ICANN | GAC
Governmental Advisory Committee

GAC Discussion on Subsequent Rounds of New gTLDs

Session 2

Contents

Session Objective

GAC Members to 1) Review Operational Design Assessment, 2) Review outputs from the GAC facilitated dialogue with the GNSO Council and ALAC on Closed Generics, 3) Review GAC priority topics to prepare GAC advice, if needed.

Leadership Proposal for GAC Action

1. GAC to discuss current status of work in ODA (options and unresolved issues, see below) and Board/Org preparations for launch of next round, and consider possible input and/or advice to the Board on such questions.

2. GAC to discuss draft outputs from the GAC/GNSO/ALAC dialogue on Closed Generics, and offer guidance to GAC representatives in said dialogue.

3. GAC Members to review prior GAC inputs regarding SubPro PDP WG Final Report and consider if any of them need to be elevated to the level of GAC Consensus Advice and/or any other input for the ICANN Board.

Current Status and Recent Developments

1. Operational Design Phase (ODP) and Operational Design Assessment (ODA)

To help inform its discussion on whether the outputs of the Subpro PDP WG Final Report are in the best interest of the ICANN community or ICANN, in September 2021, the ICANN Board approved the initiation of an Operational Design Phase (ODP). The ODP is a process in which ICANN org develops and provides the ICANN Board with relevant information to facilitate the Board's

determination of whether the Policy Development Process recommendations are in the best interest of the ICANN community or ICANN.

After a three-month ramp-up period, the ODP started on 3 January 2022. The ICANN Board has asked that ICANN org submit the Operational Design Assessment (ODA), the final output of the ODP 10 months after its start.

The ODA was [delivered](#) to the Board on 12 December 2022. A major component of ICANN org's work in the ODP was to conduct an analysis of the potential timeline, costs, resource requirements, systems needs, and risks related to implementation of the SubPro Final Report outputs. The analysis provided in the ODA presents ICANN org's assessment based on the goal of delivering on all 300-plus outputs of the SubPro Final Report to the maximum extent possible. Upon completion of its analysis, ICANN org found that the overall implementation cost for the next round of the New gTLD Program would be higher than the 2012 round. ICANN org notes that there are a few reasons for this: 1) implementing the SubPro Final Report outputs, which includes ensuring that the appropriate systems, procedures, processes, and resources are all in place in time for the opening of the next application submission period–and to mitigate challenges faced in the past–will require considerable upfront cost; 2) inflation, including increased vendor costs; 3) added complexities in the recommendations versus the 2012 round; and, 4) the need to ensure that tools for applicant assistance and other resources are in place.

In this light, ICANN org presents two potential paths forward ("options") for implementation of the SubPro Final Report outputs: 1) a single application submission period per round; and 2) cyclical application submission periods.

Option 1

In the scenario in which ICANN org implements the SubPro Final Report outputs in a single, immediate next round, ICANN org estimates that implementation of the next round of the New gTLD Program may take at least five years from the point that the Board directs ICANN org to begin implementation to the opening of the application submission window. This estimate includes time for policy implementation, process design, infrastructure development as well as for communications and outreach.

ICANN org estimates that the overall cost for the next round of the New gTLD Program will be approximately $457 million, including approximately $50 million for building and deploying the New gTLD Program infrastructure, including all resourcing, software licensing, and administrative overhead during implementation.

Option 2

ICANN org considered ways to mitigate the risk of unknown demand, and ways to gain efficiencies in the implementation timeline. Balancing a number of factors, such as cost, time, and predictability, ICANN org has developed a proposal for "Cyclical Application Submission Periods" for consideration by the Board in its deliberations on the SubPro Final Report outputs. Under this alternative proposal, the immediate next round would be split into four application submission periods, or cycles, occurring annually. While the number of applications that can be submitted in a

cycle would remain unlimited, the applications received in each cycle would be prioritized and processed based on an established capacity limit. Under Option 2, a round would consist of four application "cycles" over four years. Application submission periods would occur every 12 months for the four years, creating predictability for the Program and potentially moderating the influx of applications in the first cycle.

