

# GAC Written Consultation: Compilation of Individual Input Received

## Draft Recommendations of GNSO Subsequent Procedures PDP WG on Future New gTLDs

29 April 2020

[Topic 1: Public Interest Commitments \(PICs\)](#)

[Topic 2: GAC Early Warnings and GAC Advice](#)

[Topic 3: Applicant Support](#)

[Topic 4: Community Applications](#)

[Topic 5: Closed Generics](#)

**Please note:** Input was received from individual GAC members and Observers and does not represent GAC consensus advice. Input was compiled in alphabetical order.

### GAC Member and Observer Contributors:

- |                                       |                 |                               |
|---------------------------------------|-----------------|-------------------------------|
| 1. Australia                          | 9. France       | 18. Nigeria                   |
| 2. Belgium                            | 10. Germany     | 19. Spain                     |
| 3. Burkina Faso                       | 11. Greece      | 20. Switzerland               |
| 4. Canada                             | 12. India       | 21. Chinese Taipei            |
| 5. Caribbean Telecommunications Union | 13. Iran        | 22. USA                       |
| 6. Denmark                            | 14. Italy       | 23. World Broadcasting Unions |
| 7. European Commission                | 15. Luxembourg  |                               |
| 8. Finland                            | 16. Morocco     |                               |
|                                       | 17. Netherlands |                               |

## Topic 1: Public Interest Commitments (PICs)

Questions:	Answers from GAC Members:
<p>1. In light of prior GAC positions on this matter, <b>do you agree with the SubPro PDP WG draft recommendations?</b> If not, why?</p>	<ul style="list-style-type: none"> <li>● <b>Australia:</b> Australia strongly supported the need for safeguards to address concerns around public interest during the previous gTLD round and we would expect public interest safeguards for any future rounds.</li> <li>● <b>Belgium:</b> Belgium joins and recalls GAC concern, expressed at ICANN67, on the approach addressing the issue of DNS Abuse in a separate policy development process. We believe CCT-RT Recommendations are important and we would like to stress the need to implement them in light of the GAC Montreal Advice.</li> <li>● <b>Canada:</b> Canada agrees with Affirmation xx/ Recommendation xx (rationale 1-7). As to Recommendation xx (rationale 8), we agree in principle that DNS abuse should be solved holistically and with all the relevant parties involved for all gTLDs.</li> <li>● <b>Denmark:</b> I agree with Affirmation xx/ Recommendation xx (rationale 1-7). As to Recommendation xx (rationale 8) I agree in principle that DNS abuse should be solved holistically for all gTLDs. But the holistic solution implementing the DNS Abuse related CCT-RT recommendations MUST be in place before the beginning of next gTLD-process.</li> <li>● <b>European Commission (supported by Greece):</b> We welcome the Working Group recommendations, as these are generally in line with GAC advice on this subject. We think that the possibility to adopt public interest commitments should remain an essential mechanism to mitigate public interest concerns from GAC or other stakeholders as they arise during the application process. Both voluntary as well as mandatory PICs should remain legally binding.</li> <li>● <b>Finland:</b> On Recommendation xx (rationale 8) we believe that mandatory actions against DNS Abuse should cover all gTLDs holistically. This should also include new gTLDs. Therefore, DNS Abuse related CCT-RT recommendations should be implemented before the new round of gTLDs, if the schedule allows this. In any case, all actions should cover both old and new gTLDs.. The reference to ccTLDs should only be a recommendation, since ccTLD's operates under national legislation and are not part of ICANN's competence . All the actions should be listed in the SSAC and approved by the GNSO or the ccNSO.</li> <li>● <b>France:</b> France agrees with the draft recommendations on PICs, <b>except with Recommendation xx (rationale 8)</b>. While we are willing to see the SubPro PDP advance fast, DNS Abuse is an important issue that cannot be delayed. <b>The GAC has expressed several times the need to take measures before the launch of the next round of gTLDs applications</b>, including in the form of consensus Advice (most recently in the Montreal Communiqué). The GAC has notably called for the <b>implementation of the most important recommendations on DNS Abuse</b> contained in the <b>CCT Review</b>. <b>France therefore calls for the WG to make recommendations on the topic of DNS Abuse</b> and not postpone its tackling to a future PDP.</li> <li>● <b>Germany:</b> GAC Early Warnings and GAC Advice should be an integral part of any future round. As DNS misuse is becoming increasingly important, Germany proposes to implement the CCT-RT recommendations before a new round of gTLDs begins.</li> </ul>

- **Iran:** Yes, subject to further refinement resulting from ongoing debate in the working group.
- **Italy:** Italy considers the DNS abuse a priority issue that should be solved for all gTLDs and underline the importance of CCT-RT recommendations as a necessary implementation before the beginning of new gTLD process.
- **Luxembourg:** Luxembourg recalls the importance of previous GAC advice not to proceed with the round of new gTLDs until the CCT-RT recommendations are implemented.
- **Morocco:** A safeguard mechanism should be an integral part of any subsequent rounds. PICs requirements should consist with GAC Safeguard Advice in the ICANN46 Beijing Communique. The compliance with pics should be effectively monitored by ICANN with setting of appropriate sanctions before launching the subsequent new gTLD program. For any application subject of PICs, the terms of the PICs should not be subject to amendment or cancellation without the consent of all concerned parties.
- **Netherlands:** Addressing DNS abuse is a priority issue. The Netherlands recalls earlier GAC Advice and stresses again the importance that the CCT-RT recommendations will be and must be implemented urgently and certainly before a next gTLD process can be considered. A new round of gTLD's must not be considered before the CCT-RT recommendations are effectively implemented.
- **Nigeria:** Yes.
- **Spain:** Spain does not agree with the conclusion of rationale 8 of not to make any recommendation regarding DNS Abuse. This issue must be a priority, and policies and recommendations of the CCT-RT must be effectively implemented, in line with the GAC Cancun Communiqué, before a new round of gTLDs is started.
- **Switzerland:** Regarding the **Recommendation xx (rationale 8)** we consider that it is not appropriate that the PDP WG would decide not to make any recommendation. In fact, gaps have been identified in the current requirements of the Registry Agreement (RA) regarding DNS abuse mitigation. It is therefore imperative that the policies and eventually the RA be amended to address these gaps for future gTLD delegations. This means that an adaptation of the policies and the RA is necessary prior to any new round of gTLD delegations. This comment is in connection with the GAC Montreal consensus advice to the Board and the GAC Cancun Communique wording stating that “One important area of focus for GAC Members was DNS Abuse as mandatory PICs were used to implement GAC advice on DNS Abuse, and specifically due to the referral of relevant CCT-RT Recommendations, which were passed by the Board to the GNSO and from its Council to the Sub Pro PDP WG . The PDP WG Co-Chairs indicated that the current recommendation text would refer DNS Abuse to a separate policy development process or other effort, which would address the issue holistically (i.e. not only for the next round). GAC members expressed concern with this approach, highlighting the importance of the CCT-RT Recommendations and the need to implement them in light of the GAC Montreal Advice on this matter.”
- **USA:** The U.S. supports the recommendations, and notes persistent GAC concerns regarding the clarity and effectiveness of the mechanism to enforce disputes. We believe the PICs should be better enforced through improvements in ICANN's contractual compliance program.
- **World Broadcasting Unions:** In the PDP recommendations is still lacking any formalization of the enforcement for the non respect of PICs.

