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# Subsequent Rounds of New gTLDs

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ICANN70 - GAC Discussions on Subsequent Rounds of New gTLDs

1. Introduction
2. GAC Key Topics Identified by GAC Leadership
  - A. Clarity and Predictability of Application Process
  - B. Public Interest Commitment (PICs) and Global Public Interest
  - C. Applicant Support and Participation of Underserved Regions
  - D. Closed Generic TLDs
  - E. GAC Early Warnings and GAC Advice
  - F. Community Based Applications
  - G. Auctions/Mechanisms of Last Resort
3. Discussion on GAC Next Steps
4. AOB

## Recent Developments:

- 18 Jan. 2021: Subpro PDP WG Final Report and outputs delivered to the GNSO Council
- 18 Feb. 2021: Final Report voted upon for approval and recommendation to the ICANN Board to approve PDP WG outputs which received consensus or full consensus.
- 1 March 2021: GAC Webinar on the SubPro PDP WG Final Report
- GAC members expressed their interest in potential GAC Language/Advice on specific topics relative to Subsequent Rounds of New gTLDs, including:
  - Predictability
  - PICs and DNS Abuse Mitigation
  - Auctions
  - Cost/benefit analysis by Board
  - Follow up from Montreal Communique on CCT RT implementation

# 1. Introduction

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## Next Steps:

- Once adopted by the GNSO Council, SubPro PDP WG recommendations will be submitted to the ICANN Board for consideration, timing TBD.
- Upon reception, the ICANN Board may choose to vote to start an Operational Design Phase (ODP), as recommended by GNSO Council
- Public Comment will be opened for SubPro PDP WG Final Report
  - GAC may wish to provide consensus input
- ICANN Board Vote on PDP WG Final Report
  - GAC may wish to provide GAC consensus advice in preparation for the Board vote.

# 1. Introduction

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## **Key Topics of Interest to the GAC (see GAC Scorecard):**

1. Clarity and Predictability of Application Process
2. Public Interest Commitment (PICs) and Global Public Interest
3. Applicant Support and Participation of Underserved Regions
4. Closed Generic TLDs
5. GAC Early Warnings and GAC Advice
6. Community Based Applications
7. Auctions/Mechanisms of Last Resort

## 2. A) Clarity and Predictability of Application Process:

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### SubPro PDP WG Recommendations:

- ICANN establish **predictable, transparent, fair processes and procedures** for managing issues that arise in the New gTLD Program after the Applicant Guidebook is approved
- PDP WG advises ICANN to use a new **Predictability Framework** (Annex E to Subpro PDP WG Final Report)
- Creating a new **Standing Predictability Implementation Review Team (“SPIRT”)**, **overseen by GNSO Council to:**
  - review potential issues related to the Program
  - conduct analysis utilizing the framework, and
  - recommend the process/mechanism that should be followed to address the issue (i.e., utilize the Predictability Framework).

## 2. A) Clarity and Predictability of Application Process:

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### GAC Positions to Date:

- GAC supports creation of a predictability framework, but notes that some GAC members are not persuaded of added value of creating the new SPIRT structure (per ICANN68 Communique)
- Some GAC members asked PDP WG to consider what role the GAC could play in SPIRT, vis a visa idea of a GAC liaison.
- The GAC recommends that any changes made to the new gTLD program should be transparent and shared with community members and that the annual review of the IRT is very important to ensure revisions and adjustments, and will also contribute to increased transparency.

### **Proposed Next Steps For GAC Consideration:**

GAC to review the proposed Predictability Framework, its associated SPIRT and the guidelines for ICANN org, and assess:

- Do you think the SPIRT impacts the GAC's need for "flexibility to respond to emerging issues"?
- Do you share concerns on implementation guidance 2.3 which suggests GAC consensus advice on new gTLDs adopted after the launch will need to be forwarded to the SPIRT, without prior discussion between the GAC and the ICANN Board?
- What do you think should be the potential GAC interaction with SPIRT (i.e. a GAC liaison to SPIRT)?
- Should GAC Advice to the GNSO Council/ICANN Board be required to restate the concerns some GAC members have relative to the creation of the SPIRT?

