ALAC Updates -Jan.2023
Policy Development Activities
Statements approved by the ALAC

Initial Report on the ccNSO PDP Review Mechanism

The ALAC commends the Country Code Names Supporting Organization (ccNSO) Policy Development Process Review Mechanism Working Group on completing the initial report and would like to offer its support to the included recommendations.
The ALAC would like to stress the importance of ensuring that any review mechanism process does not result in end user confusion or inconvenience.
Country Code Top-Level Domain (ccTLD) end users must be prioritized when performing any review mechanism. Commitment to due process and policies such as these will help ensure the consideration of end users.

Improvements to 2013 Registrar Accreditation Agreement (RAA) and Current Registry Agreement (RA)

We are pleased to see that ICANN Org has accepted the contracted parties' (CPs) proposal to open contract negotiations to address the specific issue of combating domain name system (DNS) abuse -- specifically, abuse that employs maliciously registered domains. While many parts of the ICANN community do not fully agree with this limited definition of DNS abuse, we support this step to address a problem that has long plagued the community. While we understand CPs have proposed narrow parameters around these negotiations, the signatories here encourage ICANN Org and CPs to remain open to future negotiations to address the existing and evolving types of abuse which fall outside of the CPs' proposed definition of DNS abuse.
Regardless, our current specific interest is in the establishment of a duty to mitigate abuse and not, for example, simply to "investigate and respond appropriately", as required by the 2013 RAA (and while, importantly, not diminishing those duties under Sec. 3.18). Based on the Registrar and Registry Stakeholder Groups' correspondence of November 4, 2022 and ICANN's subsequent response, it appears that there is contracted party alignment with that priority.

Members of the community have conducted ongoing discussions with CPs regarding what is potentially feasible, were the contracts to be amended. These discussions have yielded some measure of transparency into potential contract changes. However, more is necessary to ensure community input is appropriately regarded, and to assist ICANN Org in its established role as an advocate for community needs and arbiter of the public interest during negotiations.

We therefore request that ICANN Org follow precedent with regard to transparency to the community and the opportunity to contribute to negotiation efforts. We do not request or expect

a role in the negotiating process itself; however, the community deserves a voice in matters of public interest such as this.

There are previously established standards for such a request. In the instance of the RAA:
▪ The agreement was successfully renegotiated in 2009 to include a number of community based suggestions;
▪ Less than two years following the 2009 renegotiation, the RAA -- due to wide-ranging community input and ICANN Org responsiveness -- was subject to a new round of even further and far more extensive negotiation;
▪ During that 18-month (2011-2013) negotiation period, successive RAA drafts were subject to numerous postings and community updates, including community exchanges at every public ICANN meeting over that span of time;
▪ Information on the progression of the negotiations, including previously released updates and documentation, was made available to the community via wiki; and
▪ Proposed updates were subject to two rounds of formal public comment. - 2 - In the instance of the RA (both the base agreement and individual gTLD contracts):
▪ In the context of development of the most recent round of new generic top-level domains (gTLDs), the public had significant input, including two rounds of formal public comment (both in 2013 alone);
▪ Each time a gTLD Registry Agreement approaches its renewal, ICANN historically has provided the community with the opportunity to comment on terms of the renewal and/or changes to the contract; and
▪ As was the case with the RAA, the base RA was the subject of extensive Governmental Advisory Committee (GAC) advice, including the Beijing Communique.
The above is a non-exhaustive list of various community inputs and serves as a reminder to ICANN Org's commitment to partnering with the community to ensure important priorities were reflected in final agreements.

Our groups expect the same level of priority observance, transparency and collective participation in this instance, while reminding ICANN Org that now, in 2023, requested contract changes deal only with the much more limited (although still complex) issue of DNS abuse.

With the above as context, we look forward to your reply confirming ICANN's intention to respect the community's long standing role in contributing to RAA and RA improvements. In addition, kindly share your and contracted parties' anticipated timelines for the process of updating these agreements and soliciting community input.

The New Generic Top-Level Domain (gTLD) Subsequent Procedures Operational Design Assessment (SubPro ODA)

The At-Large Advisory Committee (ALAC) thanks ICANN org for its enormous effort preparing the ODA. While analysis of the ODA is ongoing, we thought it worthwhile to provide some high level commentary, in the run up to the ICANN Board discussion of the ODA. Outlined in this letter are a number of high-level comments and concerns related to ALAC priority topics

covered by the ODA as well as specific concerns regarding the differences between Option 1 and Option 2.

Ahead of ICANN76, the ALAC is conducting an analysis of the ODA in comparison to its 2021 Advice to the ICANN Board on Subsequent Procedures and its related response to the ICANN Board's Clarifying Questions. The objective of this analysis was to review several key priority topics and identify

● Areas where further discussion is needed, and/or topics we thought might be clarified by the Operational Design Phase (ODP) process but were not.

● Problematic assumptions made in developing the ODA.

● New issues raised in the ODA for the ICANN Board to consider.

Areas where further discussion is needed:

1. **Metrics**. The ALAC seeks clarity on metrics for Applicant Support and DNS abuse. How will ICANN identify/rate success?

