

Subsequent Rounds of New gTLDs

Speakers:

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ICANN67 - Agenda Items 2, 6, 10, 11

ICANN

COMMUNITY FORUM

67

7-12 March 2020

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1. **Increase GAC understanding and knowledge** of procedural and substantive aspects of ongoing policy developments in the GNSO Subsequent Procedures (Sub Pro) PDP WG
2. **Enable GAC members' attendance in the PDP WG sessions** during ICANN67 towards providing relevant public policy input in the ongoing policy discussion
3. **Review and update GAC policy positions** regarding the ongoing policy development including other processes related to Subsequent Rounds of new gTLDs
4. **Identify policy positions and concerns to be discussed by the GAC, for potential input to the Sub Pro PDP WG** (as part of and/or aside from the future public comment on July-August) and/or to the ICANN Board, in the form of GAC Advice only if needed and developed through GAC consensus.

- **Final Issue Report** delivered to GNSO Council on 4 Dec 2015, *New gTLD Subsequent Procedures PDP initiated on 17 Dec 2015.*
- Charter adopted on 21 Jan 2016
- PDP has 40+ topics in its Charter to consider and established 4 Work Tracks to help distribute the work.
- Eventually established a Work Track 5, dedicated to geographic names at the top-level.
- WG has reached out for written input a number of times (in addition to face to face meetings with the community):
 - Community Comment 1: June 2016
 - Community Comment 2: March 2017
 - **Initial Report: July 2018**
 - **Supplemental Initial Report: October 2018**
 - **WT5 Initial Report: December 2018**

- The WG is concentrating on developing its draft final recommendations.
- The WG is seeking to publish its draft Final Report for public comment around July of 2020.
- Taking into account public comment, the WG will adjust its **Final Report and deliver to the GNSO Council no later than 20 December 2020.**
- At a high-level, subsequent steps will include:
 - GNSO Council consideration of the Final Report and recommendations
 - Board consideration of the Final Report and recommendations
 - Policy implementation
 - New gTLD Program launch

- For ICANN67, the PDP is concentrating on 5 topics where there remain open questions. *These topics are also topics of high interest for the GAC:*
 - Closed Generics TLDs
 - Public Interest Commitments (PICs)
 - GAC Early Warnings and GAC Advice
 - Applicant Support Program and Underserved Regions
 - Community Based Applications

- The potential outcomes from ICANN67 are:
 - Engagement with the GAC and other community members to ensure that, to the extent there are points of divergence from WG's expected outcomes, the **specific interests** are understood.

 - Where possible, open issues are resolved.

 - The WG has a clear path to completing the draft final recommendations for the 5 topics, which may include making adjustments to better account for the various interests.

Sub Pro PDP Working Group Meeting 1/3

Monday 9 March 17:15 UTC (90 min.)

GAC Session Item 2 (Update)

Monday 9 March 18:45 UTC (45 min.)

Sub Pro PDP Working Group Meeting 2/3

Tuesday 10 March 17:00 UTC (90 min.)

GAC Session Item 6 (Follow-up)

Tuesday 10 March 18:30 UTC (60 min.)

GAC Session Item 10 (GAC Discussion)

Wednesday 11 March 14:30 UTC (45 min.)

GAC Session Item 10 (GAC Wrap up)

Wednesday 11 March 15:30 UTC (30 min.)

Sub Pro PDP Working Group Meeting 3/3

Thursday 12 March 15:45 UTC (120 min.)

Overview:

- **Closed generics** are a gTLD:
 - that corresponds to a 'generic string' (such as .BLOG, .BOOK, .BEAUTY)
 - which limits 2nd level registrations to a single person or entity and/or their affiliates
- **Policy regime** and relevant advice/decisions (for the 2012 round of New gTLDs):
 - No requirements on closed generics in the 2007 GNSO policy and 2012 AGB
 - [GAC Beijing Communiqué](#) (2013): "For strings representing generic terms, exclusive registry access should serve a public interest goal" (aka "Category 2.2 Safeguard Advice")
 - ICANN Board resolution (2015): applicants proposing to provide exclusive registry access for a generic string must elect to either:
 - (1) submit a change request to no longer be an exclusive generic TLD,
 - (2) maintain their business plan and defer the application to a future round, or
 - (3) withdraw the application for a refund.
 - **ICANN Board requested consideration of this issue in policy work on subsequent rounds**

GAC Views to Date:

The Category 2.2 Safeguard Advice in the [GAC Beijing Communiqué](#) (11 April 2013) remains the GAC's reference position: *"For strings representing generic terms, exclusive registry access should serve a public interest goal"*

Monday March 9 in the Subsequent Procedures PDP WG

- **PDP WG Status:** no consensus at this stage. Compromise being sought by PDP to be in line with GAC advice which does not ban closed generics - if it can demonstrate or serve a public interest goal. PDP WG seeking to see if this is possible.
- WG has reviewed arguments for/ against closed generics: trying to determine whether a set of recommendations/guidelines can be agreed upon to allow closed generics in some shape/form.
- PDP WG session discussion focused on difficulty of defining public interest, as well as potential harms caused by individual entities controlling a single TLD.
- PDP WG Member(s) noted: best compromise could be to identify a group/entity/person who can identify whether something is in the public interest, otherwise impossible to define. WG cannot come up with definition.

