ICANN
ANNUAL GENERAL
66
MONTRÉAL
2–7 November 2019

# New gTLDs Subsequent Procedures PDP Discussion

**5 November 2019**

ICANN | GAC
Governmental Advisory Committee

ICANN

ICANN66 GAC Plenary Meeting - Session 20

# Agenda



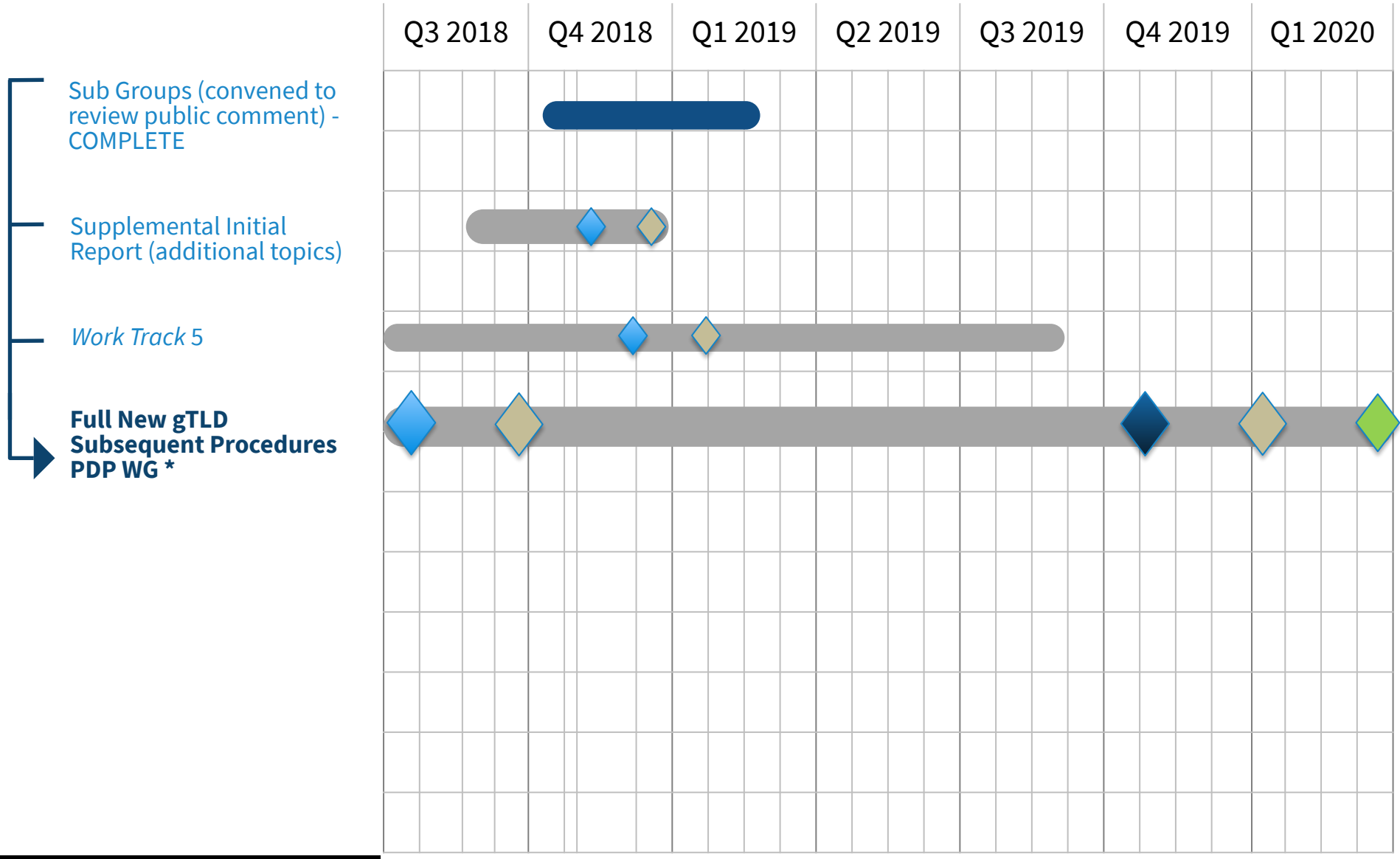
1. **New gTLD Subsequent Procedures PDP Work - Since ICANN65** (by WG Co-Chairs)
2. **Update on Key Topics for the GAC** (by WG Co-Chairs)
   a. GAC Advice & Early Warnings;
   b. Closed Generics;
   c. Public Interest Commitments (PICs) (time permitting)
   d. Applicant Support (time permitting)

