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AT-LARGE ADVISORY COMMITTEE
ALAC Advice regarding Standing for Objections in the Next Round Program

Preamble

On 03 July 2024, the At-Large Consolidated Policy Working Group (CPWG) discussed the At-Large Advisory Committee's standing for objections in the New Generic Top-Level Domain (gTLD) Program: Next Round. On 03 July 2024, an At-Large workspace was created for the development of Advice for submission to the ICANN Board.

Executive Summary

The ALAC Advises the ICANN Board to ensure that the Applicant Guidebook for future new gTLD rounds is clear with regard to the standing of the ALAC to submit Community Objections, in line with its approval of funding for such Objections.

Ratification Record

On 03 July 2024, Justine Chew discussed the ALAC's standing for objections in the New Generic Top-Level Domain (gTLD) Program: Next Round with the CPWG. Alan Greenberg subsequently volunteered to help draft Advice to submit to the ICANN Board for review and consideration. On 17 July 2024, draft comments for the Advice were discussed during the CPWG call. On 24 July 2024, the draft At-Large Advice was shared with the CPWG for review and comments. On 25 July 2024, the Advice was finalized. The ALAC Co-Vice Chairs, Claire Craig and Justine Chew, requested that the ALAC ratify the Advice before submission to the ICANN board.

On 01 August 2024, staff confirmed the online vote resulted in the ALAC endorsing the statement with 15 out of 15 votes in favor. 0 votes against, and 0 abstentions. Please note 100% of ALAC members participated in the poll. The ALAC members who participated in the poll are (alphabetical order by first name): Aziz Hilali, Bill Jouris, Bukola Oronti, Claire Craig, Eduardo Diaz, Joanna Kulesza, Jonathan Zuck, Justine Chew, Lilian Ivette De Luque, Marcelo Rodriguez, Pari Esfandiari, Raihanath Gbadamassi, Satish Babu, Shah Zahidur Rahman, and Tommi Karttaavi. You may view the results here: https://tally.icann.org/cgi/results?e=ff1d84ade9b.

ALAC Advice

The ALAC strongly advises the ICANN Board to:

1. **direct ICANN org to ensure that it is clear to all parties including gTLD Applicants and relevant Dispute Resolution Service Provider (DSRP) and its panelists that the ALAC has formal standing to file Community Objections which are derived through the ALAC Procedure for filing objections against applications for New gTLDs.**

   Such clarity might be provided in a way comparable to that of Independent Objector where section 3.2.5 of the 2012 Applicant Guidebook stated: "The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2)".

ALAC Advice Rationale

The ICANN Bylaws Article 12 Section 12(d)(1) states,

> "...**The role of the ALAC shall be to consider and provide advice on the activities of ICANN, insofar as they relate to the interests of individual Internet users. This includes policies created through ICANN's Supporting Organizations, as well as the many other issues for which community input and advice is appropriate….**"

The ALAC believes that the role enshrined in the ICANN Bylaws extends to that which would provide it an effective ability to file Limited Public Interest Objections and Community Objections in the next and subsequent rounds of applications under the New gTLD Program conducted by ICANN. While no additional conditions apply to prevent the ALAC's participation in filing Limited Public Interest Objections, the same cannot be said for that of Community Objections.

In order for the ALAC to fulfill its role as cited above, the ALAC requires automatic standing to file Community Objections to be able to effectively raise concerns against any application for a gTLD which it views to be wholly not in the interests of individual Internet users, or deserving the benefit of a commitment from the applicant to mitigate stated concerns.

The ALAC takes its role and ability to file Community Objections (and Limited Public Interest Objections) very seriously and has in place, a stringent bottom-up participative process involving all five of its Regional At-Large Organizations (RALOs) in deciding to file any objection against an application. In fact, the ALAC Procedure for filing objections against applications for New gTLDs has been designed to meet 3 criteria of:

1. Bottom-up development of potential objections,
2. Discussion and approval of objections at the Regional At-Large Organization (RALO) level, and
3. A process for consideration and approval of the objection by the At-Large Advisory Committee.

