



# Joint ALAC & GAC Meeting

Wednesday, 21 October 2020 07:00 UTC

Topic: Subsequent Procedures

# Status of Subsequent Procedures PDP

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## Recent & Onward Developments

- Public comment proceedings on Draft Final Report concluded 30 September 2020
- Subsequent Procedures PDP WG now reviewing public comments received
- Final Report expected to be completed at year end 2020

## Identifying Collaborative Forward Action

Comparative analysis summation

- Of ***selected*** public comments /positions from ALAC, GAC, ICANN Board, ICANN Org
- In respect of ***selected topics***:
  - Registry Commitments & Enforceability**
  - DNS Abuse Mitigation**
  - Application Support and Communications (Outreach)**
  - Community Applications & Community Priority Evaluation (CPE)**
  - Auctions & Private Resolutions of Contention Sets**
  - Closed Generics (CGs) aka “Exclusive Generics”**

# Comparative Analysis Summary

## □ Registry Commitments & Enforceability (Contractual Compliance & DRPs)

### ALAC

#### 1. PICs and RVCs enforceability:

- Contractual compliance: what standard and thresholds are used?
- PICDRP and RRDRP: truly accessible? Since awareness, trigger, usability effected by Contractual Compliance

2. Support adoption of Category 1 Safeguards framework by NGPC

#### 4. PICDRP and RRDRP:

- ICANN org to conduct more, periodic outreach and promotional campaigns to increase public awareness

### GAC

#### 1. PICs and RVCs enforceability:

- Clearly expressed contractual obligations
- Consequences for failure to meet obligations

2. Recognizes affirmation of Category 1 Safeguards framework by NGPC

#### 3. Adoption of Category 2 Safeguards for highly-regulated sectors

#### 4. PICDRP:

- PICDRP must be clarified and improved in order for PICs to become effective and enforceable

### ICANN Board

#### 1. PICs and RVCs enforceability re: Bylaws s. 1.1(d)(ii)(A)(1) and (2)

- How to utilize PICs and RVCs without the need for ICANN to assess and pass judgment on content?
  - PICs, String Similarity, Community TLDs commitments
- How to frame “public interest” in context of a PIC and PICDRP, to ensure objective enforceability lies within ICANN’s mission?

#### 4. PICDRP:

- Need problem statements detailing any concrete deficiencies

### ICANN org

#### 1. RVCs:

- Who will review submitted RVCs?
- How will review be conducted?
- Cut-off for accepting changes to prevent gaming?
- Meant to subsist on contract renewal / TLD assignment?
- Can be modified or removed in future?

#### 2. Category 1 Safeguards framework by NGPC

- How to address community disagreement over safeguards per Spec 11.3 (a) obligations?

#### 4. PICDRP and RRDRP:

- What should be made “clearer, more detailed, and better-defined?”

# Comparative Analysis Summary

## □ DNS Abuse Mitigation

### ALAC

#### 1. Holistic approach:

- Agree in principle but not in practice - ought to have recommendations to continuously improve DNS Abuse mitigation, to go into Base RA

#### 2. CCT-RT Recommendations:

- Must be implemented before beginning next round

### GAC

#### 1. Holistic approach:

- Notes holistic approach but continues to harbour serious concerns on absence of policy recommendations
- Expects swift action from GNSO Council in triggering such holistic effort

#### 2. CCT-RT Recommendations:

- Important to implement before beginning next round but exclude ccTLDs

### ICANN Board

#### 1. Holistic approach:

- Board Action on Final CCT Recommendations: (1 Mar 2019)  
<https://www.icann.org/en/system/files/files/resolutions-final-cct-recs-scorecard-01mar19-en.pdf>

### ICANN org

#### 1. Holistic approach:

- Intends to engage with community to clarify meaning and scope of obligations from recommended approach to seek a holistic solution on DNS abuse mitigation

# Comparative Analysis Summary

## □ Application Support & Communications (Outreach)

### ALAC

#### 1. In general:

- Recs and IGs don't go far enough to improve ASP or don't provide enough policy guidance for IRT

#### 2. Deficiencies / Lacking:

- Criteria for service to beneficiary region/ community
- Explicit business model education (different biz case studies)
- Source of funds unclear
- Details on Auction bid credit
- Prevention of gaming
- Metrics

#### 3. Reduction / Elimination of Ongoing Registry Fees:

- Yes

#### 4. Outreach

- To be done early, target correct beneficiary regions, with help of At-Large network

### GAC

#### 1. In general:

- Generally support final recommendations to extend reach to include "middle applicant", scope of \$ support to cover application costs eg application writing fees

#### 2. Deficiencies / Lacking:

- Community-based applicants should be eligible to apply
- ASP should include a support system to guide new applicants
- Meaningful evaluation to assess success

#### 3. Reduction / Elimination of Ongoing Registry Fees:

- Yes, at least in part

#### 4. Outreach

- Primarily target underdeveloped regions, separate activities to target "middle applicants"

### ICANN Board

#### 1. In general:

- Expansion of AS to affirmative payments of costs beyond application fees could raise fiduciary concerns for the Board – should be well scoped by preventing possibility of inappropriate use of resources

### ICANN org

#### 5. Implementation Guidance

- Can capture proposed fees (eg application writing fees) as part of the pro bono assistance program?
- Criteria for a "middle applicant" and "struggling regions"?
- RE: bid credit in auctions, is AS recipient to pay a specified amount if succeed in bidding (any threshold or %s)? How to prevent gaming?
- RE: AS received, what happens if merger / acquisition during prohibition period?

