GAC Written Consultation:
Draft Recommendations of GNSO Subsequent Procedures PDP WG on future New gTLDs

1. Background:

As agreed in ICANN67 the following intersessional work will be carried out on Subsequent Procedures by the GAC:

Intersessional Work: GAC Leadership and its current "topic leads" on Subsequent Rounds of new gTLDs will coordinate intersessional work on the high-interest topics identified in the GAC Scorecard.

The aim is to:
- Coordinate potential GAC input to the GNSO Subsequent Procedures PDP WG current draft recommendations
- Prepare for ICANN68
- Work intersessionally to potentially review/update previous GAC views to submit, only if consensus, to the Final Report of the public comment proceeding for July 2020

2. First work item: Consultation with the GAC on 5 initial priority topics

As discussed during the wrap-up session at ICANN67, GAC Members are invited to provide written feedback on the 5 priority topics identified by the Sub Pro PDP WG at ICANN67 which were also the focus of GAC at that meeting.

Hence, we are seeking **GAC Members' views on the draft recommendations currently discussed by the PDP Sub Pro with a focus on the 5 high-interest topics identified so far:**

1. **GAC Advice and GAC Early Warnings**
2. **Public Commitments (PICs)**
3. **Applicant Support Program**
4. **Community Applications**
5. **Closed Generics**

The aim of this consultation is to prepare a compilation of GAC Members' views as a first step in identifying common ground and serve as preliminary input to SubPro WG.

For each of the 5 topics you will find below:
- Introduction
- GAC views to date
- Draft PDP WG Final Recommendations
- Questions for GAC members on each topic

Two Important Notices/Caveats for the Proposed Consultation:

- **GAC Members are advised that their input will be shared with the GNSO WG SubPro,** unless they do not wish so. If so, please note this when adding your input or notify GAC Support Staff (gac-staff@icann.org)
- GAC input provided from individual GAC members will clearly be stated as a compilation of views from individual GAC Members and not representing a GAC consensus position, when sharing with the PDP Sub Pro WG.

Please note: GAC members are encouraged to reply to all questions. However, GAC Members may choose to answer only some questions as they feel comfortable. dAny response is important to inform the GAC's collective thinking.

Please note: On the sections "GAC views to date" below, please note this document reflects an overview. For more detailed information please refer to the GAC Scorecard.

This written consultation for GAC Membership will be available for 3 weeks, closing on 22 April 2020. Please send your input to: gac-staff@icann.org

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Topic 1: Public Interest Commitments (PICs)

Introduction:

- PICs are a contractual mechanism between ICANN and Registries, which was created to implement GAC advice
- 2 types of PICs were created:
  - *Voluntary PICs*: voluntary commitments by applicants to transform application statements into binding contractual commitments (the case for 499 applications)
  - *Mandatory PICs*: requirements consistent with GAC Safeguard Advice in the ICANN46 Beijing Communique, either applicable to all New gTLDs or those in regulated or highly regulated sectors

Prior GAC Positions

- Adoption and implementation of the PICs **differed in many respects from GAC advice** most notably on the issue of safeguards applicable to highly regulated gTLDs (Cat. 1)
- Competition, Consumer Trust, and Consumer Choice Review Team (CCT-RT) finding that there are **difficulties with assessing the effectiveness of new gTLD consumer safeguards, particularly PICs,** due to lack of a reporting framework and associated data should be considered in policy development
- **Compliance with PICs** should be effectively monitored by ICANN, with appropriate sanctions
- **Definition, accessibility and evaluation** of applicant's PICs should be improved

Draft PDP Final Recommendations

"a. Recommendations and/or implementation guidelines

<u>*Affirmation xx (rationale 1)*</u>*: The Working Group affirms Recommendation 6 from the 2007 policy, which states: "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally accepted and internationally*

recognized principles of law. 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 the Universal Declaration of Human Rights (in particular, limitations to freedom of speech rights)."

Recommendation xx (rationale 2): Mandatory Public Interest Commitments (PICs) currently captured in Specification 11 3(a)-(d) of the Registry Agreement[1] must continue to be included in Registry Agreements for gTLDs in subsequent procedures. No additional mandatory PICs are needed at this time. Noting that Mandatory PICs were not included in the 2007 recommendations, this recommendation codifies existing practice into policy. One adjustment to the 2012 implementation is included in the following recommendation (Recommendation xx (rationale 3)).

Recommendation xx (rationale 3): Provide single-registrant TLDs with exemptions and/or waivers to mandatory PICs included in Specification 11 3(a) and Specification 11 3(b)[2].

