

GAC Advice – Washington D.C. Communiqué:  
 Clarifying Questions and Updates – for 28 July 2023 Board-GAC Meeting

Clarifying Questions on ICANN77 Washington D.C. Consensus Advice

GAC Consensus Advice Item	Advice Text	Board Clarifying Questions
<p>§1.a.i  <b>Predictability in New gTLD Applications</b></p>	<p>a. <b>The GAC advises the Board to:</b></p> <p>i. <b>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.</b></p> <p><u>RATIONALE:</u></p> <p>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.</p>	<p>1. Given that the GNSO Council will charter the SPIRT, what actions or contributions does the GAC recommend the Board should undertake, given the GNSO’s remit in this matter?</p>
<p>§2.a.i  <b>Registry Voluntary Commitments (RVCs) / Public Interest Commitments (PICs) in New gTLDs</b></p>	<p>a. <b>The GAC advises the Board to:</b></p> <p>i. <b>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.</b></p>	<p>1. The Board has not yet resolved on the recommendations that pertain to PICs/RVCs. Can the GAC provide more information on its stated concerns of "weak implementation" and where there is a "lack of</p>

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	<p><u>RATIONALE:</u> 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.</p>	<p>clarity and effectiveness" relating to the PICs within the 2012 round, so that the Board can better understand the rationale supporting this advice?</p> <p>2. The Board notes that enforceability of PICs cannot be made consistent with the Bylaws merely by adding PICs to contracts. There are two concerns regarding the enforceability of PICs - those being whether the PIC is allowable under the Bylaws and whether the contractual language is enforceable.</p>
<p><b>§3.a.i Applicant Support in New gTLD Applications</b></p>	<p><b>a. The GAC advises the Board to:</b></p> <p><b>i. To 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.</b></p> <p><u>RATIONALE:</u> The GAC reaffirms the importance of increasing the number and geographical distribution of applications from underrepresented or underserved regions in</p>	<p>1. Recommendation 17.2—calling for expanded scope of financial support— is pending consideration by the Board. It may not be possible for ICANN to specify its plans to expand financial support by ICANN78 if 17.2 is still</p>

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	<p>future rounds of New gTLDs through the Applicant Support Program. The GAC reiterates its “support for proposals to substantially reduce or eliminate the application fees and ongoing ICANN registry fees to expand financial support” , in order to sufficiently cover all such applications.</p> <p>Without a substantial reduction in, or financial support for, the application and ongoing fees, many potential applicants in underrepresented or underserved regions would be unable to apply due to the status of their economies, where available capital for ICT/digital initiatives has been historically limited.</p> <p>The GAC highlights that non-financial support is also an important element of an applicant support programme, for example awareness raising, capacity development services and training. Assisting in the provision of back-end services may also be appropriate in some cases.</p>	<p>pending Board consideration. The Board continues to discuss methods of financial support. Though, ICANN plans to provide communications engagement plans related to engaging underrepresented and underserved regions by ICANN78.</p> <p>2. The Board understands that the GAC believes it is important to increase the number and geographical distribution of applications from under-represented or underserved regions in future rounds of New gTLDs through the Applicant Support Program. The Board agrees it is important to mitigate barriers to entry for applicants that face genuine and objective barriers to entry, but also notes the challenge of</p>

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		<p>objectively and specifically defining "underserved" and "under-represented" in practice. For example, the Board is not aware of an authoritative list of countries and territories that ICANN could use to objectively include and exclude certain applicants based on some aspect of their application. How would ICANN develop such a list?</p> <p>In addition, there are likely "underserved" communities within otherwise "adequately served" jurisdictions and, in addition, potential applicants with a presence in "underserved" jurisdictions that, considering the overall circumstances, may not be underserved despite such presence in the jurisdiction (e.g. a large multinational corporation with a presence in a</p>

