
GAC Discussion of New gTLD Program Next Round

Session 2 and 6

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Session Objective

GAC Members to 1) Review and discuss outputs from the GAC facilitated dialogue with the GNSO Council and ALAC on Closed Generics, 2) Discuss open issues relevant to GAC being discussed by Board and GNSO Council, and consider potential GAC advice on the matter 3) Be briefed about other developments such as GNSO Guidance Process (GGP) on applicant support and the Implementation Review Team.

Leadership Proposal for GAC Action

1. GAC to discuss current state of play and outputs from the GAC/GNSO/ALAC dialogue on Closed Generics, and determine whether GAC is in a position to endorse such outcomes, prior to a policy effort on closed generics being initiated.
2. GAC Members to discuss open issues relevant to the GAC being discussed by Board and GNSO Council, and consider potential GAC advice language on the matter based on prior GAC inputs regarding SubPro PDP WG Final Report.
3. GAC Members to receive an update on the GNSO Guidance Process (GGP) on Applicant Support and on the Implementation Review Team (IRT).

Current Status and Recent Developments

1. Closed Generics

GAC members have engaged with GNSO and At-Large members in a facilitated dialogue on closed generics since November 2022, to develop a framework taking into account the GAC Beijing advice whereby “exclusive registry access should serve a public interest goal”.

GAC members participating in this effort include Egypt, Switzerland, Canada, UK, Australia, and Nigeria.

It is planned that the facilitated dialogue group will share a draft framework with the ICANN community for review and input prior to ICANN77. This draft framework includes high-level policy elements relevant to the application phase, evaluation phase and post-delegation phase for closed generic gTLDs. The framework is intended to serve as the basis for a subsequent policy process to be initiated by the GNSO Council, pending agreement/endorsement by the GAC membership, GNSO and At-Large more broadly.

Interested GAC members are encouraged to participate in the two open sessions being held at ICANN77 by the facilitated dialogue group to be informed, provide input directly to the group or to ask questions.

GAC members are asked to consider the draft framework and provide comments to the framework. GAC advice is not currently anticipated, until GAC input is provided to the facilitated dialogue group and pending results from this joint effort.

Following community input, the facilitated dialogue group will consider the inputs received and finalize the draft framework, which will then be circulated to GAC, GNSO and ALAC for endorsement. If endorsed the framework will 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.

2. Open policy issues of interest to the GAC pertaining to the next round of new gTLDs

Beyond closed generics, where the GAC can offer feedback to the GAC representatives to the facilitated dialogue, the GAC may use ICANN77 to review [draft advice language](#) prepared by Topic Leads in consultation with the GAC Small Team on SubPro, based on prior GAC consensus input to the PDP WG, and discuss if any of those items shall be raised to the level of GAC Advice to the Board. GAC members are encouraged to consider such potential Advice also in light of the Board Chair’s [letter](#) to the GAC (23 May 2023), which suggests continued discussions between the Board and the GAC on items of interest to the GAC. Specifically, the Board Chair invites the GAC to discuss a clear path forward to supporting a Board decision regarding the recommendations on GAC Consensus Advice and GAC Early Warning, including how to address any GAC concerns during the implementation phase. The Board encourages the GAC to indicate its preferred method and timeline for engagement moving forward.

What follows is a summary of said “open policy issues”:

- **Predictability**

The SubPro PDP WG introduced the Predictability Framework as a new tool to determine mechanisms to address changes that may need to be made during the New gTLD Program and to allow their implementation in a transparent and predictable manner. As part of its recommendations, the Working Group also included the formation of a Standing Predictability Implementation Review Team (SPIRT), which will review issues that arise and utilize the Predictability Framework to identify mechanisms to resolve identified issues.

The Predictability Framework also aims to allow the implementation of mechanisms to take place in a transparent and predictable manner.

