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ICANN

ICANN79 GAC Discussion on New gTLD Program Next Round

3 March 2024

ICANN | **GAC**
Governmental Advisory Committee

79 | COMMUNITY FORUM

Agenda

1. Introduction - GAC Vice Chair

2. GAC Discussion on Community Consultation on PICs/RVCs - Nigel Hickson, Susan Chalmers (GAC Penholders) (45 minutes)

   a. Overview of the Implementation Framework

   b. GAC discussion on potential GAC input

3. SPIRT Charter Drafting Team - Call for Volunteers (10 minutes)

4. Questions and Discussion (5 minutes)

5. AOB

2. GAC Discussion on Community Consultation on PICs/RVCs

Susan Chalmers (USA)
Nigel Hickson (UK)

2. Community Consultation on PICs/RVCs

Key Question Facing the GAC:

To amend the Bylaws, or not to amend the Bylaws?

2. Community Consultation on PICs/RVCs

Key Question Facing the GAC:

To amend the Bylaws to clarify that ICANN can enforce decisions related to content, or not?

Bylaws Amendments

Sam Eisner, Deputy General Counsel (ICANN org)

Bylaws Amendments

Standard: Section 25.1

- For all Bylaws that are not identified as fundamental
- Requires:
  - Board Initiation
  - Public Comment
  - Board Approval
  - Empowered Community consideration for Rejection
    - Rejection Process at Annex D, Article 2: 21 days to raise a petition for rejection. Further process if petition raised.
- Appx. timeframe from initiation if no EC rejection: 3-4 months

Fundamental: Section 25.2

- Sections specified in Bylaws:
  - "Article 1; Sections 4.2, 4.3 and 4.7; Article 6; Sections 7.1 through 7.5, inclusive, and Sections 7.8, 7.11, 7.12, 7.17, 7.24 and 7.25; those portions of Sections 8.1, 9.2(b), 10.3(i), 11.3(f) and 12.2(d)(x)(A) relating to the provision to the EC of nominations of Directors by the nominating body, Articles 16, 17, 18 and 19, Sections 22.4, 22.5, 22.7 and 22.8, Article 26, Section 27.1; Annexes D, E and F; and Article 25"

  - For key items including changes to Mission, Accountability Mechanisms, Board selection processes, Empowered Community processes, and obligations for operation of IANA

Bylaws Amendments

Process for Fundamental Bylaws Amendment:

- Board Initiation
- Public Comment
- Board Approval
- Empowered Community Approval Process (Annex D, Article 1):
  - Community Forum
  - Affirmative vote on approval
  - Required 3/5 Decisional Participants to approve and no more than one objection

- Appx. Timeframe from initiation if EC approves: 4-6 months (or more)
- Community Forum timing is variable
  - If online, 30 days from notice of Board Approval OR
  - If requested to occur at next ICANN Public Meeting, timing then impacted by scheduled meeting date
    - Ex: If Board approved a Fundamental Bylaw Amendment in November after Hamburg, EC could have extended Community Forum period to end of ICANN79

2. GAC Discussion on Community Consultation on PICs/RVCs   (cont'd)

Susan Chalmers (USA)
Nigel Hickson (UK)

2. Community Consultation on PICs/RVCs

Why are we considering whether to amend the Bylaws?

GAC Advice and Early Warnings in the first round led to PICs and RVCs.

There is Tension Between two things:

- In 2016, the ICANN bylaws were amended to affirm that ICANN shall not regulate content.

- In Oct. 2023, the Board accepted the GNSO's policy recommendation that ICANN must allow for new gTLD applicants and ICANN to enter in to "Commitments" which could potentially relate to content.

GAC Posture on PICs/RVCs (1/2)

- In the 2012 round of new gTLD applications, the GAC issued Early Warnings noting concerns with certain applications. In response, **applicants for new gTLDs offered new commitments to try to address GAC concerns** and enable their application to proceed.

- These commitments later became known as RVCs (voluntary commitments that vary across contracts).

- GAC concerns at that time (2013-2014) also included new gTLDs that would invoke a level of implied trust from consumers. The **GAC was particularly interested in "safeguards" for domain names related to highly regulated sectors** (like .engineer, .city, and .attorney), including verification/validation of credentials in these sectors.

