

GAC Advice – ICANN80 Kigali Communiqué:
Clarifying Questions – for 15 July 2024 Board-GAC Meeting

Clarifying Questions on ICANN80 Kigali Consensus Advice

GAC Consensus Advice Item	Advice Text	Board Clarifying Questions
<p>§1.a.i Applicant Support Program (ASP)</p>	<p>a. The GAC advises the Board to:</p> <p>i. <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.</i></p> <p><u>RATIONALE:</u> 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.</p>	<ol style="list-style-type: none"> 1. If the Board were to adopt this advice, the implementation of this advice would likely mean that applicants would have only 4 months - as opposed to the currently planned 16 months - to use ICANN’s committed funding to secure further support, take advantage of non-financial support (e.g., capacity development, pro bono assistance), and prepare a new gTLD application. Does the GAC believe that the risk that funds for applicants from underserved areas will run out outweighs the value of the 16 month timeline? 2. There is currently no policy basis or guidance to prioritize support for some applications over others. Moreover, this issue was discussed and subsequently rejected by the GGP following community consultation. In its comments on the GGP report last September, the GAC acknowledged the difficulty of creating prioritization criteria. Does the GAC believe that circumstances have changed since the conclusion of the GGP that the community

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		<p>could now develop consensus policy or guidance on this topic?</p> <p>3. Noting that the GAC acknowledged the difficulties that setting up a prioritization exercise would entail, has the GAC identified criteria by which applications for support should be evaluated in the scenario that more applicants qualify for support than ICANN has budgeted?</p> <p>4. The Board has committed to use best efforts to secure additional funding if the number of qualified applicants exceeds 45. In response, the GAC has asked the Board to <i>“commit to identifying additional funding in the event that more than 45 qualified applications for applicant support are identified and provide such support”</i>. Is the GAC asking the ICANN Board to obligate a future board to uncapped expenditures to support all qualified applicants? Given the lack of reliable information regarding the size of the new gTLD applicant pool, the number of qualified applicants for support, and the current volatility of the DNS industry, how could such a commitment comport</p>

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		<p>with prudent management principles and the board fiduciary obligations?</p> <p>5. We have reviewed all of the GAC’s statements on this matter going back four years, as identified in the Chair’s recent letter to Tripti Sinha. We agree with the assertion that the GAC has consistently called for measures to support diverse applicants, and in particular to engage and support qualified applicants from underserved regions. We also believe that the Board has committed to do just that by directing Org to carry out an aggressive campaign, including in underserved regions, to raise awareness of the program and to simplify the application process to the maximum extent possible. In its comments on the recommendation 7 regarding allocation of funds among qualified applicants in the GGP report in September of last year, which did not include prioritization, the GAC said:</p> <p><i>“While the GAC supports the recommendation as written and the committee understands the choice</i></p>

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		<p><i>made to follow the principle of fairness and not carry out a prioritization exercise between applicants in case of inadequate funding, it is important to be aware of the risks that the fairness approach implies. ... Governments understand the difficulties that setting up a prioritization exercise would entail, but wonder whether it is not worth the effort to discuss this further.”</i></p> <p>Notwithstanding the GAC’s acceptance of the GGP recommendation, we now understand that the GAC is now advising the Board to reject that recommendation. If so, is the GAC saying that the if the Board cannot accept the GAC’s advice to prioritize applications from underserved regions, it should delay publication of the ASP Handbook in its current form and, understanding the impact this will have on the timeline for launch of the ASP, initiate the Bylaws process to seek a mutually acceptable solution and, if none is available, formally reject the GAC advice. Is that correct?</p>

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		<p>6. The ICANN Bylaws do entitle the GAC to provide advice contrary to the outcome of a multistakeholder policy development process in which it has participated, including to change its mind about policy recommendations that it has supported. That said, the GAC has known about the outcome of the GGP process for at least a full year. Is there a reason that the GAC waited until to Kigali to issue this advice? Understanding the timing might help us resolve this issue.</p>
<p>§1.a.ii Applicant Support Program (ASP)</p>	<p>a. The GAC advises the Board to:</p> <p>i. <i>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.</i></p> <p><u>RATIONALE:</u></p> <p>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,</p>	<p>1. Could the GAC clarify what it intends by “monitor” and “participate in” the ASP evaluation process?</p> <p>2. The SubPro evaluation process laid out in the SubPro ODA intentionally pivoted to the use of expert evaluators. Is the GAC suggesting that the ASP evaluation design should revert to the 2012 approach when the SARP was made up of volunteers?</p> <p>3. By “participate,” is the GAC suggesting that it - or its individual members - are willing to pass</p>

