC's intention and to hear its suggestions.

4. Background information

4.1. Advice, Board Action and correspondence that is relevant to the upcoming dialogue

a. **Excerpts from ICANN80 Communiqué**

GAC Advice 1.a.i.: "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."

Rationale for Advice 1.a.i.: "The ASP application submission period is twelve months. In that time period, applications that are compiled and submitted earlier in the process should not be given an advantage over applications submitted later in the process. Giving applications submitted earlier in the window an advantage, in terms of earlier evaluation, could detrimentally impact organizations applying from underserved regions, who will likely take longer to prepare applications due to the need to access enhanced services, for example, translation services into their native languages, i.e. in languages other than the six (6) official United Nations languages. It will also take longer to raise awareness of the ASP and its benefits with those without existing connections to the ICANN community. The GAC wants to mitigate against a scenario where places for 'successful applicants' have been filled before applicants from underserved regions have had an opportunity to apply in the time period advertized."

GAC Advice 1.a.ii: "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."

Rationale for Advice 1.a.ii. (community involvement in ASP evaluation process) "Given that members of the community have continued to express a high level of interest in the delivery of an ASP that facilitates global diversification of the new gTLD program, the GAC is of the view that applicants through the program, and the program itself, would benefit from having non-conflicted members of the community, including the GAC, monitor and participate in the ASP Application Evaluation process."

b. **Excerpts from [Board Scorecard on ICANN80 GAC Advice](#)**

Board understanding of Advice 1.a.i: "The GAC has concerns about potential disadvantages to prospective ASP applicants from under-served regions that may learn about the program later in the application process when allocated funds are unavailable. The GAC does not think that evaluating and providing ASP evaluation results on an ongoing basis is aligned with the goals of

the Applicant Support Program. The GAC would like a stronger Board commitment on the funding for supported applicants, should demand exceed available resources to support 45 applicants."

Board Response to Advice 1.a.i: "The Board appreciates the GAC's concerns and is aligned with the GAC that the emphasis on communications, outreach, and engagement activities for the ASP should focus on underserved regions, in line with the GNSO Guidance Process recommendation #1.

The Board is concerned that making changes to the processing and evaluation of ASP applications may affirmatively harm ASP and supported applicants by significantly reducing the time they have to access resources and prepare a strong gTLD application.

The Board is also concerned that waiting until the end of the ASP application submission period does not solve the challenge of how to decide which applicants receive support over others, if it is not based on first-come, first-serve. Additionally, the GNSO Guidance Process for ASP explored how to allocate resources if demand exceeds the budget and decided against prioritizing some applicants over others and the Board has accepted these recommendations and directed ICANN org to implement. Additionally, the Board would like to ensure that implementation work continues as per the timelines communicated in the implementation plan.

The Board understands the GAC's request that was noted in the correspondence, dated 8 July 2024, for a firmer financial commitment should the demand for ASP exceed the available resources of 45 supported applicants. However, the Board is not in a position to make open-ended financial commitments given its fiduciary responsibilities.

The Board looks forward to the Board-GAC Bylaws Consultation process that is required following this notice, during which we will work together to potentially find a mutually agreeable solution that addresses the GAC's concerns."

c. **Excerpts from GAC Correspondence to the Board, 8 July 2024**

"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 regions , and given the importance of this matter for the GAC (as expressed in the Cancun Communiqué and Washington D.C. Communiqué), 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."

d. **Excerpts from [SubPro Final Report](#)**

● "Recommendation 17.1: Recommendation 17.1: Implementation Guideline N from 2007 states: "ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed." The Working Group recommends that as was the case in the 2012 round, fee reduction must be available for select applicants who meet evaluation criteria through the Applicant Support Program. The Working Group further recommends new types of financial support for subsequent procedures that were not part of the Program in 2012, specifically, coverage of additional application fees (see Recommendation 17.2) and a bid credit, multiplier, or other similar mechanism that applies to a bid submitted by an applicant qualified for Applicant Support who participates in an ICANN Auction of Last Resort (see Recommendation 17.15 and Implementation Guidance 17.16 and 17.17). In addition, the Working Group recommends that ICANN facilitate non-financial assistance including the provision of pro-bono assistance to applicants in need. Further, ICANN must conduct outreach and awareness raising activities during the Communications Period to both potential applicants and prospective pro-bono service providers. The Working Group believes that the high level goals and eligibility requirements for the Applicant Support Program remain appropriate. The Working Group notes, however, that the Applicant Support Program was not limited to least developed countries in the 2012 round and believes that the Program should continue to be open to applicants regardless of their location as long as they meet other program criteria. Therefore, the Working Group recommends the following language in place of Implementation Guideline N: "ICANN must retain the Applicant Support Program, which includes fee reduction for eligible applicants and facilitate the provision of pro-bono non-financial assistance to applicants in need." The revised language updates the original Implementation Guideline to:

    ○ acknowledge that the Applicant Support Program was in place in the 2012 round
    ○ include reference to pro-bono non-financial assistance in addition to fee reduction
    ○ eliminate the reference to economies classified by the UN as least developed, as the Program is not limited to these applicants."

● "Recommendation 27.2: Evaluation scores on all questions should be limited to a pass/fail scale (0-1 points only)."

e. **Excerpts from [GNSO Guidance Process for Applicant Support (GGP for ASP) Final Report](#)**

- "Guidance Recommendation 1: Increase awareness of the Applicant Support Program of the next round of gTLD applications among those who may need and could qualify for support.
    - Implementation Guidance: Target potential applicants from the not-for-profit sector, social enterprises and/or community organizations from under-served2 and developing regions and countries. This should not exclude any entities from outreach efforts, such as private sector entities from underserved and developing regions and countries, recognizing the goal is to get as many qualifying applicants as possible."

- "Guidance Recommendation 7: In the scenario that there is inadequate funding for all qualified applicants in the Applicant Support Program, the recommended methodology for allocating financial support should be for ICANN org to allocate limited funding by way of fee reduction equally across all qualified applicants, while not hindering the efficiency of the process. In this context the working group agreed to assume, for the sake of equity, that one application equaled one string. This recommendation is made in the context of no additional funding being made available. However, the group recommends that ICANN org give high priority to and make every effort to provide additional funding so that all successful applicants are supported.
    - Rationale for Guidance Recommendation 7: After completing the public comment review, the working group agreed that it was important to emphasize that it made the deliberate decision not to prioritize groups of applicants seeking support."