New gTLD Subsequent Procedures PDP Update #4

Status of Public Comments Review

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PURPOSE OF UPDATES

Draw attention to selected public comments received during Aug-Sep 2020 PC proceedings:

- Treatment of ALAC Comments
- Other comments of interest
- SubPro PDP WG leanings

To determine & record what CPWG resolves to do in response:

1. ALAC Advice
2. ALAC Statement
3. Monitoring +/ Comment
4. No further action
5. Other?

SUBPRO TOPICS COVERED

as at 9.12.2020

1. 0. General Comments
2. 2. Predictability – "GAC direct access"
3. **17. Applicant Support**
4. 32. Limited Challenge/Appeals Mechanism
5. 12. Applicant Guidebook
6. 13. Communications
7. 14. Systems
8. 20. Application Change Requests
9. 24. String Similarity Evaluations – 'intended use'
10. 35. Private Resolutions of Contention Sets / Auctions
11. 15. Application Fees
12. 36. Base Registry Agreement
13. **31. Objections – ALAC Standing in Community Objections**
14. 30. GAC Early Warning & GAC Consensus Advice
15. 28. Role of Application Comment
16. **9. Registry Commitments (Public Interest Commitments & Registry Voluntary Commitments) – DNS Abuse, Enforceability**
17. **34. Community Applications (+ Community Priority Evaluations)**
18. 41. Contractual Compliance - thresholds
19. 37. Registrar Non-Discrimination / Registry/Registrar Standardization
20. 38. Registrar Support for New TLDs
21. 25. Internationalized Domain Names
22. 6. RSP Pre-Evaluation
23. 27. Applicant Reviews
24. 39. Registry System Testing
25. **1. Continuing Subsequent Procedures – program assessment, Board action on CCT-RT recommendations**
26. 3. Applications Assessed in Rounds
27. 5. Application Submission Limits
28. 16. Application Submission Period
29. 19. Application Queueing
30. 26. Security and Stability
31. 29. Name Collisions
32. 11. Universal Acceptance
33. 40. TLD Rollout
34. 18. Terms and Conditions
35. 22. Registrant Protections
36. 7. Metrics and Monitoring - completeness
37. **23. Closed Generics – ban, guardrails?**

Still to come

1. 21. Reserved Names
2. 21.1 Geographic Names at TL
3. 4. Different TLD Types
4. 8. Conflicts of Interest
5. 10. Application Freedom of Expression
6. 33. Dispute Resolution Procedures After Delegation

Recap SUBPRO TOPICS identified for

1 ALAC Advice

2 ALAC Statement

Issue:	Resolved / Action:
30. Objections	
• ALAC Standing for Community Objections	• Advocate for automatic standing so that objection be considered on merit without risk of dismissal on 'lack of standing' being an impediment to ALAC/At-Large role vis a vis individual end-users
9. Registry Commitments (PICs & RVCs)	
• DNS Abuse Mitigation	• Maintain position on need for SubPro recommendations on DNS Abuse

See: Comment-only Googledoc
(1) Draft ALAC Advice to the ICANN Board on Subsequent Procedures; and
(2) Draft ALAC Statement for SubPro PDP Final Report

SUBPRO TOPICS identified for

3 Monitoring +/ Comment

1. 2. Predictability – "GAC direct access"
2. 41. Contractual Compliance
3. 25. Internationalized Domain Names
4. 11. Universal Acceptance
5. 29. Name Collisions
6. 17. Applicant Support
7. 34. Community Applications (+ Community Priority Evaluations)
8. 9. Registry Commitments (Public Interest Commitments & Registry Voluntary Commitments) - Enforceability
9. +36. Base Registry Agreement
10. 23. Closed Generics – ban, guardrails?
11. 1. Continuing Subsequent Procedures – program metrics, Board action on CCT-RT recommendations
12. +7. Metrics and Monitoring