Recommendation xx (rationale 4): ICANN must allow applicants to submit Registry Voluntary Commitments (RVCs)(previously called voluntary PICs) in subsequent rounds in their applications and/or to respond to public comments, objections, GAC Early Warnings, and/or GAC Advice. Applicants must be able to submit RVCs at any time prior to the execution of a Registry Agreement; provided, however, that all RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendation set forth in Section <mark>xx</mark> Application Changes Requests.

Recommendation xx (rationale 5): RVCs must continue to be included in the applicant's Registry Agreement. In addition, for subsequent rounds all provisions of the PICDRP and

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[1] The relevant sections are as follows:
1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a "Registry Related Party"), to:
     a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
     b. register domain names in its own right, except for names registered through an ICANN accredited registrar; provided, however, that Registry Operator may (a) reserve names from registration pursuant to Section 2.6 of the Agreement and (b) may withhold from registration or allocate to Registry Operator up to one hundred (100) names pursuant to Section 3.2 of Specification 5;
     c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running"); or
     d. allow any Affiliated registrar to disclose Personal Data about registrants to Registry Operator or any Registry Related Party, except as reasonably necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions.
For full detail, see the 31 June 2017 Registry Agreement here:
https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.pdf
[2] For the sake of clarity, this recommendation and the exemption does NOT apply to Specification 11 3(c) or 11 3(d).

associated processes shall equally apply to RVCs.

Recommendation xx (rationale 6): At the time an RVC is made, the applicant must set forth whether such commitment is limited in time, duration and/or scope. Further, an Applicant must include its reasons and purposes for making such RVCs such that the commitments can adequately be considered by any entity or panel (e.g., a party providing a relevant public comment (if applicable), an existing objector (if applicable) and/or the GAC (if the RVC was in response to a GAC Early Warning or GAC Advice)) to understand if the RVC addresses the underlying concern(s).

Recommendation xx (rationale 7): In support of the principle of transparency, RVCs must be readily accessible and presented in a manner that is usable, as further described in the Implementation Guidance below.

> *Implementation Guidance xx (rationale 7): The Working Group notes that the CCT-RT's recommendation 25 has recommended developing an "organized, searchable online database" for RVCs. The Working Group agrees and believes ICANN org should evaluate this recommendation in the implementation phase and determine the best method for ensuring that RVCs are widely accessible.*

Recommendation xx (rationale 8): The Working Group acknowledges ongoing important work in the community on the topic of DNS abuse and believes a holistic solution is needed to account for DNS abuse in all gTLDs as opposed to dealing with these recommendations with respect to only the introduction of subsequent new gTLDs. In addition, recommending new requirements that would only apply to the new gTLDs added to the root in subsequent rounds could result in singling out those new gTLDs for disparate treatment in contravention of the ICANN Bylaws. Therefore, this PDP Working Group is not making any recommendations with respect to mitigating domain name abuse other than stating that any such future effort must apply to both existing and new gTLDs (and potentially ccTLDs)
The Working Group has reached this conclusion after duly considering the DNS Abuse related CCT-RT recommendations, which includes 14,[3] 15,[4] and 16[5]. Note however that at the time of

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[3] CCT-RT Recommendation 14 states: "Consider directing ICANN org, in its discussions with registries, to negotiate amendments to existing Registry Agreements, or in consideration of new Registry Agreements associated with subsequent rounds of new gTLDs, to include provisions in the agreements to provide incentives, including financial incentives, for registries, especially open registries, to adopt proactive anti-abuse measures."
[4] CCT-RT Recommendation 15 states: "ICANN Org should, in its discussions with registrars and registries, negotiate amendments to the Registrar Accreditation Agreement and Registry Agreements to include provisions aimed at preventing systemic use of specific registrars or registries for DNS Security Abuse. With a view to implementing this recommendation as early as possible, and provided this can be done, then this could be brought into effect by a contractual amendment through the bilateral review of the Agreements. In particular, ICANN should establish thresholds of abuse at which compliance inquiries are automatically triggered, with a higher threshold at which registrars and registries are presumed to be in default of their agreements. If the community determines that ICANN org itself is ill-suited or unable to enforce such provisions, a DNS Abuse Dispute Resolution Policy (DADRP) should be considered as an additional means to enforce policies and deter against DNS Security Abuse. Furthermore, defining and identifying DNS Security Abuse is inherently complex and would benefit from analysis by the community, and thus we specifically recommend that the ICANN Board prioritize and support community work in this area to

the drafting of this report, the ICANN Board only passed through a portion of recommendation 16 to this Working Group (amongst several other community groups) and recommendations 14 and 15 remain in a "Pending" status[6]."

