

GAC/ICANN Board Consultation Call - ICANN77 Communiqué

3 September 2024 - 1300 UTC

In the spirit of issue spotting and candid information exchange, these high-level summary notes are intended to reflect the general nature of the discussion during the GAC/ICANN Board Consultation Call - ICANN77 Communiqué. Certain specific aspects of the meeting discussions are provided to enable understanding of the flow and context of the discussions.

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I. Introduction

Nicolas Caballero (GAC Chair), welcomed participants to the call, noting the importance of the GAC-Board Consultation process to try to find a mutually acceptable solution on the ICANN77 GAC advice pertaining to avoiding “auctions of last resort in contentions between commercial and non-commercial applications”¹.

Tripti Sinha (ICANN Board Chair), welcomed GAC members noting that Board and GAC engage on a regular cadence, both due to the ICANN Bylaws requesting this, and due to the importance of GAC advice to ICANN’s policy making process. Tripti Sinha reiterated the goal of the consultation process between the Board and the GAC to, per the ICANN Bylaws, try to reach a mutually acceptable solution pertaining to GAC advice, and noted that per the process when such solutions are not possible, the Board will explain the solution it selects and the reason for not following such GAC advice. She expressed the expectation that by the end of the meeting the Board and GAC should have clarity on whether there is an agreed upon solution, and what the next steps should be.

Becky Burr (ICANN Board) noted that the GAC’s distinction on its concerns regarding well resourced applications from applicants who have fewer resources as opposed to the commercial and non-commercial designation initially provided was helpful to bring the discussion forward.

¹ Excerpt from GAC advice included in the [ICANN77 GAC Communiqué](#).

Additionally, she noted that the proposal for possible solutions which are being discussed on this call come from the Board Caucus on the Next Round of New gTLDs in preparation for the upcoming Board workshop in Los Angeles where the Board expects to further address this matter and have a clearer sense of next steps.

Jorge Cancio (GAC Switzerland) thanked the Board for its follow-up on the ICANN77 GAC advice, which included additional conversations with the GAC, community wide discussions, and underlined how positive the process has been to date.

Nigel Hickson (GAC UK) underscored the importance of the two community discussions held in August² on the topic of Auctions of Last Resort, following the ICANN80 GAC Advice, and thanked the Board for initiating this consultation process.

II. Purpose and Remit of the Consultation³

The Board-GAC consultation call on 3 September (13:00-14:30 UTC) is intended to satisfy the requirement in the [Process for Consultations between the ICANN Board of Directors \(“Board”\) and the Governmental Advisory Committee \(“GAC”\)](#) for the Board and GAC to have a Bylaws Consultation in the event that the Board determines, through a preliminary or interim recommendation or decision, to take an action that is not consistent with GAC advice. At issue in this Bylaws Consultation is item 1.a.i of the GAC’s advice from its ICANN77 Communiqué: *“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.”*

The [Board resolved](#) that it *“intends to take an action that is not consistent or may not be consistent with [the Washington advice] and hereby initiates the required Board-GAC Bylaws Consultation Process.”*

The Board noted in its [rationale](#) *“that ICANN org does not review business plans as part of the gTLD application process and that there would be numerous challenges in establishing a method for evaluating such plans for a commercial vs. noncommercial status.”*

The Board’s understanding is that concerns that the GAC tried to address with its ICANN77 advice are related to well-resourced applicants (referred to by the GAC as “commercial”) being likely to outbid less-well-resourced (“noncommercial”) applicants in an auction scenario. Therefore, this consultation call is intended for the Board and GAC to focus on whether there are measures to reduce the likelihood of such a scenario in relation to relevant Board-adopted policy recommendations and applicable GAC advice, and also avoid inconsistencies, where possible, with

² Community Discussion: Resolution of Contention Sets, 13-14 August 2024:
<https://community.icann.org/display/SPIR/Community+Discussion%3A+Resolution+of+Contention+Sets>

³ Content taken from the Board-GAC Consultation [Briefing Document](#).

[SubPro PDP Working Group](#) discussions noted in the [Final Report](#). The August 2024 [community discussion](#) on contention set resolution was held also to inform this Bylaws Consultation.

III. Possible Solutions

Becky Burr (ICANN Board) presented the potential solutions to address GAC concerns identified by the Next Round Board Caucus on New gTLDs for each item of GAC advice.

a. Prohibit private auctions

For the first advice item, **Becky Burr** (ICANN Board) noted that the Board accepted the GAC's advice pertaining to the prohibition of private auctions in the Next Round, and this will be clearly indicated in the Applicant Guidebook. Becky further noted that the Board and the GAC have been aligned on this topic for a long time, agreeing that applications for new gTLDs should be submitted by applicants who want to operate the applied for strings.

b. Reduce likelihood of contention sets being formed

Becky Burr (ICANN Board), presented an approach the Board considered to increase the chances that applicants with fewer resources are able to get a desirable string without being placed in a contention set with an applicant with increased means. She noted that the premise of the Board's discussion on this matter is that auctions are efficient ways of allocating scarce resources and that there is agreement from governments on this. As such, ICANN org and the Next Round Board Caucus came up with an approach noting that applicants, when submitting applications, can submit a primary string and an alternate string.

