ICANN | GNSO
Generic Names Supporting Organization

12 July 2024

GNSO Council Review of Kigali GAC Communiqué

TO: Tripti Sinha

Chair, ICANN Board of Directors

CC: Nicolas Caballero, GAC Chair

Dear Tripti,

On behalf of the GNSO Council, we are hereby transmitting to you the GNSO Council's *preliminary* review of the Kigali GAC Communiqué in advance of the Board's meeting with the GAC on 15 July. The GNSO Council will be considering the review for adoption at its 18 July meeting, after which the attached review document, with the addition the response on the Issues of Importance, will be formally transmitted to the Board.

The GNSO Council's review of each GAC Communiqué is an effort to provide feedback to you, in your capacity as members of the ICANN Board, as you consider issues referenced in the Communiqué that we believe relate to policies governing generic Top-Level Domains. Our intent is to inform you and the broader community of gTLD policy activities, either existing or planned, that may directly or indirectly relate to advice provided by the GAC. The GNSO Council hopes that the input provided through its review of the GAC Communiqué will enhance co-ordination and promote the sharing of information on gTLD related policy activities between the GAC, Board and the GNSO. As it relates specifically to this GAC Communiqué, the GNSO Council appreciates the GAC's participation and contributions on the GNSO Guidance Process (GGP) on Applicant Support.

Kindly,

Greg DiBiase, GNSO Chair

GAC Advice - Topic	GAC Advice Details	Does the advice concern an issue that can be considered within the remit# of the GNSO (yes/no)	*If yes, is it subject to existing policy recommendations, implementation action or ongoing GNSO policy development work?*	*How has this issue been/is being/will be dealt with by the GNSO?*
1. Applicant Support	i. To take final decisions on successful Applicant Support Program (ASP) applicants, who applied within the twelve-month time period, at the conclusion of that period as opposed to on a first come, first served basis. T`his would mean that no preference is given to applicants who applied earlier in the twelve month period, and will help ensure underserved regions are not at a disadvantage through the ASP.	yes	(i) The Applicant Support Program (ASP) arises out of the recommendations of the SubPro PDP, as supplemented by the recommendations of the GNSO Guidance Process (GGP) on Applicant Support. The ASP is being implemented by ICANN Org, supported by the SubPro IRT	(i) The timing of notification of successful applicants was one of the issues considered by the GNSO Guidance Process (GGP) on Applicant Support. The GGP operated on a representative model, with members from the GNSO Stakeholder Groups and Constituencies, the GAC and the ALAC. The GGP's Final Report (https://gnso.icann.org/sites/default/files/policy/2023/correspondence/ggp-team-et-al-to-gnso-council-et-al-08dec23-en.pdf) includes at the following recommendation relating to the timing of notification: **"Recommendation 9**: ICANN org should develop a flexible, predictable, and responsive Applicant Support Program in order to communicate the results of evaluation process and allow applicants to know their range of

				support allocations as early as possible in a transparent manner." The following rationale was given: "Per the Initial Report, the working group discussed how to deal with the timing of notifications of funding for qualified candidates and the concern that it could be detrimental for applicants to have to wait until the end of the application window before being notified of funding. In this regard, working group members suggested that the GGP could provide a guidance recommendation in the form of principles that the Applicant Support Program should allow for flexibility in the timing of notifications. Following the public comment review, the working group agreed to emphasize how important early notice is to applicants." This recommendation 9 did not differ in substance from the version contained in the GGP Initial Report, which was put out to public comment. All the public comment input received on recommendation 9 was supportive, and included input from the GAC who commented that: "The GAC supports the recommendation as written and

				wishes to highlight the importance of providing an early indication of support to applicants when this is feasible." (https://community.icann.org/display/GGPGIRFAS/Guidance+Recommendation+Initial+Report+-+Public+Comment+Review)

