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Governmental Advisory Committee Comment on GNSO New gTLD Subsequent Procedures Final Outputs for ICANN Board Consideration Public Comment Proceeding

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Introduction

The GAC welcomes the opportunity to provide input to the ICANN Board on the Final Report on the new gTLD Subsequent Procedures Policy Development Process. The GAC wishes to thank the Subsequent Rounds of New gTLDs (SubPro) PDP Working Group (WG) for the diligent and tireless effort to develop the SubPro PDP WG Final Report. The GAC is grateful for the opportunity to provide additional input on the SubPro PDP WG Final Report, building on and updating the [GAC comment on the SubPro PDP WG Final Report](#) (September 2020). The GAC welcomes further engagement on Subsequent Rounds of New gTLDs, as it remains a high priority to GAC Members.

The GAC takes this opportunity to provide general and high-level comments, as well as detailed input on the following topics of importance to the GAC to reaffirm areas of concern and provide further clarifications:

- Predictability
- Registry Voluntary Commitments/ Public Interest Commitments (PICs)
- Applicant Support
- Closed Generics
- GAC Consensus Advice and GAC Early Warnings
- Community Applications
- Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets

Overarching Comments

At a high level, the GAC makes the following comments:

First, the GAC notes that it has taken unprecedented levels of participation and engagement in the New gTLDs Subsequent Procedures PDP to mitigate the risk to businesses, Internet users, and ICANN's mission to keep the Internet secure, stable, and interoperable. The GAC supports the multistakeholder process, and does not object to the introduction of new gTLDs. However, as specified in previous GAC advice, the GAC asks the Board to ensure that all the necessary steps and reviews take place before a new round of gTLDs, inter alia, the Competition, Consumer Trust and Consumer Choice Review Team (CCT-RT) review and Second Security,

Stability, and Resiliency (SSR2) recommendations. The GAC notes that the Security and Stability Advisory Committee (SSAC), have recommended that the ICANN Board initiate a fundamental review to determine whether continuing to increase the number of gTLDs is consistent with ICANN’s strategic objective to *“evolve the unique identifier systems in coordination and collaboration with relevant parties to continue to serve the needs of the global Internet user base.”* The GAC notes that this concern is aligned, in spirit, with GAC Montreal and Helsinki consensus advice on new domain names, as well as with At-Large Advisory Committee (ALAC) Advice.

Second, the GAC continues to harbour serious concerns regarding the absence of policy recommendations on DNS Abuse Mitigation in the SubPro PDP WG Final Report, and notes that the WG deemed that such future effort should be holistic and must apply to both existing and new gTLDs. On this point, which the GAC would agree to, the GAC expects swift action from the GNSO Council in triggering such holistic effort, in order for the conditionality expressed in the GAC ICANN66 Montreal Communique to be met. As indicated in the GAC ICANN70 Communique, *“DNS Abuse should be addressed in collaboration with the ICANN community and ICANN org prior to the launch of a second round of New gTLDs. The GAC supports the development of proposed contract provisions applicable to all gTLDs to improve responses to DNS Abuse. The GAC also emphasized the importance of taking measures to ensure that Registries, Registrars and Privacy/Proxy Services providers comply with the provisions in the contracts with ICANN, including audits. The GAC welcomes the recently-launched DNS Abuse Institute and encourages community efforts to cooperatively tackle DNS Abuse in a holistic manner.”*

The GAC does not intend nor wish to unnecessarily delay the process to prepare for a future round of new domain names. However, the GAC considers, consistent with prior advice that DNS abuse needs to be addressed and sees value in the SSAC’s comment on SubPro that *“waiting until efforts to mitigate DNS abuse can be equally applied to all existing and new gTLDs, effectively cedes the ground to malicious actors who can depend upon a long policy development process to hinder meaningful anti-abuse measures.”* The GAC urges the Board and the ICANN community to collectively and meaningfully address this situation.