GAC Posture on PICs/RVCs (2/2)

- In the October 2020 GAC-Board bilateral, the Board noted particular interest in the issue of RVCs and, **given the bylaws, raised questions regarding whether RVCs are something that ICANN compliance, ICANN org, and the Board would be able to enforce**.

- In March 2021, the GAC noted under Issues of Importance that in subsequent rounds, both mandatory and voluntary PICs should remain possible.

- In Oct. 2023, **the Board accepted the GNSO's policy recommendation that ICANN must allow applicants to submit RVCs**, which could potentially relate to content.

- GAC Provided Consensus Advice during ICANN77

2012   2013   2014   2015   2016   2017   2018   2019   2020   2022   2023   2024

GAC Safeguards Advice Leads to PICs

GNSO begins SubPro PDP

Board accepts recommendations on PICs/RVCs

Risk

ICANN Bylaws change to prohibit content regulation

2. Community Consultation on PICs/RVCs

This tension creates <u>risks to ICANN</u>

- Amending the Bylaws to clarify that ICANN can regulate the enforcement of PICs/RVCs on content grounds creates risks.

- Allowing these commitments without amending the Bylaws also potentially creates risks (and could be contrary to GAC advice).

2. Community Consultation on PICs/RVCs

GAC Concerns Related to PICs Enforcement

- In its comments on the Subsequent Procedures final outputs, the GAC recalled "persistent GAC concerns regarding both the weak implementation of PICs applicable to gTLDs in highly-regulated sectors and the lack of clarity and effectiveness of the mechanism to enforce disputes (the Public Interest Commitments Dispute Resolution Process or PICDRP) …[.]"

- The GAC recommended that these issues be remedied in any subsequent rounds.

2. Community Consultation on PICs/RVCs

ICANN77 Washington D.C. Communiqué

2. **Registry Voluntary Commitments (RVCs) / Public Interest Commitments (PICs) in New gTLDs**

   a. **The GAC advises the Board:**

      i. 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.

RATIONALE

The GAC recalls persistent GAC concerns regarding both the weak implementation of PICs applicable to gTLDs in highly-regulated sectors and the lack of clarity and effectiveness of the mechanism to resolve disputes (the Public Interest Commitments Dispute Resolution Process or PICDRP) and recommends that these issues are remedied in any subsequent rounds.

2. Community Consultation on PICs/RVCs

SubPro PDP Recommendations (1/2)

Recommendation 9.9: ICANN must allow applicants to submit Registry Voluntary Commitments (RVCs) (previously called voluntary PICs) in subsequent rounds in their applications or to respond to public comments, objections, whether formal or informal, GAC Early Warnings, GAC Consensus Advice, and/or other comments from the GAC. Applicants must be able to submit RVCs at any time prior to the execution of a Registry Agreement; provided, however, that all RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendation set forth under topic 20: Application Changes Requests, including, but not limited to, an operational comment period in accordance with ICANN's standard procedures and timeframes.	See recommendation 9.1

Source: October 2023 Scorecard: Subsequent Procedures (SubPro PDP)

SubPro PDP Recommendations (2/2)

Output	GNSO Council-Approved Clarification	Board Input Regarding the Implementation Process
Topic 9: Registry Voluntary Commitments / Public Interest Commitments		
Recommendation 9.1: Mandatory Public Interest Commitments (PICs) currently captured in Specification 11 3(a)-(d) of the Registry Agreement must continue to be included in Registry Agreements for gTLDs in subsequent procedures. Noting that mandatory PICs were not included in the 2007 recommendations, this recommendation puts existing practice into policy. One adjustment to the 2012 implementation is included in the following recommendation (Recommendation 9.2).	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.	The Board directs the ICANN Interim President and CEO, or her designee(s), to initiate and facilitate a Board-level community consultation before starting the implementation process. The purpose of this consultation is to ensure that the framework for implementing these recommendations remains consistent with the ICANN Bylaws. The Board encourages this consultation to be completed no later than ICANN79 so as to not impact the overall implementation timeline for the next round of new gTLDs. This community consultation is expected to inform and aid the work of ICANN org with the SubPro Implementation Review Team on developing the Applicant Guidebook.