Questions for GAC Members on PICs:

[GAC INPUT SOUGHT IN THE TABLE BELOW VIA SUGGESTED TEXT WORD DOCUMENT]

Questions:	Answers from GAC Members:
1. In light of prior GAC positions on this matter, do you agree with the SubPro PDP WG draft recommendations? If not, why?	
2. What would you change, and/or remove? And why? Can you please provide specific wording on the language of the draft recommendation?	
3. Are there any additional comments, suggestions or recommendations you would like to make on PICs?	

enhance safeguards and trust due to the negative impact of DNS Security Abuse on consumers and other users of the Internet."

[5] CCT-RT Recommendation 16 states: "Further study the relationship between specific registry operators, registrars and technical DNS abuse by commissioning ongoing data collection, including but not limited to, ICANN Domain Abuse Activity Reporting (DAAR) initiatives. For transparency purposes, this information should be regularly published, ideally quarterly and no less than annually, in order to be able to identify registries and registrars that need to come under greater scrutiny, investigation, and potential enforcement action by ICANN org. Upon identifying abuse phenomena, ICANN should put in place an action plan to respond to such studies, remediate problems identified, and define future ongoing data collection."

[6] See relevant Board scorecard here:
https://www.icann.org/en/system/files/files/resolutions-final-cct-recs-scorecard-01mar19-en.pdf

Topic 2: GAC Early Warnings and GAC Advice

Introduction:

The 2012 Applicant Guidebook included, in addition to other ICANN mechanisms, **two mechanisms for GAC members to express public policy concerns on specific gTLD applications.**

- **GAC Early Warning**
    - Individual or collective notice from GAC members to applicants when an application was seen as potentially sensitive or problematic. Not a formal objection.
    - Does not lead to a process that can result in rejection of application
    - Raises likelihood for application to be subject of GAC Advice or of a formal objection later

- **GAC Advice on New gTLDs,** issued to the ICANN Board, could take 3 forms:
    I.The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.
    II. The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.
    III.The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.

Prior GAC Positions:

- GAC Early Warning and GAC Advice were a useful mechanism to identify applications that raise public policy concerns

- GAC Early Warning and GAC Advice should be an integral part of any future rounds.

- The GAC would welcome the opportunity to discuss options to increase the transparency and fairness of these arrangements, including:

  - providing a rationale for objections and

  - giving applicant subject to Early Warnings the opportunity for direct dialogue with the GAC

- Current concerns with PDP WG consideration to remove, in future editions of the Applicant Guidebook, language included in the 2012 AGB section 3.1 that GAC Advice "*will create a strong presumption for the ICANN Board that the application should not be approved.*"

Draft PDP Final Recommendations

"a. Recommendations and/or implementation guidelines

Affirmation xx (rationale 0): Subject to the recommendations below, the WG supports the 2012 implementation of GAC Early Warnings and GAC Advice. Section 1.1.2.4 of the 2012 Applicant Guidebook describes the Early Warning mechanism:"Concurrent with the [public] comment period, ICANN's Governmental Advisory Committee (GAC) may issue a GAC Early Warning notice concerning an application. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments."

> *Implementation Guidance xx (rationale 2): To the extent that the GAC provides Advice in the future on categories of TLDs, the Working Group urges the GAC to provide this Advice, and the Board to take any corresponding action, prior to the finalization of the next Applicant Guidebook. Once the application period has begun, the Working Group urges the GAC to limit Advice to individual applications only, based on the merits and details of the application for a particular string, not [only] on groups or classes of applications or string types.*

Recommendation xx (rationale 1): As stated in the ICANN Bylaws, GAC Advice must include a clearly articulated rationale.[7] *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*

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[7] Section 12.3. PROCEDURES of the ICANN Bylaws states: ". . .each Advisory Committee shall ensure that the advice provided to the Board by such Advisory Committee is communicated in a clear and unambiguous written statement, including the rationale for such advice." See https://www.icann.org/resources/pages/governance/bylaws-en.

policy issues."[8] To the extent that the rationale for GAC Advice is based on public policy considerations, well-founded merits-based public policy reasons must be articulated.[9]

Recommendation xx (rationale 3): Section 3.1 of the 2012 Applicant Guidebook states that GAC Advice "will create a strong presumption for the ICANN Board that the application should not be approved." Noting that this language does not have a basis in the current version of the ICANN Bylaws, the Working Group recommends omitting this language in future versions of the Applicant Guidebook to bring the Applicant Guidebook in line with the Bylaws language.[10] The Working Group further notes that the language may have the unintended consequence of hampering the ability for applicants, ICANN org, and the GAC to mitigate concerns and reach a mutually acceptable solution as described in the relevant Bylaws language, which could allow an application to proceed.

