5 September 2023

Re: Transmission of Clarifying Statement to ICANN Board

To: ICANN Board

Dear Tripti,

With the ICANN Board adopting a majority of the New gTLD Subsequent Procedures (SubPro) PDP recommendations on 26 March 2023, a portion of recommendations were left in a pending status. The GNSO Council has welcomed the open lines of communication with the ICANN Board and the strong emphasis on dialogue to resolve the concerns that prevented the Board's adoption of the pending recommendations. As a result of this collaborative effort, the Council was able to approve a Clarifying Statement that is intended to capture and memorialize the shared understandings that the Council and Board have about specific pending recommendations. Note that this Clarifying Statement omits the pending recommendations that are related to PICs and RVCs, which is as a result of the ICANN Board's need to further refine the clarifying language relating to the enforceability of PICs and RVCs .

The Council would like to draw attention to Whereas #9, which provides clarity on how the Council expects that the Clarifying Statement should be interpreted. The relevant Whereas clause is captured here in its entirety.

9. The Clarifying Statement should be read as complementary to the relevant pending recommendation(s) and should be considered jointly with the recommendations for the purposes of implementation.

Lastly, the Council would like to reiterate its appreciation for the collegial, constructive, and pragmatic manner in which the Board engaged in resolving issues with the pending recommendations and in particular, is especially thankful for the tireless efforts of the co-leads of the Board's Caucus on SubPro, Avri Doria and Becky Burr.

Kindly,

Sebastien Ducos, GNSO Chair

New gTLD Subsequent Procedures Pending Recommendations - GNSO Council Clarifying Statement

Introduction

In the ICANN Board's resolution at ICANN76 regarding New gTLD Subsequent Procedures, 38 recommendations were placed into a pending state as documented in Section B of the Scorecard. The GNSO Council established a small team to try and identify paths forward for all of the pending recommendations, with those paths to be mutually agreed upon between the GNSO Council and ICANN Board. The Council and Board discussed the expectation that for certain recommendations, a Clarifying Statement from the Council should be sufficient to mitigate Board concerns that prevented adoption of the recommendations. This document is intended to formally capture and document clarifying information from the GNSO Council.

Clarifying Statements

The recommendations where there is an expectation that the GNSO Council can resolve ICANN Board concerns via a Clarifying Statement are:

- Topic 3: Applications Assessed in Rounds - Recommendations 3.1,3.2, 3.5, 3.6, 3.7
- Topic 6: Registry Service Provider Pre-Evaluation - Recommendation 6.8
- Topic 9: Registry Voluntary Commitments / Public Interest Commitments - Recommendation 9.15
- Topic 26: Security and Stability - Recommendation 26.9
- Topic 29: Name Collision - Recommendation 29.1
- Topic 34: Community Applications - Recommendation 34.12
- Topic 35: Auctions - Recommendations 35.3, 35.5

Topic 3: Applications Assessed in Rounds - Recommendations 3.1,3.2, 3.5, 3.6, 3.7

The SubPro Final Report recommendation envisions that “the next application procedure should be processed in the form of a round” and “Application procedures must take place at predictable, regularly occurring intervals without indeterminable periods of review”. However, the GNSO Council confirms its willingness to engage with the ICANN Board to explore a shared vision for the long-term evolution of the program, which could be materially different than what is envisioned for the next round of the New gTLD Program in the Topic 3 recommendations.

Topic 6: Registry Service Provider Pre-Evaluation - Recommendation 6.8

The GNSO Council confirms its understanding of the Implementation Review Team (IRT) Principles & Guidelines that state that, “the IRT is convened to assist staff in developing the implementation details for the policy to ensure that the implementation conforms to the intent of the policy recommendations.” The Council therefore recognizes that ICANN org will be responsible for establishing the fees charged for the RSP pre-evaluation program, in consultation with the IRT, as is consistent with the roles and responsibilities captured in the IRT Principles & Guidelines. The language used in Recommendation 6.8 is not intended to alter the respective roles and responsibilities of staff and the IRT

Topic 9: Registry Voluntary Commitments / Public Interest Commitments - Recommendations 9.15

Recommendation 9.15: The GNSO Council confirms that this recommendation does not require any implementation nor create any dependencies for the Next Round of the New gTLD Program.

Topic 26: Security and Stability - Recommendation 26.9

The GNSO Council confirms that the “any level” language referenced in the recommendation should be interpreted to only be in respect of domain names that are allocated by the registry operator.

Topic 29: Name Collision - Recommendation 29.1

The GNSO Council believes that Recommendation 29.1 can be adopted by the Board on the understanding that it does not need to be acted on until such time any next steps for mitigating name collision risks are better understood out of the Name Collision Analysis Project (NCAP) Study 2.

Topic 34: Community Applications - Recommendation 34.12

The GNSO Council confirms its recommendation that terms included in the contract between ICANN org and the CPE Provider regarding the CPE process must be subject to public comment. This recommendation however is not intended to require ICANN org to disclose any confidential terms of the agreement between ICANN org and the CPE Provider.

Topic 35: Auctions - Recommendations 35.3, 35.5

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.