GNSO COUNCIL REVIEW OF GAC ADVICE CONTAINED IN THE ICANN77 GAC COMMUNIQUE[1]

GAC Advice - Topic	GAC Advice Details	Does the advice concern an issue that can be considered within the remit[2] 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. Predictability in New gTLD Applications	a. The GAC advises the Board: i. To take steps to ensure equitable participation in the proposed Standing Predictability Implementation Review Team (SPIRT) by all interested ICANN communities, on an equal footing. RATIONALE: The GAC recalls persistent GAC concerns regarding both the weak implementation of PICs applicable to gTLDs in highly-regulated sectors and the lack of clarity and effectiveness of the mechanism to resolve disputes (the Public Interest Commitments Dispute Resolution Process or PICDRP) and recommends that these issues are	Yes, the topic is related to New gTLD Subsequent Procedures	Relates to the implementation of the SubPro PDP recommendations	The GNSO Council has agreed that, since the SPIRT will fall under the oversight of the GNSO Council, it is appropriate for the GNSO Council to take the lead in drafting the charter of this group. In drafting the charter for the SPIRT, the GNSO Council will take into consideration the extensive guidance in Annex E of the SubPro Final Report, including that: *The SPIRT should be open to all interested parties, but may not necessarily be representative of the ICANN community, as actual participation may depend on interest and relevance of the new gTLD Process. Membership*

	remedied in any subsequent rounds.			*criteria should identify knowledge, experience, responsibilities to their respective organization, rules of engagement, a Statement of Participation, etc.*
2. Registry Voluntary Commitments (RVCs) / Public Interest Commitments (PICs) in New gTLDs	a. The GAC advises the Board: i. To ensure that any future Registry Voluntary Commitments (RVCs) and Public Interest Commitments (PICs) are enforceable through clear contractual obligations, and that consequences for the failure to meet those obligations should be specified in the relevant agreements with Contracted Parties. RATIONALE: The GAC recalls persistent GAC concerns regarding both the weak implementation of PICs applicable to gTLDs in highly-regulated sectors and the lack of clarity and effectiveness of the mechanism to resolve disputes (the Public Interest Commitments Dispute Resolution Process or PICDRP) and recommends that these issues are remedied in any subsequent rounds.	Yes, the topic is related to New gTLD Subsequent Procedures	There are existing policy recommendations related to PICs/RVCs which are currently pending adoption by the Board.	The Council small team has been working closely with members of the Board Caucus to understand the Board concerns with these recommendations and how best these can be addressed. The GNSO Council small team agrees with the GAC that PICs/RVCs must be contractually enforceable.

3. Applicant Support in New gTLD Applications	a. The GAC advises the Board: i. To specify ICANN's plans related to steps to expand financial support and engage with actors in underrepresented or underserved regions by ICANN78 in order to inform GAC deliberations on these matters. ii. To take steps to substantially reduce or eliminate the application fees and ongoing ICANN registry fees to expand financial support for applicants from underrepresented or underserved regions. iii. To take timely steps to facilitate significant global diversification in the New gTLD program by ensuring increased engagement with a diverse array of people and organizations in underrepresented or underserved markets and regions, including by: ● Raising awareness of the Applicant Support Program; ● Providing training and assistance to potential applicants;	Yes, the topic is related to New gTLD Subsequent Procedures.	The SubPro WG did consider whether the Applicant Support Program should include the reduction or elimination of ongoing registry fees specified in Article 6 of the Registry Agreement for eligible candidates. The Working Group's Initial Report included a preliminary recommendation to this effect, but this was removed from the Final Report following the public comment input which reflected a range of perspectives.	The Board may find it of assistance to review SubPro Final Report Topic 17 section c, which summarises the matters considered by the working group. The GNSO Council approved the SubPro Final Report recommendations, which among other things, recommended the expansion of the scope of financial support provided to Applicant Support Program beneficiaries beyond the application fee to also cover costs such as application writing fees related to the application process (17.2)*; improving outreach, awareness raising, as well as usability of the applicant support program (17.3). The SubPro Working Group did not achieve consensus on recommendations to reduce or eliminate ongoing ICANN Registry fees, though the topic was addressed in its discussions and in its preliminary recommendations. After public comment of the Preliminary Report, the SubPro

	● Exploring the potential to support the provision of back-end services; and ● Providing adequate funding for the Applicant Support Program consistent with diversification targets. RATIONALE: The GAC reaffirms the importance of increasing the number and geographical distribution of applications from underrepresented or underserved regions in future rounds of New gTLDs through the Applicant Support Program. The GAC reiterates its "support for proposals to substantially reduce 11 or eliminate the application fees and ongoing ICANN registry fees to expand financial support"[3] , in order to sufficiently cover all such applications. Without a substantial reduction in, or financial support for, the application and ongoing fees, many potential			Working Group removed any recommendations on ongoing registry fees because of concerns expressed by the community about whether a reduction or elimination of the ongoing fees would lead to less secure, reliable and resilient TLD Registry Operators. * Recommendation 17.2 has not been approved by the ICANN Board and is under discussion with the GNSO Small Team. However, the GNSO Council agrees with the SubPro Final Report (and the GAC) that ICANN should find ways to support applicants beyond just covering the application fee as stated in Recommendations 17.1, 17.2, and 17.15.