### SubPro PDP WG Recommendations:

- **On Mandatory Public Interest Commitments (PICs)**, the WG recommends that:
  - Singular and plural versions of the same string should not be permitted (Rec. 24.3)
  - Exempting single-registrant TLDs from compliance with in [RA Spec. 11 3\(a\) and \(b\)](#) (Rec. 9.2)
- **On Registry Voluntary Commitments (RVCs)**, the WG recommends:
  - Allowing their use by applicants in response to public comments, GAC Early Warnings, and/or GAC Consensus Advice, specifying whether such commitment is limited in time, duration and/or scope to facilitate review by ICANN org, a possible objector and the GAC (rec. 9.9)
  - RVCs must continue to be Included in the applicant's Registry Agreement (rec. 9.10) and commitments must be enforceable through such contracts
  - No policy recommendations on mitigating DNS Abuse: the WG deems that such future effort should be holistic and must apply to both existing and new gTLDs (and potentially ccTLDs) (rec 9.15)

### GAC Positions to Date:

- GAC concerns on lack of policy recommendations on DNS Abuse Mitigation;
- GAC strongly supports need for safeguards to address concerns around public interest and expects public interest safeguards for any future round.
- Additional mandatory PICs should remain possible where unanticipated risks emerge.
- GAC recommends incorporation of GAC advised safeguards regarding highly regulated gTLDs into PICs

### Proposed Next Steps For GAC Consideration:

- Do GAC members want to reaffirm that any and all Registry Commitments incorporated in the Registry Agreement must be clear and enforceable?
- How do GAC Members wish to consider the absence of policy recs on DNS Abuse mitigation, which remain a matter of priority?
- Does the GAC wish to align with ALAC views from the [ALAC Minority Report](#)?
  - Where an RVC is determined or ruled to be unenforceable, *“the ICANN Board must take action to remedy such unenforceability in 2 ways: (1) where feasible, to preserve the original intention of a PIC or RVC which led to that provision in the first place, and (2) if that provision that has been rendered unenforceable matches or is similar to provisions in other contracts, to enter into negotiations with relevant contracted parties to preserve that the original intention of such a provision in an agreeable manner.”*

### SubPro PDP WG Recommendations:

- **Extend scope of the program** beyond only economies classified by the UN as least developed (revision of implementation guidelines) and also consider *“struggling regions that are further along in their development compared to underserved or underdeveloped regions”* (Rec. 17.1).
- **Expand the scope of financial support** to also cover costs such as application writing fees, attorney fees related to the application process (Rec. 17.2).
- The Final Report does **not** include a recommendation for the Applicant Support Program to support the **reduction or elimination of ongoing registry fees** - contrary to GAC positions - for eligible candidates.
  - The Working Group’s Initial Report included a preliminary recommendation that the Applicant Support Program should include coverage of such fees.

### **GAC Positions to Date:**

- GAC urges consideration on how ASP can include reduction/elimination of ongoing ICANN registry fees - at least in part - to expand financial support available to eligible applicants (as was present in initial report then removed in final report)
- The GAC supports the intention of the recommendations to continue and to expand the applicant support program
- GAC supports a meaningful evaluation of the program to assess its success.

### Proposed Next Steps For GAC Consideration:

- Do GAC Members, (and USRWG in particular) consider the final recommendations to meet GAC expectations and actual needs of prospective applicants in these regions?
- Do GAC Members foresee the need to recommend/advise the ICANN Board to consider including the reduction or elimination of the ongoing registry fees, at least in part, to expand financial support available to eligible applicants?
  - In this context, the GAC may wish to recommend ICANN Board to consider the compromise presented within the PDP WG (but not endorsed) that ICANN should cover registry fees for a limited period of time, perhaps suggesting a specific time frame for this purpose.

