

29 July 2016

Avri Doria, Jeff Neumann, Stephen Coates
Co-Chairs of the GNSO New gTLD Subsequent Procedures Working Group

Dear Co-Chairs,

Thank you for your letter of 9 June 2016 seeking input on several overarching questions as part of your Working Group's first Community Comment process.

General Comments

In its Helsinki Communiqué the GAC advised the ICANN Board that:

1. The starting point for development of policy on further releases of new gTLDs should first take into consideration the results of all relevant reviews of the new gTLD round and determine which aspects and elements need adjustment. In addition, the following should be addressed:
 - a. Requirements with regard to interoperability, security, stability and resiliency can be met.
 - b. An objective and independent analysis of costs and benefits is conducted beforehand, drawing on experience with and outcomes from the recent round; and
 - c. There is an agreed policy and administrative framework that is supported by all stakeholders.
2. All measures available to the Board should be used to ensure that a comprehensive and measured approach to further releases of new gTLDs is taken in a logical, sequential and coordinated way rather than through parallel and overlapping efforts and/or timeframes that may not be agreed by all relevant interests.

In your letter you ask that the GAC consider and clarify the extent to which a range of work across the community should be considered by the PDP WG during its deliberations. The GAC notes that there is currently a range of interconnected reviews and policy development

processes relevant to new gTLDs. With regard to those identified in your letter, the GAC notes that:

- Work by ICANN and some PDPs and reviews to develop and maintain metrics to support both policy development and ongoing implementation should be considered as a specific stream of work.
- While the GAC is addressing some relevant issues through the GAC Working Groups that you list in your letter, input to PDPs and other forums will be coordinated through the GAC membership as a whole.
- The GAC's response to the questions from the Subsequent Procedures PDP WG should be seen in the context of the broader policy development landscape. Public policy issues will be addressed by the GAC through all appropriate forums, and the GAC will certainly continue to participate in this PDP. However, it is essential that a comprehensive and measured approach to new gTLD policy be taken in a sequential and coordinated way rather than through too many parallel and overlapping efforts.

With regard to existing GAC consensus advice related to new gTLDs, I have separately responded on 18 May 2016 to your request for a historical record of advice or statements relevant to this work. Do not hesitate to come back to us if you have any questions on any of the advice given by the GAC up to now.

Specific Subject Areas

The GAC's response to questions on the six specific subject areas contained on your letter is set out below.

1. Additional new gTLDs in the future

The 2007 GNSO Final Report and the Applicant Guidebook (AGB) are consistent in the position that the previous policy development process was intended to establish an ongoing mechanism for potential applicants to apply for gTLDs. As such, a deviation from this position, such as cancelling the program, would warrant policy work. If the decision is made to deviate from existing policy, it should be based on fact-based decision-making.

1.a: The 2007 consensus policy above expressed the commitment to an ongoing mechanism¹ for the introduction of new gTLDs. Are there any facts and/or circumstances that have changed such that you believe this should no longer be the policy? Please explain.

¹ "Ongoing mechanism" will be a phrase that will be used throughout this document and should be considered to mean the subsequent procedures by which new gTLD applications will be received by ICANN in the future, without making any predetermination to the precise nature of those procedures. The use of the term "ongoing mechanism" stems from the following text in the GNSO's 2007 Final Report on the Introduction of New gTLDs: "This policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains."

Please see comments above with regard to the GAC's Helsinki Communiqué.

The GAC notes that economic analysis commissioned by ICANN in 2010 concluded that the largest sources of potential benefits are likely to be: additional user benefits that arise from innovative new business models that are very different from those of existing TLD registry operators; development of gTLDs to service communities of interest; and expansion of gTLDs to include IDNs that use an expanded character set and can thus offer new benefits to specific user communities. At the present moment, it is not clear whether any of these have been realised from the recent round.

1.b: Would the absence of an ongoing mechanism have an anti-competitive effect for potential applicants?

Preventing or restricting further release of new gTLDs could be seen as a windfall gain for existing gTLD owners, protecting them from competition, with associated price and service disadvantages for end users.

However, competition is only one factor to be considered as part of any independent assessment of costs and benefits.

1.c: Are ongoing mechanisms for the introduction of additional necessary to achieving sufficient diversity (eg choice and trust) in terms of domain extensions? Please explain.

This question requires further clarification of what "sufficient diversity" means in this context

There are a number of possible elements of diversity, including innovative new business models; geographic diversity; equitable treatment of underserved regions; and communities of interest (as opposed to commercially driven initiatives). These should be addressed in the work of both the PDP and the CCT Review as appropriate.

The final issues report (especially section 4.2.3.) includes relevant information on the limited diversity in terms of geographic diversity of the applicants, as well as the distribution between "standard" and other types of application types, which might be an element to consider when discussing the possible need of establishing a differentiation between different types of applications.