Lastly, the GAC is looking forward to receiving an *“objective and independent analysis of costs and benefits [...], drawing on experience with and outcomes from the”* 2012 round of new gTLDs as called for in the GAC Helsinki Communique (30 June 2016) and reiterated in the GAC Kobe Communique (14 March 2019). Such objective and independent analysis would allow the GAC to offer further advice ahead of a launch of a new round of gTLDs. In this regard, and as noted in the GAC ICANN 70 Communique *“Such analysis has yet to take place. In this regard, the GAC*

notes that the Operational Design Phase may provide the opportunity for this analysis to assist the Board as it considers whether a second round of New gTLDs is in the interest of the community as a whole.”

In light of the above considerations, the GAC calls upon the ICANN Board to provide a comprehensive overview and periodic updates of all issues that need to be addressed before the next round of new gTLDs, and to provide a clear path as to how the Board intends to either resolve these issues or foster their resolution (for issues outside Board’s remit).

GAC Comments by Topic (as referenced in Final Report)

- **Predictability: Topic 2 in Final Report**

The GAC appreciates the efforts of the PDP WG to create a Predictability Framework, and notes that some GAC members continue to have doubts on its added-value and share concerns relative to the implementation of the Standing Predictability Implementation Review Team (SPIRT) and the added layer it may create regarding GAC consensus advice. GAC Members note that further clarification on the implementation of the SPIRT should be encouraged, as well as on the role the GAC will play in it, especially in light of Implementation Guidance 2.3 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. Furthermore, GAC members emphasize the importance of the opportunity for equitable participation on an equal footing on the SPIRT by all interested ICANN communities.

- **Registry Voluntary Commitments/ Public Interest Commitments (PICs): Topic 9 in Final Report**

As mentioned above, the GAC continues to harbour serious concerns regarding the absence of policy recommendations on DNS Abuse Mitigation in the SubPro PDP WG Final Report, and notes that the WG deems that such future effort should be holistic and must apply to both existing and new gTLDs. On this point the GAC expects swift action from the GNSO Council in triggering such a holistic effort, in order for the conditionality expressed in the GAC ICANN66 Communique to be met.

As indicated above and in the GAC ICANN70 Communique “*DNS Abuse should be addressed in collaboration with the ICANN community and ICANN org prior to the launch of a second round*

of New gTLDs [...] The GAC welcomes the recently-launched DNS Abuse Institute and encourages community efforts to cooperatively tackle DNS Abuse in a holistic manner.”

Consistent with the GAC Montreal Communiqué, the GAC further notes that any future voluntary and mandatory PICs need to be enforceable through clear contractual obligations, and consequences for the failure to meet those obligations should be specified in the relevant agreements with Contracted Parties. Additional mandatory and voluntary PICs should remain possible in order to address emerging public policy concerns.

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 enforce disputes (the Public Interest Commitments Dispute Resolution Process or PICDRP) and recommends that these issues are remedied in any subsequent rounds.

- **Applicant Support: Topic 17 in Final Report**

The GAC generally supports the final recommendations on applicant support, noting the importance of extending the scope of the program beyond only economies classified by the UN as least developed and also considering the “middle applicant”.

GAC members wish to note the importance of fostering gTLD applications from a diverse array of applicants, which could, inter alia, include regional and local authorities, from all regions and that every effort be made to increase the number of applications from underrepresented regions. In this connection, the GAC reiterates its support for proposals to reduce or eliminate ongoing ICANN registry fees to expand financial support.

The GAC wishes to support ALAC positions (expressed in its Advice to the Board) on the Applicant Support Program, noting that while the SubPro PDP WG has made some recommendations to improve the Applicant Support Program, the lack of specific goals for the program hinders proper evaluation of program objectives and performance.

The GAC would appreciate to be briefed by ICANN Org on the detailed plans for the Applicant support Program well in advance of the launch of any new gTLD program (at least 18 months or so beforehand), thus allowing us also to contribute to the initiative.