Recommendation xx (rationale 4): The Working Group recommends that GAC Early Warnings are issued during a period that is concurrent with the application comment period, as described in the 2012 Applicant Guidebook.[11] To the extent that there is a longer period given for the GAC to provide Early Warnings (above and beyond the application comment period), the Applicant Guidebook must define a specific time period during which GAC Early Warnings can be issued.

Recommendation xx (rationale 5): Government(s) issuing Early Warning(s) must include a written explanation describing why the Early Warning was submitted and how the applicant may address the GAC member's concerns.

Recommendation xx (rationale 6): Applicants must be allowed to change the application, including the addition or modification of Registry Voluntary Commitments (RVCs, formerly Voluntary PICs), to address GAC Early Warnings and/or GAC Advice. Relevant GAC members are strongly encouraged to make themselves available during a specified period of time period

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[8] Section 12.2(a)(i) of the ICANN Bylaws states: "The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly 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." See https://www.icann.org/resources/pages/governance/bylaws-en.

[9] See the Amazon IRP Final Declaration, which states: "The Panel recommends that the Board of ICANN promptly re-evaluate Amazon's applications in light of the Panel's declarations above. In its re-evaluation of the applications, the Board should make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications." See icann.org/en/system/files/files/irp-amazon-final-declaration-11jul17-en.pdf

[10] Section 12.2 (a)(x) of the ICANN Bylaws states: "The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee advice, it shall so inform the Governmental Advisory Committee and state the reasons why it decided not to follow that advice. 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."

[11] See section 1.1.2.4 of the 2012 Applicant Guidebook.

*for direct dialogue*¹² *with applicants impacted by GAC Early Warnings or GAC Advice to determine if a mutually acceptable solution can be found."*

Questions for GAC Members on GAC Early Warnings and GAC Advice:

[GAC INPUT SOUGHT IN THE TABLE BELOW VIA SUGGESTED TEXT WORD DOCUMENT]

Questions:	Answers from GAC Members:
1. In light of prior GAC positions on this matter, do you agree with the SubPro PDP WG draft recommendations? If not, why?	
2. What would you change, and/or remove? And why? Can you please provide specific wording on the language of the draft recommendation?	
3. Are there any additional comments, suggestions or recommendations you would like to make on GAC Early Warnings/GAC Advice?	

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¹² While face-to-face dialogue is encouraged, the Working Group recognizes that this may not be feasible in all cases. Dialogue through remote channels may also support the productive exchange of ideas.

Topic 3: Applicant Support

Introduction:

- ICANN Community-based initiative, led by GNSO and At-Large
- Aimed to increase underserved regions' access to New gTLDs application
- Qualified applicants could benefit from pro bono services and reduced applications fees
- In practice: The program received 3 applications; only 1 of which qualified. Some argue there was insufficient information about the program.

Prior GAC Positions:

- **Expand and improve outreach** to targeted regions in the Global South
- ICANN org should i**dentify which regions are considered as 'underserved' and 'underrepresented**' and in what context are they defined as such.
- ICANN org should **provide regional targeted capacity building efforts** to all ICANN community stakeholders [...] in a timely manner to allow stakeholders to be prepared for the subsequent round, and better promote competition, consumer choice and consumer trust.
- **Clear measurable goals and indicators** for applications from the Global South should be established, linked to ICANN strategic objectives,
- **ICANN to coordinate** pro bono assistance
- Members from underserved regions should be offered **additional support** due to external issues which should not prevent entities in those regions from applying

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"a. Recommendations and/or implementation guidelines

Affirmation xx with modification (rationale 1): With the addition of the text included in italics, the Working Group affirms Implementation Guideline B from 2007, which states: "Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants that qualify for applicant support."

Recommendation xx (rationale 2): *Implementation Guideline N from 2007 states: "ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed." The Working Group recommends that as was the case in the 2012 round, fee reduction must be available for select applicants who meet evaluation criteria through the Applicant Support Program. In addition, the Working Group also recommends that ICANN continue to facilitate non-financial assistance including the provision of pro-bono assistance to applicants in need.*[13] *It believes that the high-level goals and eligibility requirements for the Applicant Support Program remain appropriate. The Working Group notes, however, that the Applicant Support Program was not limited to least developed countries in the 2012 round and believes that the Program should continue to be open to applicants regardless of their location as long as they meet other program criteria. Therefore, the Working Group recommends the following language in place of Implementation Guideline N: "ICANN must retain the Applicant Support Program, which includes fee reduction for eligible applicants and facilitate the provision of pro-bono non-financial assistance to applicants in need." The revised language updates the original Implementation Guideline to:*

- *acknowledge that the Applicant Support Program was in place in the 2012 round*
- *include reference to pro-bono non-financial assistance in addition to fee reduction*
- *eliminate the reference to economies classified by the UN as least developed, as the Program is not limited to these applicants*