Issues Raised to the Board Relevant to Adopting the Final Report

Several substantive policy issues remain unresolved or "open" and have been raised to the ICANN Board for review prior to the approval of the SubPro PDP WG Final Report. See below some of these issues which the GAC has previously focused on as priority topics and submitted comments to the Board in June 2021 during the public comment on the Final Report.

- **Public Interest Commitments (PICs)/Registry Voluntary Commitments (RVCs)**

As PICs/RVCs were used during the 2012 round, there were some concerns expressed about enforcement. According to the CCT Final Report: *"The combination of a short timeframe to respond, and uncertainty about the specifics of enforcement may have deterred certain applicants from submitting PICs or impacted which PICs they elected to submit."*

ICANN org and the Board have noted concerns as to whether the language of the Bylaws (adopted after the launch of the 2012 round) might preclude ICANN from entering into future Registry Agreements (that materially differ in form from the 2012 round version currently in force) that include PICs and RVCs that reach outside of ICANN's technical mission as stated in the Bylaws. The language of the Bylaws specifically limits ICANN's negotiating and contracting power to PICs that are "in service of its Mission."

The Final Report recommends RVCs and PICs as one mechanism to overcome certain aspects of string similarity, as well as address GAC advice and objections.

Should the Board decide to adopt the recommendations as proposed, this could bear governance risks due to the Bylaws language in [Section 1.1](). *"The mission of [...] ICANN is to ensure the stable and secure operation of the Internet's unique identifier systems [...]. ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a)."*

The ODA stipulates that one option to address this concern is to amend the Bylaws with a narrowly tailored amendment to ensure that there are no ambiguities around ICANN's ability to agree to and enforce PICs and RVCs as envisioned in the Final Report.

The GAC noted in its [1 June 2021 collective comment](), that "*consistent with the GAC Montreal Communiqué, the GAC further notes that any future voluntary and mandatory PICs need to be enforceable through clear contractual obligations, and consequences for the failure to meet those obligations should be specified in the relevant agreements with Contracted Parties. Additional mandatory and voluntary PICs should remain possible in order to address emerging public policy concerns. The GAC recalls persistent GAC concerns regarding both the weak implementation of PICs applicable to gTLDs in highly-regulated sectors and the lack of clarity and effectiveness of the*

mechanism to enforce disputes (the Public Interest Commitments Dispute Resolution Process or PICDRP) and recommends that these issues are remedied in any subsequent rounds."

- **Closed Generics**

Due to diverging views within the SubPro PDP WG, the WG did not reach consensus on policy recommendations regarding closed generics. By way of background, the GNSO Council stated on 7 March 2013: "it was the view within the GNSO that it should not be the responsibility of ICANN to restrict the use of gTLDs in any manner, but instead to let new gTLD applicants propose various models; open or closed, generic or not." The GAC, on the other hand, issued Advice on 4 April 2013 that "for strings representing generic terms, exclusive registry access should serve a public interest goal." Ultimately the ICANN Board made a Board resolution that addressed the issue of Closed Generics, but was applicable only to the 2012 round, with the understanding that the GNSO would develop policy on the issue prior to the start of subsequent rounds of new gTLDs.

Due to the lack of policy recommendations in the SubPro Final Report, the GAC, GNSO Council and At-Large agreed to pursue next steps for a facilitated Dialogue in April 2022, which commenced in November 2022 and is currently ongoing.

The ODA states that "the Board's final action on Closed Generics depends on the outcome of the facilitated dialogue and the results of any additional GNSO policy work. The outcome(s), if any, will need to be factored into SubPro planning, design, and implementation." The ODA also notes that "any action taken by the Board on the Final Report is not dependent upon a resolution to the Closed Generics issue."