2. What would you change, and/or remove? And why? Can you please provide specific wording on the language of the draft recommendation?

- **Burkina Faso:** Nothing.
- **Canada:** Canada acknowledges and agrees with the importance of the Public Interest Commitments (PICs). We recognize that they are a valuable tool to creating holistic contractually binding commitments. They were used as the primary vehicle to implement GAC safeguard advice, and reflected GAC Early Warnings applicants had received. Canada supports the wording clarifications in the recommendations and recognizes that the success of PICs will depend on how they measures-up and are accountable to the Public Interest Commitment Dispute Resolution Procedure (PICDRP). On Recommendation xx (rationale 8), Canada joined consensus in the Montreal GAC Communique Advice directed to the Board. In monitoring the Sub Pro WG, we acknowledge the view that any policy for Subsequent Procedures of the New gTLD Program would create a disparity with ‘legacy’ TLDs, including from the 2012 round. Canada agrees in principle that DNS abuse should be addressed holistically for all gTLDs and build-on the important work that has taken place across the ICANN community to date.
- **European Commission (supported by Greece):** We agree with stakeholders and governments that assert that PICs have been insufficiently enforced. Therefore, we urge the WG to make concrete recommendations on how to improve the enforceability of PICs.
- **France: In Recommendation xx (rationale 8),** in the sentence “stating that any such future effort must apply to both existing and new gTLDs (and potentially ccTLDs)”, **the last 3 words should be removed.** Even if it is a prudent proposal, it falls outside the scope of the SubPro PDP WG’s remit.
- **Iran:** Nothing at this stage
- **Spain:** The reference to the fact that future efforts to mitigating DNS Abuse must potentially apply to ccTLDs (rationale 8) should be deleted, because ccTLDs are out of the scope of GNSO policies. Affirmation XX (rationale 1) should refer not only to trademarks, but also significantly to restrictions on the delegation of strings such as **geographical indications** (TRIPS Agreement) and abbreviations or names of **international intergovernmental organizations** (Paris Convention).
- **Switzerland:** *In addition, the wording “(and potentially ccTLDs)” at the end of the third sentence of recommendation xx (rationale 8) should be removed, as GNSO policies and the RA have no connection with ccTLDs. Regarding Affirmation xx (rationale 1): the Paris convention protects not only trademarks but also abbreviations or names of international intergovernmental organizations. In addition, since most of the states are part of the WTO agreements, we believe that the TRIPs should also be mentioned as an example of important applicable international law. Therefore, we suggest the following change: “Examples of such limitations that are internationally recognized include, but are not limited to, restrictions defined in the Paris Convention for the Protection of Industrial Property (in particular restrictions on the use of some strings as trademarks **and abbreviations or names of international intergovernmental organizations), the Trade-Related Aspects of Intellectual Property Rights (in particular restrictions on the use of some strings as geographical indications) and the Universal Declaration of Human Rights (in particular, limitations to freedom of speech rights).***
- **World Broadcasting Unions:** There is a need for more clarity about who shall monitor, who shall control, who has the right to ask ICANN to intervene, which are the sanctions in case of violations.

3. Are there any **additional comments, suggestions** or recommendations you would like to make on PICs?

- **Burkina Faso:** No at this point.
- **European Commission (supported by Greece):** Rationale 2 states 'No additional mandatory PICs are needed at this time'. It is important to realize that new mandatory PICs may be needed for (groups of) applications where new public policy concerns arise that were not present in the earlier round or not anticipated. Rationale 8 states 'a holistic solution is needed to account for DNS abuse in all gTLDs as opposed to dealing with these recommendations with respect only to the introduction of subsequent new gTLDs'. We agree with this reasoning and in line with CCT recommendations 14, 15 and 16 all gTLDs should abide to the same high threshold measures and requirements against DNS abuse as the registries following the first application round. We are confronted with unequal barriers against abuse within TLDs under coordination of ICANN; therefore, the new round of applications should not start before CCT recommendations 14, 15 and 16, addressing this unbalance, are implemented.
- **Germany:** As we see in the possible dot-org sale, assessing the effectiveness of PICs is difficult. Therefore we support a reporting framework and a monitoring by ICANN. If the Registry does not comply with the PICs appropriate sanctions should be available.
- **Iran:** After one or several rounds, should any difficulties or shortcomings are experienced , there should be a possibility for remedial action(s)
- **Morocco:** We believe that PICs should not replace the rights of others parties, in particular the rights of the UN member countries to exercise their sovereignties and rights on their intangible goods (geographical names, cultural names, etc.).
- **Netherlands:** PICs should contain all necessary requirements ( ref CCT-RT recommendations) to combat DNS abuse and to enable ICANN to take effective measures against non-compliance
- **Spain:** The new requirements to fight against DNS abuse must be included in PICs, in order that ICANN is able to adopt effective measures against actors that do not comply with them.
- **Switzerland:** Consistent with what was stated above, we consider it essential that the PICs contain new requirements that make it possible to combat DNS abuses more effectively and that also enable ICANN to take effective action against those who do not comply with them, especially the "bad actors". We wonder whether the PDP WG has analyzed and will propose improvements regarding the enforcement of PICs, which has been considered insufficient by diverse commenters in the past.
- **World Broadcasting Unions:** See above. Plus the role of GAC - as the interpreter of the Public Interest is not recognized.

## Topic 2: GAC Early Warnings and GAC Advice

Questions:	Answers from GAC Members:
<p>1. In light of prior GAC positions on this matter, <b>do you agree with the SubPro PDP WG draft recommendations?</b> If not, why?</p>	<ul style="list-style-type: none"> <li>● <b>Australia:</b> The Australian Government issued close to 130 Early Warnings in the previous round and found it a useful mechanism for beginning a discussion with an applicant on particular issues or questions. 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. We would consider an early warning mechanism an essential element of any future round.</li> <li>● <b>Belgium:</b> Would the language “<i>will create a strong presumption for the ICANN Board that the application should not be approved</i>” not indeed have the consequence of hampering “direct dialogue” (or at least some form of communication) with the applicant and thus the ability to reach a mutually acceptable solution ? If GAC wants to maintain this language, it should provide the PDP WG a strong rationale for this presumption.</li> <li>● <b>Burkina Faso:</b> Yes.</li> <li>● <b>Canada:</b> Canada agrees with Affirmation xx/ Recommendation xx (rationale 0 and 2-7).</li> <li>● <b>European Commission (supported by Greece):</b> We welcome the Working Group support for the continuation of the GAC early warning mechanism and GAC consensus advice. It acknowledges the fact that these mechanisms are essential tools to raise concerns in an early stage of the process, enabling applicants and GAC members to engage in a dialogue to mitigate these concerns. Except for some aspects and missing elements (see underneath) we welcome the recommendations.</li> <li>● <b>Denmark:</b> I agree with Affirmation xx/ Recommendation xx (rationale 0 and 2-7). As to Recommendation xx (rationale 1) I don’t see the need to limit the scope of the GAC advice. If the Board does not agree with the advice, the Board always has the possibility to reject the advice in accordance with the provisions in the Bylaws.</li> <li>● <b>France:</b> France does not agree with <b>Recommendation xx (rationale 3)</b> and with <b>Implementation Guidance xx (rationale 2)</b>. (See Question 2 for further comments)</li> <li>● <b>Finland:</b> Concerning the Recommendation xx (rationale 1) we propose that this should only refer to the Bylaws.</li> <li>● <b>India:</b> In light of prior GAC positions on this issue, we do not agree with the draft recommendations of the PDP. The idea behind GAC early warnings is to provide the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments i.e. it could potentially violate national law or raise sensitivities.  Such advance indications of potential problems would either stop particularly problematic applications at an early stage or allow applications to be adjusted to meet the public policy concerns raised by the Early Warning. 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.</li> <li>● <b>Iran:</b> 1.In implementation Guidelines, (rational 2),toward the end of the text, there is an exclusion/ a limitation of action</li> </ul>