Recommendation xx (rationale 3): *The Working Group recommends expanding the scope of financial support provided to Applicant Support Program beneficiaries beyond the application fee to also cover costs such as application writing fees, attorney fees related to the application process, and [ongoing ICANN registry-level fees].*[14]

Recommendation xx (rationale 4): *The Working Group recommends that ICANN improve outreach, awareness-raising, application evaluation, and program evaluation elements of the Applicant Support Program, as proposed in the Implementation Guidance below.*

> *Implementation Guidance xx (rationale 4)*: *Outreach and awareness-raising activities should be delivered well in advance of the application window opening, as longer lead times help to promote more widespread knowledge about the program. [Such Outreach and education should commence no later than the start of the Communication Period.*[15]*]*

> *Implementation Guidance xx (rationale 4)*: *A dedicated Implementation Review Team should be established and charged with developing implementation elements of the Applicant Support Program. In conducting its work, the Implementation Review Team*

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[13] In the 2012 round, the pro-bono assistance program was implemented through the Applicant Support Directory: https://newgtlds.icann.org/en/applicants/candidate-support/non-financial-support
[14] These are the fees specified in Article 6 of the Registry Agreement.
[15] For additional recommendations regarding the communications period, please see section xx Communications.

should revisit the 2011 Final Report of the Joint Applicant Support Working Group[16] as well as the 2012 implementation of the Applicant Support program.

Implementation Guidance xx (rationale 4): Outreach efforts should not only target the Global South, but also "middle applicants," which are located in struggling regions that are further along in their development compared to underserved or underdeveloped regions. In addition, the evaluation criteria for Applicant Support must treat "middle applicants" similar to those currently set forth in Criteria #1, Section 4 (Operation in a developing economy) of the Financial Assistance Handbook.[17]

Implementation Guidance xx (rationale 4): The Working Group supports recommendation 6.1.b in the Program Implementation Review Report, which states: "6.1.b: Consider researching globally recognized procedures that could be adapted for the implementation of the Applicant Support Program.[18]

Implementation Guidance xx (rationale 4): In implementing the Applicant Support Program for subsequent rounds, the dedicated Implementation Review Team should draw on experts with relevant knowledge, including from the targeted regions, to develop appropriate program elements related to outreach, education, and application evaluation. Regional experts may be particularly helpful in providing insight on the evaluation of business plans from different parts of the world.

Implementation Guidance xx (rationale 4): The dedicated Implementation Review Team [19] should seek advice from experts in the field to develop an appropriate framework for analysis of metrics to evaluate the success of the Applicant Support Program. The Working Group identified a non-exhaustive list of potential data points to support further discussion in the implementation phase. The Working Group anticipates that the dedicated IRT will consider how these and other potential metrics may be prioritized:
- *Awareness and Education:*
  - *number of outreach events and follow up communications with potential applicants*

[16] http://dakar42.icann.org/meetings/dakar2011/presentation-jas-final-report-13sep11-en.pdf

[17] See https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf , pg 12.

[18] The detailed description of this recommendation in the PIRR states: "In regards to the development of criteria and processes, the community may wish to research globally recognized procedures that could be adapted for the implementation of a financial assistance program (e.g., World Bank programs). Additional [research] may also be undertaken to better understand the needs of the target market and their obstacles to becoming registry operators (e.g., infrastructure, training). This information would help to design a program to better meet the needs of the target market."

[19] Although the Working Group discussed a separate IRT, this could also be achieved through a dedicated Work Stream or Track of the overall New gTLDs Implementation Review Team. The important concept here is that there is a dedicated team of knowledgeable and diverse experts in this niche area that understand the unique nature of financial and non-financial support for those in need.

- *level of awareness about the New gTLD Program / Applicant Support Program*
- *level of interest expressed/number that considered applying*
- *number of applicants*
- *diversity of the applicant pool (including geographic diversity and IDNs)*
- *number of service providers offering pro-bono assistance*
- *Approval Rate:*
  - *number of approved applicants*
- *Success of Launched gTLD:*
  - *The number of registrants of domain names registered in "regional" TLDs (e.g., TLDs focusing mainly on a local, limited market), keeping in mind that there are other barriers for registrants in developing countries to access domain names, such as inability to access online payment services and a lack of local registrars.*
  - *The number of domain names registered in "regional" new gTLDs compared to the number of Internet users in such regions. These numbers could be compared with the same numbers for Internet users and "regional" new gTLDs in developed regions such as Europe and North America.*

Recommendation xx (rationale 5): The Working Group supports recommendation 6.1.a in the Program Implementation Review Report, which states: "Consider leveraging the same procedural practices used for other panels, including the publication of process documents and documentation of rationale."[20]

Recommendation xx (rationale 6): ICANN Org must develop a plan for funding the Applicant Support Program, as proposed in the Implementation Guidelines below.

