

Subsequent Rounds of New gTLDs

Overview of policy areas of interest to the GAC - Draft - 18 February 2020

This overview document aims to enable GAC Members to take part in ongoing policy discussions of the GAC regarding future rounds of New gTLDs, also referred to as Subsequent Rounds of New gTLDs. It should be read as a guide to the detailed [GAC Scorecard on New gTLDs Subsequent Rounds](#) which reflects as exhaustively as possible the current status of policy discussions in all areas of interest to the GAC.

The structure of section 4 of this document mirrors the structure of the GAC Scorecard.

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1. Background on New gTLDs

Since its incorporation, ICANN has delivered several expansions of the TLD names space in 2001-2002 and 2003 for gTLDs and in 2009 for IDN ccTLDs. The latest and most significant expansion started in 2012, and has seen more than 1000 New gTLDs added to the DNS.

This latest expansion, known as the New gTLD Program or the 2012 round of New gTLDs, was the product of a multi-year process of policy development, policy implementation and community discussions, in which the GAC continuously participated, with notable contributions in the form of policy principles, safeguards advice and objections to applications which caused public policy concerns.

Since 2015, several ICANN processes have set out to review the outcome of the New gTLD Program to inform new policy development for subsequent rounds of New gTLDs. Among these processes, the Competition, Consumer Trust and Consumer Choice (CCT) Review has produced many significant findings and recommendations which are still being considered and debated in the ICANN Community.

The findings and recommendations established during this initial phase of reviews are expected to be taken into account during the subsequent phase - currently ongoing - of Policy Development for Subsequent Rounds, in particular in the GNSO Policy Development Process Working Group on New gTLD Subsequent Procedure (Sub Pro PDP WG). This Working Group will produce policy recommendations that will eventually be considered by the ICANN Board, for potential implementation by the ICANN org.

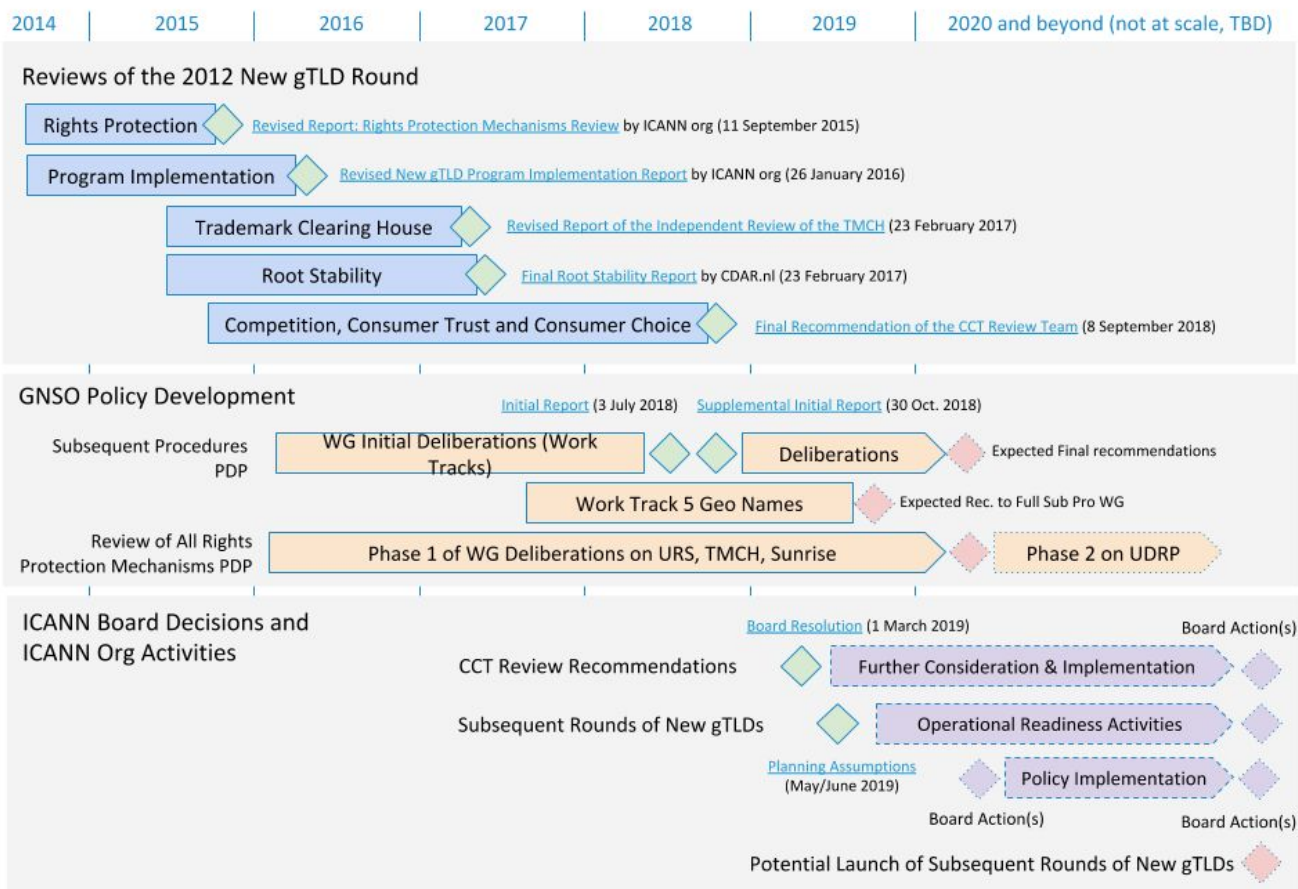
2. Timeline to Subsequent Rounds of New gTLDs