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		<p>jurisdiction that would be categorized as underserved). There are also many ways that entities that are not intended to benefit from this advice could affiliate themselves with those within the target jurisdictions so as to take advantage of potential discounts.</p>
<p><b>§3.a.ii Applicant Support in New gTLD Applications</b></p>	<p><b>a. The GAC advises the Board to:</b></p> <p style="padding-left: 40px;"><b>i. 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.</b></p> <p><u>RATIONALE:</u></p> <p>The GAC reaffirms the importance of increasing the number and geographical distribution of applications from underrepresented or underserved regions in future rounds of New gTLDs through the Applicant Support Program. The GAC reiterates its “support for proposals to substantially reduce or eliminate the application fees and ongoing ICANN registry fees to expand financial support” , in order to sufficiently cover all such applications.</p> <p>Without a substantial reduction in, or financial support for, the application and ongoing fees, many potential applicants in underrepresented or underserved</p>	<p>1. Comment from previous section also relevant here: Recommendation 17.2–calling for expanded scope of financial support– is pending consideration by the Board. It may not be possible for ICANN to specify its plans to expand financial support by ICANN78 if 17.2 is still pending Board consideration. The Board continues to discuss methods of financial support. Though, ICANN plans to provide</p>

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	<p>regions would be unable to apply due to the status of their economies, where available capital for ICT/digital initiatives has been historically limited.</p> <p>The GAC highlights that non-financial support is also an important element of an applicant support programme, for example awareness raising, capacity development services and training. Assisting in the provision of back-end services may also be appropriate in some cases.</p>	<p>communications engagement plans related to engaging underrepresented and underserved regions by ICANN78.</p> <p>2. Could the GAC specify whether they envisioned ‘eliminating ongoing ICANN registry fees’ for a specific period of time? Does the GAC envision that reduced fees could be available to existing Registry Operators that apply for and qualify for Applicant Support?</p>
<p><b>§3.a.iii Applicant Support in New gTLD Applications</b></p>	<p><b>a. The GAC advises the Board to:</b></p> <p><b>i. 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:</b></p> <ul style="list-style-type: none"> <li>● Raising awareness of the Applicant Support Program;</li> <li>● Providing training and assistance to potential applicant;</li> <li>● Exploring the potential to support the provision of back-end services; and</li> </ul>	<p>1. Could the GAC elaborate on the thinking behind “Exploring the potential to support the provision of back-end services” or provide an example?</p>

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	<ul style="list-style-type: none"> <li>● <b>Providing adequate funding for the Applicant Support Program consistent with diversification targets.</b></li> </ul> <p><u>RATIONALE:</u></p> <p>The GAC reaffirms the importance of increasing the number and geographical distribution of applications from underrepresented or underserved regions in future rounds of New gTLDs through the Applicant Support Program. The GAC reiterates its “support for proposals to substantially reduce or eliminate the application fees and ongoing ICANN registry fees to expand financial support” , in order to sufficiently cover all such applications.</p> <p>Without a substantial reduction in, or financial support for, the application and ongoing fees, many potential applicants in underrepresented or underserved regions would be unable to apply due to the status of their economies, where available capital for ICT/digital initiatives has been historically limited.</p> <p>The GAC highlights that non-financial support is also an important element of an applicant support programme, for example awareness raising, capacity development services and training. Assisting in the provision of back-end services may also be appropriate in some cases.</p>	
<p><b>§4.a.i Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs</b></p>	<p><b>a. The GAC advises the Board to:</b></p> <ul style="list-style-type: none"> <li>i. <b>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.</b></li> </ul>	<p>1. As discussed with the GAC at our ICANN77 meeting, the Board foresees a number of challenges with the advice regarding identifying commercial and noncommercial applicants. Can the GAC</p>

