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# ICANN78 GAC Discussion on New gTLD Program Next Round

24 October 2023

# Agenda

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1. Introduction - GAC Chair
2. Recent Developments - GAC Topic Leads (5 minutes)
3. GAC Discussion on Policy Issues - GAC Topic Leads (45 minutes)
  - a. PDP WG Recommendations
  - b. GAC Position
  - c. Board Position
  - d. GAC action
4. Questions and Discussion (5 minutes)
5. AOB

## 2. Recent Developments

Jorge Cancio, GAC Topic Lead (Switzerland)  
Jason Merritt, GAC Topic Lead (Canada)

## 2. Recent Developments & Next Steps

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- On 16 March 2023, the Board [resolved](#) to instruct ICANN org to begin the implementation of all Final Report Outputs detailed in Section A of the "[Scorecard on Subsequent Procedures PDP](#)" (March Scorecard) and to make available resources required for the successful and timely opening of the next round of new gTLDs.
- The ICANN Board approved ninety-eight (98) recommendations contained in the Final Report on the New gTLD Subsequent Procedures Policy Development Process, and marked the remaining thirty-eight (38) recommendations as “pending”.
- ICANN org delivered the [implementation plan](#) for opening the next round of applications for new generic top-level domains (gTLDs)
- The Board engaged with the GNSO Council on items marked as “pending”
- The GNSO Council transmitted to the Board the [New gTLD Subsequent Procedures Pending Recommendations - GNSO Council Clarifying Statement](#) on 5 September 2023 to address the Board's concerns on the pending Outputs.

## 2. Recent Developments & Next Steps

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- GAC advice to the Board at ICANN77:
  - Predictability
  - Registry Voluntary Commitments (RVCs)/Public Interest Commitments (PICs)
  - Applicant Support
  - Auctions
- ICANN77 GAC Issues of Importance:
  - Closed Generic gTLDs
  - Registry Voluntary Commitments (RVCs)/Public Interest Commitments (PICs)
  - GAC Consensus Advice and GAC Early Warnings
- On GAC Advice/GAC Early Warnings:
  - The GAC and Board engaged in a [discussion](#) on 28 July 2023.
  - The GAC and Board further engaged on this matter at the Board GAC Interaction Group (BGIG) [meeting](#) on 20 September 2023.

## 2. Recent Developments & Next Steps

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- On 10 September 2023, the ICANN Board adopted the [September 2023 Scorecard: Subsequent Procedures PDP](#), i.e. an updated Board Scorecard on the SubPro PDP WG recommendations marked as “pending” in the Board Resolution on 16 March 2023.
  - 20 Outputs were adopted by the Board.
  - 7 Outputs were not adopted
  - 13 Outputs are still “Pending”
- The Board also published on 10 September 2023 the [Board Scorecard on ICANN77 GAC Advice](#), outlining Board decisions following the issuance of GAC advice at ICANN77.
- Finally, on 21 September 2023, the Board published the [Board Scorecard on ICANN77 GAC Issues of Importance](#), outlining its comments and decisions on the GAC ICANN77 Issues of Importance following the Board-GAC Interaction on this topic.

### 3. GAC Discussion on Open Issued with ICANN Board

Jorge Cancio, GAC Topic Lead (Switzerland)  
Jason Merritt, GAC Topic Lead (Canada)



# Topic 2: Predictability

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## The SubPro PDP WG Final Report recommends:

- ICANN must establish predictable, transparent, and fair processes and procedures for managing issues that arise in the New gTLD Program after the Applicant Guidebook is approved which may result in changes to the Program and its supporting processes. The Working Group recommends that ICANN org use the Predictability Framework detailed in Annex E of this Report as its guidance during implementation to achieve the goal of predictability in mitigating issues.
- WG recommends the formation of a Standing Predictability Implementation Review Team (“SPIRT”) to serve as the body responsible for reviewing potential issues related to the Program, to conduct analysis utilizing the framework, and to recommend the process/mechanism that should be followed to address the issue (i.e., utilize the Predictability Framework). The GNSO Council shall be responsible for oversight of the SPIRT and may review all recommendations of the SPIRT in accordance with the procedures outlined in the GNSO Operating Procedures and Annexes thereto.

