

Dear Council Members,

The Working Group for the PDP on Subsequent Procedures for New gTLDs (SubPro) proudly submits its Final Report to the GNSO Council for consideration.

We are happy to report that all but one of the topics received a designation of either Full Consensus or Consensus. Annex C of the Final Report provides further detail about the Consensus designations for specific outputs under each topic. Within each of the outputs within the topics that received less than Full Consensus, to the extent there were more than one Output for that Topic, the table in Annex C sets forth those outputs within the topic that achieved Consensus or Full Consensus. For example, in Topic 2, the overall designation for the Topic is “Consensus.” That said, Outputs 2.1, 2.2, 2.4, 2.5, 2.6, 2.7 and 2.8 had “Full Consensus”, but Output 2.3 had Consensus.

The PDP Working Group Leadership would like to draw the Council’s attention to a few of the items which may require future thought and/or discussion.

1. Mitigating DNS Abuse. As you are aware, by Letter dated 27 April 2020, the SubPro PDP Working Group referred the issue of DNS Abuse in all gTLDs back to the GNSO Council. As stated in that letter, and repeated in Recommendation 9.15, the Working Group acknowledges ongoing important work in the community on the topic of DNS abuse and believes that a holistic solution is needed to account for DNS abuse in all gTLDs as opposed to dealing with these recommendations with respect to only the introduction of subsequent new gTLDs. In addition, recommending new requirements that would only apply to the new gTLDs added to the root in subsequent rounds could result in singling out those new gTLDs for disparate treatment in contravention of the ICANN Bylaws. Therefore, this PDP Working Group is not making any recommendations with respect to mitigating domain name abuse other than stating that any such future effort must apply to both existing and new gTLDs (and potentially ccTLDs).
2. Closed Generics. The Working Group had “Full Consensus” on the fact that we were unable to come to an agreement on what, if anything, should be done with respect to Closed Generics in subsequent rounds (see Topic 23). This topic was debated for many hours, was the subject of several requests for comments by the community, and had multiple proposals that were discussed, debated and ultimately dismissed. The fact is that there are compelling arguments both for and against allowing them in subsequent rounds, and no right or wrong answer. The Working Group believes that if this issue were to be considered in future policy work, it should also involve experts in the areas of competition law, public policy, and economics. In addition, it should be performed by those in the community that are not associated with any past, present, or expectations of future work in connection with new gTLD applications or objections to new gTLD applications. Absent such independence, any future work is unlikely to result in an outcome any different than the one achieved in this Working Group.
3. Public Interest Commitments / Registry Voluntary Commitments. Although the substantive proposals in Topic 9 garnered Consensus regarding PICs and RVCs, the ICANN Board raised some questions in its comments to the Draft Final Report about whether requiring PICs/RVCs in subsequent rounds (other than those that were grandfathered) are in line with the 2016 ICANN Bylaws. This issue, we believe, is not one that can be answered by a PDP Working Group, but rather by the ICANN Board itself with input from the entire community. Therefore, those recommendations should be read in a manner that assumes

that in fact PICs and RVCs can be implemented in the contracts and enforced by ICANN. There is some discussion of this in Topic 9, and proposed ways to implement those PICs/RVCs in a manner that we believe would be compliant, but this may need further discussion within the community as a whole (Not in a PDP). If for any reason the PIC/RVC Recommendations cannot be implemented with the current Bylaws, the community may either want to engage in a discussion to revise the Bylaws, or alternatively, revise the recommendations to ensure that they are enforceable.

4. Mechanisms of Last Resort / Private Resolution of Contention Sets. Topic 35 was the only topic to receive the overall designation of Strong Support but Significant Opposition.
 - Although many of the elements in those recommendations did get Consensus support, there was not consensus on:
 - (a) whether the auctions of last resort should be done as a sealed bid auction where bids are submitted towards the beginning of the process, or
 - (b) whether private auctions should be allowed to resolve contention sets.
 - There was consensus on allowing other forms of private resolution, such as combining applications, creating new ventures, etc.
 - But there was no consensus on whether private auctions, where each losing applicant splits the proceeds from the winning bid, should continue to be allowed in subsequent rounds.

Our plan is to hold a webinar for the Council and community to attend to discuss these matters further. The webinar will be held prior to the February Council meeting.

On behalf of the entire Working Group, we would like to thank the 200+ members of the group for the thousands of hours of meetings, Adobe Connect and Zoom Calls, and In-Person meetings over these past four to five years. We also want to thank not just all of the Constituencies and Stakeholder Groups that actively participated, but also the ALAC and GAC for all of their input, dedication and support. Finally, we could not have done this without the support and expertise or Steve, Julie and Emily from ICANN Org.

Sincerely,

Jeff Neuman and Cheryl Langdon-Orr
SubPro PDP Chairs