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	including the GAC, monitor and participate in the ASP Application Evaluation process.	<p>judgment on applications?</p> <p>4. The ASP criteria are designed to be as objective as possible, in line with Recommendation 27.2 of the SubPro PDP Final Report. Given that the criteria are public, what is the benefit of having community and GAC monitors?</p> <p>5. Bearing in mind that implementing this advice significantly increases the risk of legal challenges regarding a participant’s or monitor’s independence or expertise, what standard should be applied to determine whether a GAC or community member is non-conflicted? What criteria should be used to determine whether a participant/monitor has relevant experience?</p> <p>6. Keeping in mind that increased risk could materially increase the new gTLD application fee across the board, does the GAC believe that the contribution of community participants/monitors would outweigh the increased cost associated with defending against</p>

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		<p>legal challenges?</p> <p>7. How does the GAC envision community members' involvement vis-a-vis maintaining business confidentiality for ASP applicants in the evaluation process?</p> <p>8. In the GAC's recent letter to Tripti Sinha, the GAC stated that it wished to brief the evaluator on the <i>GAC's objectives for the ASP</i>. The independent evaluator will be tasked with reviewing applications for support based on objective, transparent criteria developed by the community. Are the GAC's objectives for the ASP not aligned with the evaluation criteria? Does the GAC want to convey its views on how applications should be prioritized? If that's the case, the Board is uncertain how a briefing on the GAC's priorities can be reconciled with the neutral application of objective criteria. Can you provide information that would help us understand this request?</p> <p>9. Bearing in mind that implementing this advice would directly impact the</p>

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		<p>ASP launch timeline, scheduled for the end of this year, does the GAC believe that the contribution of monitors would outweigh the downside of compressing the ASP timeline?</p>
<p>§1.a.iii Applicant Support Program (ASP)</p>	<p>a. The GAC advises the Board to:</p> <p>i. <i>To initiate a facilitated dialogue, involving representatives from the GAC, GNSO and the ALAC, to assess the feasibility of leveraging (including contracting and financing the services of) a platform to which new gTLDs, supported through the ASP, could move to eventually operate their own back-end services.</i></p> <p><u>RATIONALE:</u></p> <p>The Board has issued several useful questions to the GAC on the GAC’s previous ICANN79 Advice to “explore the potential of leveraging (including contracting and financing the services of) a platform to which new gTLDs, supported through the ASP, could move to eventually operate their own back-end services”. In order to develop a response to these questions with completeness, and duly considering the views and expertise of the wider multistakeholder community, the GAC proposes engaging in a dialogue with representatives from the GNSO and ALAC to assess the feasibility of this and to potentially develop a proposal, in a timely manner, for a way forward.</p>	<ol style="list-style-type: none"> 1. Could the GAC clarify what is meant by “a platform to which new gTLDs, supported through the ASP, could move to eventually operate their own back-end services”? Is this intended to serve as a capacity building platform? Is the GAC asking ICANN to provide subsidized back end services to supported applicants? If so, how would that enable supported applicants to transition to their own back end? Or is the GAC contemplating something else? 2. Noting that the GAC is calling for creation of a platform that enables supported applicants to move “eventually” to operate their own back-end services, did the GAC intend that such a platform be in place before launch of the Next Round? Is this something that could be undertaken down the road

