Joint ALAC & GAC Meeting

Wednesday, 21 October 2020 07:00 UTC

Topic: Subsequent Procedures
Status of Subsequent Procedures PDP

Recent & Onward Developments
• Public comment proceedings on Draft Final Report concluded 30 September 2020
• Subsequent Procedures PDP WG now reviewing public comments received
• Final Report expected to be completed at year end 2020

Identifying Collaborative Forward Action
Comparative analysis summation
• Of selected public comments /positions from ALAC, GAC, ICANN Board, ICANN Org
• In respect of selected topics:
  - Registry Commitments & Enforceability
  - DNS Abuse Mitigation
  - Application Support and Communications (Outreach)
  - Community Applications & Community Priority Evaluation (CPE)
  - Auctions & Private Resolutions of Contention Sets
  - Closed Generics (CGs) aka “Exclusive Generics”
Comparative Analysis Summary

Registry Commitments & Enforceability (Contractual Compliance & DRPs)

**ALAC**

1. PICs and RVCs enforceability:
   - Contractual compliance: what standard and thresholds are used?
   - PICDRP and RRDRP: truly accessible? Since awareness, trigger, usability affected by Contractual Compliance

2. Support adoption of Category 1 Safeguards framework by NGPC

4. PICDRP and RRDRP:
   - ICANN org to conduct more, periodic outreach and promotional campaigns to increase public awareness

**GAC**

1. PICs and RVCs enforceability:
   - Clearly expressed contractual obligations
   - Consequences for failure to meet obligations

2. Recognizes affirmation of Category 1 Safeguards framework by NGPC

3. Adoption of Category 2 Safeguards for highly-regulated sectors

4. PICDRP:
   - PICDRP must be clarified and improved in order for PICs to become effective and enforceable

**ICANN Board**

1. PICs and RVCs enforceability re: Bylaws s. 1.1(d)(ii)(A)(1) and (2)
   - How to utilize PICs and RVCs without the need for ICANN to assess and pass judgment on content?
     - PICs, String Similarity, Community TLDs commitments
   - How to frame “public interest” in context of a PIC and PICDRP, to ensure objective enforceability lies within ICANN’s mission?

4. PICDRP:
   - Need problem statements detailing any concrete deficiencies

**ICANN org**

1. RVCs:
   - Who will review submitted RVCs?
   - How will review be conducted?
   - Cut-off for accepting changes to prevent gaming?
   - Meant to subsist on contract renewal / TLD assignment?
   - Can be modified or removed in future?

2. Category 1 Safeguards framework by NGPC
   - How to address community disagreement over safeguards per Spec 11 3 (a) obligations?

4. PICDRP and RRDRP:
   - What should be made “clearer, more detailed, and better-defined?”
## Comparative Analysis Summary

### DNS Abuse Mitigation

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| **1. Holistic approach:**  
  - Agree in principle but not in practice - ought to have recommendations to continuously improve DNS Abuse mitigation, to go into Base RA | **1. Holistic approach:**  
  - Notes holistic approach but continues to harbour serious concerns on absence of policy recommendations  
  - **Expects swift action from GNSO Council in triggering such holistic effort** |
| **2. CCT-RT Recommendations:**  
  - Must be implemented before beginning next round | **2. CCT-RT Recommendations:**  
  - Important to implement before beginning next round but exclude ccTLDs |

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| **1. Holistic approach:**  
  - Intends to engage with community to clarify meaning and scope of obligations from recommended approach to seek a holistic solution on DNS abuse mitigation |
## Comparative Analysis Summary

### Application Support & Communications (Outreach)

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<td><strong>1. In general:</strong>&lt;br&gt;• Recs and IGs don’t go far enough to improve ASP or don’t provide enough policy guidance for IRT</td>
<td><strong>1. In general:</strong>&lt;br&gt;• Generally support final recommendations to extend reach to include “middle applicant”, scope of $ support to cover application costs eg application writing fees</td>
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<td><strong>2. Deficiencies / Lacking:</strong>&lt;br&gt;• Criteria for service to beneficiary region/ community&lt;br&gt;• Explicit business model education (different biz case studies)&lt;br&gt;• Source of funds unclear&lt;br&gt;• Details on Auction bid credit&lt;br&gt;• Prevention of gaming&lt;br&gt;• Metrics</td>
<td><strong>2. Deficiencies / Lacking:</strong>&lt;br&gt;• Community-based applicants should be eligible to apply&lt;br&gt;• ASP should include a support system to guide new applicants&lt;br&gt;• Meaningful evaluation to assess success</td>
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<td><strong>3. Reduction / Elimination of Ongoing Registry Fees:</strong>&lt;br&gt;• Yes</td>
<td><strong>3. Reduction / Elimination of Ongoing Registry Fees:</strong>&lt;br&gt;• Yes, at least in part</td>
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<td><strong>4. Outreach</strong>&lt;br&gt;• To be done early, target correct beneficiary regions, with help of At-Large network</td>
<td><strong>4. Outreach</strong>&lt;br&gt;• Primarily target underdeveloped regions, separate activities to target “middle applicants”</td>
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### ICANN Board

1. **In general:**<br>• Expansion of AS to affirmative payments of costs beyond application fees could raise fiduciary concerns for the Board – should be well scoped by preventing possibility of inappropriate use of resources

