ICANN Board-GAC ICANN77 Consensus Advice Clarifying Questions Call

ICANN

28 July 2023

Agenda

- Welcome - Tripti Sinha

- Opening Remarks - Nicolas Caballero and Becky Burr

- Review of ICANN77 GAC Consensus Advice and Board Clarifying Questions

- GAC Topics Of Interest: Sub-Pro Related

- Closing Remarks and AOB - Nicolas Caballero and Becky Burr

GAC Consensus Advice and Board Clarifying Question

Topic	GAC Consensus Advice	Board Clarifying Question(s) and/or Comment(s)
Predictability in New gTLD Applications	To take steps to ensure equitable participation in the proposed Standing Predictability Implementation Review Team (SPIRT) by all interested ICANN communities, on an equal footing.	1. Given that the GNSO Council will charter the SPIRT, what actions or contributions does the GAC recommend the Board should undertake, given the GNSO's remit in this matter?

GAC Consensus Advice and Board Clarifying Question

Topic	GAC Consensus Advice	Board Clarifying Question(s) and/or Comment(s)
Registry Voluntary Commitments (RVCs) / Public Interest Commitments (PICs) in New gTLDs	To ensure that any future Registry Voluntary Commitments (RVCs) and Public Interest Commitments (PICs) are enforceable through clear contractual obligations, and that consequences for the failure to meet those obligations should be specified in the relevant agreements with Contracted Parties.	1. The Board has not yet resolved on the recommendations that pertain to PICs/RVCs. Can the GAC provide more information on its stated concerns of "weak implementation" and where there is a "lack of clarity and effectiveness" relating to the PICs within the 2012 round, so that the Board can better understand the rationale supporting this advice? 2. The Board notes that enforceability of PICs cannot be made consistent with the Bylaws merely by adding PICs to contracts. There are two concerns regarding the enforceability of PICs - those being whether the PIC is allowable under the Bylaws and whether the contractual language is enforceable.

GAC Consensus Advice and Board Clarifying Question

Topic	GAC Consensus Advice	Board Clarifying Question(s) and/or Comment(s)
Applicant Support in New gTLD Applications	To specify ICANN's plans related to steps to expand financial support and engage with actors in underrepresented or underserved regions by ICANN78 in order to inform GAC deliberations on these matters.	1. Recommendation 17.2–calling for expanded scope of financial support– is pending consideration by the Board. It may not be possible for ICANN to specify its plans to expand financial support by ICANN78 if 17.2 is still pending Board consideration. The Board continues to discuss methods of financial support. Though, ICANN plans to provide communications engagement plans related to engaging underrepresented and underserved regions by ICANN78. 2. Continued on next slide.

GAC Consensus Advice and Board Clarifying Question

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Applicant Support in New gTLD Applications	To specify ICANN's plans related to steps to expand financial support and engage with actors in underrepresented or underserved regions by ICANN78 in order to inform GAC deliberations on these matters.	2. The Board understands that the GAC believes it is important to increase the number and geographical distribution of applications from under-represented or underserved regions in future rounds of New gTLDs through the Applicant Support Program. The Board agrees it is important to mitigate barriers to entry for applicants that face genuine and objective barriers to entry, but also notes the challenge of objectively and specifically defining "underserved" and "under-represented" in practice. For example, the Board is not aware of an authoritative list of countries and territories that ICANN could use to objectively include and exclude certain applicants based on some aspect of their application. How would ICANN develop such a list? In addition, there are likely "underserved" communities within otherwise "adequately served" jurisdictions and, in addition, potential applicants with a presence in "underserved" jurisdictions that, considering the overall circumstances, may not be underserved despite such presence in the jurisdiction (e.g. a large multinational corporation with a presence in a jurisdiction that would be categorized as underserved). There are also many ways that entities that are not intended to benefit from this advice could affiliate themselves with those within the target jurisdictions so as to take advantage of potential discounts.

GAC Consensus Advice and Board Clarifying Question

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Applicant Support in New gTLD Applications	To take steps to substantially reduce or eliminate the application fees and ongoing ICANN registry fees to expand financial support for applicants from underrepresented or underserved regions.	1. Comment from previous section also relevant here: Recommendation 17.2–calling for expanded scope of financial support– is pending consideration by the Board. It may not be possible for ICANN to specify its plans to expand financial support by ICANN78 if 17.2 is still pending Board consideration. The Board continues to discuss methods of financial support. Though, ICANN plans to provide communications engagement plans related to engaging underrepresented and underserved regions by ICANN78. 2. Could the GAC specify whether they envisioned 'eliminating ongoing ICANN registry fees' for a specific period of time? Does the GAC envision that reduced fees could be available to existing Registry Operators that apply for and qualify for Applicant Support?

GAC Consensus Advice and Board Clarifying Question

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Applicant Support in New gTLD Applications	To take timely steps to facilitate significant global diversification in the New gTLD program by ensuring increased engagement with a diverse array of people and organizations in underrepresented or underserved markets and regions, including by: ● Raising awareness of the Applicant Support Program; ● Providing training and assistance to potential applicant; ● Exploring the potential to support the provision of back-end services; and ● Providing adequate funding for the Applicant Support Program consistent with diversification targets.	1. Could the GAC elaborate on the thinking behind "Exploring the potential to support the provision of back-end services" or provide an example?