The GAC noted in its 1 June 2021 collective comment its continued support of the retention of the advice contained in the GAC Beijing Communique whereby "exclusive registry access should serve the public interest goal" and that adequate means and processes are defined to ensure that public interest goals are met. The burden of demonstrating the public interest benefit of a closed generic string should rest with the applicant and be subject to comments during the review process. The GAC is currently engaged with the GNSO and At-Large in a facilitated dialogue on closed generics to attempt to agree upon a framework for closed generics.

- **Applicant Support Program**

The Applicant Support Program (ASP) was developed for the 2012 round with the goal of providing financial and non-financial assistance to gTLD applicants requiring support that intend to use a gTLD to provide a public interest benefit. The Final Report outputs on Applicant Support Program introduce a number of improvements to the way the program operated during the 2012 round. In August 2022, the GNSO Council initiated a GNSO Guidance Process (GGP) to provide additional guidance on ASP-related outputs.

ICANN org notes in the ODA that the ASP is an important program and has added planning details to the ODA with the aim of improving the program. Rec 17.2 of the final report calls for ICANN org to expand "the scope of financial support provided to [...] beneficiaries beyond the application fee

to also cover costs such as application writing fees and attorney fees related to the application process."

As noted in the Board's comments on the Draft Final Report, expanding financial support to cover fees that ICANN org does not charge does not seem feasible or appropriate to implement.

In the ODA, ICANN org suggests working collaboratively with a sub-committee of the IRT focused on the Applicant Support Program to explore ways to follow the intent of examping the scope of the ASP, taking into account research on other globally recognized procedures.

The GAC noted in its 1 June 2021 collective comment general support for the final recommendations on applicant support, noting the importance of extending the scope of the program beyond only economies classified by the UN as least developed and also considering the "middle applicant". GAC members highlighted the importance of fostering gTLD applications from a diverse array of applicants, which could include regional and local authorities, from all regions and that every effort be made to increase the number of applications from underrepresented regions. The GAC reiterated its support for proposals to reduce or eliminate ongoing ICANN registry fees to expand financial support.

- **Auctions**

In the 2012 round ICANN org included methods to resolve contention into the AGB and encouraged self-resolution and subsequently, private resolution of contention set (e.g., private auctions) were commonly used to resolve string contention sets. The PDP WG, however, did not reach consensus on private resolution of contention sets but noted that "some applicants that applied for multiple TLDs (called "Portfolio Applicants") leveraged funds from the private auctions they "lost" for financial positioning in the resolution of other contention sets."

The ODA proposes that in future rounds, in accordance with the Final Report output, applicants be required to sign a statement of bona fide intent to operate the gTLD and abide by the Contention Resolution Transparency Requirements. Additionally, during the implementation period, ICANN org will seek expert guidance to identify additional effective mechanisms to deter applicants from applying for new gTLDs solely for financial gain.

The GAC noted in its 1 June 2021 collective comment the GAC reiterated concerns on the implementation of the "bona fide" intention to operate a gTLD (as noted in the SubPro PDP WG Final Report) and noted that punitive measures for non compliance or submission of a "bona fide" intention are not sufficiently defined. Regarding Auctions of Last resort, the GAC reaffirmed its view that they should not be used in contentions between commercial and non-commercial applications, and reiterates that private auctions should be strongly disincentivized. The GAC sees value in ALAC's view expressed in its advice to the ICANN Board noting that they believe there "*should be a ban on private auctions. Also, by mandating ICANN only auctions, the proceeds of any such ICANN auctions can at least be directed for uses in pursuit of public interest, such as was determined through the CCWG on Auction Proceeds*."

2. Closed Generics

As part of the Operational Design Phase (ODP) work, several policy issues were identified for the ICANN Board to address, including closed generics, since the SubPro PDP WG did not reach consensus on policy recommendations on closed generics. GAC advice from 2013 states that *"for strings representing generic terms, exclusive registry access should serve a public interest goal"*.