The Operational Design Assessment (ODA) notes that the Predictability Framework contains several areas of ambiguity that need to be addressed during implementation. Some may need resolution with the SubPro IRT, such as roles and responsibilities, how to address multiple areas of impasse, and the SPIRT membership model. Specifically, the roles of stakeholders such as the ICANN Board, ICANN org, GNSO Council, and the SPIRT may need further definition in the Predictability Framework. Direction is also needed about how issues raised will be categorized and whether the SPIRT should advise on methods to address the issue in specific circumstances. More discussion may be needed about when to categorize items as policy or operational issues and what to do when ICANN org and the SPIRT disagree on categorization. Categorization is key because it determines the appropriate mechanism to address the issue.

Another area of ambiguity in the Predictability Framework is how to determine the appropriate process to introduce a change to the New gTLD Program if there are no underlying policy recommendations or implementation guidance.

In general, the Predictability Framework does not change existing roles of the Board, ICANN org, or GNSO Council, nor does it supersede the existing GNSO Council PDP. The SPIRT is a GNSO Council body that will assist in identifying appropriate mechanisms for handling an issue. In order to maximize predictability, ICANN org will incorporate guidelines on how issues will be triaged, categorized, and raised to the SPIRT within the Applicant Guidebook during the implementation period.

The GAC in its [1 June 2021 collective comment](#), expressed appreciation in the efforts of the SubPro PDP WG to create a Predictability Framework, and noted that some GAC members continued to have doubts on its added-value and shared concerns relative to the implementation of the Standing Predictability Implementation Review Team (SPIRT) and the added layer it may create regarding GAC consensus advice. GAC Members noted that further clarification on the implementation of the SPIRT should be encouraged, as well as on the role the GAC will play in it, especially in light of Implementation Guidance 2.3 suggesting direct dialogue between the SPIRT, ICANN org and the ICANN Board on GAC Consensus Advice, in which the GAC expects to be

included as well.

Furthermore, GAC members emphasized the importance of the opportunity for equitable participation on an equal footing on the SPIRT by all interested ICANN communities.

Proposed GAC Advice for consideration advises the Board to ensure equitable participation on the Standing Predictability Implementation Review Team (SPIRT) by all interested ICANN communities, on an equal footing.

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

As RVCs/PICs 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 Operational Design Assessment (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.”*

Proposed GAC Advice for consideration asks the Board to ensure that any future Registry Voluntary Commitments (RVCs) and Public Interest Commitments (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.

- **Applicant Support**

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 expanding 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.

Proposed GAC Advice for consideration asks the Board to consider reducing or eliminating ongoing ICANN registry fees to expand financial support for applicants from underrepresented regions.

- **GAC Consensus Advice and GAC Early Warnings**

The process for GAC Advice on new gTLDs is intended to address applications that are identified by governments to be problematic (e.g., that potentially violate national law or raise sensitivities). GAC members can raise concerns about any application to the GAC. A GAC Early Warning typically results from a notice to the GAC by one or more governments that an application might be problematic. The full GAC will consider concerns raised by individual GAC members and may come to consensus on GAC advice to forward to the ICANN Board. As stated in the ICANN Bylaws, GAC advice must include a clearly articulated rationale and must be limited to the scope set out in the applicable Bylaws provisions.

Where GAC advice on new gTLDs is received by the Board concerning an application, ICANN will publish the advice and endeavor to notify the relevant applicant(s) promptly. The applicant has a period of 21 calendar days from the publication date in which to submit a response to the Board. ICANN org will consider the GAC advice on new gTLDs as soon as practicable. In the Final Report, the SubPro PDP WG provided seven outputs on the topic of GAC Early Warning and GAC Consensus Advice. Overall, ICANN org has not identified any procedural issues concerning the implementation of the recommendations and believes that the recommendations related to GAC Early Warning and GAC advice can be implemented. However, the GAC voiced concerns about specific recommendations concerning the timing of GAC advice on future categories of TLDs and limiting the scope of GAC advice to the scope set out in the applicable Bylaws provisions.

