

21 October 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. The Council appreciates that the first clarifying statement allowed the ICANN Board to adopt the relevant recommendations during its September 2023 meeting.

This second clarifying statement is limited to the pending recommendations related to PICs and RVCs. As with the first clarifying statement, 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 again 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.

Signature

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 that the GNSO Council and ICANN Board agreed can be resolved via a Clarifying Statement from the GNSO Council are:

- Topic 9: Registry Voluntary Commitments / Public Interest Commitments - Recommendations 9.1, 9.4, 9.8, 9.9, 9.10, 9.12, 9.13
- Topic 30: GAC Consensus Advice and GAC Early Warning - Recommendation 30.7
- Topic 31: Objections - Recommendations 31.16, 31.17

Topic 9: Registry Voluntary Commitments / Public Interest Commitments - Recommendations 9.1, 9.4, 9.8, 9.9, 9.10, 9.12, 9.13, 9.15

Recommendations 9.1, 9.4, 9.8, 9.9, 9.10, 9.12, 9.13: The GNSO Council confirms that any new Public Interest Commitments (PICs) or Registry Voluntary Commitments (RVCs) must be enforceable under the ICANN Bylaws and as a practicable matter. In respect of RVCs, both ICANN org and the applicant must agree that a proffered commitment is clear, detailed, mutually understood, and sufficiently objective and measurable as to be enforceable. And further, the Council observes that among the purposes of PICs / RVCs is to address public comments, in addressing strings deemed highly sensitive or related to regulated industries, objections (whether formal or informal), GAC Early Warnings, and/or GAC Consensus Advice. This clarifying statement is made with the understanding that the ICANN Board will have a community-wide conversation on PICs/RVCs.

Topic 30: GAC Consensus Advice and GAC Early Warning - Recommendation 30.7

Please see the Council's clarifying statement for Recommendations 9.1, 9.4, 9.8, 9.9, 9.10, 9.12, 9.13.

Topic 31 Objections - Recommendations 31.16, 31.17

Please see the Council's clarifying statement for Recommendations 9.1, 9.4, 9.8, 9.9, 9.10, 9.12, 9.13.