**GAC’s view - ICANN77 GAC Communiqué: The GAC Advises the Board:** “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.”

# Topic 2: Predictability

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## Board's view - Board response to ICANN77 Advice

- The Board has approved the recommendations on Topic 2, Predictability, and the implementation of the recommended framework is in progress by the org, working with the Implementation Review Team (IRT). The SPIRT, which is part of the recommended Predictability Framework, is a group chartered by the GNSO. The Board accepts this advice and will convey to the GNSO Council the GAC's advice and rationale concerning representation in formation of the SPIRT.

## GAC members to discuss:

- GAC reactions to Board decision?
- Is there a need for GAC follow-up action and/or of any messages to be shared during the Board/GAC bilateral?

# Topic 30: GAC Advice/Early Warning

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## Rec. 30.4 of the SubPro PDP WG Final Report:

- Section 3.1 of the 2012 Applicant Guidebook which states that GAC Consensus Advice “*will create a strong presumption for the ICANN Board that the application should not be approved*” does not have a basis in the current version of the ICANN Bylaws, and as such the WG recommends omitting this language in future versions of the Applicant Guidebook.

## GAC’s view - ICANN77 GAC Communiqué:

*“Some GAC Members disagree with Recommendation Guidance 30.4 which notes the removal of language regarding possible changes to Section 3.1 of the 2012 Applicant Guidebook which states that GAC Consensus Advice “will create a strong presumption for the ICANN Board that the application should not be approved.” With a view to responding to the concerns that inform the recommendation to omit such language, some GAC Members propose the following alternative wording to that specific part of Section 3.1 of the future Applicant Guidebook: “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”. The GAC welcomes the opportunity to engage in constructive dialogue with the Board in order to explore alternatives which may offer a way forward and accommodate the different views existing on this matter.”*

# Topic 30: GAC Advice/Early Warning

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## Board's view - September Board Scorecard on SubPro PDP

- The Board reviewed the concerns voiced by GAC members in the [ICANN77 GAC Communiqué](#).
- The Board notes that the ICANN Bylaws Section 12.2(a) details all relevant procedures concerning GAC Consensus Advice, and that this section of the ICANN Bylaws determines how the Board engages with GAC Consensus Advice - not language included in a future Applicant Guidebook.
- Accordingly, the Board moves to adopt this recommendation, noting that it does not in any way prejudice or impact the processes regarding Board consideration of GAC Consensus Advice detailed in Bylaws Section 12.2 (a).

## GAC members to discuss:

- GAC reactions to Board decision?
- Is there a need for GAC follow-up action and/or of any messages to be shared during the Board/GAC bilateral?

# Topic 9: PICs/RVCs

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## The SubPro PDP WG Final Report recommends:

- Mandatory Public Interest Commitments (PICs) must continue to be included in Registry Agreements for gTLDs in subsequent procedures,
- On RVCs: allow 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.
- RVCs must continue to be included in the applicant's Registry Agreement, and must be readily accessible and presented in a manner that is usable.
- Commitments made within PICs/RVCs must be enforceable through contracts entered between registry operators and ICANN
- The Working Group acknowledges ongoing important work in the community on the topic of DNS abuse and believes that a holistic solution is needed to account for DNS abuse in all gTLDs.
- PDP Working Group is not making any recommendations with respect to mitigating domain name abuse other than stating that any such future effort must apply to both existing and new gTLDs (and potentially ccTLDs).

# Topic 9: PICs/RVCs

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## **GAC's view - ICANN77 GAC Communiqué:**

- The GAC issued Advice at ICANN77 noting that:
  - *“the GAC advises the Board 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.”*

## **Board's view - Scorecard on ICANN77 GAC Advice**

- The Board accepts this advice and will consider the GAC's advice as it further deliberates on pending recommendations related to PICs/RVCs.

