Council Leadership Recommendation: Policy Vehicle for Closed Generics Work in the GNSO

Context

During its meeting at ICANN76, the ICANN Board passed a resolution adopting a substantial portion of the outputs from the New gTLD Subsequent Procedures PDP, setting in motion the start of the implementation process for the next round of new gTLDs. As part of the resolution, the Board established deadlines for key deliverables that will impact the development of the implementation plan. By 15 June 2023, the Board expects to receive "A GNSO Council project plan and timeline for policy work, or an alternate path, on how to handle closed generics for the next round of new gTLDs."

The Closed Generics Dialogue is expected to deliver a draft framework by 31 May 2023, which the Council will use as a basis to develop the scope of work, project plan and timeline for a subsequent policy process. The type of policy process that the GNSO chooses will determine some of the specific milestones and deliverables to include in the project plan.

Council Leadership Assessment

Taking into account the applicability of different GNSO processes, Board and community expectations, and practical considerations, Council leadership recommends that subsequent policy work takes place in the form of an Expedited Policy Development Process (EPDP).

In making this assessment, Council leadership started with the context and history of this issue. GNSO policy work for the next round of New gTLDs has taken place in the form of a PDP, namely the New gTLD Subsequent Procedures Policy Development Process (PDP). Closed Generics was one of the topics included in the SubPro PDP. As a result, there is an expectation that the nature of this work should be handled by a policy development process. In the Board's letter to the GAC and GNSO inviting them to enter a facilitated dialogue, the Board states, "Should the GAC and GNSO Council reach agreement on a framework, the proposal would then be considered through the appropriate GNSO policy development process that includes the wider community."
 Policy development processes (PDPs and EPDPs) are well understood by the broader community and are accepted as the vehicle for the GNSO to make policy recommendations to the Board regarding New gTLDs.

Between the PDP and EPDP, the EPDP is the more appropriate option, given groundwork on the topic that has already taken place. Per the EPDP Manual, an EPDP is appropriate when the process needs "to provide new or additional policy recommendations on a specific policy issue that had been substantially scoped previously, such that extensive, pertinent background information already exists." This description fits the circumstances of the Closed Generics issue.

Council leadership looked at other available GNSO processes as part of its analysis, and the GNSO Guidance Process (GGP) in particular. A GGP is an option in cases where Council "has determined that the intended outcome of the GGP is not expected to create new "Consensus Policy" recommendations including, but not limited to, any new contractual obligations for contracted parties (in which case a PDP would need to be initiated)." Council leadership does not believe that a GGP is

the appropriate vehicle because this topic falls under the scope of policy development work, and only an PDP/EPDP would provide the necessary legitimacy from a process perspective. Further, GNSO Council leadership does not believe that a GGP, even if it were an appropriate mechanism, would provide significant cost savings, as the process has many of the same requirements as an EPDP.

Finally, processes associated with Section 16 of the PDP Manual are likely inapplicable because there are no "approved GNSO policies" to modify. The SubPro PDP's output on this topic was in the category of "No Agreement" (which achieved full consensus). The GNSO Council considered this functionally equivalent to the designation of Divergence and did not approve the output.