The Final Report recommends that, if in the future the GAC issues advice on categories of TLDs, the GAC should provide this advice prior to the finalization and publication of the next Applicant Guidebook. If the GAC advice is issued thereafter, the Board must consider whether to accept or override such advice in accordance with relevant Bylaws provisions. Specifically, the GAC “does not consider that the PDP should make recommendations on GAC activities which are carried out in accordance with the ICANN Bylaws and the GAC’s internal procedures.”¹³⁴ In this regard, the GAC does not support the SubPro PDP WG recommendation “regarding the timing of GAC Consensus Advice on future categories of TLDs and particular applications, oriented to disincentivizing any such advice being submitted after the finalization and publication of the next Applicant Guidebook.

In the ODA, ICANN org notes the recommendations can be implemented as written in the Final Report. However, the Board may wish to engage with the GAC to address the GAC concerns with the Final Report outputs on Topic 30. Specifically, the Outputs recommended that GAC advice on future categories of TLDs and particular applications be provided as early as possible. It is important to note that the GAC is not prevented from submitting late advice or advice on TLD categories, as there are no binding impediments for the GAC regarding this recommendation. The Board may wish to note concerns regarding this issue and support clear expectations for all parties involved. Regarding the outputs on GAC Consensus Advice that is issued after finalization and publication of the Applicant Guidebook, the Board may wish to consider how it will handle disagreements concerning the possibility of the Board overriding GAC Consensus Advice in the event it is issued after the finalization and publication of the Applicant Guidebook.

The GAC noted in its [1 June 2021 collective comment](#) Its lack of support for the SubPro PDP WG recommendation “regarding the timing of GAC Consensus Advice on future categories of TLDs and

particular applications, oriented to disincentivizing any such advice being submitted after the finalization and publication of the next Applicant Guidebook.” There also are diverse views within the GAC on the “strong presumption” language. Some GAC members believe that Section 3.1 of the 2012 Applicant Guidebook, which states that GAC Consensus Advice “...should be maintained, as they consider that “this language was part of a delicate compromise during the 2012 round preparations and further consider that it is consistent with past and present Bylaws provisions. Further, said GAC members consider that the possibility of maintaining a dialogue with the concerned applicant is not hampered by this language.” Other GAC members “support the Working Group’s recommendation to remove this language, and believe that the text of any future Applicant Guidebook must be consistent with the Bylaws regarding GAC advice.” The GAC also noted that “applications may not always be able to be remedied in the opinion of the Government(s) issuing a GAC Early Warning.” As such, the GAC has proposed updated language to Recommendation 30.6 as follows: “[...] how the applicant may potentially address the GAC member’s concerns to the extent feasible”.

Proposed GAC Advice for consideration advises the Board 1) to not accept recommendation guidance 30.2 regarding the timing of GAC Consensus Advice on future categories of TLDs and particular applications, oriented to disincentivizing any such Advice being submitted after the finalization and publication of the next Applicant Guidebook; and 2) to adopt recommendation 30.6 with the inclusion of the compromise language submitted by the GAC as follows:

“Government(s) issuing Early Warning(s) must include a written explanation describing why the Early Warning was submitted and how the applicant may address the GAC member’s concerns *to the extent feasible*”.

- **Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets**

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.”

Proposed GAC Advice for consideration advises the Board 1) to ensure that auctions of last resort are not used in contentions between commercial and non-commercial applications, and 2) to ban or strongly disincentivize private auctions.

- **Community Applications**

Community Priority Evaluation (CPE) was a contention resolution mechanism available to applicants during the 2012 round that self-designated their applications as community applications. Prevailing in CPE allowed the community applicant to gain priority within a contention set, i.e., all other applicants in a contention set were not allowed to proceed in the New gTLD Program, assuming the prevailing applicant successfully completed all other New gTLD Program processes.