## **Board's view - September Board Scorecard on SubPro PDP**

- The Board adopts rec. 9.15 pertaining to DNS Abuse and the holistic solution needed with the GNSO Council-Approved Clarification.
- The other recommendations on PICs/RVCs remain “pending” and are therefore still under discussion by the Board.

# Topic 9: PICs/RVCs

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## **GNSO Clarifying Statement - October 2023 (pending submission to Board)**

- *The GNSO Council confirms that any new Public Interest Commitments (PICs) or Registry Voluntary Commitments (RVCs) must be enforceable under the ICANN Bylaws and as a practicable matter. In respect of RVCs, both ICANN org and the applicant must agree that a proffered commitment is clear, detailed, mutually understood, and sufficiently objective and measurable as to be enforceable. And further, the Council observes that among the purposes of PICs / RVCs is to address public comments, in addressing strings deemed highly sensitive or related to regulated industries, objections (whether formal or informal), GAC Early Warnings, and/or GAC Consensus Advice. This clarifying statement is made with the understanding that the ICANN Board will have a community-wide conversation on PICs/RVCs.*

## **GAC members to discuss:**

- GAC reactions to Board decision?
- Is there a need for GAC follow-up action and/or of any messages to be shared during the Board/GAC bilateral?

# Topic 35: Auctions

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## The SubPro PDP WG Final Report:

- If there is contention for strings, applicants may:
  - resolve contention between them within a pre-established timeframe in accordance with the Applicant Guidebook and supporting documents
  - if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement, contention will be resolved through an ICANN Auction of Last Resort and;
  - Expert panels may be used to make Community Priority Evaluation determinations. The SubPro PDP Final report further noted that applications must be submitted with a bona fide (“good faith”) intention to operate the gTLD. Applicants must affirmatively attest to a bona fide intention to operate the gTLD clause for all applications that they submit.



# Topic 35: Auctions

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## **GAC's view - ICANN77 GAC Communiqué:**

- The GAC advises the Board:
  - i. 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.
  - ii. To ban or strongly disincentivize private monetary means of resolution of contention sets, including private auctions.

## **Board's view - Response to ICANN77 GAC Advice. The Board understands that:**

- the GAC would like the Board to take steps to avoid the use of auctions of last resort in contentions between commercial and non-commercial applications
- the GAC encourages the consideration of alternative means for the resolution of such contention sets.
- the GAC's distinction between commercial and noncommercial applications in this advice is regarding features of the application, including the application's business plan, rather than the applications legal entity.
- The Board understands that the GAC would like the Board to ban or disincentivize private monetary means of resolution of contention sets, including private auctions.

# Topic 35: Auctions

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## Board's view - Response to ICANN77 GAC Advice.

- As the recommendations relating to auctions are under discussion and pending action by the Board, the Board defers action on this advice until such time as these deliberations are completed.

## Board's view - September Board Scorecard on SubPro PDP

- The Board approves rec. 35.3 on the bona fide requirement and recommendation 35.5 on the Contention Resolution Transparency Requirements with [GNSO Council-Approved clarifications](#).
- The GNSO Council clarified that *“The GNSO Council confirms that the references to private auctions in Recommendations 35.3 and 35.5 merely acknowledge the existence of private auctions in 2012 and should NOT be seen as an endorsement or prohibition of their continued practice in future rounds of the New gTLD Program. The Council notes that there were extensive discussions on the use of private auctions in the SubPro working group. To the extent that draft recommendations were developed as to private auctions, these did not receive consensus support in the working group but did receive strong support with significant opposition.”*

# Topic 35: Auctions

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## **GAC members to discuss:**

- GAC reactions to Board decision?
- Is there a need for GAC follow-up action and/or of any messages to be shared during the Board/GAC bilateral?

# Topic 17: Applicant Support

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## **The SubPro PDP WG Final Report recommends that:**

- Financial assistance should continue to be provided to eligible applicants and to expand the scope of financial support provided to Applicant Support beneficiaries beyond the application fee to also cover costs such as application writing fees and attorney fees related to the application process.
- ICANN improve outreach, awareness-raising, application evaluation elements of the Applicant Support Program, as well as usability of the program.

