ICANN 67
COMMUNITY FORUM
67

7–12 March 2020

GAC Capacity Building Workshop on Subsequent Procedures

Monday, 9 March 2020
10:45-12:15 Cancun Time (UTC-5)
15:45-17:15 UTC

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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
French Audio: http://stream.icann.org:8000/cun67-cozumel3-fr.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>
➢ Start your sentence with a <COMMENT> and end it with <COMMENT>

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Agenda

1. **Welcome, Introductions and Overview on Subsequent Procedures Discussion (5 mins)**

2. **Part I: Process (20 mins)**
   a. Policy Development in the GNSO Sub Pro PDP (GNSO)
   b. ICANN67 PDP potential outcomes (GNSO)
   c. Q&A

3. **Part II: Substance (60 mins)**
   Subsequent Procedures - GAC overview

      i. Closed Generics TLDs
      ii. Public Interest Commitments (PICs)
      iii. GAC Early Warnings and GAC Advice
      iv. Applicant Support Program and Underserved Regions
      v. Community Based Applications

4. **Closing Remarks (5 mins)**

PART I: Process

a. **Policy Development in the GNSO Sub Pro PDP WG (GNSO)**

b. **ICANN67 PDP potential outcomes (GNSO)**

c. **Q&A**

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- **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

- As noted, the WG is concentrating on developing its draft final recommendations.

- 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.*

- 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.

PART II: Substance

Subsequent Procedures - GAC overview

- Closed Generics TLDs
- Public Interest Commitments (PICs)
- GAC Early Warnings and GAC Advice
- Applicant Support Program and Underserved Regions
- Community Based Applications

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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"*

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

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:
  - 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.
  - 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.
  - 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.*"

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 i**dentify 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

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

Closing Remarks