- [Closed Generics: Topic 23 in Final Report](#)

The GAC is mindful that the issue of closed generics has generated considerable debate and diverse views. GAC Members support the proposed suspension of Closed Generic TLD applications until policy recommendations and/or a framework on the delegation of closed generics, which serve a public interest are developed by consensus, as per the ALAC minority statement and subsequent ALAC Advice to the ICANN Board.

As to substance, the GAC continues to support the retention of the advice contained in the GAC Beijing Communique whereby *“exclusive registry access should serve the public interest goal”* and that adequate means and processes are defined to ensure that public interest goals are met. The burden of demonstrating the public interest benefit of a closed generic string should rest with the applicant and be subject to comments during the review process.

As no agreement has been found within the PDP WG, the GAC encourages the Board to take the necessary steps for starting outcome-oriented community discussions to identify criteria as to how to assess “public interest” within closed generic TLDs.

In this sense, the GAC, recognizing that the PDP WG was not able to agree on how to treat closed generic TLD applications in future rounds, took note of the three proposals submitted by individual/small groups of PDP WG Members:

- A Proposal for Public Interest Closed Generic gTLDs (PICG TLDs), submitted by Alan Greenberg, Kathy Kleiman, George Sadowsky, and Greg Shatan
- The Case for Delegating Closed Generics, submitted by Kurt Pritz, Marc Trachtenberg, Mike Rodenbaugh.
- Closed Generics Proposal, submitted by Jeff Neuman in his individual capacity.

Regarding these proposals, the GAC has expressed that it is not in a position to support “The Case for Delegating Closed Generics”, which would allow all closed generics being delegated, and finds common ground in the other two proposals. The GAC further noted that the “Proposal for Public Interest Closed Generic gTLDs”, which includes a new category of new gTLDs - Public Interest Closed Generic Strings (PICGS) - is aimed to operate within a public interest framework directly in response to the GAC Beijing Advice, and also noted that the suggestion of a public interest closed generic review panel and creation of public interest closed generic would require further community work, in order to minimize added complexity and avoid undue overlap with community status applications. The GAC encourages the continued consideration of this

proposal together with the “Closed Generics Proposal”, both proposals having found explicit support in the GAC.

Regarding the “Closed Generics Proposal” the GAC finds value in the notion of creating a Framework for Evaluating Closed Generic applications to determine whether those applications serve a legitimate public interest goal.

- **Name Collisions: Topic 29 in Final Report**

The GAC highlights the importance, also expressed by ALAC in its Advice to the Board, of ensuring an effective framework for measuring and tackling name collision in further rounds of new gTLDs, taking into account the work on name collisions carried out so far by the Name Collision Analysis Project (NCAP). The GAC draws the ICANN Board’s attention to the SSR2 recommendation 17 and supports the proposed setting of a framework to characterize the nature and frequency of name collisions and resulting concerns thereby allowing the appropriate handling of sensitive data and security threats. The ICANN community should develop a clear policy for avoiding and handling new gTLD-related name collisions. The GAC therefore calls upon the Board to take due consideration of the Final report’s implementation guidelines 29 (and 29.3 and 29.4 in particular).

- **GAC Consensus Advice and GAC Early Warnings: Topic 30 in Final Report**

The GAC reiterates that GAC Early Warnings and GAC Advice are both important and useful instruments to identify applications that raise public policy concerns and should be an integral part of any future rounds. The GAC remains open to increasing transparency and fairness of these, including giving applicants an opportunity for direct dialogue with the GAC. In this sense, the GAC sees value in the recommendations regarding specified time periods for early warnings, direct dialogue between the early warning issuing government and the applicant, and the opportunity for the applicant to amend its applications based on those consultations.