The alternate string proposal envisions that applicants could propose an alternate string at the time of application. In the case of a contention set on the primary string, the application would shift to the alternate string, thereby avoiding an auction or other contention resolution. Becky Burr provided additional information on this potential process, noting that an applicant would submit their primary and alternate strings prior to reveal day, ICANN org would then determine which strings are identical and if an applicant's primary string is identical to another they would move to their alternate string.

There are open questions pending about whether the move to the alternate string would be automatic or whether the applicant would be given the opportunity to revert to its primary string and proceed with a contention. Additionally, the switch to the alternate string would only occur if it does not create a new contention or add to an existing one.

Becky Burr noted that the Board's Next Round Caucus position on this is that it would be a useful way to maximize the chances that less well resourced applicants are able to get a desirable string without going to a contention set and that this position would be presented to the full Board during its upcoming Board workshop.

c. Use a methodology other than an auction to resolve contention

Becky Burr presented another option to avoid auctions of last resort to resolve contention sets discussed by the community and the GAC is that of holding a charitable raffle. She noted that holding a charitable raffle would address the GAC's concern around avoiding auctions between well-resourced and less-well-resourced applicants, and would have the effect of banning or strongly disincentivizing private monetary auctions, aligning with GAC advice. Becky Burr noted that the Next Round Board Caucus expressed concerns that the use of a charitable raffle could incentivize well-resourced applicants to game the system, for example using side payments or submitting multiple applications for the same string to increase the number of tickets in the lottery. She noted that charitable raffles would need to comply with all applicable laws and regulation, including but not limited to the California Penal Code, and there would be a likelihood that jurisdictions outside of California and the United States would have rules that would complicate the raffle process.

By way of process, Becky Burr noted that the raffle proceeds must support a charitable or beneficial purpose or organization, must be held in person (with proxies available) and use paper tickets. As such, she expressed the Next Round Board Caucus' position that this process may not address the GAC's concerns due to the opportunity for gaming, and may not be aligned with the advice of the Policy Development Process Working Group who did not reach consensus to recommend a change to the 2012 second-price ascending clock methodology.

IV. Discussion

Becky Burr noted that the purpose of the discussion is to receive as much input as possible from the GAC prior to the Board workshop, to help inform the Board in its consideration of next steps, while expressing the Next Round Board Caucus' inclination toward moving to allow alternate strings to be submitted for no cost at the time of application due to the concerns expressed on the raffle option.

Nicolas Caballero, thanked Becky Burr for the clear explanation, while noting that during the community discussions held in August⁴ on Auctions there was also community support on adopting a sealed bid, second-price (Vickrey) auction method to resolve contention to be held at the start of the round prior to reveal day.

Becky Burr noted that a sealed bid, second-price auction would take place in the event where an auction would occur, and the Board has not resolved on this matter yet. She noted that this option is not off the table, but there are parts of the ICANN community that are not in support of this method. She further stated that the remit of the discussion for the consultation between the GAC and the Board is to enable applicants to avoid auctions, hence why this option was not discussed during this meeting.

⁴ See footnote #2.

Jorge Cancio (GAC Switzerland) thanked Becky Burr for the presentation and presented some initial reactions and considerations noting that the GAC previously mentioned its preference to avoid that the bilateral discussions between the GAC and the Board would prejudice the conclusions of the community conversations, and this would apply to the consultation process as well. Jorge Cancio noted there was a [summary](#) of the community discussions⁵ shared and wondered whether such conclusions (tending into a raffle solution and/or a Vickrey auction) could be further refined, and recognized that the Implementation Review Team is in the process of discussing these options actively. As such, Jorge Cancio noted it may be premature to reach today a conclusion prior to the conclusion of said community discussions. Finally, he noted that in the event that an auction would need to be held, the Vickrey process appears to be the most appropriate model, and expressed hope that a solution would be found in that direction due to the support expressed by the community.

Becky Burr confirmed that the Board heard support for Vickrey auctions in the community discussions held in August and no opposition was voiced. The Board notes there may be objections within the community which were not yet expressed during the discussion, and these will be probed by the Board in the event that auctions are indeed on the table for the resolution of contention sets, which is yet to be determined.

Martina Barbero (GAC European Commission) expressed a question pertaining to the alternate string proposal, asking if it is the applicant's choice to move to the alternate string, is there a risk that well-resourced applicants will decline moving to the alternate string as they can afford the consequences of proceeding with an auctions? She noted this would mean that more resourced applicants will most often get their first choice versus less resourced applicants who would be more inclined to switch to alternate (i.e. their second best choice).