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		<p>so as not to delay the launch of the Next Round?</p>
<p>§1.a.iv Applicant Support Program (ASP)</p>	<p>a. The GAC advises the Board to:</p> <p>i. <i>To develop a report outlining the results and outputs of the Engagement and Outreach Plan according to the stated timeline i.e.</i></p> <ul style="list-style-type: none"> ● <i>May 2024: Launch Awareness Campaign (including priority outreach to underserved regions).</i> ● <i>June 2024 (ICANN80): Stakeholder Consultations</i> <ul style="list-style-type: none"> ○ <i>Conduct stakeholder consultations to gather feedback on the ASP's design and eligibility criteria.</i> ○ <i>Engage with potential applicants to understand their needs, challenges, and expectations regarding the ASP.</i> ○ <i>Use feedback to refine ASP guidelines and communication materials.</i> <p><u>RATIONALE:</u></p> <p>The GAC appreciates the publication of the ‘New gTLD Program: Next Round Engagement and Outreach Plan’, which included a high-level plan for outreach on the Applicant Support Program. The GAC looks forward to receiving the itemized costs, detailed scope and clear metrics of success (including specific targets) to accompany the plan. In that regard, the GAC appreciates the Key Performance Indicators</p>	<p>1. Org is preparing and will publish a timeline that provides the “who, what, when” of its outreach and engagement plan. The team is establishing a monthly reporting cadence for activities and outcomes to be presented for community discussion and feedback, beginning 60 days from now. The monthly reports will be based on the KPIs presented and discussed in Kigali and over the course of recent discussions with the community. Additionally, once the program is launched, regularly scheduled meetings between the ICANN staff leading the engagement/outreach program and the IRT ASP sub track will provide an ongoing opportunity for all interested community members, including the GAC, to monitor progress, provide feedback, and suggest course corrections.</p> <p>What additional reporting is the GAC requesting?</p> <p>2. Should we assume that the bullet points are intended to reflect the level of detail that the GAC would</p>

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	<p>(KPI) published that will be used to assess program success after implementation, and looks forward to receiving associated KPI targets that will be used to measure ongoing progress in real-time as the program is implemented. The GAC believes that such an approach can only be of positive benefit to the success of the ASP, and would allow for course corrections as deemed necessary during implementation, as opposed to waiting until the end of the program to conduct an assessment.</p>	<p>like to see or do they reflect actual tasks that the GAC wants org to undertake? If the latter, we will need additional information. For example, the ASP’s design and eligibility criteria have already been the subject of a public consultation. We received comments from ICANN stakeholders, including the GAC. Is the GAC suggesting that additional community consultations are required and/or that eligibility criteria should be further modified? Shouldn’t the guidelines be fixed before publication of the ASP Guidebook? Shouldn’t the eligibility criteria be fixed prior to publication of the Guidebook and launch of the ASP? How will potential applicants know what to do if the criteria and guidelines are a continuously moving target?</p> <p>3. In its recent correspondence, the GAC asked for budgetary figures matched with planned activities. We understand that the GAC would like to be in a position to advocate for additional funding resources if it feels they are needed. We believe that the question should be “is org doing enough of the right kinds of</p>

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		<p>things” and not “how much money is ICANN spending on this.” What additional value does the GAC derive from knowing how much each activity costs?</p>
<p>§2.a.i Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs</p>	<p>a. The GAC advises the Board to:</p> <p style="padding-left: 40px;">i. <i>To prohibit the use of private auctions in resolving contention sets in the next round of New gTLDs.</i></p> <p><u>RATIONALE:</u></p> <p>The GAC notes the Board Resolution of 8 June 2024 as well as the update provided by the Board on its current thinking about resolution of contention sets in relation with the ICANN77 Washington D.C. GAC Consensus Advice:</p> <p style="padding-left: 40px;">I. To take steps to avoid the use of auctions of last resort in contentions between commercial and non-commercial applications [...]</p> <p style="padding-left: 40px;">II. To ban or strongly disincentivize private monetary means of resolution of contention sets, including private auctions.</p> <p>Pursuant to GAC Consensus Advice regarding the use of private auctions, noting the recent Board resolution and discussions between GAC, ALAC and other parties during ICANN80, the GAC has concluded that private auctions should be prohibited for the next round of New gTLDs.</p> <p>The GAC further notes that according to its resolution, the Board intends to take an action that is potentially inconsistent with the above GAC Consensus Advice concerning auctions of last resort in contentions between commercial and non-commercial applications.</p>	<ol style="list-style-type: none"> 1. The Board understands the GAC is advising the Board to ban the use of private auctions in any contention set in the Next Round of the New gTLD Program. The Board has previously agreed that private actions will be prohibited. Is the GAC advising the Board to do something else? 2. Regarding the GAC’s previous advice regarding resolution of contention sets involving commercial and non-commercial applications, the Board resolved on 8 June 2024 to initiate the Bylaws-mandated Board-GAC Consultation process for the GAC’s ICANN77 Washington, D.C. Communiqué advice item 4.a.i. We understand that the GAC is now asking, as part of its rationale for this advice item, for the Board to conduct a broader discussion with the community. As proposed in the Board Chair’s letter of 1 July 2024, the Board would like to proceed