Monday March 9 in the Subsequent Procedures PDP WG (Continued)

- Jorge Cancio/Switzerland: community could try to define what it wants to avoid rather than finding a definition for public interest, and leave it to the Board to decide.
- Traction from multiple PDP WG members supporting Jorge Cancio's idea of identifying guidelines to "avoid" rather than the contrary.
- Jeff Neuman/Co-chair of PDP Sub Pro WG: what are behaviors members want to avoid? If criteria is provided, what are potential concerns? What would be acceptable or not, then how can it be enforced?
- **PDP WG seeking input on potential harms from allowing closed generics, specific examples.** Opportunity for GAC members to provide input.
- **Discussion not conducive at this stage for consensus/compromise on this issue, lack of specificity from PDP WG members and community members on potential harms in allowing closed generics.**

GAC Membership Discussion on Closed Generics:

- Do GAC Members think the Beijing Advice still should be the basis for the GAC's position, i.e. is a closed registry model compatible with requiring a public interest goal?

Beijing Advice: *For strings representing generic terms, exclusive registry access should serve a public interest goal.*

- How should the condition “exclusive registry access should serve a public interest goal” be understood?
 - As a positive definition of “public interest goal”?
 - As a negative definition of conducts which are against the public interest, e.g. anti-competitive behavior?

Overview:

- Contractual mechanism between ICANN and Registries to implement GAC advice
- 2 types of PICs were created:
 - **Voluntary PICs:** voluntary commitments by applicants to transform application statements into binding contractual commitments (the case for 499 applications)
 - **Mandatory PICs:** requirements consistent with GAC Safeguard Advice in the ICANN46 Beijing Communique, either applicable to all New gTLDs or those in regulated or highly regulated sectors

GAC Views to Date:

- Adoption and implementation of the PICs **differed in many respects from GAC advice** most notably on the issue of safeguards applicable to highly regulated gTLDs (Cat. 1)
- CCT Review finding that there are **difficulties with assessing the effectiveness of new gTLD consumer safeguards, particularly PICs**, due to lack of a reporting framework and associated data should be considered in policy development
- **Compliance with PICs** should be effectively monitored by ICANN, with appropriate sanctions
- **Definition, accessibility and evaluation** of applicant's PICs should be improved

Tuesday March 10 in the Subsequent Procedures PDP WG:

- WG recommends that ICANN must continue to provide applicants with the opportunity to submit **Registry Voluntary Commitments (RVCs)** (previously called voluntary PICs) in subsequent rounds.
- Applicants must be able to submit RVCs at the time of application submission as well as at any other time prior to the execution of a Registry Agreement.
- Applicants must also be allowed to commit to additional RVCs, or modify proposed RVCs, in response to public comments, objections, GAC Early Warnings, and/or GAC Advice.
- PDP Co-Chairs noted all RVCs should be subject to public comments including any proposed changes to RVCs, including additions or changes, must be subject to public comment.
- Most thorough discussion in the session focused on **DNS Abuse** and garnered a lot of conversation and interest in participating GAC members.

Tuesday March 10 in the Subsequent Procedures PDP WG (Continued):

- As per PDP Co-Chairs, the recommendation from the working group currently notes that DNS abuse be looked at by a separate policy group that is able to address DNS abuse from a holistic standpoint.
- The WG recommends that a community wide effort be established to look at this issue rather than within the Subsequent Procedures PDP WG.
- Several GAC members raised concerns regarding CCT-RT recommendations relative to DNS Abuse, if CCT Recommendations were assigned to PDP WG but the PDP WG considers them out of scope.
- GAC members expressed concern on this approach and further flagged that CCT, Board decision and GAC Advice have not been previously discussed within PDP WG discussions, highlighting the importance of:
 - the CCT-RT Recommendations;
 - the need to implement them in light of the rationale on DNS Abuse; and
 - taking into account the [GAC Montreal Advice](#) on this matter.