2. **DNS Abuse**. The ALAC expects to see a decrease in the levels of DNS abuse prior to the beginning of the new round. We believe the ODA correctly addresses the need for the ICANN Board to take into account community advice on DNS abuse, such as the ALAC's Advice on DNS abuse, prior to a new round.

3. **Geographic Names at the Top Level**. The ALAC supports the Governmental Advisory Committee (GAC) request for a notification system; however, requests that this system be expanded.

a. Can a notification system apply to the broader community, not just the GAC?

b. Initial examples of why this system should be expanded in the interest of end users include the protection of indigenous, politically persecuted groups, and/or minority communities.

4. **Auctions**. The ALAC shares the ICANN Board's concern regarding the risk of gaming

a. The ALAC supports the ICANN org suggestion to seek third-party expertise in auction design not only to assist in determining supplemental methods to disincentivize gaming but also effectively address the use of the bona fide intent affirmation mooted in the SubPro policy development process (PDP).

b. The retention of a second-price sealed bid auction in ICANN-run auctions of last resort still leaves a lot to be desired if we want to increase competition by leveling the playing field for less-well-resourced applicants. The ALAC still favors a Vickrey auction, at this time.

Problematic assumptions made in developing the ODA:

5. **Applicant Support**. The ALAC welcomes efforts to increase awareness of the Applicant Support Program, as well as the provision of resources to boost its chances of success. However, a. Explicit goals allow for better program design. b. ICANN org's proposed Applicant Support Fund of USD$2mil is likely inadequate c. We support and are prepared to assist in the implementation of the suggested "pre-round" evaluation of Applicant Support applicants.

6. **Community Priority Evaluation (CPE)**. At-Large volunteers contributed significantly to the development of recommendations and implementation guidance on CPE after the Draft Final SubPro Report of September 2020 was published for Public Comment. These recommendations go some way towards addressing the objectives of CPE, avoiding gaming/misuse of CPE, and misalignment of CPE with the diversity of communities.

a. There remain several major omissions which will curtail intended improvements to CPE.

b. The ALAC supports the ODA's suggestion to allow community-based applicants to apply for change of string address contention sets. However, there may be a need to establish criteria to govern the eligibility of applicants and/or the alternative strings sought, beyond the Application Change Request procedures which would apply based on the SubPro Outputs.

c. We will address our concerns regarding the CPE with the ICANN Board in more detail.

New issues raised by the ODA:

7. **Option 1 versus Option 2**.

The ALAC is concerned that ICANN org has inadvertently created a false dichotomy with the presentation of two options. This has certainly spurred community discussion and ideally will lead to a more nuanced outcome.

The ALAC appreciates that Option 2 proposes a shorter 18-month implementation timeframe that would likely appeal to parts of the ICANN Community. The batched application process might make course correction easier. However, we are concerned that the condensed implementation timeframe risks a deferment of several key priority areas that affect end users.

The ALAC would like assurances that Option 2 will not translate to a deferment of action on Internationalized Domain Names (IDNs) variant management policy, community advice on DNS abuse, Competition, Consumer Trust and Consumer Choice Review Team Recommendations, Closed Generics, Applicant Support, and the Name Collision Analysis Project (NCAP) studies. The ALAC requests that these areas are accounted for under Option 2. Failing that, it would appear that Option 1 is the most prudent path to take.

It is unclear how the multi-cycle application process under Option 2 would impact different TLD type applications. For example, might acceptance of applications for IDN variant TLDs be deferred to one of the later cycles? Would a round devoted to "brands," impede on efforts by communities to stake their claims?

Next Steps

The ALAC intends to supplement our Advice to the ICANN Board on Subsequent Procedures, which we expect to do before ICANN76.

The ALAC would welcome an opportunity to discuss these concerns during a joint call before ICANN76 and/or during our ICANN76 bilateral session.

Statement on the Initial Report on the Second CSC Effectiveness Review.

The At-Large Advisory Committee (ALAC) appreciates the opportunity to submit comments on the Initial Report on the Second Customer Standing Committee (CSC) Effectiveness Review. The ALAC and At-Large community support almost all of the recommendations in the Initial Report, with a few minor exceptions:

● The role of chair should be filled by a CSC liaison when no CSC member is available to chair the role.

● The reports on the Service Level Agreements (SLAs) performance should continue to be circulated on a monthly basis.

Registration Data Consensus Policy for gTLDs

The EPDP Recommendations were issued in February 2019 and expected to be approved by the GNSO and Board in short order. The EPDP team (including representatives of contracted parties) understood that it would take some time to translate the recommendations into policy and then to have contracted parties implement that policy. Accordingly, Recommendation 28 extended the validity of terms within the Temporary Specification to allow for the creation and implementation of the policy. After due consideration the EPDP team set a deadline for contracted party compliance at 29 February 2020 (1 year after issuance of the Phase 1 report). Clearly the EPDP team underestimated the amount of time needed to translate the recommendations into policy. However, the EPDP team, including registry and registrar representatives unanimously believed that the allowed period was sufficient for contracted party implementation. Given Recommendation 28, and the fact that these recommendations are reasonably consistent with the Temporary Specification, and that the differences have been well known now for several years, the ALAC believes that allowing an additional 18 months for contracted party implementation is excessive and uncalled for.

Thank you.