## **In the [Operational Design Assessment \(ODA\)](#):**

- ICANN org included a proposal on how the ASP would work, noting that
  - applicants with demonstrated financial need will be able to apply for applicant support funds 18 months before the New gTLD Program application submission period opens.
  - Successful applicants will be eligible for reduced ICANN fees related to the New gTLD Program, a curated list of pro bono and/or reduced-cost providers to assist with the development of applications and related content such as registry policies, and a bid credit or multiplier if the application undergoes an ICANN Auction of Last Resort.

# Topic 17: Applicant Support

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## GAC's view - ICANN77 GAC Communiqué:

- The GAC advises the Board to:
  - i. 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,
  - ii. 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,
  - iii. 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 applicants;
    - exploring the potential to support the provision of back-end services; and
    - providing adequate funding for the Applicant Support Program consistent with diversification targets.

# Topic 17: Applicant Support

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## Board's view - Scorecard on ICANN77 GAC Advice:

- While the Board anticipates ICANN's engagement plans will include efforts related to actors in underrepresented or underserved regions, both the SubPro Final Report and the Draft GNSO Guidance Process for ASP emphasize that communications, outreach, awareness, and engagement should not be limited to specific geographies.
- As comments from GAC members indicate, it is difficult to define an agreed list of underserved and underdeveloped regions and countries in relation to the DNS.
- The Board welcomes additional GAC input on this, taking into account the GNSO Guidance Process for ASP has developed draft outputs related to outreach and awareness that also reference a part of the GAC's definition: an "under-served region, is one that does not have a well-developed DNS and or associated industry or economy."
- As the recommendations relating to Applicant Support are under discussion and pending action by the Board, the Board defers action on this advice until such time as these deliberations are completed.
- Considering the Board's ongoing work in relation to pending Recommendation 17.2, relating to expanding the scope of financial support, ICANN may not be in a position to share specific plans related to this recommendation by ICANN78.

# Topic 17: Applicant Support

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## Board's view - Scorecard on ICANN77 GAC Advice (continued):

- The Board understands the GAC is recommending reduction or elimination of application fees in the next round, and that the GAC would support ICANN org providing fee reductions to new registry operators that qualified for such support in the New gTLD Program.
- The Board acknowledges this advice and the importance of financial support for qualified supported applicants.
- The Board is conducting ongoing work in relation to pending Recommendation 17.2, relating to expanding the scope of financial support.
- As the recommendations relating to Applicant Support are under discussion and pending action by the Board, the Board defers action on this advice until such time as these deliberations are completed.

# Topic 17: Applicant Support

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## Board's view - Scorecard on ICANN77 GAC Advice (continued):

- The Board anticipates that ICANN's communications and engagement plans will articulate how to best raise awareness and provide training and assistance to potential ASP applicants.
- The Board notes that it is critical to acknowledge the many challenges for potential applicants from underrepresented or underserved communities. While ASP is a critical component of increasing diversity, there may be other issues beyond fees, training, and access to pro bono professional services. Potential applicants may face other barriers in applying for a gTLD, being successful in their gTLD application, and then managing the registry in a secure and stable manner.
- The next round of the ASP presents a significant learning opportunity to test collective assumptions about barriers to entry for diverse, underrepresented, and underserved applicants. With a robust evaluation of the ASP, that learning can then be applied to improve the program in future rounds.
- As the recommendations relating to Applicant Support are under discussion and pending action by the Board, the Board defers action on this advice until such time as these deliberations are completed. The Board encourages continued participation by the Small Group of GAC representatives on the GGP on Applicant Support.



# Topic 17: Applicant Support

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## **GAC members to discuss:**

- GAC reactions to Board decision?
- Is there a need for GAC follow-up action and/or of any messages to be shared during the Board/GAC bilateral?

# Questions and Discussion