The SubPro Final Report affirms “the continued prioritization of applications in contention sets that have passed Community Priority Evaluation (CPE)”¹⁴³ (affirmation with Modification 34.1). The rationale for this states that “the Working Group supports the overall approach used in the 2012 round for community-based applications, as well as the continued prioritization of applications in contention sets that have passed Community Priority Evaluation...”¹⁴⁴ In addition, the SubPro Final Report proposes Implementation Guidance for improving the definitions and applications of CPE Criteria from the 2012 Applicant Guidebook. The SubPro Final Report also includes recommendations to improve the CPE process, in terms of information sharing, transparency, efficiency, and predictability.

In the ODA, ICANN org anticipates moving forward with the SubPro Final Report outputs on community applications and has designed the process accordingly. During the Operational Design Phase, ICANN org identified potential improvements to further mitigate risks. Further modifications to these proposed improvements can be explored with the IRT during implementation.

GAC Advice is not currently anticipated on community applications, due to sufficient substance and divergence in GAC views vis-a-vis policy recommendations within the SubPro PDP WG Final Report.

3. GNSO Guidance Process (GGP) on Applicant Support and Implementation Review Team (IRT)

GAC Members have appointed representatives on both the GNSO Guidance Process on Applicant Support, and the Subsequent Procedures Implementation Review Team (IRT).

On the **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 ICANN77, members of the GNSO Guidance Process (GGP) will hold a working session, aiming to conclude discussions of Task 6 related to financing the program, and begin the development of a draft report.

The Subsequent Procedures **Implementation Review Team (IRT)** commenced its work in May 2023 and is expected to draft the next applicant guidebook in preparation for the next round of new gTLDs. The GAC appointed a representative and an alternate to participate in the process, provide input to the IRT and report back to the broader committee on areas of importance to the GAC. GAC members appointed to the IRT are: Canada (Representative) and UK (Alternate). ICANN org presented a draft Implementation Plan for the Implementation Review Team's input, including the ninety-eight recommendations from the SubPro PDP WG Final Report and incorporates a phased approach taking into account multiple factors, including internal resource and SME availability and interdependencies on the various streams. Implementation of the thirty-eight outputs currently in "pending" status as per the March 2023 Board Resolution will be integrated into the implementation work if/when these have been approved by the ICANN Board. The implementation plan currently assumes a 24 month timeline for drafting the Applicant Guidebook, with the support of the IRT.

4. Next steps

On 16 March 2023, the Board [resolved](#) to instruct ICANN org to begin the implementation of all Final Report Outputs detailed in Section A of the "[Scorecard on Subsequent Procedures PDP](#)" and to make available resources required for the successful and timely opening of the next round of new gTLDs. The ICANN Board approved ninety-eight (98) recommendations contained in the Final Report on the New gTLD Subsequent Procedures Policy Development Process, and marked the remaining thirty-eight (38) recommendations as "pending".

The Board further directed ICANN org to deliver a comprehensive implementation plan to the Board no later than 1 August 2023, containing a work plan, relevant information for the Infrastructure Development stream, timelines and anticipated resource requirements to announce the opening of the next round of new gTLDs, subject to the satisfactory completion of four deliverables by the conclusion of ICANN77 on 15 June 2023.

One of these deliverables is agreement between the ICANN Board and GNSO Council on a plan and timeline for the consideration and resolution of all Outputs contained in Section B of the Scorecard, on which the Board has yet to reach a decision and have been designated as “pending”.

As part of the Operational Design Phase (ODP) the GNSO Council provided [additional input](#) on several topics, which will be taken into account by ICANN org when implementing the applicable Recommendations.

Upon completion of these successive steps ICANN org would be expected to start a new round of applications for gTLDs, by May 2026.

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.
- [Draft GAC Advice Language](#) for GAC Membership consideration on GAC priority topics and items marked as pending by the ICANN Board.
- [ICANN Board Chair letter](#) to GAC Chair on next steps relative to the new gTLD next round (23 May 2023)
- [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>

Document Administration

Title	ICANN77 GAC Session Briefing - GAC Discussion on New gTLD Program Next Round
Distribution	GAC Members (before meeting) and Public (after meeting)
Distribution Date	Version 1: 31 May 2023