3.1.7 - Do you believe that parties to disputes should be able to choose between 1 and 3 member panels and should the costs of objections reflect that choice?☒

RySG, BRG, and Aflias recommended that parties should be able jointly determine whether to use a 1- or 3-member panel.

Excerpt:

"As set forth in our recommendations in response to question 3.1.2 we believe that parties should be able to jointly determine whether to use a one or three-Expert panel. The selection of a one or three-Expert panel raises tradeoffs related to cost and consistency. While one-Expert panels are lower cost, three expert panels may be more reliable and less likely to generate concerns around inconsistent application of objection procedures or outcomes. In light of these tradeoffs, we believe that, for all Objection types, Parties should be able to jointly determine whether to use a one or three-expert panel. In the event that the Parties fail to reach agreement the default should be to rely on a three-Expert panel." – RySG, BRG, Afilias

3.1.8. - Is clearer guidance needed in regards to consolidation of objections? Please explain.☒

RySG, BRG, and Aflias provided suggested guidelines for consolidation of string confusion objections.

Excerpt:

"While we for most objection types consolidating objections is difficult given the ability for applicants for a single string to propose vastly different business models, we believe that for string confusion objections, a model in which objections are filed against strings (consolidating all applications for that string by default) would be preferable and would ameliorate inconsistent outcomes witnessed as part of the String Confusion Objection Process. We propose the following guidelines:

- An objector could file a single objection that would extend to all applications for an identical string.
- Given that an objection that encompassed several applications would still require greater work to process and review, the string confusion panel could introduce a tiered pricing structure for these sets.
- Each applicant for that identical string would still prepare a response to the objection.
- The same panel would review all documentation associated with the objection.
- Each response would be reviewed on its own merits to determine whether it was confusingly similar.
- The panel would issue a single determination that identified which applications would be in contention. Any outcome that resulted in an indirect contention would be explained as part of the panel's response." -- RySG, BRG, Aflias
- A limited appeals process (as described above) would be available to both the objectors and the respondents to handle any perceived inconsistencies." – RySG, BRG, Aflias

Dotgay LLC stated that clearer guidance is needed regarding consolidation of community objections.

Excerpt:

"Yes. **Clearer guidance should be given for objection consolidation**.

The community objection proceedings exist as the primary method for community organizations to defend against gTLD applications they deem harmful to their communities. However, objections are only offered for a

cost that some communities may find challenging to afford if faced with the reality of multiple and problematic strings/applications intersecting their communities. **Objection consolidation suggested a form of financial relief, but without assurances that consolidation will be effectively utilized** to keep costs from becoming a barrier to engagement, the current guidance offers no value to community objectors.

Before costs for community objections are established for subsequent rounds, **clearer guidance is needed to encourage and clarify circumstances that generally and specifically warrant consolidation. DRSP's must agree to follow such guidance and some form of quality control standards must be established**. This would not only ensure community objections remain focused on serving their intended purpose of addressing potential community harm, but it would also provide guidance and predictability to community organizations that may be extending themselves to simply engage. . ." – dotgay LLC (staff note: please see full comment for discussion of objections filed against applications for .GAY and .LGBT)

3.1.9 - Many community members have highlighted the high costs of objections. Do you believe that the costs of objections created a negative impact on their usage? If so, do you have suggestions for improving this issue? Are there issues beyond cost that might impact access, by various parties, to objections?☒

☒

RySG, BRG, Afilias, vTLD Consortium, NABP, and dotgay LLC provided suggestions for managing the high cost of objections.

Sample excerpts (emphasis added):

"As noted in our response to question 3.1.2 The costs associated with Community Objections were surprisingly high compared to other types of objections, and were hard to predict in advance of filing. This may have been particularly problematic for communities that chose to file objections with a low probability of success.

ICANN should prioritize cost in choosing a vendor. Costs should be transparent up front to participants in objection processes with a fixed fee absent extraordinary circumstances.