2. Community Consultation on PICs/RVCs

Proposed Solution: ICANN org's Implementation Framework

- To ensure the framework is consistent with the ICANN Bylaws, the ICANN Board requested a community consultation.

- The consultation (launched in November) aims to ensure the ICANN Board, organization, and community are aligned in how these recommendations can be implemented.

- ICANN Org produced an implementation framework that recommends content-related commitments focus on a registry operator's *process for implementing* any content restrictions proposed by the prospective registry operator; including through the potential use of third-party monitoring.

Example: Cyberbullying; .sucks Registry Agreement

If a complaint is made that any site of the TLD engages in cyberbullying (as defined by www.stopcyberbullying.org), and that complaint is proved, the site will be subject to rapid takedown policies. Registry Operator will retain an objective third-party with subject matter expertise to review all such matters and on whose recommendations the Registry Operator can confidently act upon.

2. Community Consultation on PICs/RVCs

Other SO/AC Views

- **RrSG, RySG, and NCSG**: No Bylaws amendment is required because ICANN should not accept such commitments in the next round.

- **IPC**: ICANN must accept and enforce such commitments in the next round, but no clarification to the Bylaws is required for ICANN to perform this function.

- **ALAC**: ICANN must accept and enforce such commitments in the next round, and ICANN must move forward with a Fundamental Bylaws change <u>if</u> ICANN obtains legal advice counseling it to do so.

- **RSSAC, ccNSO**: No comment

- **BC**: Response to be finalized

2. Community Consultation on PICs/RVCs

Timeline

- 2013: First GAC Advice on "safeguards," leading to PICs

- 2015: GAC Advice urges voluntary commitments as a best practice

- 2016: GNSO begins SubPro PDP

- 2016: IANA Transition, ICANN Bylaws change

- 2021: GNSO SubPro PDP Final Report Released

- 2023: Board accepts Final Report recommendations on PICs/RVCs, based on GNSO clarifying statement.

- 2023: ICANN releases implementation framework for community consultation.

2. Community Consultation on PICs/RVCs

Next Steps

- ICANN79 Consultation – Plenary Session

- GAC members to discuss whether a collective comment by 31 March 2024 is feasible

- Google doc was created to gather input in preparation for plenary session at ICANN79; Only one Input to date

- Do GAC members have input to share on ICANN's proposed solution?

- **Who would like to help Susan/Nigel hold the pen?**

3. SPIRT Charter Drafting Team - Call for Volunteers

Benedetta Rossi (ICANN org)

SPIRT Charter Drafting Team - Call for Volunteers

- The GNSO Council seeks volunteers to serve on a Drafting Team that will develop a charter for the Standing Predictability Implementation Review Team (SPIRT).

- The SPIRT will utilize the Predictability Framework (an output of the implementation effort for New gTLD Subsequent Procedures as developed by ICANN org), in coordination with the IRT.

- This Drafting Team will NOT be responsible for developing the Predictability Framework, but will be responsible for:
  - determining how the SPIRT will utilize the Predictability Framework by preparing the draft Charter.

- In developing the draft Charter, the Drafting Team will be expected to consider elements such as:
  - the composition of the SPIRT
  - detailing how issues are raised to the SPIRT procedurally
  - defining operating principles and decision-making, and
  - other important aspects to support the proper functioning of the SPIRT.

SPIRT Charter Drafting Team - Call for Volunteers

The GAC issued advice to the Board at ICANN77 noting:

1. Predictability in New gTLD Applications

a. The GAC advises the Board:

   i. 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.

RATIONALE

The GAC appreciates the efforts to create a Predictability Framework. GAC Members note that further clarification on the implementation of the SPIRT is necessary, as well as on the role the GAC will play in it, especially in light of Implementation Guidance 2.3 of the SubPro PDP Working Group Final Report suggesting direct dialogue between the SPIRT, ICANN org and the ICANN Board on GAC Consensus Advice, in which the GAC expects to be included as well, as discussed with the Board and GNSO Council during ICANN77. Furthermore, GAC members emphasize the importance of the opportunity for equitable participation on an equal footing on the SPIRT by all interested ICANN communities.

SPIRT Charter Drafting Team - Call for Volunteers

- **GAC member volunteers to serve on this drafting team?**

Questions and Discussion