GAC Consensus Advice and Board Clarifying Question

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Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs	To take steps to avoid the use of auctions of last resort in contentions between commercial and non-commercial applications; alternative means for the resolution of such contention sets, such as drawing lots, may be explored.	1. As discussed with the GAC at our ICANN77 meeting, the Board foresees a number of challenges with the advice regarding identifying commercial and noncommercial applicants. Can the GAC provide its thinking on how these distinctions could be made given that jurisdictions may have different criteria for delineating commercial vs. non-commercial entities? Does this presume that all non-commercial entities have a non-profit designation; that all commercial entities have a for-profit status? What if a commercial entity is partnering with or affiliated with a non-commercial entity for an application? 2. In the 2012 round, applicants who prevailed in Community Priority Evaluations (CPE) would 'win' their contention sets without the need for auctions. CPE will be part of the next round of new gTLDs, too. With that in mind, what mechanisms, in addition to CPE, does the GAC envisage could be put in place that would avoid auctions of last resort to resolve contention sets? (noting that the proceeds of ICANN's auction of last resort, other than private auctions, could add to ICANN's auction proceeds fund, if the community agreed upon adding those funds)? 3. Is the phrase "such as drawing lots" material to the GAC's advice? ICANN has legal prohibitions in its ability to run a lottery.

GAC Consensus Advice and Board Clarifying Question

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Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs	To ban or strongly disincentivize private monetary means of resolution of contention sets, including private auctions.	No clarifying questions at this time.

GAC Follow-up on Previous Advice and Board Clarifying Question

Topic	GAC Follow-up on Previous Advice	Board Clarifying Question(s) and/or Comment(s)
Privacy and Proxy Services	The GAC thanks the Board for the reprioritisation of the Privacy Proxy Services Accreditation Issues (PPSAI) policy recommendations, as per the GAC's previous advice. In addition, the ICANN76 Advice requested that the Board regularly update the GAC on the status of activities related to Privacy and Proxy services. In that regard, the GAC appreciates the update from the Board during ICANN77 on the status of developments regarding Privacy and Proxy services and the GAC would welcome continued updates, including providing detail in writing.	No clarifying questions at this time.

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GAC Topics Of Interest: SubPro-Related

GAC Topics of Interest: SubPro Final Report Topic 30

Topic	GAC Comment	Board Question(s) and/or Comment(s)
GAC Advice/GAC Early Warning: Implementation Guidance 30.2: *"[...] the GAC should provide [Consensus] Advice prior to the finalization and publication of the next Applicant Guidebook. In the event that GAC Consensus Advice is issued after the finalization and publication of the Applicant Guidebook [...] the ICANN Board should take into account the circumstances resulting in such timing and the possible detrimental effect of such timing in determining whether to accept or override such GAC Consensus Advice as provided in the Bylaws."*	"[...] [t]he GAC does not consider that recommendations should constrain GAC activities which are carried out in accordance with the ICANN Bylaws and the GAC's internal procedures. In this regard, t**he GAC does not support the recommended limitation** (Implementation Guidance 30.2) **regarding the timing of GAC Consensus Advice** (bold added) 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."	1. The Board agrees with the GAC when it notes that GAC Early Warnings are useful mechanisms that "may help the applicant to know how it can mitigate concerns and find a mutually acceptable solution." 2. The Board will always consider GAC consensus advice in accordance with the relevant Bylaws provisions. At the same time, the Board encourages the GAC to issue advice as timely as practicable in order to minimize unpredictable impacts on the next round of the new gTLD program. [Final Report](). 3. In implementation, Org takes implementation guidance into account and the Board expects that Org will do so for this item, too.

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GAC Topics of Interest: SubPro Final Report Topic 30

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GAC Advice/GAC Early Warning: Recommendation 30.4: *"[...] the 2012 Applicant Guidebook states that GAC Consensus Advice "will create a strong presumption for the ICANN Board that the application should not be approved." [...] the Working Group recommends omitting this language in future versions of the Applicant Guidebook to bring the Applicant Guidebook in line with the Bylaws language. [...]"*	"**Some GAC Members disagree with Recommendation Guidance 30.4 which notes the removal of language regarding possible changes to Section 3.1** (bold added) of the 2012 Applicant Guidebook [...]" Some GAC Members "propose the following alternative wording to [...] Section 3.1: "will create a strong presumption for the ICANN Board that the application should not be approved, without prejudice to the applicable provisions of the Bylaws".	1. As the Board will always consider GAC advice in accordance with the relevant Bylaws provisions, the Board believes that adopting recommendation 30.4 as written retains the necessary affirmation of how the Board must consider GAC advice that the GAC members appear to be seeking as noted in the comment. 2. The Bylaws specify that GAC advice shall be taken into consideration "in the formulation and adoption of policies" (Bylaws 12.2.a.x).

GAC Topics of Interest: SubPro Final Report Topic 30

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GAC Advice/GAC Early Warning: Recommendation 30.6: *"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."*	The GAC agrees with the notion that a GAC Early Warning should be explained and that in order to ensure constructive dialogue at an early stage of the procedure and mitigate these concerns it is important for government(s) issuing Early Warning(s) or the GAC in its advice to provide a written explanation/rationale. However, the GAC wishes to recall the compromise language brought forward by the GAC, as applications may not always be able to be remedied in the opinion of the government(s) issuing a GAC Early Warning. **Therefore, the GAC proposes the adoption of an updated language to Recommendation 30.6 as follows: "[...] how the applicant may potentially address the GAC member's concerns to the extent feasible"** [bold added].	1. The Board notes that the GAC had previously proposed to amend the recommendation with the same language ("to the extent feasible"), see the 2020 [GAC's public comment on the Draft Final Report](#), and also the 2021 [GAC's public comment on the Final Report](#).

2. The Board believes that the intent of this recommendation can be met if a GAC member provides a rationale why a remedy to their early warning is not possible. |

Closing Remarks & AOB

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- AOB