In March 2022 the ICANN Board reached out to the GAC and GNSO Chairs to identify interest in a GAC/GNSO collaboration in a small focused group with subject matter experts from both groups to attempt the development of a framework for closed generics, followed by a subsequent letter including a framing paper outlining roles and responsibilities, the process and expected timing. Both the GAC and GNSO have agreed to this dialogue taking place and invited participation from At-Large. The GAC agreed to the proposed facilitator for the dialogue as brought forward by the ICANN Board. ICANN org prepared a Problem Statement and Briefing Paper to set the basis for the dialogue as a starting point.

GAC members identified for this effort include the GAC Chair, Switzerland, Canada, UK, Australia, and Nigeria.

The GAC/GNSO dialogue on closed generics began in November 2022 via Zoom meetings, including a 2-day hybrid meeting held in Washington D.C. in January 2023. During this hybrid meeting, participants discussed several key topics and definitions, brainstormed ideas for potential application and evaluation criteria, and collaborated in breakout and plenary sessions. A summary of the meeting and discussions was shared with GAC members.

In preparation for ICANN76, the GAC/GNSO group anticipates to share a summary of outputs for review by GAC and GNSO members and for discussion.

Should the GAC and GNSO reach agreement on a framework, the broader community will be invited to provide feedback. Following community input, the proposed framework – if agreed upon – can be considered through the appropriate GNSO policy development process. If the dialogue does not result in a mutually agreed framework, the Board will need to consider appropriate next steps.

3. GNSO Guidance Process (GGP) on Applicant Support

During its meeting on 25 August 2022, the GNSO Council approved the GGP Initiation Request to provide additional guidance to support the eventual implementation efforts relating to the Applicant Support Program, as recommended in the SubPro Final Report. The working group was subsequently formed and began its work in November 2022, following its work plan and timeline.

GAC Members appointed to the GGP on Applicant Support effort include: Argentina, United Kingdom and Universal Postal Union.

Its tasks include reviewing historical information about applicant support, identifying subject matter experts, developing data/metrics and measures of success, and creating methodology for allocating financial support where there is inadequate funding for all qualified applicants.
Once the working group completes all of its tasks, it is expected to produce a GNSO Guidance Recommendation(s) Report, which will be subject to Public Comment.

Following the review of Public Comment submissions and, if required, additional deliberations, the working group will produce a Final Report for the consideration of the GNSO Council and subsequently for consideration by the ICANN Board.

During ICANN76, the GGP Working Group will hold a working session, aiming to finish consideration of Tasks 3-5 related to metrics and begin discussions of Task 6 related to financing the program.

4. ICANN76 as an opportunity to raise certain substantive issues to GAC Advice

Beyond closed generics, where the GAC can offer feedback to the GAC representatives to the facilitated dialogue, and ODA, where the GAC can offer input to the Board both on the "options" and the "unresolved issues" mentioned above, the GAC can also use ICANN76 to review its inputs (LINK) to the subsequent procedures discussions and consider if any of those may be raised to the level of GAC Advice to the Board.

5. Next steps

Now that the ICANN org has delivered the Operational Design Assessment, next steps with varying timelines include:

  i.   ICANN Board consideration of the PDP recommendations as adopted by GNSO Council - opportunity for GAC Consensus Advice to the ICANN Board;
  ii. ICANN Board vote;
  iii. ICANN org (as directed by the Board) to begin implementation of the policy recommendations (which will likely include a revised Applicant Guidebook).

Upon completion of these successive steps ICANN org would be expected to start a new round of applications for gTLDs, timing to be confirmed.

Key Reference Documents
  ● Final Report on the new gTLD Subsequent Procedures PDP WG
  ● GAC Consensus Collective Comment (1 June 2021) on GNSO New gTLD Subsequent Procedures Final Outputs for ICANN Board Consideration.
  ● New gTLD Subsequent Procedures Operational Design Assessment
  ● New gTLD Subsequent Procedures ODA Community Webinar Slides

Further Information

- GAC Policy Background Document on Subsequent Rounds of New gTLDs:
  https://gac.icann.org/briefing-materials/public/gac-policy-background-new-gtlds-subsequent-rounds.pdf

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