We also believe that **stricter enforcement of the page caps** established for the objections will help to address issues related to cost. . . We believe that the page caps proposed are appropriate and should be more strictly enforced as part of a subsequent application procedure. To these ends, we would welcome additional language clarifying that attachments should be limited to supporting documentation and must not be used to make additional arguments not covered within the 5,000 word/20 page limit and that, following submission of the initial objection, additional documentation will only be accepted if it is specifically requested by the Objection panel." – RySG, BRG, Afilias

"The Consortium recommends that the cost of a community-based objection be reduced to avoid being an obstacle preventing communities from filing objections. . . The Consortium supports the Council of Europe report ["Applications to ICANN for Community-Based New Generic Top Level Domains (gTLDs): Opportunities and Challenges from a Human Rights Perspective"] recommendation to ICANN to "**lower the costs for Community Objection**" for legitimate industry associations and communities. . . The Consortium supports to Council of Europe report recommendation to ICANN to "**provide clarity on the expected costs for Community Objection**." It should be possible to at least provide guidance on approximate costs based on an assessment of experiences of the 2012 round.

Rules pertaining to the objector's standing contributed to the cost of a community-based objection being prohibitive. Established institutions associated with a clearly-defined community could file a community-based objection only as an individual organization, not jointly with other organizations in the same community. If the objector's goal is to prove substantial opposition from a significant portion of the community, it seems logical for ICANN to allow an objection to be filed jointly by organizations within the community. For this reason, the Consortium supports the Council of Europe report recommendation to ICANN to "**assess whether it is desirable and feasible to open up the possibility to collectively file a Community Objection**."" – vTLD Consortium, NABP

". . . Suggestion: **Given that standing was a key element in community objections, with discernable boundaries, it is a step in the process that could likely be separated from the other criteria under its own cost structure and stage in the overall community objection process**. **Let the objector bear the brunt of the fees until it can be established that they are legitimate and with proper standing to object**. In some cases, having a stage for determination on standing as a first step also provides the community applicant with a reasonable amount of time to try and resolve the issues rooted in the opposition being charged in the formal objection, similar to the Cooperative Engagement Process (CEP) currently used at ICANN. . . Requiring a period similar to CEP also helps weed out any fake, frivolous or fraudulent objections, and ultimately helps avoid any unnecessary costs." – dotgay LLC

"Costs: We believe that the **cost of objections was a barrier to access and engagement**. This is based on the limited number of community objections filed by gay community groups from the hundreds that expressed ongoing concern to dotgay LLC about applications they deemed harmful to the LGBTQIA population. . . Considering that future gTLD applications have the potential to raise concerns of harm in the purview of communities that are not well resourced, **community objections must not price out community organizations that are willing or obliged to speak up on behalf of their members**. . . Although there are some features to the objection proceedings that do offer aid or relief, such as the independent objector and objection consolidation, these features are worthless unless there is awareness beyond the ICANN community and clearer guidance on when and where costs can be minimized or become less of a barrier to access. . .

Awareness: As a community applicant that engaged with the gay community in all reaches of the globe during application development for .GAY, we consistently found ourselves being the first to bring LGBTQIA organization awareness to the new gTLD program and ICANN's objection proceedings. Our concern is that other communities without such links to the new gTLD program will remain among the most vulnerable and the most at risk in subsequent procedures, especially if strings associated with their community are knowingly or unknowingly selected by applicants without community dialogue or full consideration of potential harm. **The community objection proceedings should avoid becoming a mere dog and pony show that gives the impression that community objection is being taken seriously (for a price), and instead focus on ensuring real access for community organizations as a true instrument to mitigate harm**. . ." – dotgay LLC

3.1.10 - Do you feel that GAC Early Warnings were helpful in identifying potential concerns with applications? Do you have suggestions on how to mitigate concerns identified in GAC Early Warnings?