SUBPRO TOPICS identified for

3 Monitoring +/ Comment

Issue + Updates:	Status / Proposed Action:
2. Predictability + 14. Systems	
• GAC Consensus Advice • Avenue to consider GAC Consensus Advice which potentially impact any or all applications	• Status: New IG 2.3 – post SPIRT formation, ICANN Board/Org should engage with SPIRT to determine process
• Board/Org action in emergency cases	• Status: New IG 2.6 – to acknowledge need for Board/Org action in emergency circumstances; action to be narrowly tailored; ICANN Board to notify all impacted applicants (if any) w/n 24 hours; notification to serve as referral to SPIRT for elective action
• Membership of SPIRT	• Status: No change to Rec/IG – membership remains open, ALAC has option to nominate representation
	• Proposed Action for all sub-issues: 4 No further action

SUBPRO TOPICS identified for

3 Monitoring +/ Comment

Issue + Updates:	Status / Proposed Action:
41. Contractual Compliance • Standards, thresholds in assessing complaints • Contractual Compliance to introduce/publish threshold against which registry/registrar practices are assessed - include guidelines on how each threshold is derived and applied	• Status: Accepted by SubPro WG, Rec 41.2 has been amended to include what we asked for *More information must be published on: (a) the context of the compliance action and whether it was closed due to action taken by the registry operator, or whether it was closed due to a finding that the registry operator was never out of compliance, and* ***(b) standards and/or thresholds ICANN applies in assessing, and accepting each complaint for further action****.* • Proposed action: 4 No further action

For Discussion

SUBPRO TOPICS identified for

3 Monitoring +/ Comment

Issue + Updates:	Status / Proposed Action:
25. IDNs	
• Potential 'overlap' with IDN Scoping Team • Dependency on GNSO EPDP on IDNs	• Status: SubPro PDP WG has inserted acknowledgment of GNSO Council convening a small team to prepare a draft charter and an EPDP initiation request in rationale
• Treatment of IDN Variant TLDs • ALAC advocates offering IDN gTLDs identified as IDN variants of existing or applied for gTLDs be offered to relevant RO of the existing gTLDs by way of activation at no or minimal costs and not through separate application incurring prevailing standard application fee.	• Status: Rec 25.5 amended to include "bundling" *WG believes that IDN variant TLDs must only be allowed if labels are allocated to or registered by the same entity. To the extent that the TLD were to change hands at any point after delegation, the IDN variants TLDs must be allocated to or registered by the same entity.* • Proposed Action: Do we need to reiterate position on activation of IDN variant TLDs at no or minimal costs and not through separate application incurring prevailing standard application fee? Or bring up in EPDP?
• Metrics • Metrics that ALAC proposed have been included for dedicated IRT consideration in implementation phase	• Monitor for inclusion

For Discussion

SUBPRO TOPICS identified for

3 Monitoring +/ Comment

Issue:	Status / Proposed Action:

11. Universal Acceptance
• Adoption of UA
  • Metric on adoption by 3rd parties as measure of success of Program
• Promotion of UA-readiness
  • ICANN org infrastructure
  • Application process
	• Status: SubPro PDP WG:
	  • Judging success of Program based on 3rd parties not under ICANN auspices or control of Ry/Rr – not appropriate
	  • Ability to accept IDN SL registrations not been a UA problem in years
	  • So, what metric beyond comparison of data collected by UASG could be proposed within SubPro remit?
	  • Inserted new text under New Issues (not new IG): *The Working Group notes that it may be useful in the implementation phase to consider and compare data collected by the UASG before the next round and after the next round of the New gTLD Program*
	• Proposed Action:
	  • Query insertion of new text under New Issues instead of as a new IG.
	  • What else?

For Discussion

SUBPRO TOPICS identified for

3 Monitoring +/ Comment

Issue:	Status / Proposed Action:

29. Name Collisions
• Impact of NCAP
  • ALAC: IG should be subject to SSAC recommendations from NCAP Studies 2 and 3
  • ICANN Board: how will future NCAP study results be dealt with in future rounds? Need to initiate new policy processes
	• Status: SubPro PDP WG updated rationale to reflect status of NCAP Study 2 and that Board will not be acting on Study 2 until after issuance of SubPro PDP Final Report, so SubPro recommendations could be affected by further Board actions.
	• Proposed Action:
	4 No further action for SubPro WG
	1 ALAC Advice to reiterate position advocating for:
	  • Action to be subject to recommendations of SSAC resulting from NCAP Studies 2 and 3 having been implemented
	  • If the application period for next round commences before NCAP Studies 2 and 3 are completed or if resulting recommendations – as approved by Board - are not yet implemented, then delegation of any applied-for string with risk of name collision must withheld until such recommendations are addressed in implementation (to secure applicant commitments, if any)