3. **Update on GAC Focal Group on Subsequent Rounds of new gTLDs**
4. **Next Steps**
5. **AOB**

# 1. Current Status

- The WG has published an **Initial Report and a Supplemental Initial Report**
- All public comments received were first organized then considered substantively, with that substantive consideration now nearly complete.
- The WG is in a transition period where it will primarily f**ocus on preparing draft Final Recommendations**.
- A **public comment period on select topics** will likely be needed prior to finalization of the Final Report.
- The WT5 Final Report, delivered with Consensus support, will be integrated into the overall Final Report.

# 1. SubPro Timeline



# 2. GAC Advice & Early Warnings



**The Working Group is converging on a set of high-level agreements on this topic. Please note that work is still in progress and the recommendations may change. Consensus calls have not yet been held.**

GAC Advice:

- GAC Advice must include clearly articulated rationale, including the national or international law upon which it is based.
- Future GAC Advice, and Board action thereupon, for categories of gTLDs should be issued prior to the finalization of the next Applicant Guidebook. Any GAC Advice issued after the application period has begun must apply to individual strings only, based on the merits and details of the application, not on groups or classes of applications.
- Consistent with the updated ICANN Bylaws, the WG is considering omitting in future editions of the Applicant Guidebook language included in the 2012 AGB section 3.1 that GAC Advice "will create a strong presumption for the ICANN Board that the application should not be approved."
    - In addition, the WG believes that this language hampers opportunities for applicants and the GAC to mitigate concerns, which could allow an application to proceed.

# 2. GAC Advice & Early Warnings



**The Working Group is converging on a set of high-level agreements on this topic. Please note that work is still in progress and the recommendations may change. Consensus calls have not yet been held.**

GAC Early Warnings:

- The application process should define a specific time period during which GAC Early Warnings can be issued and require that the government(s) issuing such warning(s) include both a written rationale/basis and specific action requested of the applicant.
- The applicant should have an opportunity to engage in direct dialogue in response to such warning and amend the application during a specified time period.
- The Working Group is recommending that applicants can change their applications in response to GAC Early Warnings, which was not allowed in the 2012 round.

# 2. Closed Generics



The GNSO Council has charged the PDP WG with analyzing the impact of Closed Generics and considering future policy. The WG generally agrees that some form of policy guidance should be drafted on this topic if it is possible to reach consensus on the path forward. At this stage, however, there continue to be different and strongly-held views on the specific policy goals. Four options have been discussed and put out for public comment:

- Option 1: Formalize GNSO policy, making it consistent with the existing base Registry Agreement that Closed Generics should not be allowed.
- Option 2: Allow Closed Generics but require that applicants demonstrate that the Closed Generic serves a public interest goal in the application. Potential objections process could be similar to community-based objections.
- Option 3: Allow Closed Generics but require the applicant to commit to a code of conduct that addresses the concerns expressed by those not in favor of Closed Generics. An objections process for Closed Generics could be modelled on community objections.
- Option 4: Allow Closed Generics with no additional conditions. Establish an objections process modelled on community objections.

Divergent views have been expressed on these options within the Working Group and in the responses received through public comment.

# 2. Public Interest Commitments (PICs)



**The Working Group is converging on a set of high-level agreements on this topic. Please note that work is still in progress and the recommendations may change. Consensus calls have not yet been held.**

Mandatory PICs:

- Codify the current implementation of mandatory PICs as policy recommendations. No additional mandatory PICs are needed.

- Provide single-registrant TLDs with exemptions and/or waivers to mandatory PICs included in Specification 11 3(a) and Specification 11 3(b).