It is anticipated that the ICANN Board will consider approving the launch of subsequent rounds of new gTLDs on the basis of the findings and recommendations issued during the Review and Policy Development Phases.

To date, it is not possible to estimate precisely when the ICANN Board will consider approving the launch of subsequent rounds of new gTLDs, the main dependency for a Board approval is the delivery of GNSO Policy recommendations (expected around September 2020), after a final round of public consultations.

Upon Board approval, the Implementation phase would begin with the ICANN organization implementing the policy recommendation and Board decision, into relevant processes and systems to: manage, evaluate and delegate New gTLD Applications. This would likely take a significant amount of time, and would likely necessitate public comment periods.

Timeline to Subsequent Rounds of New gTLDs



3. GAC Input on Policy and Procedures for Subsequent Rounds of New gTLDs

The GAC has provided input into relevant reviews of the 2012 Rounds (Reviews Phase) as well as during the initial phases of the Sub Pro PDP (Policy Development Phase). These are summarized and referenced in the GAC Scorecard on New gTLDs Subsequent Rounds.

As the Policy deliberations in the relevant GNSO PDP progress towards finalizing recommendations to the ICANN Board, the GAC has started to review the expected outcomes and assess alignment with its expectations and prior position.

This analysis work is coordinated by the [GAC Focal Group on Subsequent Rounds of New gTLDs](#), on the basis of its reference document, the GAC Scorecard. It is expected that GAC positions may require updating and adapting to the advancement of policy discussions.

4. Policy areas of interest to the GAC on Subsequent rounds of New gTLDs - In Alphabetical Order

- **Applicant Evaluation and Accreditation Programs**

The GAC submitted advice noting that applicant evaluation and Registry Service Provider pre-approval process should include consideration of potential security threats. Such consideration should include using tools such as ICANN's DAAR to identify any potential security risks (and affiliated data) associated with an application.

- [Applicant Support and Participation of Underserved Regions](#)

The 2012 New gTLD round, included at a very late stage in the process, an Applicant Support Program. This community-based initiative under the leadership of the GNSO and At-Large was expected to increase underserved regions' access to New gTLDs application.

Qualified applicants, evaluated against a set of criteria including public interest benefit, financial need and financial capabilities had access to pro bono services and reduced application fees. In order to support the program a \$2,000,000 of seed funding was set aside by the ICANN Board. In practice, this program did not reach its intended target because there was insufficient information about the program and a level of uncertainty regarding the market for new gTLDs.

Based on various assessments of the program, the GAC, its Underserved Regions Working Group and Focal Group on Subsequent Rounds may be able to contribute to the goal and effectiveness of such a program in future rounds.

- **Application Procedures**

In the 2012 round of new gTLDs, application procedures for new gTLDs were established through the New gTLD Applicant Guidebook. For upcoming rounds, the GAC suggests that there be a critical assessment of whether the Applicant Guidebook should be used as a central document in the future, or whether simpler and clearer information for applicants can be provided through a single place on the ICANN website.