Implementation Guideline xx (rationale 6): ICANN Org should evaluate whether it can provide funds (as they did in 2012) or whether additional funding is needed for the Applicant Support Program in subsequent rounds.[21]

Implementation Guideline xx (rationale 6): ICANN Org should seek funding partners to help financially support the Applicant Support Program, as appropriate.

Recommendation xx (rationale 7): Unless the SARP reasonably believes there was willful gaming, Applicants who are not awarded Applicant Support (whether "Qualified" or "Disqualified

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[20] The detailed description of this recommendation in the PIRR states: "Regarding execution of the program, in this round, the SARP was an independent panel that defined its own processes, procedures, and final reports. The SARP's work was performed earlier than the other New gTLD Program evaluation panels, and based on lessons learned from the implementation of other panels, ICANN should consider whether additional guidance should be provided to the SARP regarding publication of their processes, final report format, and documentation of rationale."
[21] See section xx Application Fees for Implementation Guidance regarding use of excess application fees resulting from establishment of a fee floor to fund the Applicant Support Program and other New gTLD Program elements.

[22]*") of the Applicant Support Program must have the option to to pay the balance of the full standard application fee and transfer to the standard application process. Applicants must be provided with a limited period of time to provide any additional information that would be necessary to convert the application into one that would meet the standard criteria (e.g., showing how the applicant for financial and other support could acquire the requisite financial backing and other support services to pass the applicable evaluation criteria). That said, this limited period of time should not cause unreasonable delay to the other elements of the New gTLD Program or to any other applicants for a string in which its application may be in a contention set.*

<u>Recommendation xx (rationale 8)</u>: The Financial Assistance Handbook[23] or its successor, subject to the changes included in the above recommendations, must be incorporated into the Applicant Guidebook for subsequent rounds."

Questions for GAC Members on Applicant Support:

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Questions:	Answers from GAC Members:
1. In light of prior GAC positions on this matter, do you agree with the SubPro PDP WG draft recommendations? If not, why?	
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[22] See https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf.
[23] The Financial Assistance Handbook from the 2012 round is available at: https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf

Topic 4: Community Applications

Introduction:

- A Community-based New gTLD is intended for use by community groups interpreted broadly
  - For example: an economic sector, a cultural community, or a linguistic community
  - 84 application self identified as such in the 2012 round
- Given priority in case of multiple applicants for a given string if they could meet the high bar of the Community Priority Evaluation (CPE) process.
  - 25 applicants elected to go through CPE in the 2012 round
  - 5 applicants passed the CPE test

Prior GAC Positions:

- The GAC noted the importance of **making the CPE more transparent in future rounds**, in support of several stakeholders' views on this matter.
- The GAC stressed that **where a community which is impacted by a new gTLD application has expressed a collective and clear opinion**, that opinion **should be duly taken into account** as part of the application, regardless of whether those communities have utilised the ICANN formal community process
- The GAC proposed **an appeal mechanism** for community applications.
- A study by the Council of Europe on [Applications to ICANN for Community-based New Generic Top Level Domains (gTLDs): Opportunities and challenges from a human rights perspective](#) should be considered

Draft PDP Final Recommendations

"a. Recommendations and/or implementation guidelines

<u>Affirmation xx (rationale 1)</u>: The Working Group affirms the following concept derived from Implementation Guideline F from 2007: "If there is contention for strings...a claim to support a community by one party will be a reason to award priority to that application."

<u>Affirmation xx (rationale 1)</u>: The Working Group affirms Implementation Guideline H from 2007, which states: "External dispute providers will give decisions on complaints."

<u>Recommendation xx (rationale 2)</u>: The Community Priority Evaluation (CPE) process must be as efficient, transparent and predictable as possible.

<u>Implementation Guideline xx (rationale 2)</u>: In service of transparency, if the evaluation panel relied on research for the decision it should be cited and a link to the information provided.

<u>Implementation Guideline xx (rationale 2)</u>: To support predictability, the CPE guidelines should be considered a part of the policy adopted by the Working Group.

<u>Implementation Guideline xx (rationale 3)</u>: ICANN org should examine ways to make the CPE process more efficient in terms of costs and timing.

<u>Recommendation xx (rationale 2)</u>: All Community Priority Evaluation procedures (including any supplemental dispute provider rules) must be developed and published before the opening of the application submission period and must be readily and publicly available.

<u>Recommendation xx (rationale 4)</u>: ICANN must consider ways to improve evaluators' ability to gather information about an application.