*“not [only] on groups or classes of applications or string types”*. During the further debates at the level of WG I raised my concerns about the rationale for such .The limitation. The explanation/ arguments provided were not convincing.

- **Italy:** Rationale 1: don't need to limit the scope of GAC advice. Rationale 2: the GAC should have possibility to provide Advice on groups or classes of applications for strings or string types also during the application period
- **Luxembourg:** Regarding Implementation Guidance rationale 1, we do not see the necessity to limit the scope of GAC advice.
- **Netherlands:** Implementation Guidance xx ( rationale 2) not agreed: Advice on groups or classes of applications for strings or string types should remain in place also during the application period.  
Recommendation xx (rationale1) not agreed: no need to limit the scope of GAC advice.  
Recommendation xx (rationale 3) not agreed: keep the notion that GAC advice ‘will create a strong presumption for the ICANN Board that the application should not be approved’. Nothing prevents the applicants to seek engagement with GAC to discuss the Advice and seek a mutually acceptable solution.
- **Morocco:** We support to improve safeguard mechanism to address concerns dealing with public policy and public interest. In the Recommendation xx (rationale 3), the SubProPDP WG proposes to remove from the Section 3.1 of the 2012 AGB the language “ GAC advice will create a strong presumption for ICANN Board that the application should not approved”. The argument announced by the SubPro PDP WG is that language does not have a basis in the current version of the bylaw. We aren't agree with this proposition and we insist to maintain this language, for the following reasons:
  - The applicant Guidebook should be the result of a consensus that takes into account ICANN bylaws, international laws and agreements, public policy issues and the innovative ideas from inside and outside of ICANN community.
  - ICANN Bylaws strongly emphasize that public policy is one of the sources of inspiration for regulating ICANN activities.
  - The language “GAC Advice will create... not approved” does not contradict the current ICANN Bylaws.
  - Safeguard mechanism provides a visibility and awareness-raising for applications to better understand the concerns of the governments and allows governments to arise to the applications their preoccupations.
- **Nigeria:** Do not agree with the WG's Recommendation xx (rationale 3) because the language used in the Applicant Guidebook (“... will create a strong presumption for the ICANN Board that the application should not be approved.”) does not seem to conflict with ICANN's Bylaws. GAC Advice based on a **consensus** should form a strong basis for likely rejection of an application.
- **Spain:**
  - Implementation Guidance xx (rationale 2): We do not agree. GAC Advice on groups or categories of applications should remain possible also once the application period has begun.
  - Recommendation xx (rationale1): we do not agree. A reference to the Bylaws would suffice.
  - Recommendation xx (rationale 3): We do not agree. The text that the WG proposes to omit, that GAC advice

	<p>“will create a strong presumption for the ICANN Board that the application should not be approved” should remain.</p> <ul style="list-style-type: none"> <li>○ Recommendation xx (rationale 5): The case where the GAC members’ concerns may not be addressed should also be taken into account in this recommendation.</li> <li>● <b>Switzerland: Implementation Guidance xx (rationale 2):</b> GAC Advice on categories of applications should remain possible, where emerging issues and/or unexpected concerns arise regarding a category of applications. Furthermore, this provides the GAC the opportunity to propose the establishment of PICs in the public interest for such a category of applications. <b>Recommendation xx (rationale 1)</b> should simply refer to the Bylaws. <b>Recommendation xx (rationale 2):</b> The text of the 2012 AGB which is recommended being omitted was consistent with the then existing ICANN Bylaws and was the result of long discussions within the community and gave the GAC the possibility to object, by GAC consensus advice, to a specific application. Considering that, the new Bylaws do not introduce any change in that regard, and taking into account that a GAC consensus advice is subject to very high standards and an obligation to provide a rationale, we do not see the need for such an omission. However, if a remediation of the corresponding application is possible a facilitated dialogue between the parties and the GAC should still be possible. <b>Recommendation xx (rationale 5):</b> this recommendation should also foresee the case where the concerns expressed may not be remediated.</li> <li>● <b>Chinese Taipei:</b> We generally agree with the contents of this draft recommendation, and support the continuous implementation of the two mechanisms of GAC Early Warnings and GAC Advice, with which governments can guard public interests as well as prevent applicants from breaching the recognized public interests. In addition, the mechanisms of GAC Early Warnings and GAC Advice enable applicants’ predictability in application processes and business operation. Applicants may hence avoid the unforeseeable problems that limit their business operation with potential new regulations enforced to protect public interests in specific countries. However, we have concern about the Working Group’s decision to omit the languages that GAC Advice “will create a strong presumption for the ICANN Board that the application should not be approved.” It might result in undermining GAC advices on sensitive issues. Therefore, I suggest maintaining the languages.</li> <li>● <b>USA:</b> The U.S. concurs with 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 U.S. supports consistency between GAC Advice and the ICANN Bylaws.</li> <li>● <b>World Broadcasting Unions:</b> On “rationale 3” the proposed wording is weakening the impact of GAC advice. The applicant needs to be aware that -if GAC raise a concern- this is based on Public Interest and that there is a high risk that its application could be rejected. Minimizing this risk will lower the barriers for badly intentioned applicants.</li> </ul>
<p>2. <b>What would you change, and/or remove?</b> And why? Can you please provide specific wording on the</p>	<ul style="list-style-type: none"> <li>● <b>Burkina Faso:</b> Nothing.</li> <li>● <b>Canada:</b> As to Recommendation xx (rationale 1), suggest to consider replacing the word ‘limited’ in the sentence: “GAC advice be <i>limited to the scope set out in the applicable Bylaws provisions</i>’ with ‘GAC advice be <i>within the scope set out in the applicable Bylaws provisions</i>’.</li> </ul>

language of the draft recommendation?