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	<p>In this regard, and with a view to identifying alternative means to resolve such contention sets, the GAC advises that before taking a decision and engaging in a potential Bylaws-mandated process with the GAC, the Board initiates a focused community-wide discussion, including ALAC, GAC and other parts of the community, in order to identify, inter alia, possible ways forward consistent with the GAC Consensus Advice.</p>	<p>with this community consultation in parallel with this GAC Advice Process, in order to minimize any potential delays in the implementation timeline for the Next Round. The Board expects that the newly-requested community consultation and GAC Advice Processes may inform each other, as the Board seeks to both address the ICANN80 advice and find a mutually acceptable solution for advice item 4.a.i from the ICANN77 advice.</p> <p>3. With respect to the Bylaws mandated discussions with the GAC, the Board proposes to move more expeditiously than might be the case in other situation in order to minimize any impact on the schedule. Accordingly, the Board is planning to resolve this issue no later than its September meeting.</p>
<p>§2.a.ii Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs</p>	<p>a. The GAC advises the Board to:</p> <p>i. <i>To urgently 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</i></p>	<p>1. The GAC Advice issued after ICANN 77 called on the board to To take steps to avoid the use of auctions of last resort in contentions between commercial and non-commercial applications. Is the GAC expanding its ICANN 77 advice? In other</p>

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	<p><i>the ICANN Board takes any action in a manner that may be inconsistent with the ICANN77 Washington D.C. Communiqué GAC Consensus Advice.</i></p> <p><u>RATIONALE:</u></p> <p>The GAC notes the Board Resolution of 8 June 2024 as well as the update provided by the Board on its current thinking about resolution of contention sets in relation with the ICANN77 Washington D.C. GAC Consensus Advice:</p> <ul style="list-style-type: none"> i. To take steps to avoid the use of auctions of last resort in contentions between commercial and non-commercial applications [...] ii. To ban or strongly disincentivize private monetary means of resolution of contention sets, including private auctions. <p>Pursuant to GAC Consensus Advice regarding the use of private auctions, noting the recent Board resolution and discussions between GAC, ALAC and other parties during ICANN80, the GAC has concluded that private auctions should be prohibited for the next round of New gTLDs.</p> <p>The GAC further notes that according to its resolution, the Board intends to take an action that is potentially inconsistent with the above GAC Consensus Advice concerning auctions of last resort in contentions between commercial and non-commercial applications. In this regard, and with a view to identifying alternative means to resolve such contention sets, the GAC advises that before taking a decision and engaging in a potential Bylaws-mandated process with the GAC, the Board initiates a focused community-wide discussion, including ALAC, GAC and other parts of the community, in order to</p>	<p>words, is the GAC now advising ICANN to find alternatives to ICANN auctions in all cases, including in contention sets between two or more commercial players?</p> <ol style="list-style-type: none"> 2. If so, can you explain what public policy interest is served by banning ICANN auctions to resolve contention sets involving purely commercial actors? 3. Auctions are a simple and well understood mechanism that is deployed by governments globally to resolve contention for scarce resources such as spectrum. Why does the GAC object to the use of ICANN auctions to resolve purely commercial contention sets? 4. If so, the methodology of ICANN’s auction of last resort was discussed in detail during the PDP WG, but no consensus was reached. What new information is available that would result in a different outcome compared to the deliberations that were held during the SubPro PDP that did not result in consensus?

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	<p>identify, inter alia, possible ways forward consistent with the GAC Consensus Advice.</p>	<p>5. If so, the Board has discussed, for example, the possible use of ICANN auction proceeds in the event additional applicant support is needed. In the GAC’s view, does the public policy interest in banning ICANN auctions to resolve purely commercial contention sets outweigh the benefits of (i) relying on a simple and well understood mechanism that is deployed by governments globally to resolve contention and (ii) increased opportunities to support applicants from underserved areas needing financial assistance?</p> <p>6. <i>Assuming that the GAC is not changing its advice from ICANN 77 regarding alternative means to resolve contention sets between commercial and non-commercial applicants:</i></p> <ul style="list-style-type: none"> ● Can auctions be used to resolve contentions sets including two or more <i>non-commercial</i> applicants? ● Can you articulate the public policy principle that is being served by this recommendation? ● Is the GAC assuming that the balance of power between a