Nominet responded that GAC Early Warnings were helpful in identifying potential concerns with applications.

Excerpt:

"Yes. Whilst the GAC should not run ICANN's policy for new gTLDs, it is important that GAC input is a formal part of the application process, and dialogue between the GAC and applicants should be encouraged to help work out solutions to public policy concerns." – Nominet

BC, RySG, BRG, Afilias provided suggestions for improving the Early Warning mechanism.

Sample excerpts:

"In the next "round", the BC would like to see clarification around the GAC objections process and timeline for filing and addressing GAC objections." -- BC

"There seemed to be some confusion and uncertainty about the implications and consequences of a GAC Early Warning. Several steps could minimize this confusion and uncertainty in the future:
(i) change the name to GAC Member Early Warning (or something similar) to communicate clearly that the Early Warning has not been issued by the entire GAC, but, instead, by one or more GAC members;
(ii) (adopt and identify a clear timetable for action by the issuing GAC member(s) to provide certainty to applicants;
(iii) require the issuing GAC member(s) to identify the national law(s) on which the Early Warning is based;
(iv) have the issuing GAC member(s) designate the type of action(s) desired from the applicant; and
(v) emphasize that the GAC Member Early Warnings have no precedential value." – RySG, BRG, Afilias

3.1.11 - What improvements and clarifications should be made to GAC Advice procedures? What mitigation mechanisms are needed to respond to GAC Advice? How can timelines be made more precise?

ALAC, vTLD Consortium, NABP, Jim Prendergast, RySG, BRG, Aflias, and Valideus provided suggestions for improving GAC Advice procedures.

Sample excepts (emphasis added):

"GAC advice in relation to gTLDs **must include rationales**. . ." -- ALAC

". . . To prevent delays and ambiguities in the application evaluation process, **GAC Advice and the ICANN's Board's resulting policy decisions should be determined prior to the launch of New gTLD subsequent procedures**. While this cannot necessarily be done in relation to individual potential TLD strings, it should be possible to do so in relation to particular categories where there may be sensitivity. Understandably issues may arise that cannot be predicted, but, with regard to policy decisions for sensitive and highly regulated strings, for example, these negotiations can be conducted in advance and should be firmly established and publicized prior to new applications being accepted." – vTLD Consortium, NABP

"Additionally, in freezing groups of applications by category, it was apparent that the GAC had not actually read the affected applications prior to issuing its Advice. This is evidenced by the fact that the .pharmacy application already included safeguards such as those advised by the GAC. Failure of the GAC either to read the application and/or to have a process whereby misunderstandings could be clarified resulted in a substantial delay to the processing of NABP's .pharmacy application. In subsequent rounds, if last-minute application freezes should become necessary**, the GAC should ensure that it understands the application(s)** in question. In addition, there should be processes introduced whereby an **applicant can communicate directly with the GAC member(s) having an objection to address any misunderstandings**." -- NABP

"One of the GNSO principles for the new gTLD program is "There must be a clear and pre-published application process using objective and measurable criteria." The issuance of GAC advice after applications were submitted threw the entire program in the air for years and arguably violated this principle. To this day, we are still dealing with the implications from this.

Now that the community, including the GAC, has been through the 2012 round, we have a track record to look back upon and utilize. Nearly all the GAC advice pertained to all applications, or categories of applications. . . One would expect that advice still stands.

For the benefit of ICANN, the community and applicants, **GAC advice should be developed and issued prior to the launch of the next application period (round or otherwise)**. This allows applicants to have the full benefit of the GAC concerns prior to expending time, energy and resources applying for new gTLDs. Some may choose to do so in contradiction of advice and others may decide not to. It is unfair for applicants who follow the Application Guidebook, which the GAC contributed to, to file an application and suddenly find their business plans upended because of unforeseen objections from the GAC." – Jim Prendergast

"GAC Advice was provided against whole categories of applications. Though Advice was ultimately determined to apply to strings specifically listed in the Beijing Communique, the initial communique suggested that these lists were non-exhaustive, and could apply to applications not specifically referenced. This contradicts the procedures established in the Applicant Guidebook, which stated that Advice would be provided against applications. This created confusion for applicants whose strings may exist in related industries, but were not cited, around whether advice applied to them and whether to engage advice directly.