SUBPRO TOPICS identified for

3 Monitoring +/ Comment

Issue:	Status / Proposed Action:

17. Applicant Support + 35. Auctions

- Community participation in Dedicated IRT
  - IG 17.5: A dedicated IRT should be established and charged with developing implementation elements of ASP by revisiting 2011 Final Report of Joint Applicant Support WG, 2012 implementation of ASP
- Lack of details of Bid Credits for AS qualifier in auctions (+35. Auctions)
- Risk of gaming – assessing willful gaming + penalty not addressed
- Reference to "Middle Applicant" is to those in "struggling regions"

- Status: No change save for "Middle Applicant" reference
- Proposed Action:

1 ALAC Advice

2 ALAC Statement

- Ask for assurance of community participation / input in Dedicated IRT?
- What else?
- Explore joint advocacy with GAC, RySG?
- To revisit vis a vis 35. Auctions / Private Resolutions of Contention Sets

For Discussion

SUBPRO TOPICS identified for

3 Monitoring +/ Comment

Issue + Updates:	Status / Proposed Action:

34. Community Applications & CPE
• Major reform of CPE process, criteria, guidelines
Outstanding:
• Avoid bias towards economic-driven groupings
• More grassroot participation and expertise in evaluation panels
• Greater community participation in ICANN's engagement of a CPE service provider/panellists:
  • (i) development of criteria to evaluate and select candidates;
  • (ii) shortlisting of identified candidates;
  • (iii) final selection process; and
  • (iv) terms for inclusion into the contract
• Lowering of threshold to prevail
	• Status:
	  • SubPro PDP WG Leadership introduced new IGs 34.2, 34.3, 34.4, 34.5, 34.6, 34.7, 34.8, 34.9, 34.17 per comments by At-Large and others
	  • However, improvement needed to IG 34.3 for *inter alia*:
	  • Removing disadvantage for communities not having clear straight-forward "membership" definition to score as against economic communities
	  • Allowance for scoring for reasonably delineated communities
	  • Inclusion of community-related expertise in CPE process
	  • SubPro PDP WG Leadership suggests "***the process to develop evaluation and selection criteria for CPE Provide must include mechanisms to ensure appropriate feedback from ICANN Community. Also, terms included in contract must be subject to public comment***".
	  • Discussion on lowering of threshold to prevail still expected
	• Proposed Action:
	1 ALAC Advice 2 ALAC Statement
	  • Advocate for omissions to be included?
	  • Explore joint advocacy with GAC and others

For Discussion

SUBPRO TOPICS identified for

3 Monitoring +/ Comment

Issue:	Status / Proposed Action:

9. Registry Commitments (PICs & RVCs)
• Enforceability, Bylaw conflict re:
PICs , String Similarity, Community
TLDs commitments & RVCs
	• Status: Pending SubPro WG deliberation on proposed 4 Guardrails for PICs/RVCs:
	1. RVCs can only address issues with DN themselves, incl. eligibility criteria consistent with 2, not content of websites / apps that use DNs
	2. Commitments need to be consistent with HR core values per ICANN Bylaws
	3. PICs/RVCs should not give RO unbounded discretion to suspend DNs
	4. PICs/RVCs should not be used to create new policies not est. by ICANN processes
	• Proposed Action:
	Proactive approach
	• Any and all Registry Commitments incorporated in RA must be clear and enforceable
	• Enforceability a must whether is a/an
	  • PIC (i.e. mandatory per consensus policy); or
	  • RVC that is voluntarily proffered by applicant/RO *provided within ICANN's Mission?*; or
	  • RVC that is negotiated due to GAC Advice/EW or Application Comment or Objection *taken to fall within ICANN's Mission*
	• Clarity of Registry Commitments to be achieved by ICANN Legal, approved by ICANN Board to ensure enforceability *prima facie*
	  • *Subject to Accountability Mechanisms, PICDRP, litigation/arbitration*
	• Reaction to the proposed 4 Guardrails?
	• Contractual Compliance to introduce/publish standards & threshold to assess registry (+registrar) practices - including guidelines on how each threshold is derived and applied
	• Explore joint advocacy with GAC, NCSG, IPC …