- **European Commission (supported by Greece):** Rationale 1 states 'The Working Group recommends that GAC Advice be limited to the scope set out in the applicable Bylaws provisions and elaborate on any "interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues." This is an incorrect interpretation of the bylaws, according to which 'GAC should consider and provide advice on the activities of ICANN as they relate to concerns of governments'. There is not and there should not be any narrowing down to only 'interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues'. We would like to change Rationale 5 as follows: 'Government(s) issuing Early Warning(s) must include a written explanation describing why the Early Warning was submitted, and indicating how the applicant may address the GAC member's concerns or asking the applicant to propose mitigating measures'. This addition is needed as it may not be in the capacity of the government concerned to propose a solution to address the concern. The applicants may be better suited to propose a solution fitting in the proposed operation and registration policy of the TLD.
- **France:**
  - Recommendation xx (rationale 3): **France supports that it be removed.** Since the "old" ICANN Bylaws were considered consistent with the AGB's text on GAC Advice, and since the "new" Bylaws did not change anything substantial on this matter, **we do not see why the AGB's content should be changed on this issue** and why the provision stipulating that GAC Advice on a given application "will create a strong presumption for the ICANN Board that the application should not be approved" should be removed. **It is unclear why there would be confusion between the AGB and the Bylaws** on the matter of GAC Advice, and why the "strong presumption" principle would hamper "the ability for applicants, ICANN org, and the GAC to mitigate concerns and reach a mutually acceptable solution". **We would welcome more detailed explanations** from the SubPro PDP WG on this concern.
  - Implementation Guidance xx (rationale 2): **France supports that it be removed.** We believe that **GAC Advice on categories of applications should remain possible even after the opening of the application period**, since emerging issues or unforeseen circumstances can give new importance to or shed new light on large categories of applications, and thus require Advice on entire categories.
- **India:** The PDPs draft recommendation to remove the provision that "GAC Advice will create a strong presumption for the ICANN Board that the application should not be approved" should not be included as it could result in undermining GAC advice on sensitive issues.

Regarding the recommendation that the Application Guidebook should define the time period during which GAC Early Warnings can be issued if beyond the application comment period, a reasonable time period should be identified.

Regarding the recommendation that applicants should be allowed to change their application, including through PICs, to address GAC Early Warnings and GAC Advice:

  - Such changes to the application, including through PICs should be legally binding.
  - Any changes made should be subject to strict enforcement through proper channels, such as ICANN contractual compliance.

- After the application has been changed, there should be a consultation with the GAC or the country that raised the issue to determine if the concerns raised in the GAC Early Warnings and/or GAC Advice have been suitably addressed. The altered application should not be allowed to proceed without such express confirmation

Regarding the recommendation that GAC members would be strongly encouraged to make themselves available during a specified time period for direct dialogue with relevant applicants to determine if a mutually acceptable solution can be found in responding to Early Warning or Advice: If a “mutually acceptable solution” cannot be found in response to the GAC Early Warning or Advice, the application should not be allowed to proceed.

- **Iran:** I therefore would not agree, for the time being, to such exclusion / limitation. Further discussions are needed in order to remove the concerns or the language should be softened by changing the text as follows: *the Working Group invites the GAC to limit, Advice to individual applications, based on the merits and details of the application for a particular string, and to the extent practicable, not apply that on certain groups or classes of applications or string types.yet to be decided and agreed upon*
- **Morocco:** The Recommendation xx (rationale 3) is ended by “while could allow an application to proceed”. We suggest removing this sentence because we consider that sometimes a solution may not be in favor of allowing an application to proceed.
- **Nigeria:** Removing the WG’s Recommendation xx (rationale 3) should be considered since there seems not to be language conflict in the Applicant Guidebook and the ICANN Bylaws  
Section 1.1.2.7 of the 2012 Applicant Guidebook states:  
 “If the Board receives GAC Advice on New gTLDs stating 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. If the Board does not act in accordance with this type of advice, it must provide rationale for doing so”.  
Section 12.2 (a) of the ICANN Bylaws states:  
 (x) “... Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection (**“GAC Consensus Advice”**), **may only be rejected by a vote of no less than 60% of the Board**, and the Governmental Advisory Committee and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee will state whether any advice it gives to the Board is GAC Consensus Advice.  
 (xi) “If GAC Consensus Advice is rejected by the Board pursuant to Section 12.2(a)(x) and if no such mutually acceptable solution can be found, the Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed ...”
- **Switzerland: Recommendation xx (rationale 1)** should just read *“Recommendation xx (rationale 1): As stated in the ICANN Bylaws, GAC Advice must include a clearly articulated rationale. The Working Group recommends that GAC Advice be limited to the scope set out in the applicable Bylaws provisions.”* The rest of the text should be deleted.

	<ul style="list-style-type: none"> <li>● <b>World Broadcasting Unions:</b> On “rationale 3” I would prefer the original version of the AGB. On “rationale 4” I think that GAC needs to keep the right -at any time- to release an early warning. In the past we have experienced that the potential dangers of certain applications emerged only during the applications evaluations. If such time limit will remain, then we need to have the same for ICANN board decisions, that sometime took years before to take position.</li> </ul>
<p>3. Are there any <b>additional comments, suggestions or recommendations</b> you would like to make on GAC Early Warnings/GAC Advice?</p>	<ul style="list-style-type: none"> <li>● <b>Belgium:</b> Belgium would like to recall that, in order to facilitate the processing of future applications for gTLDs, many GAC members expressed, in Montreal (ICANN66), interest in the development of a tool that would provide timely notifications to GAC Members of strings that consist in geographic names, drawing inspiration as appropriate from the existing tool for the 2-character codes.</li> <li>● <b>Burkina Faso:</b> No.</li> <li>● <b>Canada:</b> Understanding where GAC participation and advice could be enhanced and strengthened for subsequent rounds of new gTLDs is an important objective of this process. We also support the opportunity for the applicant to amend its applications based on exchanges and early engagement with government.</li> <li>● <b>European Commission (supported by Greece):</b> In Rationale 2 the Working Group urges the GAC to provide possible advice on categories of TLDs prior to the finalization of the next Applicant Guidebook, and to limit advice after that to individual applications only. This, however, cannot be excluded, as it may occur that GAC has similar concerns with applications with similar characteristics, only to be detected after the applications have started. This was the case during the first round when groups were identified, e.g. of applications associated with highly regulated sectors. It could be even beneficial to group certain applications, as it can lead to harmonization of mitigating commitments for similar cases. We note that there are two important elements missing that need to be incorporated; <ul style="list-style-type: none"> <li>○ there needs to be a full or partial refund of the application fee depending of the moment of withdrawal, when the applicant decides to withdraw the application after a GAC early warning or negative GAC advice is issued,</li> <li>○ The lack of reaction by an applicant within a specified time frame to an GAC early warning or GAC advice addressing his/her application should create a strong presumption for the ICANN Board that the application should not be approved.</li> </ul> </li> <li>● <b>Finland:</b> We would highlight the importance of having discussion and finding a compromise between the applicant and the GAC. This step should be a part of the application process.</li> <li>● <b>Germany:</b> Involve the GAC as early as possible, especially for applications where there is public interest like geo TLDs.</li> <li>● <b>India:</b> The GAC has stated that it is willing to discuss options to increase the transparency and fairness of these arrangements (including providing a rationale for objections and giving applicants subject to Early Warnings the opportunity for direct dialogue with the GAC). Further, any rationale provided by the GAC would be based on its role under the Bylaws to “consider and provide advice on the activities of ICANN as they relate to governments, particularly</li> </ul>