Therefore, it is incomprehensible that the ALAC, while on the one hand, recognized as an "established organization" and funded by ICANN Org to file objections, should have any of its Community Objections, which are derived from a bottom-up participative process that incorporates several levels of safeguards and analysis, be further subjected to additional procedural hurdles to substantiate an association with "a clearly delineated community". This hurdle is immeasurably high when such an association cannot even be determined consistently by Community Objection Dispute Resolution Service Provider (DSRP) panelists who would then dismiss an ALAC-filed Community Objection on the ground of a 'lack of standing' to file such objections.

Having any of its Community Objections be dismissed on a 'lack of standing' due to any lack of association with "a clearly delineated community" would clearly not only constitute a waste of resources and a total disregard for valuable At-Large volunteer time, but is an unreasonable procedural impediment to the ALAC carrying out the task of voicing concerns through filing Community Objections.

The ALAC strongly believes that any Community Objection that it files in the next and subsequent rounds should be determined on the merits of the objection and ought not be subject to additional procedural hurdles leading to a dismissal for 'lack of standing'. The situation is comparable to that of the Independent Objector who is granted standing without meeting the otherwise normal "community" criteria.

The ALAC issued comparable advice to the Board in its 2021 submission in relation to the entire SubPro Report.[1] In her 22 May 2023 response to the ALAC, the Board Chair said *"The Board considered the ALAC's views in the course of its deliberations, but retains confidence in the current process, which will remain in place until such time community consensus is reached on an alternative approach."*

The ALAC believes that the community has already reached such a consensus. The 2012 Applicant Guidebook allocated funds for the ALAC to issue objections. The SubPro PDP did not alter that. It makes little sense to allocate ICANN funds for such objections if those objections would immediately be dismissed. Accordingly the community has already implicitly given the ALAC standing to file those objections. All that remains is to ensure that those adjudicating the objections understand this, just as they do for the Independent Objector.

[1] See: Annex 1: 2021 ALAC Advice to the ICANN Board on the Subsequent Procedures PDP Recommendations

Appendix A: 2021 ALAC Advice to the ICANN Board on the Subsequent Procedures PDP Recommendations[2]

12. ALAC Standing in Community Objection

The ALAC requires automatic standing to file Community Objections, without which the ALAC would effectively be prevented from raising concerns against any application for a TLD which it views to be wholly not in the interests of individual end users, or deserving the benefit of a commitment from the applicant to mitigate stated concerns.

The ALAC views its responsibility to uphold the interests of individual end users with importance, and had for the 2012 New gTLD application round established a stringent bottom-up participative process involving all five of its Regional At-Large Organizations (RALOs) in deciding to file a Community Objection against an application. As a result of this procedure, the ALAC filed Community Objections against two applications for the <dot>HEALTH TLD.

While the Dispute Resolution panelist who heard and determined those objections did not explicitly dismiss them for a lack of standing, contradictory provisions in the 2012 Applicant Guidebook could allow for a Community Objection filed by the ALAC in future to be dismissed for lack of standing.

Affirmation 31.1 in the SubPro Final Report, *inter alia*, confirms that the ALAC is defined as an established institution for purposes of Objections in subsequent procedures, while Affirmation 31.4 confirms the ALAC's standing to continue to be able to file Community Objections (and Limited Public Interest Objections) in subsequent procedures. With these affirmations, the ALAC can expect some funding for the filing of its selected objections in the next round of applications.

Section 3.2.2 'Standing to Object' of the 2012 Applicant Guidebook (AGB) provides that an established institution associated with a clearly delineated community has standing to object, yet, section 3.2.2.4 requires an established institution associated with a clearly delineated community eligible to file a community objection to still prove two elements to qualify for standing for a community objection. Thus, these two sections in the 2012 AGB arguably conflict with each other when applied to the ALAC.

It is incomprehensible that the ALAC, while on the one hand, funded by ICANN Org to file objections, should have any of its Community Objections, which would be derived through a bottom-up participative process, be dismissed on the ground of a 'lack of standing' to file such objections. Having any of its Community Objections be dismissed on a 'lack of standing' would clearly not only constitute a waste of resources but a procedural impediment to the ALAC carrying out the task of voicing concerns through filing Community Objections. The ALAC strongly believes that any Community Objection that it files in future should be determined on the merits of the objection and not be procedurally dismissed for 'lack of standing'. To ensure this outcome, the ALAC strongly recommends that it be granted, under no uncertain terms, automatic standing to file Community Objections in Subsequent Procedures and in future rounds of the New gTLD Program.

[2] See: https://atlarge.icann.org/advice_statements/13823.