
New gTLD Subsequent Procedures PDP Supplemental Report: GAC Public Comment

With regard to the use of auction mechanisms, the GAC reiterates its comments on the use of auction mechanisms submitted to the Public Comment process for the PDP Initial Report, as follows:

Auctions of last resort should not be used to resolve contention between commercial and non-commercial applications. As to private auctions, incentives should be created to strongly disincentivise that instrument.

With regard to the role of Application Comment, the GAC reiterates its comments on GAC Early Warnings and other objections to proposed strings, as follows:

The GAC believes that the Early Warning arrangements applied in the recent gTLD round were a useful mechanism to identify applications that raise public policy concerns. This also applies to GAC advice to the Board and the specific "AGB-GAC consensus advice." They should be an integral part of any future rounds. Constructive dialogue through this process can help applicants better understand the concerns of governments and help governments better understand the planned operation of proposed gTLDs.

The GAC would welcome the opportunity to discuss options to increase the transparency and fairness of these arrangements (including providing a rationale for objections and giving applicants subject to Early Warnings the opportunity for direct dialogue with the GAC). Any rationale provided by the GAC would be based on its role under the Bylaws to "consider and provide advice on the activities of ICANN as they relate to governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues."

However, the GAC does not consider that the PDP should make recommendations on GAC activities, which are carried out in accordance with the Bylaws and GAC's internal procedures.

In Section 2.4.c.1, the Supplemental Report states that the Working Group would like to implement some operational improvements relating to potential changes in new gTLD applications by, among other things: (1) having ICANN provide guidance on changes that will likely be approved and changes that will likely not be approved; (2) having ICANN set forth the types of changes which are required to be posted for public comments and the changes that are not required to be posted; and (3) having ICANN set forth the types of changes that would require a re-evaluation and the changes that would not require a re-evaluation. The GAC concurs that better guidance on these questions would be helpful. In the ongoing deliberations involving possible change requests and guidance, care is required so as not to allow changes that could undermine the Role of Application comments. In particular, the public comment process for some issues, such as competition issues, can be carried out only if information about a prospective new gTLD and the identity of the new gTLD's likely operator is published. Changes in the likely operator of a new gTLD should

require notification under section 1.2.7 of the gTLD Applicant Guidebook and may require re-evaluation and a new public comment period.

Accordingly, with regard to both the Role of Application comment and Change requests, the GAC believes that ICANN should enforce section 1.2.7 of the gTLD Applicant Guidebook to require applicants to disclose to ICANN any material changes or updates pertaining to their application, including any agreements whereby an applicant has agreed to transfer or seek ICANN's approval to transfer to another entity the right to operate a new gTLD that could be authorized in response to a pending application. As stated in 1.2.7 of the gTLD Applicant Guidebook: "If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms." The GAC believes that a change to the likely operator of the new gTLD would constitute a material change in the application that invokes the notification requirement in 1.2.7 and that ICANN may require a re-evaluation of the application, including a new public comment period, for competition concerns. Implementing section 1.2.7 in this manner will serve the public interest by providing the GAC and other members of the public the opportunity to identify and comment at the earliest possible time in the new gTLD application process competition and other issues, such as security questions, that may depend on the identity of the new gTLD operator.

16 December 2018