

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

Update #3 to the At-Large CPWG

Justine Chew
ALAC Liaison to the GNSO

20 September 2023



Background

- ⊙ At ICANN76, ICANN Board:
 - 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, *inter alia*, plans for resolving the 38 Pending SubPro Recs

- ⊙ 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(s)
 - Additional processes: either a GNSO Operating Procedure Section 16 processes or Supplementary Recommendations

Background

- ⦿ Since ICANN77, Aug-Sep 2023
 - GNSO Council's First Clarifying Statement¹ submitted to the Board
 - ICANN Board recent Sep workshop -> resolution² together a SubPro Scorecard³

The Board SubPro Scorecard comprises:

 - Section A: Outputs that the Board adopts
 - Section B: Outputs that the Board adopts with GNSO Council-approved clarifications
 - Section C: Outputs that the Board does not adopt this time
 - Section D: Outputs that the Board is still discussing
 - Second Clarifying Statement expected to address another 10 SubPro Outputs

1 - See: <https://gnso.icann.org/sites/default/files/policy/2023/draft/draft-subpro-pending-recommendations-clean-23aug23-en.pdf>

2 - See: <https://www.icann.org/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-10-09-2023-en#section2.d>

3 - See: <https://www.icann.org/en/system/files/files/scorecard-subpro-pdp-board-action-10sep23-en.pdf>

As at 10 September 2023

- Section A. Board adopts 4 SubPro Outputs after conversation with GNSO Council, and another 3 after liaising with GAC (No Board concern)

SubPro Topic	Relevant Recs	Board Input re: Implementation
Topic 16: Application Submission Period	16.1	None
Topic 18: Terms and Conditions	18.4	Post consulting GNSO Council, instructs ICANN org to work on definition of “substantive change’ and ‘material impact’ in consultation with SubPro IRT
Topic 19: Application Queuing	19.1, 19.3	None
Topic 30: GAC Consensus Advice / GAC Early Warning	30.4	Adoption does not prejudice or impact the way Board considers GAC Consensus Advice per Bylaws Section 12.2(a)
Topic 30: GAC Consensus Advice / GAC Early Warning	30.5	None
Topic 30: GAC Consensus Advice / GAC Early Warning	30.6	ICANN org to make clear in AGB that as part of an Early Warning, a GAC member may indicate that its concern can only be addressed by the applicant withdrawing, in consultation with SubPro IRT as needed

As at 10 September 2023

⦿ Section B. Board adopts another 12 SubPro Outputs with GNSO Council's First Clarifying Statement

SubPro Topic	Relevant Recs	Summary of Board Concern	GNSO Council Clarification
Topic 3: Applications Assessed in Rounds	3.1, 3.2, 3.5, 3.6, 3.7	Inflexibility of being held to rounds	<ul style="list-style-type: none"> “next application procedure should be a round” “application procedures to take place at predictable, regularly occurring intervals w/o indeterminable periods of review”
Topic 6: Registry Service Provider Pre-Evaluation	6.8	Roles of IRT & ICANN org seem to be reversed	<ul style="list-style-type: none"> Recognition that ICANN org will be responsible for establishing the fees charged for the RSP pre-evaluation program, in consultation with the IRT
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	9.15	Not concern, merely confirming nothing specific to do on DNS Abuse	<ul style="list-style-type: none"> This does not require any implementation nor create any dependencies for Next Round
Topic 26: Security and Stability	26.9	Uncertainty/risks in ICANN's ability to enforce PICs/RVCs per mission	<ul style="list-style-type: none"> “any level” interpreted only in respect of DNs that are allocated by the RO
Topic 29: Name Collision	29.1	Not concern, merely awaiting NCAP Study 2 Report	<ul style="list-style-type: none"> Adoption does not immediate implementation, can wait for NCAP Study 2 outputs
Topic 34: Community Applications	34.12	Possibly required to publish CPE provider confidential info for public comment	<ul style="list-style-type: none"> No intention to require ICANN org to disclose any confidential terms with CPE Provider
Topic 35: Auctions	35.3, 35.5	Mention of "private auctions" should not endorse/prohibit private auctions	<ul style="list-style-type: none"> Confirms references to private auctions merely acknowledge existence of private auctions in 2012 and should NOT be seen as an endorsement or prohibition of their continued practice in future rounds

As at 10 September 2023

- Section C. Board DOES NOT adopt 7 SubPro Outputs at this time

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

As at 10 September 2023

- ◎ Section D. Board could adopt another 10 pending Outputs with GNSO Council Second Clarifying Statement
 - Pending discussion on language proposed by Board SubPro Caucus around enforceability of PICs/RVCs

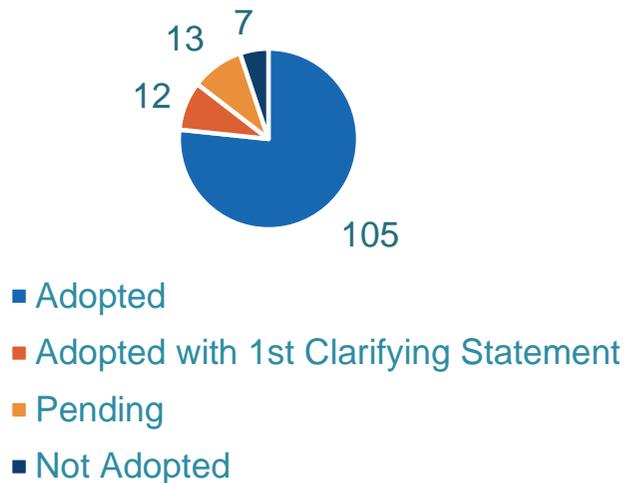
SubPro Topic	Relevant Recs	Summary of Board Concern
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	9.1, 9.4, 9.8, 9.9, 9.10, 9.12, 9.13	Uncertainty/risks in ICANN's ability to enforce PICs/RVCs per mission
Topic 30: GAC Consensus Advice and GAC Early Warning	30.7	Use of RVCs to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

- ◎ Section D. Board still discussing 3 other pending Outputs with GNSO Council Small Team

SubPro Topic	Relevant Recs	Summary of Board Concern
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

Board Decision on SubPro Outputs



- 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:

- ALAC 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**