### SubPro PDP WG Recommendations:

- **The WG has not been able to agree on how to treat closed generic TLD applications in future rounds.** The Final Report reflects this status (No Agreement 23.1).
- The PDP WG has had numerous discussions and received extensive comments from the community, **but was not able to agree.**
- PDP WG members recognize [ICANN Board's resolution](#) after the 2012 round noting that the PDP WG attempted to draft recommendations but no agreement was reached (Rationale for No Agreement 23.1).

### GAC Positions:

- GAC encourages further discussions to identify criteria as to how to assess “public interest” within closed generic TLDs.
- The GAC reviewed three proposals submitted by individual/small groups of PDP WG members:
  - the GAC does not support “The Case for Delegating Closed Generics”, allowing all closed generics being delegated.
  - The GAC encourages the continued consideration of the “Proposal for Public Interest Closed Generic gTLDs”, which includes a new category of new gTLDs - Public Interest Closed Generic Strings (PICGS) - aimed to operate within a public interest framework directly in response to the GAC Beijing Advice, with the “Closed Generics Proposal”
  - Both proposals above found explicit support in the GAC.

### Proposed Next Steps For GAC Consideration:

- Do GAC members wish to submit advice to the ICANN Board recalling GAC advice that closed generics should serve a public interest goal, noting areas of agreement within two proposals submitted by individual PDP WG members to seek potential alignment with previous GAC advice?
- GAC may consider that due to No Agreement on closed generics and absence of a SubPro PDP WG recommendation, as per At-Large statement:
  - *there be a suspension of any processing or acceptance of any applications for Closed Generics until such a time recommendations on how to address applications for Closed Generics which serve a global public interest are developed by the GNSO/ICANN Board*

## 2. E) GAC Early Warnings and GAC Advice:

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### SubPro PDP WG Recommendations:

- GAC Advice is recommended to be:
  - limited to the scope set out in the applicable Bylaws provisions
  - elaborate on any interaction between ICANN's policies and various laws/international agreements or where they may affect public policy issues (Rec.30.3).
- GAC Advice on categories of TLDs, groups or classes of applications, or string types, or to a particular string, should be issued by the GAC before the Applicant Guidebook is published, (30.2)
- 30.6: GAC members issuing Early Warnings must include a written explanation describing why the Early Warning was submitted and how the applicant may address the concern

## 2. E) GAC Early Warnings and GAC Advice:

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### GAC Positions to Date:

- GAC proposed compromise language to note that applications may not always be able to be remedied in the opinion of the Government(s) issuing a GAC Early Warning as follows:
  - “[...] how the applicant may potentially address the GAC member’s concerns to the extent feasible”.
- The recommendation language remains however unchanged, and no explanation was presented for not taking into account GAC suggested edits.
- WG recommendations diverge with the opinion of a number of GAC members since PDP WG rec 30.4 notes that future versions of the AGB should omit this language:
  - GAC Advice *“will create a strong presumption for the ICANN Board that the application should not be approved”*.

## 2. E) GAC Early Warnings and GAC Advice:

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### Proposed Next Steps For GAC Consideration:

- Do GAC members wish to re-affirm:
  - that some GAC members strongly support the retention of the “Strong presumption” language which is recommended for removal by the PDP WG in the future AGB (Rec. 30.4)?
  - GAC opposition to Rec. 30.2 which notes the limited timing of GAC Consensus Advice on future categories of TLDs and particular applications
  - GAC proposed compromise language relative to Rec. 30.6
- GAC to consider working with GAC Board Interaction Group (BGIG) for on-going exchanges on the implications of the Sub Pro Final recommendations, and how the Board-GAC relationship can be best understood and communicated in Applicant Guidebook

## 2. F) Community Based Applications:

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### SubPro PDP WG Recommendations:

- The PDP WG supports approach used in the 2012 round, including the continued prioritization of applications in contention sets that have passed Community Priority Evaluation (Affirmation 34.1).
- To make Community Priority Evaluation (CPE) processes efficient, transparent and predictable as possible, the WG recommends (Rec. 34.13-31.15):
  - Amended CPE Guidelines should be considered a part of the policy adopted by the PDP WG.
  - ICANN org to consider efficiency improvements, costs and timing.
  - All CPE procedures and dispute provider rules must be published before the application submission
  - Regarding the definition of “Community”, the WG does not appear to be seeking to establish a broader definition instead relying on the existing criteria for the CPE review.
- Implementation Guidelines 34.2 - 34.9: recognition of communities beyond economic communities with a formal membership structure