	<p>matters where there may be an interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues.</p> <ul style="list-style-type: none"> <li>● <b>Iran:</b> No suggestion at this stage</li> </ul>
--	---

### Topic 3: Applicant Support

Question:	Answers from GAC Members:
<p>1. In light of prior GAC positions on this matter, <b>do you agree with the SubPro PDP WG draft recommendations?</b> If not, why?</p>	<ul style="list-style-type: none"> <li>● <b>Burkina Faso:</b> No. The concern of GAC stated: “<b>Clear measurable goals and indicators</b> for applications from the Global South should be established, linked to ICANN strategic objectives” does not appear to have been taken into account.</li> <li>● <b>Canada:</b> Canada agrees with the draft recommendations.</li> <li>● <b>Caribbean Telecommunications Union:</b> Generally, yes. Agreed: <i>“The revised language updates the original Implementation Guideline to:</i> <ul style="list-style-type: none"> <li>○ <i>acknowledge that the Applicant Support Program was in place in the 2012 round</i></li> <li>○ <i>include reference to pro-bono non-financial assistance in addition to fee reduction</i></li> <li>○ <i>eliminate the reference to economies classified by the UN as least developed, as the Program is not limited to these applicants</i></li> </ul> </li> <li>● <b>Denmark:</b> Agree with the draft recommendations.</li> <li>● <b>European Commission (supported by Greece):</b> The recommendations and implementation guidance appear to be aligned with GAC advice on this matter and we support expanding outreach and awareness-raising activities to targeted regions beyond the Global South. GAC should be involved in further policy development and preparation of activities in the remit of defining underserved regions, capacity building, outreach and funding mechanisms.</li> <li>● <b>Finland:</b> We can agree with the recommendations.</li> <li>● <b>France:</b> France agrees with the draft recommendations on Applicant Support.</li> <li>● <b>Germany:</b> Agree, in particular with the focus on the Global South and underserved regions.</li> <li>● <b>Iran:</b> Yes, in principle</li> <li>● <b>Italy:</b> Agree with recommendations</li> <li>● <b>Morocco:</b> We support to improve the application support process and to address meaningful evaluation of this program to better learn from experience.</li> <li>● <b>Netherlands:</b> Agree with recommendations, but need to clarify what is understood by ‘middle applicants located in struggling regions’.</li> <li>● <b>Nigeria:</b> Yes. However, a slight amendment is proposed to Recommendation xx (rationale 7) to eliminate the <b>Disqualified applications</b> category. The Support Application Review Panel (SARP)’s main focus is on determining whether an application qualifies for financial</li> </ul>

	<p>support or not. Pg. 8 of the Financial Assistance Handbook from the 2012 round states:  “The SARP’s objective is to establish whether applicants meet the Financial Assistance criteria – but not to decide relative merits of New gTLD Applications.” <u>Therefore, the outcome of SARP review should be either <b>award financial aid</b> or <b>do not award financial aid</b>. There shouldn’t be a third category in which applications are <b>disqualified</b> by SARP since “...the Financial Assistance application should stand alone and applicants should not assume the New gTLD Application has been fully read by the SARP.”</u> (Pg. 7-8 of the Financial Assistance Handbook from the 2012 round)</p> <ul style="list-style-type: none"> <li>● <b>Spain:</b> In general terms we agree with the recommendations.</li> <li>● <b>Switzerland:</b> <i>The recommendations go into the direction, as mentioned in the GAC ICANN 67 Communique. We look forward to the comments of the GAC USRWG on this matter.</i></li> <li>● <b>USA:</b> The U.S. supports the intention of the recommendations to continue and to expand the applicant support program. The U.S. also supports a meaningful evaluation of the program to assess its success.</li> <li>● <b>World Broadcasting Unions:</b> The proposed change in “rationale 2” to enlarge beyond the traditional list of Developing countries is good but lack of clauses to prevent risk of gaming.  On “rationale 4” -as discussed at GAC during ICANN 67 - the support has to be granted also to Community applicants, independently of their geographic location, especially to those representing vulnerable groups.</li> </ul>
<p><b>2. What would you change, and/or remove? And why?</b>  Can you please provide specific wording on the language of the draft recommendation?</p>	<ul style="list-style-type: none"> <li>● <b>Burkina Faso:</b> Under Recommendation xxx (Rational 2) proposals, remove the wording: <i>“eliminate the reference to economies classified by the UN as least developed, as the Program is not limited to these applicants”</i></li> <li>● <b>Caribbean Telecommunications Union:</b> More meaningful metrics for Awareness and Education. Specifically, for “number of outreach events”: Metric should better (or additionally) relate to # of countries/markets/regions reached. For <i>“level of awareness about the New gTLD Program / Applicant Support Program; level of interest expressed/number that considered applying”</i> Would benefit from a more specific statement of measurement than just “level of...”</li> <li>● <b>Iran:</b> not at this stage. however, I will be delighted to consider any other changes proposed to gac members in support of this important issue.</li> <li>● <b>Nigeria:</b> <i>recommendation xx (rationale 7) should be rephrased as follows (the modified portion is in bold face): “unless the sarp reasonably believes there was willful gaming, <b>applicants who are not awarded applicant support must have the option to pay</b> the balance of the full standard application fee and transfer to the standard application process. applicants must ...”</i></li> <li>● <b>World broadcasting unions:</b> applicants using this scheme cannot sell the domain name or the company for a substantial period of time (10 years?) to buyers that don’t match the criteria for which the applicant support was originally given. on “rationale 6” the support for subsequent rounds is particularly crucial for community based applicants, that in the last round were mainly penalized by the length of the selection process.</li> </ul>

3. Are there any additional comments, suggestions or recommendations you would like to make on Applicant Support?

- **Belgium:** pursuing transparency and effectiveness goals, Belgium stresses the importance of establishing clear and objective criteria in order to identify which regions are considered as “underserved”, “underrepresented” but also “struggling regions” and in which circumstances applicants “regardless of their location” can benefit from the program.
- **Burkina Faso:** No.
- **Canada:** Canada appreciates the opportunity to support the GAC Underserved Regions Working Group, who has previously provided excellent input to the Applicant Support deliberations. For example, Canada supports ensuring the Applicant Support program be made widely available, merit-based, have a strong outreach strategy and be accountable. Canada appreciates the earnest effort of ICANN Org and the Sub Pro WG to acknowledge the challenges and shortcomings of the Applicant Support program to be able to substantially improve it and expand it.
- **Caribbean Telecommunications Union:** With small and/or unsophisticated markets, it will always be challenging to formulate a sustainable business case even if there might be a laudable social objective for a gTLD. This challenge would still militate against increasing applications from underserved areas, notwithstanding the concessions and support available for applications (but not for operations sustainability).
- **Finland:** could it be possible to make use of gac members in reporting to the public especially of different financing options and lowered prices? this could be done in cooperation with local ccTLDs.
- **France: Applicant Support seems especially relevant today as we are currently witnessing important mergers and acquisitions in the registry/registrar industry.** Newcomers trying to obtain the delegation of new gTLDs will find it ever more difficult to compete with well-installed giants that have the important financial means and experience from the previous round to support their own applications. **We suggest that the WG reflect on recommending the extension of financial support beyond the application process.** Indeed, organizations with legitimate reasons to apply for the delegation of a gTLD and the technical skills to manage it, above all in underserved regions and developing countries, may encounter financial difficulties not only to lodge applications, but also, if successful, in their operations as registry operators. **It could be envisaged that successful applicants having benefited from Applicant Support be also eligible to some kind of “special reserve fund”** if they encounter financial difficulties during their activities as registry operator. Criteria should be devised for such financial help (it would not be meant to compensate for hazardous strategic choices or management mistakes for instance), but **we think useful that there be a “safety net” for registry operators from underserved regions and developing countries** and that this idea be delved into.
- **Germany:** Germany suggests to use the expertise of the local ccTLD operator and (if available) industry associations representing the local Domain industry. ICANN could offer support to applicants at the Internet Governance Forum IGF and at regional and local IGFs.
- **Iran:** I also propose to remove the highlights in yellow and retain the text with black
- **Morocco:** The Diversity is one of the ICANN Bylaws principles. It’s applied in several ICANN activities. We believe that the diversity is one of the important keys to ICANN's success and we propose to add, as pro bono ICANN assistance, the option of allowing applicants to submit their requests in other UN languages. Particular attention must be paid to the criteria for the choice of beneficiaries and obligations must be imposed to avoid the emergence of immoral and

