

## Status of 38 SubPro Pending Recommendation as at 12 May 2023

### (a) Provision of clarifying information to the Board

| <u>SubPro Topic</u>           | <u>Pending Recs</u>     | <u>Synopsis: Board Concern</u>   | <u>GNSO Reaction</u>  | <u>ALAC Priority?</u>   |
|-------------------------------|-------------------------|--|---|---|
| 3: Apps Assessed in Rounds    | 3.1, 3.2, 3.5, 3.6, 3.7 | Inflexibility of being tied to rounds  | <ul style="list-style-type: none"> <li>On basis of small team (ST) discussion, staff support team to develop first draft of clarifying information, followed by ST review;</li> <li>Aim to share clarifying info in advance of meeting with Board [on 22 May];</li> <li>Based on Board's feedback, determine whether further Council action is necessary</li> </ul> | NO. Unless FCFS crops up again, even so, must → PDP   |
| 9: RVCs/PICs                  | 9.2                     | Waiver of Spec 11 3(a) & 3(b) for single-registrant TLDs → unforeseen harm               |   | <b>MAYBE; TO MONITOR -- Spec 11 3(a) &amp; 3(b) read with Spec 13 → no registrants to protect since "registered name holder" (i.e. the only registrant) in this scenario is the RO itself. Would typically protect its own brand.</b> |
| 18: Terms & Conditions        | 18.3                    | Covenant not to sue subject to challenge/appeal mechanism → undue legal exposure         |   | NO. Doesn't need to be our fight  |
| 19: Application Queuing       | 19.3                    | Prescriptive batch size → inflexibility  |   | NO. Implement formula, not batch size.  |
| 22: Registrant Protections    | 22.7                    | Exemption of COI = no EBERO funds: better to be case-by-case than blanket exemption      |   | NO. No registrants to protect.  |
| 26: Security & Stability      | 26.9                    | Ability to prohibit emojis at the 3 <sup>rd</sup> Level                                  |   | NO. Board to figure this out.   |
| 29: Name Collision            | 29.1                    | Not Concern, awaiting NCAP Study 2 Rpt   |   | <b>YES? We're with the Board</b>  |
| 32: Limited Challenge /Appeal | 32.1, 32.2, 32.10       | Co-existence with Bylaw-driven Accountability Mechanisms, add unnecessary cost and delay |   | NO. Doesn't need to be our fight  |
| 34: Community Apps            | 34.12                   | Possibly required to publish confidential info for public comment                        |   | NO. Never intended for this to happen. GNSO to clarify.   |
| 35: Auctions                  | 35.3, 35.5              | "Private Auctions" mentioned   |   | <b>YES, but not on these recs per se. Need to support Board's plan for external expertise to deal with auctions</b>   |

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### (b) Determination that the issue can be resolved during implementation

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|------------------------------|---------------------|---|--|---|
| 6: RSP Pre-Evaluation        | 6.8                 | Roles of IRT & ICANN org seem to be reversed  | <ul style="list-style-type: none"> <li>None at this stage, ST Assessment captures rationale</li> <li>Based on Board's feedback, determine whether further Council action is necessary</li> </ul> | NO. Not our fight. Leave GNSO to clarify. |
| 16: App Submission Period    | 16.1                | Application window period too prescriptive  |  | NO. Not our fight. Leave GNSO to clarify. |
| <b>17: Applicant Support</b> | 17.2                | Open-ended nature of potential payments   |  | <b>YES. But IRT can sort this out.</b>    |
| 18: Terms & Conditions       | 18.4                | Ability for applicant to withdraw w/o clarity on "substantive" or "material" changes made to ABG/program process could → gaming |  | NO. IRT should be able to sort this out.  |

### (e) Explore starting a Bylaw process

| <u>SubPro Topic</u>               | <u>Pending Recs</u>                        | <u>Synopsis: Board Concern</u>   | <u>GNSO Reaction</u>  | <u>ALAC Priority?</u>   |
|-----------------------------------|--|--|---|---|
| <b>9: RVCs/PICs</b>               | 9.1, 9.4, 9.8, 9.9, 9.10, 9.12, 9.13, 9.15 | Uncertainty/risks in ICANN's ability to enforce PICs/RVCs per mission / Bylaw sec 1.1 limitation. Bylaw change must succeed. | <ul style="list-style-type: none"> <li>Discuss with Board during [22 May] meeting;</li> <li>Based on Board's feedback, determine whether further Council action is necessary</li> </ul> | <b>YES. If Bylaw change to proceed, then must complete before next round. Can start exploring if ALAC/At-Large wishes to support (e) in principle</b> |
| 24: String Similarity             | 24.3, 24.5,                                | Enforcing "intended use" of singular/plural through PICs may fall outside ICANN mission.                                     |   |   |
| 30: GAC Consensus Advice & GAC EW | 30.7, 31.16,                               | Use of RVCs to address GAC EW / Advice / comments may fall outside ICANN mission.  |   |   |
| <b>31. Objections</b>             | 31.16, 31.17                               | Use of RVCs to address objections may fall outside ICANN mission.  |   |   |

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### (g) Other - Dialogue between the Council and Board

| <u>SubPro Topic</u>               | <u>Pending Recs</u> | <u>Synopsis: Board Concern</u>  | <u>GNSO Reaction</u>  | <u>ALAC Priority?</u>     |
|-----------------------------------|---------------------|---|---|---------------------------|
| 18: Terms and Conditions          | 18.1                | Does not want to unduly restrict ICANN's discretion to reject an application in circumstances that fall outside the specific grounds set out in the recommendation. | <ul style="list-style-type: none"> <li>On basis of ST discussion, staff support team to develop first draft of speaking points, followed by ST review;</li> </ul>                       | NO. Not really our fight. |
| 30: GAC Consensus Advice & GAC EW | 30.4, 30.5, 30.6    | Non-consensus GAC discomfort in removing "GAC Consensus Advice as creating strong presumption for the ICANN Board that the application should not be approved."     | <ul style="list-style-type: none"> <li>Discuss with Board during [22 May] Meeting;</li> <li>Based on Board's feedback, determine whether further Council action is necessary</li> </ul> | NO. Not our fight.        |