## 2. F) Community Based Applications:

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### GAC Positions to Date:

- GAC encourages the GNSO to improve the CPE process in order to address important shortcoming/uncertainties such as effectiveness, predictability, transparency and independent appeal mechanism.
- GAC notes that definition of “community” would deserve clarification as well as the criteria to be qualified as such.
- The GAC encourages the consideration of measures to ensure more grassroots participation and expertise, in evaluation panels, in order to improve their understanding about how different “communities” are recognized, organized, administered or developed.

## 2. F) Community Based Applications:

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### Proposed Next Steps For GAC Consideration:

- GAC may wish to assess whether its expectations are met by the final recommendations
- GAC may consider supporting [ALAC minority statement](#) to SubPro PDP WG noting dissent on omissions from the PDP WG Final Report:
  - *“Implementation Guidance 34.4 – to address impediment to proving both ‘awareness and recognition of the community members’ for CPE Criterion 1-A; while allowance has been made in respect of ‘recognition’ to compel consideration the views of the relevant community-related experts, especially in cases where recognition of the community is not measurable, no similar allowance has been made in respect of measuring ‘awareness’ where such measurement could also be prevented or impaired.”*
  - Recommendation 34.12: *“falls short by not also stipulating that the shortlisting and selection of CPE provider(s) by ICANN Org be subject to community input as a proactive measure for the community to help ICANN Org select the most suitable CPE Provider for subsequent procedures.”*

## 2. G) Auctions/Mechanisms of Last Resort:

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### SubPro PDP WG Recommendations:

- **Applications must be submitted with a bona fide (good faith) intention to operate the gTLD**, i.e. applicants shall not submit applications for the purpose of financially benefiting from the resolution of contention sets
- **Auctions of last resort must take place using the second-price auction method**, in which bidders submit a sealed-bid auction rather than the ascending clock auction used in 2012.
- **ICANN Auctions of Last Resort shall only take place after all other evaluation procedures, objections**, etc., similar to the 2012 round.
- The GAC and some members of the Sub Pro WG share the ICANN Board's high level concerns with gaming and abuse of private auctions in future rounds. However, to date there is no consensus in the WG on the proportionate safeguards to address government, civil society, and private sector interests on this complex issue.

## 2. G) Auctions/Mechanisms of Last Resort:

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### **GAC Positions to Date:**

- GAC recognizes that bona fide intention is aimed to reduce potential gaming, however punitive measures for non compliance or non submission of bona fide intention are not sufficiently defined
- GAC reaffirms its view that auctions should not be used in contentions between commercial and non-commercial applications
- GAC reiterates that private auctions should be strongly disincentivized.

## 2. G) Auctions/Mechanisms of Last Resort:

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### Proposed Next Steps For GAC Consideration:

- Do GAC members wish to reiterate the importance of punitive measures for bona fide intention clauses/consider further input on “private auctions”?
- Seek further language disincentivizing auctions of last resort, and supporting the ALAC Minority Statement language on this item:
  - *“Recommendation 35.3 implies that use of a bona fide intent affirmation is limited to applicants who participate in auctions or private resolution mechanisms. If at all, this affirmation should apply to all applications, not just those that fall into contention sets. In any case, the factors for establishing a lack of bona fide intent are too subjective, and without deterrence through penalty, are ultimately just a mere attempt at ‘window dressing’ ”*

#### Upcoming Opportunities for GAC Input/Advice:

- ICANN70 Communique
  - GAC may wish to provide consensus advice to the ICANN Board on topics of priority
- Public Comment on SubPro PDP WG Final Report
  - GAC may wish to provide consensus input
- ICANN Board Vote on PDP WG Final Report
  - GAC may wish to provide consensus input



- Potential additional topics/items relative to Subsequent Procedures of New gTLDs based on GAC discussions