	<p>anti- competitive practices.</p> <ul style="list-style-type: none"> <li>● <b>Switzerland:</b> Care has to be taken in defining the different categories of applicants who could benefit from the support program, in order to avoid gaming. Transfer of TLDs obtained through this program should be subject to strict limitations, in order to avoid gaming.</li> <li>● <b>World broadcasting unions:</b> the above mentioned enlargement of applicants eligible for support needs to be included in the text.</li> </ul>
--	---

## Topic 4: Community Applications

Questions:	Answers from GAC Members:
<p>1. In light of prior GAC positions on this matter, <b>do you agree with the SubPro PDP WG draft recommendations?</b> If not, why?</p>	<ul style="list-style-type: none"> <li>● <b>Belgium:</b> In what way would an appeal mechanism, as proposed by GAC, be put in place?</li> <li>● <b>Burkina Faso:</b> Yes.</li> <li>● <b>Canada:</b> Canada agrees with the draft recommendations.</li> <li>● <b>Denmark:</b> Agree with the draft recommendations.</li> <li>● <b>European Commission (supported by Greece):</b> The recommendations are still abstract and can only be reviewed sufficiently when further details are given. Therefore, we advise the GNSO to present detailed recommendations on how to adapt the rules for the Community Priority Evaluation (CPE) process in order to address the many shortcomings detected during the first round of applications. As stated in earlier GAC advice, next to broadening transparency and having a proper independent redress mechanism, the recommendations of the Council of Europe report <a href="#">Applications to ICANN for Community-based New Generic Top Level Domains (gTLDs): Opportunities and challenges from a human rights perspective</a> should be carefully examined and concretely reflected in the PDP final recommendations. We note especially the recommendations on clarifying the definition of “community” and the conditions of a community claim, and facilitating due process and participation.</li> <li>● <b>Finland:</b> We can agree with the recommendations.</li> <li>● <b>France:</b> France agrees with the draft recommendations on Community Applications, <b>which should be supplemented nonetheless.</b></li> <li>● <b>Germany:</b> Agree with recommendations but we have concerns about the CPE process and its effectiveness.</li> <li>● <b>India:</b> The PDPs draft recommendations seem to be compatible with the GAC’s position on this issue.</li> <li>● <b>Iran:</b> In principle, YES. However, there are certain tasks that envisage to be done either by ICANN or by CPE, before the application(s) starts. It is not clear whether all these courses of actions or preparation could be timely done.</li> <li>● <b>Italy:</b> Agree with recommendations</li> <li>● <b>Netherlands:</b> Agree with recommendations but questions remain on the effectiveness of a CPE process and how well an appeal mechanism works.</li> </ul>

	<ul style="list-style-type: none"> <li>● <b>Spain:</b> There are some uncertainties regarding the effectiveness of the CPE process, being one issue that qualification as Community application may be too difficult to achieve due to the requirements and criteria put in place.</li> <li>● <b>Switzerland:</b> To our knowledge, one of the key criticisms of the Community Priority Evaluation (CPE) was that qualification as a Community application was far too difficult to achieve given the level of requirements or rather the severity of the material requirements or criteria set for this purpose. We are unsure whether this point is being effectively addressed by the SubPro PDP WG in its recommendations. In any case, this problem should be tackled.</li> <li>● <b>USA:</b> The U.S. supports the recommendations to improve the community priority evaluation process, particularly with regard to predictability and transparency.</li> <li>● <b>World Broadcasting Unions:</b> Various GAC concerns expressed in the past (also echoed by the Ombudsman of ICANN and by various other community members) have not taken in consideration in the draft proposed by PDP. None of the proposed rationale solve the main problem that was the very high score requested to be recognized as a true community applicant: 14 point out of 16 (near 90% required) proved to be unjust and has as consequence to eliminate automatically most of the CBA. The ratio needs to be revised to a substantial lower number (12?) and criteria need to be revised to avoid restrictive interpretation.</li> </ul>
<p>2. <b>What would you change, and/or remove?</b> And why? Can you please provide specific wording on the language of the draft recommendation?</p>	<ul style="list-style-type: none"> <li>● <b>Burkina Faso:</b> Nothing.</li> <li>● <b>Canada:</b> Canada has been following the Sub Pro WG deliberations and recognizes that on the issue of community applications, there are several organizations and individuals with substantial experience in applying for community TLDs. Their lessons learned including on costs, sponsorship, review, and appeal should continue to be leveraged by the Sub Pro WG to improve the policy for subsequent procedures of the New gTLD Program.</li> <li>● <b>India:</b> Regarding the PDPs recommendation to “expand the scope of financial support to also cover costs...”, the issue of including ongoing ICANN registry-level fees is being discussed by the PDP. The ongoing ICANN registry-level fees should be included as an item within the purview of the recommendation that seeks to expand financial support available to applicants.</li> <li>● <b>Iran:</b> I do not change anything at this stage</li> <li>● <b>World Broadcasting Unions:</b> 1) the evaluation of CBA needs to be given to experts that understand what the various kind of communities are and represent. EUI (chosen for the first CPE) was exactly the opposite: zero experience and understanding of what a community is; 2) existing communities are already recognized, defined and formalized in many international fora (UNESCO or ECOSOC for linguistic, religious, ethnic and for minorities), (ITU for some technical communities). These entities need to be taken as a reference for defining what a community is and who represent this community. ICANN cannot pretend to redefine already existing reality; 3) Non commercial entities applying for community based TLDs need to be sustained, especially if the process last too long. Is good to remember that some CBA waited for 3 years before to get recognition of their rights. Most of the applicants gave up because they had not the resources to pay lawyers and consultants over a three years process.</li> </ul>
<p>3. Are there any <b>additional comments, suggestions or</b></p>	<ul style="list-style-type: none"> <li>● <b>Burkina Faso:</b> No</li> <li>● <b>France:</b> The idea to make CPEs “as efficient, transparent and predictable as possible” (<b>Recommendation xx (rationale 2)</b>)</li> </ul>

recommendations you would like to make on Community Applications?

is particularly commendable, as well as the objective to render them “more efficient in terms of costs and timing” (**Recommendation xx (rationale 3)**), because **CPEs have proven to be quite slow and difficult so far**. Unfortunately, **the draft recommendations do not mention several GAC-supported ideas** that were expressed during ICANN 67 sessions (and seemed to meet agreement among the SubPro PDP WG) and included in the GAC Communiqué:

- That **evaluators should also have necessary expertise** in the field of communities;
- That **evaluators should have additional resources** at their disposal to gather information about a Community Priority Evaluation (CPE) application and any opposition to that application;
- The **establishment of an appeals mechanism** for the New gTLD Program;
- Providing **support for non-profit community-based applications**.