Implementation Guidance xx (rationale 4): Evaluators should continue to be able to send clarifying questions to CPE applicants but further, should be able to engage in written dialogue with them as well.

Implementation Guidance xx (rationale 4): Evaluators should be able to issue clarifying questions, or utilize similar methods to address potential issues, to those who submit letters of opposition to community-based applications."

Questions for GAC Members on Community Applications:

[GAC INPUT SOUGHT IN THE TABLE BELOW VIA SUGGESTED TEXT WORD DOCUMENT]

Questions:	Answers from GAC Members:
1. In light of prior GAC positions on this matter, do you agree with the SubPro PDP WG draft recommendations? If not, why?	
2. What would you change, and/or remove? And why? Can you please provide specific wording on the language of the draft recommendation?	
3. Are there any additional comments, suggestions or recommendations you would like to make on Community Applications?	

Topic 5: Closed Generics

Introduction:

Closed generics are a gTLD:

- that corresponds to a 'generic string' (such as .BLOG, .BOOK, .BEAUTY)
- which limits 2nd level registrations to a single person or entity and/or their affiliates

Policy regime and relevant advice/decisions (for the 2012 round of New gTLDs):

- No requirements on closed generics in the 2007 GNSO policy and 2012 AGB
- GAC Beijing Communiqué (2013): "For strings representing generic terms, exclusive registry access should serve a public interest goal" (aka "Category 2.2 Safeguard Advice")
- ICANN Board resolution (2015): applicants proposing to provide exclusive registry access for a generic string must elect to either:

  > (1) submit a change request to no longer be an exclusive generic TLD,
  > (2) maintain their business plan and defer the application to a future round, or
  > (3) withdraw the application for a refund.

ICANN Board requested consideration of this issue in policy work on subsequent rounds

GAC Views to Date:

The Category 2.2 Safeguard Advice in the GAC Beijing Communiqué (11 April 2013) remains the GAC's reference position: *"For strings representing generic terms, exclusive registry access should serve a public interest goal".*

Draft PDP Final Recommendations:

"a. Recommendations and/or implementation guidelines

No Agreement: The Working Group notes that in the 2012 round of the New gTLD Program, a decision was made by the ICANN Board to effectively ban exclusive use generic applications. It is the understanding of the Working Group that the ICANN Board

intended that its decision to effectively ban Closed Generics applied only to the 2012 round and that it wanted the GNSO to engage in policy discussion regarding the treatment of such strings in subsequent rounds. Although the Working Group has had numerous discussions about this topic, and received extensive comments from the community, the Working Group was not able to agree as to how to treat these applications in subsequent rounds."

Please note: since there is no agreement within SubPDP PDP WG on Closed Generics, for further information and background, rationale and deliberations are included below from the PDP WG documentation:

b. Deliberations and rationale for recommendations and/or implementation guidelines

"The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013.[24] In the Beijing Communiqué, the GAC advised the Board that, "For strings representing generic terms, exclusive registry access should serve a public interest goal" (the "Category 2.2 Safeguard Advice"). The GAC identified a non-exhaustive list of strings in the current round of the New gTLD Program that it considers to be generic terms where the applicant is proposing to provide exclusive registry access.

On 21 June 2015, the ICANN Board passed a resolution that effectively banned Exclusive Generic / Closed Generic TLDs in the 2012 round. In addition, the Board requested that the GNSO consider this topic in future policy development work for subsequent procedures.[25] The GNSO Council has in turn charged the Working Group with analyzing the impact of Closed Generics and considering future policy.

Although the Working Group generally agrees that some form of policy guidance should be drafted on this topic, at this stage, however, there continue to be different and strongly-held views on the specific policy goals.

The Working Group discussed that for most subjects within the PDP's remit, the 2012 implementation is considered the default going forward unless the Working Group agrees that a change to policy, implementation, or both is appropriate. In this particular case, however, the text of the Board's resolution left unclear what the "default" should be in subsequent procedures. Specifically, the Board stated that it was making a decision for the 2012 round but requesting input from the GNSO, through policy development work, about how to handle this issue going forward. The Working Group further noted that the Applicant Guidebook did not provide any guidance on the issue of Closed Generics, either in allowing or forbidding them. The Working Group discussed the possible scenario that if the Working Group were unable to put forward recommendations on this topic, it may be up to the Board to decide how to proceed for

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[24] See https://gac.icann.org/contentMigrated/icann46-beijing-communique
[25] https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a

subsequent procedures. However, the Working Group agreed that this was not an ideal outcome both from the perspective that it is the GNSO and this PDP's remit to develop policy on this topic, but also as an acknowledgement that the Board would be put in a challenging situation in this scenario.