SUBPRO TOPICS identified for

3 Monitoring +/ Comment

Issue + Updates:	Status / Proposed Action:

9. Registry Commitments (PICs & RVCs) +36. Base Registry Agreement
• Prohibition of fraudulent / deceptive practices in PIC or base RA
  • PICDRP requires evidence of harm
	• Status: SubPro PDP WG proposes to amend Rec 36.4 as follows:
	  • Confirm support for adding contractual provision stating RO will not engage in fraudulent / deceptive practices
	  • In event ICANN receives court order that RO has engaged in fraudulent / deceptive practices, ICANN may issue breach notice per Base RA
	  • In event there is credible allegation by any 3rd party of fraudulent / deceptive practices other than per court order, ICANN may at its discretion, either commence DRP actions under RA Art 5 or appoint a PICDRP panel. **For purposes of a credible claim of fraudulent / deceptive practices, only need to specifically state grounds of alleged non-compliance, but not of personal harm as result of RO's act or omission**.
	• Proposed Action:
	  • Any refinement needed? Else 4 No further action

For Discussion

SUBPRO TOPICS identified for

3 Monitoring +/ Comment

Issue:	Status / Proposed Action:

23. Closed Generics aka Exclusive Generics

- 3 Proposals
  - Little support for 2 extremes (allow vs ban)
  - Comments on CG support public interest goal angle

- Status:
  - No consensus SubPro PDP WG on ban / suspension / permissibility with or without guardrails
  - Disagreement on what is status quo if no recommendation made
    - Base RA Spec 11 3(d) RO of a "Generic String" TLD may not impose eligibility criteria for registrations limited exclusively to a single person or entity
    - GAC Beijing Advice "exclusive registry access to serve public interest goal"
    - Board interpretation of global public interest?
  - SubPro WG Leadership to suggest how to proceed
- Proposed Action:

  Proactive approach

  1 ALAC Advice
  - **Support Closed Generics only if guardrails are included:**
    - **TLD must embody concept of Trust – a trusted source for whatever it is offering**
    - **Public interest requires that TLD must span and serve competitors – "competitors" and "competition" anathema to TLD operated in public interest**
    - **Board must be ultimate judge of public interest**
    - **Commitments embodied in application must be enforceable and RA renewal contingent on commitments being honoured**
  - Explore joint advocacy with GAC, NCSG, BC?

For Discussion

SUBPRO TOPICS identified for

3 Monitoring +/ Comment

Issue:	Status / Proposed Action:

1. Continuing Subsequent Procedures +7. Metrics and Monitoring

- Program assessment
  - ALAC: Clear, measurable objectives to meaningfully evaluate Program – data measure competition, baseline metrics to measure consumer trust
  - ALAC, GAC Montreal Communique: CCT-RT prerequisite & high priority recommendations to be implemented prior to next round
- Board action on CCT-RT recommendations
  - Board resolutions of 31 Mar 2020 and 22 Oct 2020

- Status:
  - SubPro PDP WG noted input, understands required to consider all CCT-RT recommendations directed to it by ICANN Board resolutions, but is not necessarily required to agree with all outcomes and suggested solutions; and has addressed to extent relevant/possible
    - Rec 7.1: Meaningful metrics must be identified to understand the impact of the Program. To review metrics, data must be collected at a logical time to create a basis against which future data can be compared.
    - IG 7.2: Metrics collected to understand the impact of Program should, broadly speaking, focus on the areas of trust, competition, and choice. Notes that the CCT-RT 2018 Final Report includes a series of recommendations regarding metrics. Work related to the development of metrics should be in accordance with CCT-RT recommendations currently adopted by the Board, as well as those adopted in the future.
- Proposed Action:
  - To be discussed …
  - Explore joint advocacy with GAC
  - Monitor for inclusion of various proposed metrics under Topic 7 including developing/publishing thresholds for EBERO, compliance of PICs/RVCs, metrics to evaluate IDNs promotion/availability etc

SUBPRO TOPICS tagged for

4 No further action

1. 0. General Comments
2. 32. Limited Challenge/Appeals Mechanism
3. 12. Applicant Guidebook
4. 13. Communications
5. 14. Systems
6. 20. Application Change Requests
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