**We suggest that they be included in the WG’s recommendations.**

- **India:** Regarding the category of a “middle applicant” (a struggling region that is further along in development compared to underserved or underdeveloped regions)
  - It should be added in the subsequent round.
  - Introducing this category would provide developing economies with more opportunities in the DNS space while bearing in mind that their economic and developmental realities and priorities are different from both developed and underserved regions.
  - A suggested approach in which the ASP can be extended to benefit the “middle applicants” is by reducing the application fee of \$185,000 USD, but not to the extent of the reductions availed by the underserved regions, so as to encourage them to cross the threshold in the domain name space.
  - Further, there can be special outreach programmes tailored towards “middle applicants” which would focus more on how the new gTLDs may practically benefit them as against the more awareness-centric outreach programmes for underdeveloped economies and underserved regions.

The ASP can also set up a support system to guide new applicants through the application procedure and deal with all the questions and queries of the applicants about navigating the application process as it can be a daunting task for a first-time applicant.

- **Iran:** None at this stage but would have no problem to examine changes proposed by other GAC Members.
- **Spain:** Evaluators should have the necessary expertise and information, in line with GAC ICANN67 Communiqué.
- **Switzerland:** As expressed by the GAC ICANN 67 Communiqué we consider 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. The establishment of an appeals mechanism for the New Gtld Program applicable to CBA should be foreseen. Consideration should be given to providing support for non-profit community-based applications.
- **World Broadcasting Unions:** The best knowledge about what community applications are today stay within the communities that have successfully been recognized and are running the first TLD community based. Their expertise needs to be recognized and used for the next gTLD’s round.

## Topic 5: Closed Generics

Questions:	Answers from GAC Members:
<p>1. In light of prior GAC positions on this matter, <b>do you agree with the SubPro PDP WG draft recommendations?</b> If not, why?</p>	<ul style="list-style-type: none"> <li>● <b>Australia:</b> The Australian Government issued a number of Early Warnings on closed generic applications during the last round. We continue to support existing GAC advice that any closed generic should serve a public interest goal.</li> <li>● <b>Burkina Faso:</b> Yes.</li> <li>● <b>Canada:</b> Canada supports existing GAC advice that any closed generic should serve a public interest goal.</li> <li>● <b>Denmark:</b> I support that Closed Generics only can be used if they serve a public interest goal.</li> <li>● <b>European Commission (supported by Greece):</b> In line with the GAC Beijing Communiqué (2013), the subsequent ICANN Board resolution (2015), and the incorporation in the 2012 Applicant Guidebook, exclusive registry access for a generic string should continue to be only allowed if this serves a public interest goal. Exclusive registry access should remain the exception rather than the rule. This is also consistent with article 2.9 of the existing base Registry Agreement, where the fundamental principle of registry-registrar separation is laid down through a.o. the obligation to provide registrars non-discriminatory access to registry services. There is no reason, other than for public interest, why this access should be made impossible <ul style="list-style-type: none"> <li>Applying this principle to TLDs containing generic terms is of even higher importance than for other TLDs. Second level domain names under e.g. .book, .car, .shop can be regarded as non-specific commodity names with wide arrays of use cases for registrants, as they refer to general classes of goods, services, groups, organizations or things. Vertical integration of registry (operation) and one single affiliated registrar (selling) can potentially have negative impact on competition and user choice, as it makes it easy to manipulate the market by e.g. unilaterally setting high prices for (premium) names or creating artificial scarcity.</li> <li>In the hypothetical case provided by the Working Group of the International Red Cross and the TLD .disaster there is a clear public interest goal; it should be guaranteed that websites under second level domains providing humanitarian aid or other services during calamities are genuine and affiliated to the registry.</li> </ul> </li> <li>● <b>Finland:</b> We support that Closed Generics can only be used when they are based on public interests.</li> <li>● <b>Germany:</b> Germany has concerns about "closed generics", we can only accept such TLDs if the "public interest" is fully considered.</li> <li>● <b>Iran:</b> Either of the following two options could be further explored: <ul style="list-style-type: none"> <li><i>Option 2: Allow Closed Generics but require that applicants demonstrate that the Closed Generic serves a public interest goal in the application. Potential objections process could be similar to community-based objections.</i></li> <li><i>Option 3: Allow Closed Generics but require the applicant to commit to a code of conduct that addresses the concerns expressed by those not in favor of Closed Generics. An objections process for Closed Generics could be modelled on</i></li> </ul> </li> </ul>

*community objections*

- **Italy:** Italy supports that Closed Generics can only be used for public interest. Preference for option 2 limited to applicants from to non-profit organizations. *Option 2: Allow Closed Generics but require that applicants demonstrate that the Closed Generic serves a public interest goal in the application. Potential objections process could be similar to community-based objections. Limiting the application to non-profit organisations*
- **Luxembourg:** Should the ultimate discussion turn around Option 2 and 3, we would prefer option 2 in line with Beijing GAC advice that states that such terms should serve a public interest goal.
- **Nigeria:** SubPro PDP WG has not agreed on any recommendations
- **Netherlands:** Preference for option 2 but limited to applicants from non-profit national and international organisations.
- **Spain:** Our preference is option 2, but only where the ICANN Board determined that the TLD would serve a public interest goal. Applicants should be limited to non-profit organizations.