Four options have been discussed and were put out for public comment in the Initial Report. As the Working Group developed and deliberated on these options, it took into consideration GAC Advice included in the Beijing Communique on Category 2.2 Safeguards, and specifically the Advice that "For strings representing generic terms, exclusive registry access should serve a public interest goal."[26] The Working Group was careful to note that the implementation in 2012, of effectively banning closed generics, was not necessarily representative of the GAC Advice, which appeared to envision a scenario where an exclusive registry (i.e., closed generic) could be acceptable. Therefore, four options were considered by the Working Group:

- *Option 1: Formalize GNSO policy, making it consistent with the existing base Registry Agreement that Closed Generics should not be allowed.*
- *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.*
- *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 community objections.*
- *Option 4: Allow Closed Generics with no additional conditions. Establish an objections process modelled on community objections.*

Divergent views have been expressed on these options within the Working Group and in the responses received through public comment. In particular, there are some that believe that closed generics should not be allowed under any circumstances, and others believe that Option 4 is the only acceptable solution, both of which effectively means that options 2 and 3, or any other proposed solution that seeks to either mitigate perceived harms or impose conditions on the use of Closed Generics, are therefore unacceptable.

Nevertheless, the Working Group considered if there may be new ways to think about the Closed Generic issue and seek a compromise position, given the diverging views on the topic. Members of the Working Group who support implementing closed generics in some form sought to assuage the concerns of those that favor banning closed generics by raising the following questions for discussion:
- *For those who raised concerns about Closed Generics in the 2012 round and those who continue to raise concerns, is there a way to allow Closed Generics while addressing the concerns raised, for example through some formulation of the suggested measures included in Option 2 or 3?*

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[26] https://gac.icann.org/contentMigrated/icann46-beijing-communique

- *For those who support Closed Generics without restrictions, are there additional rules or conditions that could be acceptable if these rules or conditions enabled Closed Generics to be available, for example through some formulation of the suggested measures included in Option 2 or 3?*

The Working Group was unable to agree on either of the above options, , but noted that if the Working Group were to recommend Option 2 or 3, additional details would need to be discussed:
- *Option 2: Against what criteria would applications be evaluated to determine if they serve a public interest goal? How is public interest defined in this regard?*
- *Option 3: What provisions might be included in a code of conduct that could address the concerns raised about Closed Generics? Are there objective criteria that could be used to determine whether a particular application would serve the public interest?*

The Working Group began to consider additional new proposals put forward by Working Group members regarding treatment of closed generics in subsequent rounds that most closely related to Option 2.
- *Allow closed generic applications in line with GAC Advice only where the ICANN Board determined that the TLD would serve a public interest goal. Some proposed that the Board could only do this if the Board approved the application by a Supermajority for example at least 90% of sitting, non-conflicted, Board members) that the TLD would serve a public interest goal.*
  - *Working Group members expressed different perspectives on whether the decision by the Board should be appealable through the ICANN Reconsideration or IRP processes or whether it should be considered final.*
  - *One possibility to reduce the number of potential applications would be to limit applicants for closed generics to non-profit entities. This limitation was proposed because it offers a reasonable way to restrict the applicant pool that is aligned with the objective of serving the public interest.*
  - *An additional supplemental proposal suggested additional contractual enforcement provisions in the relevant RA for a closed generic TLD that is a generic word, such terms and conditions: (1) to be derived from the applicant's submission on the use of the closed generic TLD as being in the public interest; (2) which prohibit any action considered as anti-competitive (eg. discriminatory registration policies in favour of certain parties or against competitors in the applicable industry); (3) which govern any dealings on the disposal and/or future use of the closed TLDs - that (1) and (2) must be adhered to at all times and by any party which operates or acquires the rights under the RA; and (4) to stipulate that launching for SLD registration for the closed generic TLD by the (first) RO must take place within 2 years of signing the RA.*
    The breach of one or more of which will constitute cause for termination of the RA.

A hypothetical example was raised within the Working Group for a .disaster application by the International Red Cross where the applicant proposed a closed TLD to only be used by them in connection with disaster relief efforts around the world (eg. hurricainesandy.disaster). Users would know, for example, that uses of that domain name were sponsored by the official disaster recovery efforts in an effort to reduce fraudulent charitable solicitations. One could argue that it is more in the public interest for that TLD to be used in this manner as opposed to requiring the TLD to be open for sale by registrars in an unrestricted manner.

One Working Group member proposed a series of additional use cases for potential closed generic TLDs.[27] The Working Group member encouraged the Working Group to develop creative solutions to solve the needs raised in these use cases."

Questions for GAC Members on Closed Generics:

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[27] https://mm.icann.org/pipermail/gnso-newgtld-wg/2020-February/002544.html