Becky Burr outlined the discussions held by the Next Round Board Caucus, noting that as explained, there are multiple ways of applying the alternate string approach in the case of a contention. The first one is to move automatically to an alternate string, meaning that all applicants applying for a specific string would move to their alternate string and the original string is left with no applications. This option would decrease the likelihood of gaming expressed by the European Commission. However, applicants cannot be forced to submit alternate strings, and in the case of a contention with an applicant without an alternate string, a contention resolution would need to occur. Becky Burr noted these options are yet to be determined, but expressed a personal preference for applicants being given a choice at the time of the contention to decide whether to move forward with an auction since less well resourced applicants could have found additional resources (for instance from the Applicant Support Program) to be competitive in an auction.

Susan Chalmers (GAC USA) asked for further clarification on what an alternate string would look like from an applicant's perspective, asking whether the Board has specific illustrations to further clarify how this would work vis-a-vis the policy discussions on singular versus plural strings, and whether an alternate string would entail a different spelling or something cognitively similar to the primary string.

⁵ See footnote #2.

Becky Burr responded that the Next Round Caucus has not yet discussed the details of this situation, but the alternate string submission would need to reconcile with the original application submitted.

Nicolas Caballero, concluded that there is alignment between the Board and the GAC on the first item discussed, i.e. prohibiting private auctions. On the proposed solutions brought forward by the Board, he noted that further discussion is needed (i.e. on alternate strings).

Alfonso Besada (GAC Brazil) noted that this process should align with the principles of the Applicant Support Program which aims to promote participation of NGOs, charities and indigenous communities in the next round of new gTLD applications.

Nigel Hickson (GAC UK) noted that in community discussions held in August⁶ the alternate string solution did not receive resounding support due to potential drawbacks, however following this discussion he recognizes this could be a way for applicants with less resources to avoid contention sets. This potentially alleviates some of the issues, but there will still be strings which will go into contentions, and it would be helpful to receive an explanation for those who were not in the August community discussions on the Vickrey or sealed bid auctions which gained support by the community.

V. Next Steps

Becky Burr (ICANN Board) noted that the Board would be appreciative of receiving additional information from the GAC on its preference or support for Vickrey auctions, which would help the Board in its future discussions on auctions.

Nicolas Caballero (GAC Chair), agreed to submit a detailed response to the Board outlining the GAC's preference for Vickrey auctions.

Becky Burr noted the Board will use the outcome of this discussion and the community discussions on auctions to inform its session on the Next Round during the upcoming Board workshop (6-8 September 2024). Subject to the outcome of the Board workshop the Board may reach out to the GAC for further consultation. Additionally, Becky Burr noted that the Board recognizes there are multiple moving parts, including additional GAC advice which will require a GAC/Board consultation, but expressed that the Board is trying to resolve items as quickly as possible to ensure the Next Round can be launched in accordance with the timeline. Following Board discussion, the Board will need to determine whether to reaffirm or reverse the intended Board action or take mitigating action per the [Process for Consultations between the ICANN Board of Directors \("Board"\) and the Governmental Advisory Committee \("GAC"\), including those required pursuant to Article XI Section 2.1 j of the ICANN Bylaws.](#)

Tripti Sinha (ICANN Board Chair) thanked GAC members for their participation and for the constructive discussion which provides sufficient information and action items to proceed with this discussion in the Board workshop. Tripti Sinha adjourned the meeting.

⁶ See footnote #2.

VI. Meeting Participants

GAC

Nico Caballero, GAC Chair
Marina Flego Eiras, Argentina
Stefan Vouk, Austria
Vladimir Kiryanenko, Belarus
Houégnon Geoffroy Bonou, Benin
Suada Hadzovic, Bosnia and Herzegovina
Alfonso Besada, Brazil
Rida Tahir, Canada
Jose Hernandez, Cayman Islands
Wang Lang, China
Thiago Dal-Toe, Colombia
Finn Petersen, Denmark
Christine Arida, Egypt
Manal Ismail, Egypt
Gemma Carolillo, European Commission
Martina Barbero, European Commission
Rudy Nolde, Germany
Hossein Mirzapour, Iran
Adriano Daddario, Italy
Sanae Katayanagi, Japan
Mina Ogihara, Japan
Zeina Bou Harb, Lebanon
Alisa Heaver, Netherlands
Babagana Digma, Nigeria
Ibiso Kinglsey-George, Nigeria
Amina Ramallan, Nigeria
Mistura Aruna, Nigeria
Edgware Makanjuola, Nigeria
Idris Idris, Nigeria
Omonzokpia Giwa, Nigeria
Russell Woruba, Papua New Guinea
Ana Maldonado, Spain
Jorge Cancio, Switzerland
Shelley-Ann Clarke-Hinds, Trinidad and Tobago
Nigel Hickson, United Kingdom
Susan Chalmers, United States of America
Owen Fletcher, United States of America
Peter Mujtaba, CTO
Nigel Cassimire, CTU
Daniel Carletti, REGULATEL
Tracy F. Hackshaw, UPU

ICANN Board

Tripti Sinha, ICANN Board Chair
Alan Barrett
Becky Burr
Chris Buckridge
Edmon Chung
James Galvin
Patricio Poblete
Danko Jevtović
Wes Hardaker
Maarten Botterman

ICANN Org:

Amy Bivins
Daniel Halloran
Elena Plexida
Erika Randall
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