If the Applicant Guidebook is retained, the suggested partitioning of the Applicant Guidebook made by the PDP WG, into different audience-driven sections or by type of application appears to have merit.

The GAC stressed the importance of better guidance provided by ICANN regarding possible changes in applications once submitted and their consequences in terms of publication and evaluation. Specifically, care is required so as not to allow changes that could undermine the role of Application comments. A change to the likely operator of the new gTLD would constitute a material change and require notification and possibly re-evaluation as public comments for competition and other concerns.

- **Auctions Procedures**

An auction of two or more applications within a contention set. The auctioneer successively increases the prices associated with the applications within the contention set, and the respective applicants indicate their willingness to pay these prices.

As the prices rise, applicants will successively choose to exit from the auction.

All auction procedures related to the first round of new gTLDs can be found [here](#).

- **Clarity and Predictability of Application Process**

A number of stakeholders, and in particular New gTLD applicants in the 2012 round of New gTLDs, have taken issue with new rules or requirements being imposed on applicants after they had applied. This was in part the result of GAC Advice and decision taken by the ICANN Board in response to such Advice.

In this context, the GAC expressed previously its appreciation of the importance of predictability for New gTLD applicants in subsequent rounds, at the pre-application, application and ongoing post-application stages. However, the GAC also stressed that this should not be the prime or only consideration given that, in the GAC's view, the GAC needs a degree of flexibility to respond to emerging issues at the global level, as dealt with in ICANN processes, since national laws may not be sufficient to address them. Additionally, the GAC deems this need for flexibility to continue after the conclusion of a GNSO PDP.

- **[Closed Generic TLDs](#)**

A "generic TLD" consists of a word or term that denominates or describes a general class of goods, services, groups, organizations or things (e.g. .book, .bank, .weather etc.).

A "closed generic TLD" refers to an application where the applicant would impose restrictive eligibility criteria to limit registrations at the second level exclusively to a single person, entity or group of affiliate. For instance, a number of private entities applied for their exclusive use of New gTLD such as .SEARCH, .BLOG, .BOOK, .BEAUTY and .CLOUD (among others).

The 2012 Applicant Guidebook did not provide guidance on Closed Generics and applications were submitted with the assumption that Closed Generics would be allowed. In the ICANN46 Beijing Communique, the GAC advised the ICANN Board that exclusive registration requirements for strings representing generic terms 'should serve a public interest goal'. GAC members raised public policy concerns based on possible violation of competition law. In 2015, the ICANN Board responded to the GAC advice by issuing a resolution instructing applicants for Closed Generics to either:

- withdraw their application,
- defer their application until the next round, or
- modify their proposed eligibility requirements to be open.

- **Community Engagement**

The engagement of specific communities affected by a potential New gTLD Application has been a concern expressed by the GAC, for fear that affected party may not be made aware of that impact. This the GAC previously recommended it be ensured that all relevant stakeholders from affected communities to have a fair say when their legitimate interests are affected by new gTLD applications

- **Community-Based Applications**

A Community TLD is a type of New generic top level domain name (gTLD) intended for community groups interpreted broadly to include, for example, an economic sector, a cultural community, or a linguistic community.

These TLDs were afforded a degree of priority in case there were multiple applicants for a given string. In such a case, a community group could be given precedence (priority) to the TLD provided

the community status would meet a fairly high bar as evaluated through a process known as Community Priority Evaluation (CPE).

The GAC noted the importance of making the CPE more transparent in future rounds, in support of several stakeholders' views on this matter. The GAC stressed that where a community which is impacted by a new gTLD application has expressed a collective and clear opinion, that opinion should be duly taken into account as part of the application, and proposed an appeal mechanism for community applications.

- **Freedom of Expression**

In the 2012 round of new gTLDs, claims were made by several stakeholders that there had been an infringement of the applicant's freedom of expression. This view is not supported by the GAC. The GAC noted that while freedom of expression, especially from commercial players, is important but is not absolute.

The GAC stressed the importance of taking into account all affected parties in this context, including, inter alia, intellectual property rights, applicable national laws on the protection of certain terms etc.

