



AT-LARGE BRIEF FOR THE GOVERNMENTAL ADVISORY COMMITTEE (GAC) ON SUBSEQUENT PROCEDURES

This At-Large Brief has been prepared to support of the continuing collaboration between the Leaderships of the At-Large Advisory Committee (ALAC) and the Governmental Advisory Committee (GAC) and their respective topic leads for Subsequent Procedures.

ALAC Statement to the Subsequent Procedures PDP Final Report

The ALAC notes that its Consolidated Policy Working Group (CPWG) has concluded their deliberation on the Subsequent Procedures policy development process and is currently waiting to review the Subsequent Procedures PDP Working Group Final Report, as well as the outcome of the Consensus Call process within Subsequent Procedures PDP Working Group (SubPro WG) on its Final Report. The ALAC is scheduled to decide on the recommendations of the CPWG for the submission of an ALAC Statement to the Subsequent Procedures PDP Final Report of 18 December 2020 (Final Report) shortly prior to the deadline for its submission to the Subsequent Procedures PDP Working Group of 18 January 2021.

Subject to the 11 January 2021 release of the designation of levels of support for the recommendations and implementation guidance contained in the Final Report, the CPWG has recommended to the ALAC for an ALAC Statement be submitted to record either qualified support or dissent by the ALAC of the recommendations of the SubPro WG for the areas tabled below.

Area / Topic	CPWG's recommendation to the ALAC
1. DNS Abuse Mitigation	Qualified Support for Recommendation 9.15 <ul style="list-style-type: none"> • Agree with the principle that combatting DNS abuse should be subject to community consensus policy that would apply to all TLDs and not just future batches of New gTLDs • Disagree with the approach taken by the Subsequent Procedures PDP Working Group • Reiterate existing ALAC position on need for Subsequent Procedures PDP WG recommendations to compel incremental improvements to DNS abuse mitigation
2. Enforceability of Public Interest Commitments (PICs) and Registry Voluntary Commitments (RVCs)	Qualified Support for Affirmation 9.3, Recommendations 9.1, 9.4, 9.8, 9.9, 9.10, 9.11, 9.12 and Implementation Guidance 9.5, 9.6 and 9.7 ¹ , and Recommendations 9.9, 9.10, 9.11 and 9.12 ² : <ul style="list-style-type: none"> • Any and all Registry Commitments incorporated in RA must be clear and enforceable, whether such commitments are: <ul style="list-style-type: none"> ○ PICs (i.e. mandatory per consensus policy); ○ RVCs that are negotiated due to GAC Advice/EW or Application Comment or Objection and taken to fall within ICANN's Mission; or ○ RVCs that are voluntarily proffered by applicant. • Clarity of Registry Commitments, especially RVCs, to be achieved by ICANN Legal and Contractual Compliance, and

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	<p>approved by ICANN Board to ensure <i>prima facie</i> enforceability, subject only to Accountability Mechanisms, PICDRP, litigation, arbitration</p> <ul style="list-style-type: none"> ○ Dispute resolution mechanism for RVCs as agreed between ICANN and applicant must continue to be inserted in RA ● Where an RVC is determined or ruled to be unenforceable, the ICANN Board must take action to remedy such outcome by preserving (where feasible) the original intent of the PIC or RVC and arresting any reasonably foreseeably impact of such determination or ruling of unenforceability on the enforceability of an identical or similar provision in other contracts <p>¹ relating to Public Interest Commitments (PICs) ² relating to Registry Voluntary Commitments (RVCs)</p> <p>For completeness, Affirmation 41.1 and Recommendation 41.2 are to apply equally to PICs and RVCs, in particular compelling Contractual Compliance to introduce/publish standards and threshold to assess registry practices, including guidelines on how each threshold is derived and applied to determine compliance or non-compliance of a PIC or an RVC through act or omission by a registry whether leading to sanctions and/or RA termination or not.</p>
<p>3. Closed Generics</p>	<p>Due to No Agreement 23.1 resulting in absence of SubPro WG recommendation</p> <ul style="list-style-type: none"> ● Advocate that in the present absence of consensus policy recommendations on how to address Closed Generics, there be a suspension of any processing or acceptance of any applications for Closed Generics until such time GNSO provides consensus policy recommendations on how to address applications for Closed Generics which serve a global public interest which is line with GAC advice in the GAC ICANN46 Beijing Communique.
<p>4. Applicant Support</p>	<p>Qualified Support, not objecting to SubPro WG's recommendations but need to:</p> <ul style="list-style-type: none"> ● Reiterate concern on lack of clear objectives for the Applicant Support Program (ASP), which in turn prevents its proper evaluation, as highlighted in recommendations #29 and #32 of the Competition, Consumer Choice & Consumer Trust Final Report 2018. ● Reiterate concern on lack of policy guidance for implementation on ASP beyond just recommending the establishment of a Dedicated Implementation Review Team for the ASP that is charged with developing implementation