Voluntary Commitments:

- Continue with the concept of voluntary commitments in subsequent procedures and allow applicants to commit to additional obligations in response to public comments, GAC Early Warnings, and/or GAC Advice.

- At the time a voluntary commitment is made, the applicant must set forth whether such commitment is limited in time, duration and/or scope such that the commitment can adequately be reviewed by ICANN, an existing objector (if applicable) and/or the GAC (if the voluntary PIC was in response to a GAC Early Warning or GAC Advice).

- Voluntary commitments should be reflected in the applicant's Registry Agreement; Voluntary commitments can only be changed after public comment.

# 2. Applicant Support



**The Working Group is converging on a set of high-level agreements on this topic. Please note that work is still in progress and the recommendations may change. Consensus calls have not yet been held.**

- The Applicant Support Program should:
  - continue to be open to applicants regardless of their location as long as they meet other program criteria.
  - not only target the Global South, but also consider the “middle applicant” which are struggling regions that are further along in their development compared to underserved or underdeveloped regions.
  - employ longer lead times to create awareness, draw on regional experts, and leverage tools and expertise to evaluate applicant business cases.
  - include financial support beyond the application fee, such as including application writing fees, related attorney fees, and ICANN registry-level fees.
  - Consider as a measure of success the number of successful applicants to the ASP program. Some responses also supported looking at the total number of applications to the ASP.
- Applicants who do not meet the requirements of the ASP should be provided with a limited period of time (that does not unreasonably delay the program) to pay the additional application fee amount and transfer to the relevant application process associated with their application if they choose to apply as a standard applicant.

# 3. GAC Focal Group on Subsequent Rounds Update



- Since Marrakech ICANN65, the GAC Focal Group on Subsequent Rounds of new gTLDs has been **meeting bi-weekly** (last call on 15 October 2019);
- Thus far, the GAC Focal Group on Subsequent Rounds of gTLDs has focused on **capacity building** on:
  - GAC Early Warning & GAC Advice;
  - Closed Generics;
  - Public Interest Commitments (PICs) and Global Public Interest;
  - Applicant Support; and
  - Recommendations 30 & 31 of the CCT Review Implementation Plan

- Last call was a joint call with the USRWG focused around applicant support and recommendations 30 and 31 of the CCT Review Implementation Plan.

# 4. Next Steps for GAC Focal Group

- GAC to review and determine next steps for the Focal Group, confirming **focus**:
  - Review the scope of the Focal Group: **does the GAC wish to move from capacity building to discussing, developing and updating GAC positions?**
  - **If so, more GAC member are needed to participate**
  - **Topic leads needed to update GAC positions on priority topics**
- Proposed priority topics for possible GAC Input:
  - GAC Advice & Early Warnings
  - Closed Generics
  - Applicant Support
  - Public Interest Commitments (PICs)

# 4. Potential Opportunities for GAC Input



## New gTLDs Policy - Subsequent Rounds - ICANN66 Topics

## Annex: Preliminary GAC Scorecard: Status of Substantive Areas of Interest to the GAC

(as of 31 October 2019)

### Contents

**New gTLD Applications Process**

Applicant Support and Participation of Underserved Regions

**New gTLD Applications Requirements**

Closed Generic TLDs

**New gTLD Applications Requirements - Safeguards and Public Interest Commitments**

Public Interest Commitments (PICs)

Global Public Interest

**New gTLD Applications Evaluation, Objections and String Contention**

GAC Early Warnings and GAC Advice

# 4. Opportunities for GAC Input

- **Imminent (within next 3 months):**
  - Participation in upcoming Sub. Pro. PDP WG calls to discuss Final Recommendations (November 2019 onwards)
  - Public Comment on Specific Topics by Sub. Pro. PDP WG (Timing TBC - Dec 2019/Jan 2020)

# 4. Opportunities for GAC Input

- **Longer Term (Moving Targets)**
  - Sub Pro PDG WG Final Report (March 2020/April 2020)
  - ICANN Board Request for GAC Input when reviewing Final Recommendations
  - CCT Review Recommendations consideration by ICANN Board and Implementation by ICANN Org

# AOB

- Any Other Business