Procedures relative to applications for new gTLDs have to be inclusive of all parties whose interests and rights are affected by a specific string application, and all need to be given a fair say in the process.

- **Future Releases of New gTLDs (Timing and Prerequisites)**

The GAC addressed timing and prerequisites for next rounds of new gTLDs in multiple versions of GAC advice/input, flagging as a concern the lack of clarity on realization of the expected benefits of new gTLDs.

Additionally, the GAC noted that the development and collection of metrics is far from complete and that ICANN, registries and registrars should commit to gathering appropriate data on security and consumer safety issues in a transparent manner. Preventing or restricting further release of new gTLDs could be seen as a windfall gain for existing gTLD owners. However, competition is only one factor in terms of assessment of costs and benefits.

The GAC also provided input to the Competition, Consumer Trust and Consumer Choice Review Team (CCT-RT) report on recommendations for new gTLDs, noting that the CCT-RT's contribution is critical in evaluating the overall impact of the new gTLD Program and identifying corrective measures and enhancements. Thus far, this item is not being considered by the PDP WG as an item for recommendations.

In the [GAC Kobe Communiqué](#), the GAC recalled its advice in the ICANN56 Helsinki Communiqué, which states that the development of policy on further releases of new gTLDs needs to fully consider all the results of the relevant reviews and analyses to determine which aspects and elements need adjustment. The GAC advised the Board to address and consider these results and concerns before proceeding with new rounds.

- **[GAC Early Warnings and GAC Advice](#)**

The GAC has at its disposal two mechanisms to express public policy concerns in the 2012 New gTLDs Program included in the Applicant Guidebook, in addition to other ICANN mechanisms, that were used by GAC members to express public concerns towards a specific domain name application or string : 1) GAC Early Warning and 2) GAC Advice.

- 1) A GAC Early Warning is an individual notice from GAC members to applicants when an

application is seen as potentially sensitive or problematic by one or more governments. This mechanism provided the earliest possible notice of potential public policy concern and serves the interests of both applicants and the GAC members. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application. However, a GAC Early Warning should be taken seriously as it raises the likelihood that the application could either be the subject of GAC Advice on New gTLDs, or of a formal objection at a later stage in the process. During the 2012 Round of New gTLD Applications, GAC members issued 242 Early Warnings for 187 applications and more specifically to 145 strings.

- 2) During the 2012 Round, the GAC issued Advice to the ICANN Board on public policy issues related to proposed applications. In total, 517 applications (27% of all applications) were subject to GAC Advice:
 - The majority (491) were subject to advice on broad categories of strings;
 - 26 were subject to specific advice, including 6 to which the GAC advised to not proceed (.amazon and IDN variations, .halal, .islam, .gcc.).

This form of GAC Advice (consensus or formal objection) creates a strong presumption that the application should not proceed.

- **Policy Development Process**

Following the 2012 round of new gTLDs, the GAC presented advice to the ICANN Board and input to the Subsequent Procedures PDP WG about concerns relative to the amount of ongoing interconnected reviews and policy development processes relevant to new gTLDs, noting the importance of taking a comprehensive and measured approach to the new gTLD policy in a sequential and coordinated way rather than through too many parallel and overlapping efforts.

The GAC noted the essential nature of cross-community working environment to the development of workable policies that maximize benefits to all relevant stakeholders, in particular the GNSO process should be complemented by the input from other SOs/ACs, and ICANN Board when not appropriately reflected in the outcome.

- **Public Interest Commitments (PICs)**

PICs were created during the processing of applications in the 2012 Rounds of New gTLDs, as a contractual mechanism between ICANN and Registry Operators, to implement various GAC advice related to public policy issues that emerged once New gTLDs applications were revealed.

Two types of PICs were developed:

- Voluntary commitments by applicants (or so called “voluntary PICs”): to transform application statements into binding contractual commitments (499 applications), in some cases in response to GAC Early Warnings or GAC Advices on their applications (see below);
- Mandatory requirements (or so called “mandatory PICs”) consistent with GAC Safeguard Advice in the ICANN46 Beijing Communique, that were either:
 - Applicable to all New gTLDs or
 - Applicable to New gTLDs in regulated or highly regulated sectors (category 1).