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	<p><u>RATIONALE:</u></p> <p>While the GAC acknowledges that, in an attempt to reduce potential gaming, recommendation 35.3 of the SubPro PDP Working Group Final Report included the need for applications to be submitted with a “bona fide” intention to operate a TLD, the GAC reiterates concerns regarding the implementation of this condition, and notes that punitive measures for non compliance with the condition of submission of a “bona fide” intention are not sufficiently defined.</p> <p>Regarding Auctions of Last Resort, the GAC reaffirms its view that they should not be used in contentions between commercial and non-commercial applications. In addition the GAC reiterates that private monetary means of resolution of contention sets should be banned or strongly disincentivized, to prevent applications under false pretences for monetary gain. Other means, like drawing lots, may be used to resolve contention sets.</p> <p>The GAC supports ALAC’s view expressed in its advice to the ICANN Board noting that they believe there “should be a ban on private auctions” and that “by mandating ICANN only auctions, the proceeds of any such ICANN auctions can at least be directed for uses in pursuit of public interest, such as was determined through the CCWG on Auction Proceeds.”</p>	<p>provide its thinking on how these distinctions could be made given that jurisdictions may have different criteria for delineating commercial vs. non-commercial entities? Does this presume that all non-commercial entities have a non-profit designation; that all commercial entities have a for-profit status? What if a commercial entity is partnering with or affiliated with a non-commercial entity for an application?</p> <p>2. In the 2012 round, applicants who prevailed in Community Priority Evaluations (CPE) would ‘win’ their contention sets without the need for auctions. CPE will be part of the next round of new gTLDs, too. With that in mind, what mechanisms, in addition to CPE, does</p>

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		<p>the GAC envisage could be put in place that would avoid auctions of last resort to resolve contention sets? (noting that the proceeds of ICANN’s auction of last resort, other than private auctions, could add to ICANN’s auction proceeds fund, if the community agreed upon adding those funds)?</p> <p>3. Is the phrase “<b>such as drawing lots</b>” material to the GAC’s advice? ICANN has legal prohibitions in its ability to run a lottery.</p>
<p><b>§4.a.ii</b>  <b>Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs</b></p>	<p><b>a. The GAC advises the Board to:</b></p> <p><b>i. To ban or strongly disincentivize private monetary means of resolution of contention sets, including private auctions.</b></p> <p><u>RATIONALE:</u></p> <p>While the GAC acknowledges that, in an attempt to reduce potential gaming, recommendation 35.3 of the SubPro PDP Working Group Final Report included the need for applications to be submitted with a “bona fide” intention to operate</p>	<p>No clarifying questions at this time.</p>

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	<p>a TLD, the GAC reiterates concerns regarding the implementation of this condition, and notes that punitive measures for non compliance with the condition of submission of a “bona fide” intention are not sufficiently defined.</p> <p>Regarding Auctions of Last Resort, the GAC reaffirms its view that they should not be used in contentions between commercial and non-commercial applications. In addition the GAC reiterates that private monetary means of resolution of contention sets should be banned or strongly disincentivized, to prevent applications under false pretences for monetary gain. Other means, like drawing lots, may be used to resolve contention sets.</p> <p>The GAC supports ALAC’s view expressed in its advice to the ICANN Board noting that they believe there “should be a ban on private auctions” and that “by mandating ICANN only auctions, the proceeds of any such ICANN auctions can at least be directed for uses in pursuit of public interest, such as was determined through the CCWG on Auction Proceeds.”</p>	

**Clarifying Questions on ICANN77 Washington D.C. Follow-up on Previous Advice**

GAC Follow-up on Previous Advice	Advice Text	Board Clarifying Questions
<p><b>Follow-up 1</b></p>	<p>The GAC thanks the Board for the reprioritisation of the Privacy Proxy Services Accreditation Issues (PPSAI) policy recommendations, as per the GAC's previous advice. In addition, the ICANN76 Advice requested that the Board regularly update the GAC on the status of activities related to Privacy and Proxy services. In that regard, the</p>	<p>No clarifying questions at this time.</p>

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	<p>GAC appreciates the update from the Board during ICANN77 on the status of developments regarding Privacy and Proxy services and the GAC would welcome continued updates, including providing detail in writing.</p>	
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