# Comparative Analysis Summary

## □ Community Applications & Community Priority Evaluation (CPE)

### ALAC

#### 1. In general:

- Recs are too high level, insufficient details to address well-known deficiencies of CPE

#### 2. Lacking major reform of CPE process, criteria, guidelines:

- More community participation in CPE provider engagement
- Changes to CPE process – COI challenge mechanism, no supp. call for doc. support / opposition, limited appeal mechanism
- Changes to CPE criteria:
  - Broader, more flexible “community” - avoid bias towards economic-driven groupings
  - Independence is scoring of Criteria, sub-criteria
  - Flexibility, clarity in Criteria, sub-criteria appl.
  - No imbalance in support vs opposition
  - Lower threshold to prevail
- More awareness on use of PICDRP and RRDRP

### GAC

#### 1. In general:

- Generally support final recommendations;
  - Evaluators to have necessary expertise in communities
  - For greater consistency, appeals mechanism
  - For independent research by evaluator, dialogue

#### 2. Lacks / need:

- Consideration for non-profit community-based applications
- Clarification for “community” and measures to ensure more grassroots participation and expertise in evaluation panels – recognition of communities by regional and/or international institutions with subject matter expertise
- Special consideration for marginalized groups and to CS advocacy groupings (Community Human Rights based)
- Rebalancing of scoring to eliminate possible penalization

### ICANN Board

#### 1. In general:

- Concerns with CPE process, insufficient for Board to assess whether it is in the best interests of ICANN and ICANN Community to proceed with CPE
- Consider mission-limitation in Bylaws that might impact on ICANN’s ability to enforce the content of community TLDs post delegation.

### ICANN org

#### 5. Implementation Guidance

- More details needed on source of problems/issues with CPE process, including relevant examples and how to address them
- More details needed for Rec and IG in respect of CPE.

# Comparative Analysis Summary

## □ Auctions & Private Resolutions of Contention Sets

### ALAC

#### 1. Auctions:

- **Ban on private auctions** - concern with gaming through use of private auctions to reshuffle funds as raised by Board
- **Adopt traditional Vickrey auction** – proposed “sealed bid, second price auction” compromise waters down strength of Vickrey auction in alleviating speculative applications

#### 2. Private Resolutions – Transparency:

- Strong transparency mechanism needed not only for effective program evaluation but to disincentivize gaming

#### 3. Concept of “Good faith” attestation:

- Ineffective, mere window dressing, lacks punitive framework

### GAC

#### 3. Concept of “Good faith” attestation:

- How will “bona fide” intention to operate a TLD be ensured and implemented?
- “Bona fide” intention and Contention Resolution Transparency Requirements do not sufficiently answer Board’s concerns over permissibility of private resolutions (including auctions) to resolve contention sets

### ICANN Board

#### 1. Auctions:

- Why should auctions not be done in a way that any net proceeds would benefit the global internet community?

#### 2. Private Resolutions – Transparency:

- Why should “private resolutions” only partially be brought into program, not all or not at all?

#### 3. Concept of “Good faith” attestation:

- Specific and enforceable promises? Can be changed later?
- Need objective criteria to assess types of behaviour or abuse to be addressed.
- Difficulties with varying scenarios for est. bona fide intent.

### ICANN org

#### 2. Private Resolutions – Transparency & 3. Concept of “Good faith” attestation:

- Review of “bona fide” attestation for all applicants or only where question or objection rises?
- Does CQ mechanism apply? How to evaluate responses?
- Criteria for evaluation panel reviewing “bona fide” intention? When is review done?
- Penalties for lack of intent? Is refund policy affected?
- How to handle changes? Via Applicant Change Request?
- How to address potential for gaming?
- Clarity on Contention Resolution Transparency Requirements – adherence measures, penalties

# Comparative Analysis Summary

## ❑ Closed Generics aka “Exclusive Generics”

### ALAC

#### 1. On the 3 Proposals:

- Supported the “A Proposal for Public Interest Closed Generics gTLDs (PICG TLDs)”
- Cannot accept “The Case of Delegating Closed Generics” which completely ignores GAC Advice

#### 2. Closed Generic Principles:

- ❑ TLD must embody Trust – offeror must be trusted source
- ❑ CG TLDs operated in public interest must span, serve competitors
- ❑ Board to judge “Public Interest”
- ❑ Commitments must be enforceable, their compliance prerequisite for RA renewal

### GAC

#### 1. On the 3 Proposals:

- Both PICG TLDs and the “Closed Generics Proposal” found support
- Unable to support “The Case of Delegating Closed Generics” allowing delegation of all CGs

#### 2. Closed Generic Principles:

- Not necessarily inherently anti-competitive, but need appropriate guardrails
- Adequate means needed to ensure public interest goals met – burden on applicant to show
- Continue to identify criteria for assessing “public interest” within CGs

### ICANN Board

- Requesting a specific outcome of discussion on CGs is outside Board’s purview

### ICANN org