

NEW gTLD PROGRAM: NEXT ROUND

gTLD

GAC-Board Consultation Call

**Try to find mutually acceptable solution on
ICANN77 GAC Advice re: commercial and
non-commercial applicants**

03 September 2024 | 13:00-14:30 UTC



Agenda

1. Welcome and Introduction
2. Purpose and Remit of the Call
3. Possible Solutions
 - a. Prohibit Private Auctions
 - b. Reduce the Chances that Contention Sets Are Formed
 - c. Raffle
4. Discussion
5. Next Steps
6. AOB

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Purpose and Remit of the Call


Background

The ICANN Bylaws require the Board to take into account public policy advice from the GAC when formulating and adopting public policy matters. (Art. 12, Sec. 2.2(x)).


When the Board intends to take an action that is inconsistent with GAC advice, the Bylaws and other ICANN governing procedures, including the GAC Operating Principles, establish a consultative process between the Board and the GAC to find a mutually acceptable solution.

At the core of the consultative process is the requirement that the Board notify the GAC when it intends to take an inconsistent action and explain why it is doing so. Additionally, the GAC and the Board must engage with each other in good faith to try to find a solution to their differences.


If in the end the Board and the GAC cannot find a solution, the Board is required to explain in its final decision why it is not following the GAC's advice.



Purpose and Remit of this Consultation slide 1 of 2

- Bylaws-mandated process for GAC and Board to “**try**, in good faith and in a timely and efficient manner, **to find a mutually acceptable solution**” regarding GAC’s advice “**to avoid the use of auctions of last resort** in contentions **between commercial and non-commercial applications** [...]”.
 - The Board resolved that it “intends to take an action that is not consistent or may not be consistent with [the advice] and hereby **initiates the required Board-GAC Bylaws Consultation Process.**”
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Purpose and Remit of this Consultation slide 2 of 2

- The Board had previously noted the challenges in distinguishing commercial from noncommercial applicants, as ICANN does not review business plans. **Proposal is to differentiate between well-resourced and less-well-resourced applicants** instead.
 - The discussion should **focus on measures to reduce the likelihood of well-resourced and less-well-resourced applicants resolving contention via an auction**, considering existing policy recommendations, past SubPro PDP Working Group discussions and the GAC advice.
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Possible Solutions

3a

Prohibit Private Auctions

Prohibit private auctions

The [Board adopted](#) the scorecard "[GAC Advice – ICANN80 Kigali Communiqué: Actions and Updates \(29 July 2024\)](#)", which states:

“The ICANN Board accepts this advice to prohibit the use of private auctions in resolving contention sets [...]. The Board notes the GAC's advice is related to private auctions only, and that acceptance of this advice would not preclude the use of other forms of private resolution, such as joint ventures.”


Private auctions will not be permitted during the Next Round and this will be clearly indicated in Next Round's Applicant Guidebook.



3b

**Increasing the chances that
applicants secure a desired string**


Alternate String

- During the application window, allow applicants to submit one primary string with or without an alternate string.
 - Before reveal day, ICANN org would determine which strings are identical.
 - If an applicant's primary string is identical to another, they would be moved to their alternate string. Whether this is automatic or a post-reveal day choice is to be determined.
 - This switch to the alternate string would only occur if it does not create a new or add to an existing contention set.
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3c

Raffle


GAC Advice

- Holding a charitable raffle would address the GAC's concern around avoiding auctions between commercial (well-resourced) and non-commercial (less-well-resourced) applicants.
 - The GAC has also advised the Board to “ban or strongly disincentivize private monetary means of resolution of contention sets, including private auctions.”
 - The use of a charitable raffle could incentivize well-resourced applicants to game the system, for example, using side payments or submitting multiple applications for the same string.
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Applicable rules

- Will need to comply with all applicable laws and regulations, including - but not necessarily limited to California Penal Code, Section 319-329.
 - The raffle proceeds must support charitable or beneficial purposes or organization.
 - It must be held in person (use of proxy is possible) and use paper tickets.
 - Other administrative requirements may be burdensome.
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Concerns

- Well-resourced applicants may be incentivized to game the system by, for example, submitting multiple applications, making side payments, etc.
 - Raffles may instead increase the opportunities for well-resourced applicants to game the system to their advantage.
 - Relying on chance to resolve contention sets may be seen as inconsistent with ICANN's obligation to preserve“ the stable and secure operation of the Internet's unique identifier systems [...]”.
 - The PDP Working Group did not reach consensus to recommend a change to the 2012 second-price ascending clock methodology.
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Discussion

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Next Steps

Next steps

- The Board will use the outcome of this discussion to inform its session on the Next Round during the upcoming Board workshop in Los Angeles (6-8 September 2024).
 - Subject to the outcome of the Board workshop the Board may reach out to the GAC for further consultation.
 - The Board will then determine whether to reaffirm or reverse the intended Board action, or take mitigating action, per [Process for Consultations between the ICANN Board of Directors \(“Board”\) and the Governmental Advisory Committee \(“GAC”\), including those required pursuant to Article XI Section 2.1.j of the ICANN Bylaws.](#)
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AOB

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