Overview:

The 2012 Applicant Guidebook included, in addition to other ICANN mechanisms, **two mechanisms to for GAC members to express public policy concerns on specific gTLD applications.**

- **GAC Early Warning**
 - Individual notice from GAC members to applicants when application seen as potentially sensitive or problematic. Not a formal objection.
 - Does not lead to a process that can result in rejection of application
 - Raises likelihood for application to be subject of GAC Advice or of a formal objection later
- **GAC Advice on New gTLDs**, issued to the ICANN Board, could take 3 forms:
 - I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.
 - II. The GAC advises ICANN that there are concerns about a particular application “dot-example.” The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.
 - III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.

GAC Views to Date:

- GAC Early Warning and GAC Advice were a useful mechanism to identify applications that raise public policy concerns
- GAC Early Warning and GAC Advice should be an integral part of any future rounds.
- The GAC would welcome the opportunity to discuss options to increase the transparency and fairness of these arrangements, including:
 - providing a rationale for objections and
 - giving applicant subject to Early Warnings the opportunity for direct dialogue with the GAC
- Current concerns with PDP WG consideration to remove, 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.*”

GAC Discussion Based on GNSO Subsequent Rounds Discussion, 10 March 2020

GAC members encouraged to:

- Express their views on whether the rationale of GAC Advice should be based on “national/international law” or whether it may be also based on “other public policy reasons”.
- To express their views on whether the future editions of the Applicant Guidebook should omit 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.*”
- To express their views on whether “*GAC Advice issued after the application period has begun must apply to **individual strings only**, based on the merits and details of the applications for that string, not on groups or classes of applications.*”

Overview:

- ICANN Community-based initiative, led by GNSO and At-Large
- Aimed to increase underserved regions' access to New gTLDs application
- Qualified applicants could benefit from pro bono services and reduced applications fees
- In practice: The program received 3 applications; only 1 of which qualified. Some argue there was insufficient information about the program.

GAC Views to Date:

- **Expand and improve outreach** to targeted regions in the Global South
- ICANN org should **identify which regions are considered as 'underserved' and 'underrepresented'** and in what context are they defined as such.
- ICANN org should **provide regional targeted capacity building efforts** to all ICANN community stakeholders [...] in a timely manner to allow stakeholders to be prepared for the subsequent round, and better promote competition, consumer choice and consumer trust.
- **Clear measurable goals and indicators** for applications from the Global South should be established, linked to ICANN strategic objectives,
- **ICANN to coordinate** pro bono assistance
- Members from underserved regions should be offered **additional support** due to external issues which should not prevent entities in those regions from applying

Overview:

- A Community-based New gTLD is intended for use by community groups interpreted broadly
 - For example: an economic sector, a cultural community, or a linguistic community
 - 84 application self identified as such in the 2012 round
- Given priority in case of multiple applicants for a given string if they could meet the high bar of the Community Priority Evaluation (CPE) process.
 - 25 applicants elected to go through CPE in the 2012 round
 - 5 applicants passed the CPE test

GAC Views to Date:

- The GAC noted the importance of **making the CPE more transparent in future rounds**, in support of several stakeholders' views on this matter.
- The GAC stressed that **where a community which is impacted by a new gTLD application has expressed a collective and clear opinion**, that opinion **should be duly taken into account** as part of the application, regardless of whether those communities have utilised the ICANN formal community process
- The GAC proposed **an appeal mechanism** for community applications.
- A study by the Council of Europe on [Applications to ICANN for Community-based New Generic Top Level Domains \(gTLDs\): Opportunities and challenges from a human rights perspective](#) should be considered

- **Intersessional Work:** GAC Leadership, and its current “topic leads” on Subsequent Rounds of new gTLDs, Vice-Chairs Luisa Paez and Jorge Cancio, will lead intersessional work on the high-interest topics identified in the GAC scorecard.
- **The aim is to:**
 - Coordinate potential GAC input to the GNSO Subsequent Procedures PDP WG
 - Prepare for ICANN68
 - Work intersessionally to potentially review/update GAC positions to submit, only if consensus, to the Final Report of the public comment proceeding envisaged for July 2020 of the PDP Sub Pro WG
- **Interested GAC Members are encouraged to approach GAC topic leads in order to co-lead/contribute on any of the Subsequent Procedures key issues.**

Written Consultation Amongst GAC Membership Next 3 Weeks:

- Aim is to seek GAC Members' analysis and views on the Draft Recommendations currently discussed by the PDP Sub Pro with a focus on the 5 high-interest topics identified in ICANN66 and in ICANN 67
- 1) Closed Generics, 2) GAC Advice and GAC Early Warnings, 3) Public Commitments (PICs), 4) Applicant Support Program and 5) Community Applications

Two Important Notices/Caveats for the Proposed Consultation:

- The document would end with a notice and disclaimer advising GAC Members that their input will be shared with the GNSO SubPro, unless they do not wish so.
- When sharing with the PDP SUB Pro WG, will clearly state that these views are from individual GAC Members and do not represent a GAC consensus position.