- **Reserved Names**

Reserved names refer to names that cannot be applied as a TLD since they are unavailable as per the 2012 Applicant Guidebook labelled “Reserved Names”. Existing reservations of names at the

top level substantially reflect the GAC Principles Regarding New gTLDs. The GAC would expect that any changes should be consistent with these Principles.

In the context of operations of a New gTLD (when delegated in the DNS), Reserved Names also refer to names not authorized for use at the second level (for example: www.reserved-name.tld). These are defined in the Registry Agreement (Specification 5), which was included in the 2012 Applicant Guidebook. Such names included 2-character country codes, country and territory names and identifiers for Intergovernmental Organizations.

- **Safeguards (Highly regulated sectors, Registration Restrictions, DNS Abuse):**

In the course of policy development, policy implementation, and operation of the new gTLDs program, members of the ICANN Community, including the GAC, have raised a range of concerns regarding possible negative impacts of New gTLDs.

In this regard, the GAC advised the ICANN Board to develop safeguards related to strings for different sectors.

General safeguards

The GAC considers that Safeguards should apply to broad categories of strings. For clarity, this means any application for a relevant string in the current or future rounds, in all languages applied for.

In the [ICANN46 Beijing Communiqué](#), the GAC advised the ICANN Board that the following six safeguards should apply to all new gTLDs and be subject to contractual oversight:

- WHOIS verification and checks: Registry operators will conduct checks to identify registrations in its gTLD with deliberately false, inaccurate or incomplete WHOIS data at least twice a year.
- Mitigating abusive activity: Registry operators will ensure that terms for registrants include prohibitions against the distribution of malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.
- Security checks: Registry operators will periodically conduct a technical analysis to assess whether domains in its gTLD are being used to perpetrate security threats
- Documentation: Registry operators will maintain statistical reports that provide the number of inaccurate WHOIS records or security threats identified and actions taken as a result of its periodic WHOIS and security checks.
- Making and Handling Complaints: Registry operators will ensure that there is a mechanism for making complaints to the registry operator that the WHOIS information is inaccurate or that the domain name registration is being used to facilitate or promote malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law
- Consequences: registry operators shall ensure that there are real and immediate consequences for the demonstrated provision of false WHOIS information.

Specific safeguards

The following safeguards are intended to apply to particular categories of new gTLDs as detailed below.

Safeguards Category 1: The GAC stressed that strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to

invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm.

Safeguard Category 2: GAC Advice noted that as an exception to the general rule that the gTLD domain name space is operated in an open manner registration may be restricted, in particular for strings mentioned under category 1. In these cases, the registration restrictions should be appropriate for the types of risks associated with the TLD. The registry operator should administer access in these kinds of registries in a transparent way that does not give an undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage. Additionally, the GAC stressed that for strings representing generic terms, exclusive registry access should serve a public interest goal.

- **String Similarity**

A proposed gTLD string creates a probability of user confusion due to similarity with any reserved name, any existing TLD, any requested IDN ccTLD, or any new gTLD string applied for in the current application round.

- Exact same string: Multiple applicants applied for a gTLD. Auction procedures are put in place, except if one of the applications is a community-based application that has passed the community evaluation process. In this case, the community application prevails (.hotel / .wine).
- Non-exact match contention sets: Two applications are almost similar and could lead to a confusion (.hotel & .hoteis / .unicorn & .unicom).

- **TLD Categories (or Types)**

In the 2012 round of New gTLDs, different categories of TLDs were established in addition to standard or generic gTLDs:

- Community gTLD: A community-based gTLD is a gTLD that is operated for the benefit of a clearly delineated community. An applicant must be prepared to substantiate its status as representative of the community it names in the application (.MUSIC)
- Geographic gTLD: (.NYC; .RIO) Applications for strings that are country or territory names
- Brand gTLD: Application by a company which is planning on using its corporate name or brand as a top level domain (.CANON).

For those particular categories, specific rules were established under the New gTLD Program.

The GAC noted that there is still significant scope for the development and enhancement of current mitigation measures and safeguards, taking into account the specific risk levels associated with different categories of New gTLDs.

The GAC issued advice calling for further exploration of categories suggesting that certain types of TLDs which may deserve a differential treatment, including sensitive strings and highly regulated sectors. The GAC stressed that differential treatment may require different tracks for application and different procedures, rules and criteria. This item is of importance to be confirmed with data gathering.