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	<p>elements of ASP by revisiting 2011 Final Report of Joint Applicant Support WG, 2012 implementation of ASP</p> <ul style="list-style-type: none"> • Seek assurance for ALAC/At-Large participation in Dedicated IRT given that: <ul style="list-style-type: none"> ○ The ALAC was co-charterer for the JAS WG ○ Community input is essential, especially in light of this Dedicated IRT's wide scope (including implementation of the Bid Credits for AS qualifiers in auctions as the contention resolution mechanism of last resort)
<p>5. Auctions and Private Resolution of Contention Sets</p>	<p>Dissent, maintain opposition to</p> <ul style="list-style-type: none"> • Recommendation 35.2 – specifically, that private auctions are allowed <ul style="list-style-type: none"> ○ Concern about attempts to “game” application process through use of private auctions ○ Allowing shuffling of funds, i.e. the ability for a loser to apply proceeds from 1 private auction to another, only really benefits incumbent RO / multiple-string applicants; disadvantages single-TLD/niche applicants ○ No good reason for not mandating ICANN only auctions such that auction proceeds can be directed for uses in public interest – CCWG on Auction Proceeds • Recommendation 35.3 – use of bona fide intent affirmation being presumably limited to applicants who participate in auctions or private resolution mechanisms <ul style="list-style-type: none"> ○ If at all, this affirmation should apply to all applications, not just those that fall into contention sets ○ Factors for establishing lack of bona fide intent too subjective, and without penalty, ultimately just mere “window dressing” • Recommendation 35.4 - Second-price, sealed bid auction compromise, while superior to status quo, still inferior to a Vickrey auction solution in deterring speculative applications • Recommendation 35.5 – specifically, that private auctions are allowed and protections for disclosing applicants under the Contention Resolution Transparency Requirements framework. <ul style="list-style-type: none"> ○ Full transparency of terms of any private resolution are absolutely necessary to gain data for program evaluation, all terms ought to be disclosed to ICANN but some may be subject to a non-disclosure commitment by ICANN Org where necessary, in order for all data to be captured to inform future policy work (through aggregate, anonymized data)
<p>6. Community Priority Evaluation (CPE)</p>	<p>Qualified Support, dissent limited to omissions</p> <ul style="list-style-type: none"> • In Implementation Guidance 34.4 – to address impediment to proving both “awareness and recognition of the community members” for CPE Criterion 1-A; while allowance has been made in respect of “recognition” to compel consideration the

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	<p>views of the relevant community-related experts, especially in cases where recognition of the community is not measurable, no similar allowance has been made in respect of measuring “awareness” where such measurement could also be prevented or impaired.</p> <ul style="list-style-type: none"> • In Recommendation 34.12 – to include shortlisting and final selection of CPE Provider to be also subject to community input which is reasonable because of the need to supervise ICANN Org’s selection of the most suitable CPE Provider <p>Coverage of dissent would be expanded if insufficient consensus support were determined on some or all of the other new recommendations and implementation guidance in the Final Report.</p>
<p>7. Geographical Names at the Top Level + Systems</p>	<p>Qualified Support for the Work Track 5 Final Report, dissent limited to omissions</p> <ul style="list-style-type: none"> • To calls for stronger preventive protection of Non-Capital City Names strings, require letters of support/non-objection irrespective of applicant’s declared use of TLD provided where city meets specified criteria (has 100k inhabitants, international airport per IATA. Such preventive protection to extend to qualified non-capital city names in ASCII, native script, in current and historical forms (eg. Kolkata/Calcutta) • To provision of a Notification Tool limited exclusively to participating GAC Members for informing them of any application for strings matching their conditional-submissions of names with geographical meaning. • To provision of an opt-in update system for interested parties to automatically keep them informed on application(s) for specified string(s)
<p>8. ALAC Standing in Community Objections</p>	<p>Qualified Support, dissent limited to omission</p> <ul style="list-style-type: none"> • To the ALAC having automatic standing to guarantee that Community Objection(s) it files be considered on merit without risk of dismissal on ‘lack of standing’ being an impediment to the ALAC/At-Large’s acting in the best interest of individual end-users

ALAC Advice to the ICANN Board on Subsequent Procedures

The CPWG has also recommended to the ALAC for ALAC Advice be submitted to the ICANN Board in respect of Subsequent Procedures, which advice would reflect similar, if not identical, submissions as recommended above for the ALAC Statement to the Subsequent Procedures PDP Final Report. An exception is the additional recommendation regarding Name Collision and certain recommendations of the 2018 Competition, Consumer Choice and Consumer Trust Review Team.

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9. Name Collision	<ul style="list-style-type: none"> • Do not object to SubPro WG's recommendations • However, must reiterate position on NCAP Studies 2 and 3: <ul style="list-style-type: none"> ○ Board must consider any recommendations of SSAC resulting from NCAP Studies 2 and 3, and should approve them for implementation prior to the commencement of the next round of applications for New gTLDs ○ 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)
10. Competition, Consumer Choice and Consumer Trust Review Team 2018 recommendations	<ul style="list-style-type: none"> • Noted the ICANN Board's action the CCTRT recommendations which were assigned to SubPro WG and/or passed through to SubPro WG by the ICANN Board in its resolutions of 1 March 2020 and 22 October 2020, as well as SubPro WG's responses. • We think that sufficient consideration has been given by either the ICANN Board or SubPro WG or both to CCTRT recommendations #9, #12(2) and (3), #23, #25, #30, #34, #35 • As expressed above, concerns remain on SubPro WG action (or lack thereof) with respect to CCTRT Recommendations #14, #15, #16 (to do with incentives for anti-abuse measures and data collection to identify DNS Security Abuse) as well as CCTRT Recommendations #29, #31 and #32 (to do with the Applicant Support Program) • Also concern over lack of SubPro recommendation to address CCTRT Recommendation #12(1) (to do with incentives meet user expectation regarding the relationship of content of a gTLD to its name) • Reiterate need for all prerequisite and high priority CCTRT recommendations to be implemented prior to launch of next round

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18 December 2020