Next Round of NgTLDs / Subsequent Procedures The 38 Pending SubPro Recommendations

Update #2 to the At-Large CPWG

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30 August 2023

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Background

- At ICANN76, ICANN Board *inter alia*:

  - Adopted 98 recommendations from the Final Report of the New gTLD Subsequent Procedures PDP (SubPro Recs)

  - Marked a remaining 38 SubPro Recs as "pending" *citing* concerns

  - Requested from GNSO Council, plans for:

    - <mark>Resolving the 38 Pending SubPro Recs</mark>

- Since ICANN76:

  - GNSO Council Small Team on SubPro has been working with Board SubPro Caucus members to resolve Board concerns on 38 SubPro Pending Recs

  - This work is bifurcated along need for:

    - Clarifying Statement

    - Additional processes: either a GNSO Operating Procedure Section 6 processes or Supplementary Recommendations

- GNSO Council has adopted a Clarifying Statement
  - See: https://gnso.icann.org/sites/default/files/policy/2023/draft/draft-subpro-pending-recommendations-clean-23aug23-en.pdf

SubPro Topic	Relevant Recs	Summary of Board Concern
Topic 3: Applications Assessed in Rounds	3.1, 3.2, 3.5, 3.6, 3.7	Inflexibility of being held to rounds
Topic 6: Registry Service Provider Pre-Evaluation	6.8	Roles of IRT & ICANN org seem to be reversed
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	9.15	Not concern, merely confirming nothing specific to do on DNS Abuse
Topic 26: Security and Stability	26.9	Uncertainty/risks in ICANN's ability to enforce PICs/RVCs per mission
Topic 29: Name Collision	29.1	Not concern, merely awaiting NCAP Study 2 Report
Topic 34: Community Applications	34.12	Possibly required to publish CPE provider confidential info for public comment
Topic 35: Auctions	35.3, 35.5	Mention of "private auctions" should not endorse/prohibit private auctions

- ⊙ Addition expected to the Clarifying Statement
  - ○ Pending discussion on language proposed by Board SubPro Caucus around enforceability of PICs/RVCs

SubPro Topic	Relevant Recs	Summary of Board Concern
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	9.1, 9.4, 9.8, 9.9, 9.10, 9.12, 9.13	Uncertainty/risks in ICANN's ability to enforce PICs/RVCs per mission
Topic 30: GAC Consensus Advice and GAC Early Warning	30.7	Use of RVCs to address GAC EW / Advice (or even other comments)
Topic 31: Objections	31.16, 31.17	Use of PICs/RVCs to address objections

As at 24 August 2023

⊙ What's left? Board signaled non-adoption of:

SubPro Topic	Relevant Recs	Summary of Board Concern
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	**9.2**	Waiver of Spec 11 3(a) & 3(b) for single registrant TLDs could lead to unforeseen harm on different business models
Topic 17: Applicant Support	**17.2**	Open-ended nature of potential payees and potential fiduciary concerns
Topic 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.
Topic 18: Terms and Conditions	18.3	Covenant not to sue subject to challenge/ appeal mechanism leading to undue legal exposure (tied to Recs 32.1, 32.2, 32.10)
Topic 22: Registrant Protections	22.7	Exemption of COI means no EBERO funds – better to be case-by-case than blanket exemption (similar to Rec 9.2)
Topic 24: String Similarity	24.3, 24.5	Enforcing "intended use" of singular-plural through PICs may fall outside ICANN mission
Topic 32: Limited Challenge / Appeal	32.1, 32.2, 32.10	Co-existence with Bylaw-driven Accountability Mechanisms, duplication, add unnecessary cost and delay

What Happens Next?

- GNSO Council instructs Small Team to do remaining work, whereupon Small Team discusses:

  - Update to Assignment Form (charter)

  - Plan/breakdown of work steps

  - Opening 1 work step (solution development) to extended participation from GNSO Constituencies and ACs

- From ALAC / At-Large perspective:

  - GNSO Liaison to continue monitoring developments

  - Opportunity for appointment of SME + 1 alternate to work on:

    - Rec 17.2 – Applicant Support ⬅ **ALAC Proposal for SubPro Rec 17.2 on Applicant Support**
      (see: https://community.icann.org/x/ogBgDw)