GAC advice was provided against strings (encompassing all members of a contention set) rather than individual strings. This also contradicts the procedures defined in the applicant guidebook. Applications for a single string may propose vastly different business models with implications for the validity of parts of the GAC Advice. The expectation should be that applications will be reviewed and, if applicable, referenced individually as part of the GAC Advice, with these factors taken into account.

GAC Advice was non-implementable in its initial form. This necessitated lengthy and tedious back-and-forth with the ICANN Board to reach a solution that was amenable to the GAC and technically feasible for registry operators, complicating resolution of the Advice by ICANN and registry operators and significantly drawing out the timeline to bring new gTLDs to market. Whereas the ICANN Board was prepared to accept and take steps to address the public policy concerns raised in the GAC Beijing Communiqué, the GAC insisted on playing a prolonged role in implementation and operational matters which resulted in further unreasonable delays for all concerned. GAC Advice should be provided in such a way that provides sufficient flexibility for ICANN or the relevant community to develop policy or implementation frameworks that ensure such advice is implementable.

GAC Advice did not provide a rationale for why particular strings were included. The failure to justify the selection of strings referenced in the GAC communique further extended the process of accepting and implementing GAC Advice. Consistent with the recommendations of the Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability), advice provided against applications as part of a future application process should be accompanied by a rationale and demonstrate familiarity with the application in question. We further note that the community has already developed several recommendations regarding the provision of GAC advice that ameliorate some of these concerns as part of the CCWG-Accountability. The requirements for the provision of GAC advice established as part of the CCWG-Accountability must apply equally to the provision of advice as part of the application process. . .

The GAC did not allow applicants an opportunity to be heard. An applicant whose application was the subject of GAC Advice had no opportunity to be heard by the GAC before the GAC issued its GAC Advice. Indeed, the GAC Chair refused at least one applicant's request to be heard. Without an opportunity to be heard before the GAC issues Advice on its application, an applicant is denied a fundamental requirement of procedural fairness that is recognized under national and international law. Moreover, requiring that applicants have an opportunity to be heard by the GAC should minimize the likelihood that the GAC will issue Advice based on incorrect factual assertions or fundamental misunderstandings by GAC members. Of course, the opportunity to be heard must be meaningful in terms of both process (timing and length of presentation, for example) and substance (topics covered and GAC member attendance, for example)." – RySG, BRG, Aflias

"The GAC's **processes for filing formal advice – including objections to specific applications – and its rationale need to become more transparent and accountable**. If there is to be a presumption that the Board will accept that advice, this should not be done blindly, without the Board first having reviewed, clarified, and agreed with the supporting rationale.

A **formal Government Objection process (currently available under the Formal Objection mechanism managed by ICANN's DRSPs) should be considered as the appropriate venue for individual GAC members to file objections to specific applications**. **Errors of fact made by GAC members should be open to challenge.**

A clearer process should be applied to the identification of regulated and safeguard TLDs. Issues of definition and scope for such categories of TLDs, as well as whether terms identified by the GAC as falling under these lists are non-exhaustive or not, cannot be repeated in a future round, let alone under the unpredictable timelines that became a feature of the first round.

The determination of such lists by the GAC should be transparently reasoned and founded on clearly established guidelines for applicants. It is imperative that this area of new gTLD policy is settled in advance of subsequent procedures, dictated by existing laws related to TLD strings, rather than by who is applying for those strings. The GAC should not be used as a vehicle for applicants to gain a competitive advantage over others." -- Valideus

Nominet noted the complexity of this topic without providing specific additional suggestions for future improvements.