The GAC believes that early warnings are a useful mechanism for beginning a discussion with an applicant on particular issues, questions and potential sensitivities by one or more governments, where an application may potentially infringe national laws or raise sensitivities. Constructive dialogue through this process can help applicants better understand the concerns of governments and help governments better understand the planned operation of proposed gTLDs. GAC Early Warnings may help the applicant to know how it can mitigate concerns and find a mutually acceptable solution.

The GAC hence considers an early warning mechanism an essential element of any future round.

However, the GAC does not consider that the PDP should make recommendations on GAC activities which are carried out in accordance with the ICANN Bylaws and the GAC's internal procedures. In this regard, the GAC does not support the PDP WG recommended limitation (Implementation Guidance 30.2) regarding the timing of GAC Consensus Advice on future categories of TLDs and particular applications, oriented to discouraging any such Advice being submitted after the finalization and publication of the next Applicant Guidebook.

Regarding Recommendation 30.4, there are diverse views within the GAC on the "strong presumption" language. Some GAC Members believe that Section 3.1 of the 2012 Applicant Guidebook, which states that GAC Consensus Advice "*will create a strong presumption for the ICANN Board that the application should not be approved,*" should be maintained, as they consider that this language was part of a delicate compromise during the 2012 round preparations and further consider that it is consistent with past and present Bylaws provisions. Further, said GAC Members consider that the possibility of maintaining a dialogue with the concerned applicant is not hampered by this language, considering that recommendation 30.7 of the PDP WG establishes ways and means to conduct such a dialogue even in the case of GAC Consensus Advice objecting to an application. However, other GAC Members support the Working Group's recommendation to remove this language, and believe that the text of any future Applicant Guidebook must be consistent with the Bylaws regarding GAC advice.

Regarding Recommendation 30.6, the GAC agrees with the PDP WG notion that a GAC Early Warning should be explained and that in order to ensure constructive dialogue at an early stage of the procedure and mitigate these concerns it is important for Government(s) issuing Early Warning(s) or the GAC in its advice to provide a written explanation/rationale. However, the GAC wishes to recall the compromise language brought forward by the GAC, as applications may not always be able to be remedied in the opinion of the Government(s) issuing a GAC Early Warning. Therefore, the GAC draws the Board's attention on its proposed updated language to Recommendation 30.6 as follows: "[...] *how the applicant may potentially address the GAC member's concerns to the extent feasible*".

- **[Community Applications: Topic 34 in Final Report](#)**

The GAC supported the proposals in the Sub Pro PDP WG Initial Report for procedures to deal with community-based applications, as consistent with previous GAC advice. Additionally, the GAC notes that PDP WG final recommendations support the GAC's opinion that evaluators should also have necessary expertise in the field of communities and additional resources at

their disposal to gather information about a Community Priority Evaluation (CPE) application and any opposition to that application.

PDP WG final recommendations include measures for improved transparency and predictability, aligned with concerns expressed by the GAC regarding the need for greater consistency in the CPE process, and the establishment of an appeals mechanism for the New gTLD Program. The GAC supports the recommendations to improve the community priority evaluation process, particularly with regard to predictability and transparency. In this sense, the GAC supports recommendation 34.2, noting that the Community Priority Evaluation (CPE) process must be efficient, transparent and predictable, which aligns with previous GAC advice.

The GAC notes that consideration should be given to providing support for non-profit community-based applications, which is not included in the final recommendations.

- **Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets: Topic 35 in Final Report**

While the GAC acknowledges that, in an attempt to reduce potential gaming, the PDP WG recommendation 35.3 included the need for applications to be submitted with a “bona fide” intention to operate a TLD, the GAC reiterates concerns on the implementation of this condition, and notes that punitive measures for non compliance or submission of a “bona fide” intention are not sufficiently defined.

Regarding Auctions of Last resort, the GAC reaffirms its view that they should not be used in contentions between commercial and non-commercial applications, and reiterates that private auctions should be strongly disincentivized.

The GAC sees value in ALAC’s view expressed in its advice to the ICANN Board noting that they believe there *“should be a ban on private auctions. Also, 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.”*

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