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[3] GAC Comment on GNSO New gTLD Subsequent Procedures Final Outputs for ICANN Board Consideration, 1 June 2021: https://gac.icann.org/publications/public/gac-comment-subpro-final-outputs-1june21.pdf

	applicants in underrepresented or underserved regions would be unable to apply due to the status of their economies, where available capital for ICT/digital initiatives has been historically limited. The GAC highlights that non-financial support is also an important element of an applicant support programme, for example awareness raising, capacity development services and training. Assisting in the provision of back-end services may also be appropriate in some cases.		
4. Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs	a. The GAC advises the Board: i. To take steps to avoid the use of auctions of last resort in contentions between commercial and non-commercial applications; alternative means for the resolution of such contention sets, such as drawing lots, may be explored. ii. To ban or strongly disincentivize	Yes, the topic is related to New gTLD Subsequent Procedures.	Yes - SubPro Topic 35 deals with contention resolution, including ICANN auctions of last resort and private means of contention resolution. i. Affirmation with Modification 35.1 states:	i Recommendation 35.1[5] has been adopted by the Board which requires the use of auctions of last resort for all applicants unable to resolve contention between themselves (commercial or non-commercial). The SubPro working group considered the GAC proposal for a different

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[5] The Council small team has been working closely with members of the Board Caucus to understand the Board concerns with these recommendations 35.3 and 35.5 and how best these can be addressed. It appears that the Board's concerns relate only to the inclusion of references to private auctions and not to the overall recommendations. The likely mechanism to address the Board concerns will be the provision of a GNSO clarifying statement.

private monetary means of resolution of contention sets, including private auctions. RATIONALE: While the GAC acknowledges that, in an attempt to reduce potential gaming, recommendation 35.3 of the SubPro PDP Working Group Final Report included the need for applications to be submitted with a "bona fide" intention to operate a TLD, the GAC reiterates concerns regarding the implementation of this condition, and notes that punitive measures for non compliance with the condition of submission of a "bona fide" intention are not sufficiently defined. Regarding Auctions of Last Resort, the GAC reaffirms its view that they should not be used in contentions between commercial and non-commercial applications. In addition the GAC reiterates that private monetary means of resolution of contention sets should be banned or strongly disincentivized, to prevent applications under false pretences for		"Implementation Guideline F from 2007 states: "If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and; iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels." The Working Group affirms this Implementation Guideline with the	mechanism for auctions involving non-commercial applicants but ultimately did not agree by consensus to have a separate mechanism. ii The GNSO Council notes that the SubPro Working Group had extensive discussions on the topic of private resolution of contention sets including the use of private auctions. There were some members of the Working Group, including those from the GAC and ALAC as well as some from the GNSO Community that opposed the use of private auctions. However, although that position had strong support, there was also substantial opposition to that position and therefore a recommendation banning the use of private auctions was not adopted.

	monetary gain. Other means, like drawing lots, may be used to resolve contention sets. The GAC supports ALAC's view expressed in its advice to the ICANN Board noting that they believe there "should be a ban on private auctions" and that "by mandating ICANN only auctions, the proceeds of any such ICANN auctions can at least be directed for uses in pursuit of public interest, such as was determined through the CCWG on Auction Proceeds."[4]		following changes in italicized text: "If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe in accordance with the Applicant Guidebook and supporting documents ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. **If there is no such claim, and no mutual agreement, contention will be resolved through an ICANN Auction of Last Resort** and; iii) Expert panels may be used to make Community Priority Evaluation determinations."

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[4] [ALAC Advice to the ICANN Board on the Subsequent Procedures PDP Recommendations](#) (16 April 2021)

| | | | The revision to part i) specifies that any private resolution of contention must be in accordance with the Application Guidebook and supporting documents, including the Application Change request process and Terms and Conditions. Adjustments in the text of ii) and iii) describe in greater specificity program elements as they were implemented in the 2012 round, which will carry over into subsequent rounds.

ii Yes - Recommendations in Topic 35 support the use of private means of contention resolution. However, the WG s sought to disincentivise the practice of | |

			"winning by losing" by its consensus recommendations: 35.3 relating to the requirement for there to be a bona fide intention to operate the TLD, and identifying possible factors for consideration in assessing this; and 35.5 setting out transparency requirements where there has been private resolution. Council notes that these two recommendations are currently pending adoption by the Board.	