### ICANN org

5. **Implementation Guidance**<br>• Can capture proposed fees (eg application writing fees) as part of the pro bono assistance program?<br>• Criteria for a “middle applicant” and “struggling regions”?<br>• RE: bid credit in auctions, is AS recipient to pay a specified amount if succeed in bidding (any threshold or %s)? How to prevent gaming?<br>• RE: AS received, what happens if merger / acquisition during prohibition period?
### Comparative Analysis Summary

#### Community Applications & Community Priority Evaluation (CPE)

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| **1. In general:**  
  - Recs are too high level, insufficient details to address well-known deficiencies of CPE  
  - **Lacking major reform of CPE process, criteria, guidelines:**  
    - More community participation in CPE provider engagement  
    - Changes to CPE process - COI challenge mechanism, no supp. call for doc. support / opposition, limited appeal mechanism  
    - Changes to CPE criteria:  
      - Broader, more flexible “community” - avoid bias towards economic-driven groupings  
      - Independence is scoring of Criteria, sub-criteria  
      - Flexibility, clarity in Criteria, sub-criteria appl.  
      - No imbalance in support vs opposition  
      - Lower threshold to prevail  
    - More awareness on use of PICDRP and RRDRP  
  | **1. In general:**  
  - Generally support final recommendations;  
    - Evaluators to have necessary expertise in communities  
    - For greater consistency, appeals mechanism  
    - For independent research by evaluator, dialogue  
  - **Lacks / need:**  
    - Consideration for non-profit community-based applications  
    - Clarification for “community” and measures to ensure more grassroots participation and expertise in evaluation panels – recognition of communities by regional and/or international institutions with subject matter expertise  
    - Special consideration for marginalized groups and to CS advocacy groupings (Community Human Rights based)  
    - Rebalancing of scoring to eliminate possible penalization  
  | **1. In general:**  
  - Concerns with CPE process, insufficient for Board to assess whether it is in the best interests of ICANN and ICANN Community to proceed with CPE  
  - Consider mission-limitation in Bylaws that might impact on ICANN’s ability to enforce the content of community TLDs post delegation.  
  | **5. Implementation Guidance:**  
  - More details needed on source of problems/issues with CPE process, including relevant examples and how to address them  
  - More details needed for Rec and IG in respect of CPE |
## Comparative Analysis Summary

### Auctions & Private Resolutions of Contention Sets

**ALAC**

1. **Auctions:**
   - Ban on private auctions - concern with gaming through use of private auctions to reshuffle funds as raised by Board
   - Adopt traditional Vickrey auction – proposed “sealed bid, second price auction” compromise waters down strength of Vickery auction in alleviating speculative applications

2. **Private Resolutions – Transparency:**
   - Strong transparency mechanism needed not only for effective program evaluation but to disincentivize gaming

3. **Concept of “Good faith” attestation:**
   - Ineffective, mere window dressing, lacks punitive framework

**ICANN Board**

1. **Auctions:**
   - Why should auctions not be done in a way that any net proceeds would benefit the global internet community?

2. **Private Resolutions – Transparency:**
   - Why should “private resolutions” only partially be brought into program, not all or not at all?

3. **Concept of “Good faith” attestation:**
   - Specific and enforceable promises? Can be changed later?
   - Need objective criteria to assess types of behaviour or abuse to be addressed.
   - Difficulties with varying scenarios for est. bona fide intent.

**GAC**

3. **Concept of “Good faith” attestation:**
   - How will “bona fide” intention to operate a TLD be ensured and implemented?
   - “Bona fide” intention and Contention Resolution Transparency Requirements do not sufficiently answer Board’s concerns over permissibility of private resolutions (including auctions) to resolve contention sets

**ICANN org**

2. **Private Resolutions – Transparency & 3. Concept of “Good faith” attestation:**
   - Review of “bona fide” attestation for all applicants or only where question or objection rises?
   - Does CQ mechanism apply? How to evaluate responses?
   - Criteria for evaluation panel reviewing “bona fide” intention? When is review done?
   - Penalties for lack of intent? Is refund policy affected?
   - How to handle changes? Via Applicant Change Request?
   - How to address potential for gaming?
   - Clarity on Contention Resolution Transparency Requirements – adherence measures, penalties
## Comparative Analysis Summary

**Closed Generics aka “Exclusive Generics”**

### ALAC

1. **On the 3 Proposals:**
   - Supported the “A Proposal for Public Interest Closed Generics gTLDs (PICG TLDs)
   - Cannot accept “The Case of Delegating Closed Generics” which completely ignores GAC Advice

2. **Closed Generic Principles:**
   - TLD must embody Trust – offeror must be trusted source
   - CG TLDs operated in public interest must span, serve competitors
   - Board to judge “Public Interest”
   - Commitments must be enforceable, their compliance prerequisite for RA renewal

### GAC

1. **On the 3 Proposals:**
   - Both PICG TLDs and the “Closed Generics Proposal” found support
   - Unable to support “The Case of Delegating Closed Generics” allowing delegation of all CGs

2. **Closed Generic Principles:**
   - Not necessarily inherently anti-competitive, but need appropriate guardrails
   - Adequate means needed to ensure public interest goals met – burden on applicant to show
   - Continue to identify criteria for assessing “public interest” within CGs

### ICANN Board

- Requesting a specific outcome of discussion on CGs is outside Board’s purview

### ICANN org