Subsequent Rounds of New gTLDs

Speakers:
Luisa Paez, Canada
Jorge Cancio, Switzerland

ICANN67 - Agenda Items 2, 6, 10, 11
How BEST to participate?

Adigo Dial-in Numbers: https://www.adigo.com/icann
Zoom Dial-in Numbers: https://zoom.us/zoomconference

English Audio: http://stream.icann.org:8000/cun67-cozumel3-en.m3u
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If you want your QUESTIONS/COMMENTS to be read out:

➢ Start your sentence with <QUESTION> and end it with <QUESTION>
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Do you have a question or concern for the ICANN Ombudsman?

Email ombudsman@icann.org to set up a meeting.
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.
Status of Policy Development (GNSO Sub Pro PDP WG)

- **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.
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<tr>
<td>Sub Pro PDP Working Group Meeting 1/3</td>
<td>Monday 9 March 17:15 UTC</td>
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<tr>
<td>GAC Session Item 2 (Update)</td>
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New gTLD Policy: Closed Generic TLDs

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"*
New gTLD Policy: Closed Generic TLDs

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?
New gTLD Policy: Public Interest Commitments (PICs)

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.
New gTLD Policy: GAC Early Warning and GAC Advice

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.
New gTLD Policy: GAC Early Warning and GAC Advice

**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.”
New gTLD Policy: GAC Early Warning and GAC Advice

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.”
New gTLD Policy: Applicant Support Program

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
New gTLD Policy: Community Based Applications

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
Proposed GAC Next Steps

- **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.
Proposed Next Step from GAC Leadership

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.