	iii. To initiate a facilitated dialogue, involving representatives from the GAC, GNSO and the ALAC, to assess the feasibility of leveraging (including contracting and financing the services of) a platform to which new gTLDs, supported through the ASP, could move to eventually operate their own back-end services.			The GNSO Council has not yet had the opportunity to discuss the GAC's suggestion iii. "To initiate a facilitated dialogue" and thus does not have any guidance to offer at this time on this issue.
2. Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs	i. To prohibit the use of private auctions in resolving contention sets in the next round of New gTLDs. ii. To urgently initiate a focused community-wide discussion (including with the GAC and ALAC) on the resolution of contention sets, with a view to finding alternatives to private auctions and ICANN auctions of last resort, before the ICANN Board takes any action in a manner that may be inconsistent with the ICANN77 Washington D.C. Communiqué GAC Consensus Advice.	Yes	(i) The Board adopted SubPro recommendation 35.3 & 35.5 with GNSO Council-Approved Clarifications: The GNSO Council confirms that the references to private auctions in Recommendations 35.3 and 35.5 merely acknowledge the existence of private auctions in 2012 and should NOT be seen as an endorsement or prohibition of their continued practice in future rounds of the New gTLD Program. The Council notes that there were extensive discussions on the use of private auctions in the SubPro working group. To the extent that draft recommendations were developed as to private auctions, these did not receive consensus support in the	

			working group but did receive strong support with significant opposition. (ii) The Board adopted 35.1 in March 2023 which affirmed the use of ICANN Auctions of last resort. According to the Rationale in the SubPro Final Report: *The Working Group discussed a number of possible alternatives to ICANN Auctions of Last Resort for resolving contention sets, as detailed in the Supplemental Initial Report.* *In examining the benefits and drawbacks of these alternatives and the different perspectives provided in public comment, the Working Group did not come to any agreement that there is a better option that would be widely supported by the community. Therefore, the Working Group affirms the use of ICANN Auctions of Last Resort as a method of last resort to resolve contention sets*.	
3. Follow-Up on Previous advice: Urgent Requests for Disclosure of Registration Data	It is the GAC's understanding that the GNSO needs to provide input on the next steps, building on the Board's conclusion that "the proposed urgent response policy is not fit for purpose and must be revisited". 9	Yes	The issue of Urgent Requests relates to the implementation of Board-adopted GNSO policy recommendations of the EPDP Temporary Specification for gTLD Registration Data – Phase 1. Specifically: Recommendation #18 states: The EPDP Team recommends	This matter is on the draft agenda for discussion at the GNSO Council meeting on 18 July 2024. The treatment of PDP policy recommendations is governed by the PDP Manual, Annex A of the GNSO Operating Procedures, Section 16 of which deals with amendment or

	https://gnso.icann.org/sites/default/files/policy/2024/correspondence/sinha-to-dibiase-03june24-en.pdf 13 The GAC urges the GNSO Council and the Board to take any necessary steps in an expeditious manner to "establish a clear process and a timeline for the delivery of a policy on Urgent Requests for domain name registration data", given the vital public safety interests related to such requests, as per the ICANN79 San Juan GAC Advice.		that criteria for a Reasonable Request for Lawful Disclosure and the requirements for acknowledging receipt of a request and response to such request will be defined as part of the implementation of these policy recommendations but will include at a minimum: … ● Timeline & Criteria for Registrar and Registry Operator Responses: … ● A separate Timeline of [less than X business days] will be considered for the response to 'Urgent' Reasonable Disclosure Requests, those Requests for which evidence is supplied to show an immediate need for disclosure [time frame to be finalized and criteria set for Urgent requests during implementation]. The EPDP Team recommends that the above be implemented and further work on defining these criteria commences as needed and as soon as possible	modification, as follows: "16. Amendments or Modifications of Approved Policies Approved GNSO Council policies may be modified or amended by the GNSO Council at any time prior to the final approval by the ICANN Board as follows: 1. The PDP Team is reconvened or, if disbanded, reformed, and should be consulted with regards to the proposed amendments or modifications; 2. The proposed amendments or modifications are posted for public comment for not less than thirty (30) days; 3. The GNSO Council approves of such amendments or modifications with a Supermajority Vote of both Houses in favour. Approved GNSO Council policies that have been adopted by the ICANN Board and have been implemented by ICANN Staff may only be amended by the initiation of a new PDP on the issue. [emphasis added]." The process for amendment of recommendations prior to final approval by the ICANN Board is therefore not applicable to this

				Recommendation 18, since it has already been approved by the GNSO Council and adopted by the ICANN Board.