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		<p>commercial and a non-commercial applicant always disadvantages the non-commercial applicant?</p> <p>7. To ensure there are no delays to the AGB timeline, the Board believes all high-level decisions on contention resolution need to be made no later than the Board’s workshop from 6-8 September 2024. Accordingly, the Board will undertake a compressed consultation during August. We have asked org to arrange for one or more 90 minute webinars in August to hear ideas from the community, including the GAC and ALAC. Does the GAC agree with the Board’s proposed condensed consultation, so that the timeline for the Applicant Guidebook and therefore the opening of the next round?</p>

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Clarifying Questions on ICANN80 Kigali Follow-up on Previous Advice

GAC Follow-up on Previous Advice Item	Advice Text	Board Clarifying Questions
<p>1. Applicant Support Program (ASP)</p>	<p>The GAC stated in its ICANN79 San Juan Communiqué Advice (Advice 1.a.ii) that the communications and outreach strategy for the ASP “must include details on building awareness of Universal Acceptance and Internationalized Domain Names and must leverage community connections to ensure underserved regions are reached”. Therefore, the GAC looks forward to receiving detailed plans on these core aspects of the ASP by mid-Q3 2024 (August 2024).</p> <p>The Board also accepted the ICANN79 GAC advice (Advice 1.a.iii) for ICANN to undertake an assessment of the appropriate budget to support the ASP and the associated communications and outreach strategy. As part of its scrutiny, the GAC requests that ICANN provide specific budgetary figures matched with planned activities for the ASP communications and outreach strategy, not necessarily including the estimated fees ICANN will use for the public relations firm it will hire to support ASP outreach, by mid-Q3 2024 (August 2024).</p> <p>Additionally, the GAC requests a session by mid-Q3 2024 (August 2024) with the relevant ICANN org ASP and Outreach, Engagement and Communications leads to discuss the communications and outreach strategy and the financial plan that will support the ASP. This should be arranged well before stakeholder mapping is finalized and a grassroots campaign is launched, so that the GAC has an opportunity to comprehensively review and provide feedback on these plans ahead of implementation.</p>	<ol style="list-style-type: none"> 1. Could the GAC elaborate on what additional detail it would like to see on UA and IDNs in relation to the ASP? 2. ICANN org has already shared the overall ASP funding plan with the community and has also shared the overall communications and outreach strategy for which resources across the org are being made available. As there is no separate communications and outreach strategy for ASP as this is embedded in the overall plan, it is not possible to provide specific budgetary figures that match with planned ASP activities. Can the GAC help the Board understand what the GAC is specifically looking for and/or what concerns it is aiming to address?

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<p>2. Urgent Requests for Disclosure of Registration Data</p>	<p>The GAC takes note of the letter sent by the Board to the GNSO Council concerning the “Dialogue with GNSO Council on EPDP Phase 1 Recommendation 18 (Urgent Requests)”. The GAC appreciates the acknowledgment from the Board that “the proposed timeline whether one, two, or three business days - does not appear to be fit for purpose” and that “a much shorter response timeline, i.e., minutes or hours rather than days, would seem to be more appropriate” for situations that pose an imminent threat to life, serious bodily harm, critical infrastructure, or child exploitation. The GAC appreciates that, in the absence of authentication and validation, it may be difficult for registrars to determine whether requestors are who they claim to be.</p> <p>It is the GAC’s understanding that the GNSO needs to provide input on the next steps, building on the Board’s conclusion that “the proposed urgent response policy is not fit for purpose and must be revisited”.</p> <p>The GAC urges the GNSO Council and the Board to take any necessary steps in an expeditious manner to “establish a clear process and a timeline for the delivery of a policy on Urgent Requests for domain name registration data”, given the vital public safety interests related to such requests, as per the ICANN79 San Juan GAC Advice.</p> <p>Appreciating that input from Law Enforcement Authorities will be needed to address some of the Board’s concerns, the GAC stands ready to contribute to the work of the GNSO in relation to possible solutions for authentication of requestors via the work of the Public Safety Working Group, which has already started. The GAC highlights, however, that discussions on the authentication of Law</p>	<p>1. The GAC indicates that discussions on authentication should proceed “in parallel and commence before ICANN81.” The GAC also acknowledges the necessity of law enforcement involvement in discussions around authentication and indicates that work within the PSWG has already started. Can the GAC clarify the scope of the policy development it is recommending to occur in parallel? In particular, given the dependency on working out issues around authentication, could the GAC identify which area(s) of policy development it envisions could progress absent this information?</p>

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	Enforcement Agency requestors and on the response time for Urgent Requests should proceed in parallel and commence before ICANN81, to address the issue of Urgent Requests as soon as possible.	