Option 4 should not be accepted, and in case that there is no consensus between options 2 and 3, then Closed Generic should not be allowed (option 1).
- **Switzerland:** Option 4 is not an acceptable possibility for us. If no consensus on either option 2 or 3 is found, then Closed Generics should not be allowed (option 1). In principle, we would favor option 2, where closed generic applications could be allowed in line with GAC Beijing Advice only where the ICANN Board determined that the TLD would serve a public interest goal. This could be the case of a public interest function, which according to applicable law can only be performed by one single entity or if the public interest function is coordinated at the international level by a single umbrella entity. Moreover, closed generic applications should not be allowed when it leads to giving a particular operator in the market a competitive advantage over the other operators in this market. In this regard, it might be appropriate to limit as a matter of principle applicants for closed generics to non-profit entities and to provide additional contractual enforcement provisions in the relevant RA (Registry Agreement), which prohibit any action, considered as anti-competitive or as discriminatory registrations. The breach of those provisions should constitute cause for the immediate termination of the RA. Finally, we have some sympathy for the idea that the Board shall determine that a requested TLD would serve a public interest goal by a supermajority (e.g. at least 90% of sitting, non-conflicted, Board members).
- **USA:** The U.S. is mindful that the issue of closed generics has generated considerable debate and diverse views. Broadly speaking, the U.S. does not believe closed generics are inherently anti-competitive. Having said that, the U.S. would nonetheless support the retention of the advice contained in the GAC Beijing Communique. 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.
- **World Broadcasting Unions:** GAC would have to stick to its original position of 2012. Since the stalemate is originated by the refusal to define what Public Interest is, then GAC is fully entitled to insist on the ban of generic TLDs. As a compromise position, GAC could eventually agree to allow the use of generic TLD to non profit organizations that are trusted by the vast majority of the interested communities of the real world. I.e. could apply for “disaster” the UNDRR (the UN agency for disaster prevention; or the community of NGO’s recognized by the Sendai process).

<p><b>2. What would you change, and/or remove? And why?</b> Can you please provide specific wording on the language of the draft recommendation?</p>	<ul style="list-style-type: none"> <li>● <b>Burkina Faso:</b> Nothing.</li> <li>● <b>Germany:</b> Add a definition of Public Interest.</li> <li>● <b>Iran:</b> In option 3 I suggest the following amendments: <i>The applicant undertake to submit a firm commitment to diligently ,timely and fully apply a code of conduct that addresses the concerns expressed by those not in favor of Closed Generics. An objections process for Closed Generics could be modelled on community objections together with the above-mentioned firm commitment</i></li> <li>● <b>Nigeria:</b> Allow Closed Generics but require that: <ul style="list-style-type: none"> <li>○ applicants demonstrate that the Closed Generic serves a public interest goal in the application.</li> <li>○ applicants must be non-profit entities.</li> <li>○ potential objections process should be similar to community-based objections</li> </ul> </li> <li>● <b>World Broadcasting Unions:</b> In an autonomous effort to try to arrive to a solution, GAC could start to work on a “code of conduct” as mentioned in Option 3. If GAC will be able to define such a code, and it will be accepted by the other communities, this could be the base to accept generic TLDs.</li> </ul>
<p><b>3. Are there any additional comments, suggestions or recommendations you would like to make on Closed Generics?</b></p>	<ul style="list-style-type: none"> <li>● <b>Belgium:</b> As no agreement has been found yet, Belgium can only but encourage the PDP WG to continue its discussion, in particular on identifying criteria, examples and use-cases that may serve for assessing the public interest within the context of closed generics.</li> <li>● <b>Burkina Faso:</b> No.</li> <li>● <b>Canada:</b> Canada has monitored the Sub Pro WG’s various exchanges to try to reach a compromise solution on this longstanding issue. These collaborative efforts are a testament to the multistakeholder process. Canada notes the middle-ground options considered by the Sub Pro WG on Closed Generics. The code of conduct or a Board approval requirement were two accountability options put forward that could be worth exploring. Another important and complex dimension to this issue seems to be addressed in ICANN’s Org ongoing efforts with the community to develop a global public interest framework within ICANN’s mission. Canada acknowledges and encourages the ICANN Board’s participation in the Sub Pro WG in order to ensure these parallel processes are aligned.</li> <li>● <b>Caribbean Telecommunications Union:</b> Concur with current GAC advice (Beijing)</li> <li>● <b>France:</b> <p><b>General remarks:</b> France reasserts its support for the Beijing Communiqué and the idea that closed generics should serve a public interest goal.</p> <p>As has been said and written numerous times, the exceptional level of control in the hands of a closed gTLD registry operator (RO) could pose <b>risks to free speech within said gTLD</b>. The opening of closed gTLDs related to economic sectors also risks <b>distorting competition and misleading consumer choice</b>. Despite the claims by proponents of closed generics that such gTLDs would allow registries to experiment new products and services and would therefore prove beneficial to consumers, it is unclear how they would do so and, to our knowledge, convincing explanations and examples have not been proposed so far to underpin this argument.</p> <p><b>Submitting the opening of closed generics to a public interest goal obligation seems the best, and perhaps only way to prevent the risks mentioned above.</b></p> <p>We agree however that the implementation of this principle needs to be worked on. <b>We are willing to work on a</b></p> </li> </ul>

more precise definition of “public interest” with fellow GAC members and other members of the ICANN Community. **About the four proposed “options”:** Among the “options” proposed above (P. 26), **option number 2 seems the closest one to the GAC Beijing Communiqué’s advice. Option 4** thoroughly fails to meet the Communiqué’s advice and **is not acceptable in our eyes. Option 1** (which would enshrine the current situation), on the contrary, would go too far in the direction given by GAC and **should not be selected either.** Regarding **Option 3, a mere “code of conduct” seems insufficient** to guarantee that the registry will indeed serve a public interest goal. Demanding, as in **Option 2**, the idea that the applicant demonstrate beforehand, during the application phase, that they serve such a public interest goal is more promising, although **the process and criteria for evaluating this goal must be cautiously defined.**

**Other proposals:** France believes that any future recommendation by the SubPro PDP WG should reflect the Beijing Communiqué. In case of doubt or inability to reach consensus, **we believe that the ICANN Board resolution of 21<sup>st</sup> June 2015 should serve as the “default” position.** We can indeed deduce from the Board Resolution that the Board asked GNSO for “further guidance” on closed generics. However, from this we can also deduce that, until GNSO reaches or formulates such “further guidance”, the previous Board decision should remain unchanged.

Reserving closed generics to non-profit entities (see P. 27) is an interesting proposal. However, **instead of reserving them applications to closed gTLDs, we suggest that, under Option 2, a non-profit entity be automatically considered as having a public interest goal**, provided the entity and its leaders clearly **prove financial and interpersonal independence** from entities or individuals who have interest in controlling the considered closed gTLD. The “**additional contractual enforcement provisions**” presented at the end of page 27 of this document are interesting potential additions to the registry agreement. They should however be **considered only as an addition to a system like Option 2, not as a replacement**, which seems to be the aim of the text but should be made clearer.

**Point (2) should also be complemented to prevent attempts** by a closed gTLD RO **to restrict free speech.**

**France does not support the idea that the ICANN Board could be given the power to decide that a given TLD serves a public interest goal**, even by a supermajority.

- **Germany:** If we (the GAC and the whole ICANN community) can not find a consensus based definition of Public Interest then ICANN should not accept applications for Closed Generic TLDs.
- **Iran:** Further criteria need to be explored to provide together with the associated application modality to implement the referred commitment
- **Luxembourg:** We also encourage further discussions to identify criteria as to how assess public interest within closed generic TLDs.
- **Morocco:** The strings representing generic terms should be limited to serve a public interest goal.
- **Nigeria:** *Additional hypothetical examples (other than the ‘disaster’ example raised within the Working Group) should be put forward an additional example could be a ‘pandemic’ application by the WHO*
- **World Broadcasting Unions:** Is none of these compromise solutions could be accepted by the other stakeholder, better for GAC to confirm its refusal to open the pandora box of generic TLDs.