1.d: Is it too early in the review cycle of the previous round to determine the full range of benefits of the 2012 round of new gTLDs? Should that impact the decision to introduce additional new gTLDs and/or the timing of ongoing mechanisms for new gTLDs?

Please see general comments above.

The PDP should be conscious that evidence from the recent round is still being gathered, and note that development and agreement of (let alone collection of) relevant metrics appear to be spread across several processes and far from complete.

1.e: What additional considerations should be taken into account before deciding on ongoing mechanisms for new gTLDs (eg to cancel ongoing mechanisms for new gTLDs via policy changes?)

The GAC suggests that there needs to be a commitment by ICANN, registries and registrars to gather the most appropriate data on security and consumer safety issues and ensure that this is fully transparent.

Any other Issues related to this overarching subject?

Not at this stage.

2. Categorisation or differentiation of gTLDs (for example, brand, geographical or supported/community) in ongoing new gTLD mechanisms.

Defining application categories was seen as too “challenging” during the development of the 2007 Final Report and the subsequent development of the Applicant Guidebook. However, the Applicant Guidebook did recognize that certain categories of TLDs deserved differential treatment in the application process, evaluation process, the string contention resolution process and in the ultimate Registry Agreement. The categories included geographic, community, and brand TLDs and those associated with governments or governmental organizations.

The Working Group intends to formally address this issue depending on the feedback provided by the community beyond simply identifying categories, the PDP-WG would need to consider the development of distinct and enforceable definitions, development of separate requirements and processes, validation and enforcement measures, and a process to switch categories post-delegation, among many other areas of work.

2.a: Should subsequent procedures be structured to account for different categories of gTLDs?

The GAC advised in its Communiqué from the Nairobi meeting (March 2010) as follows:

Finally, the GAC reiterates the importance of fully exploring the potential benefits of further categories (or track differentiation) that could simplify rather than add complexity to the management of the new TLD program and in that way help to accelerate the new gTLD program. In particular, the GAC believes that:

- i. This could create greater flexibility in the application procedures to address the needs of a diversity of categories or types of string - including common nouns (e.g., “music”), cultural/linguistic communities, brand names and geographical strings - would likely make application processes more predictable and create greater efficiencies for ICANN, both in ASCII and IDN spaces;*
- ii. Taking into account that applicants and users of new TLDs of a high public interest for a specific community, such as city TLDs or country-region and other geographical TLDs, may expect the legal framework of the territory in which the community is located to*

be applicable to the TLD, ICANN should allow for ways to respect the specific legal framework under which the respective community is operating in the TLD regime. This will also help ICANN, the applicants and national or local public authorities to avoid the risk of large scale legal challenges.

- iii. *Instead of the currently proposed single-fee requirement, a cost-based structure of fees appropriate to each category of TLD would a) prevent cross subsidisation and b) better reflect the project scale, logistical requirements and financial position of local community and developing country stakeholders who should not be disenfranchised from the new TLD round.*

These issues remain relevant to future new gTLD processes.

Note: Several possible categories have been suggested by PDP WG members, including:

- Open Registries
- Geographic
- Brand (Specification 13)
- Intergovernmental Organization
- Community
- Validated - Restricted Registries with qualification criteria that must be verified
- Not-for-profit or non-profit gTLDs, NGOs
- Highly Regulated or 'Sensitive' TLDs
- Exclusive Use Registries (Keyword Registry limited to one registrant & affiliates) or c;osed generics.
- TLD with applicant self-validated restrictions and enforcement via Charter Eligibility Dispute Resolution Policy.

2.b: Are additional categories missing from the list? If so, what categories should be added?

The list appears to be a good basis for further analysis of this concept. The 2007 GAC Principles on new GTLDs already include a series of specific types or characteristics of TLDs (terms with national, cultural, geographic and religious significance; country, territory or place names and descriptions; IGO names and acronyms; etc.); and subsequent GAC Advice, such as i.e. the 2013 Durban Communiqué, has put emphasis on certain types of TLDs (generic; geographic names; community based; sensitive strings; highly regulated sectors), which may well deserve a differentiated treatment.

2.c: Do all categories identified by the PDP WG members belong in the list?

No comments at this stage.

2.d: If categories are recognized, in what areas of the application, evaluation, contention resolution and/or contracting processes would the introduction of categories have a likely impact?

The appropriate treatment of different types of TLD applications may require different tracks for the applications and/or different procedures, rules and criteria for their handling. This need is highlighted for instance by the unforeseen consequences for community applicants of recourse by competing applicants to other accountability mechanisms; and the specific

challenges faced by some community applicants in auctions when in competition with commercial applicants.

These issues should be further explored based also on the data still to be gathered.

2.e: If different categories of gTLD are defined, should all types be offered in each application window? Is it acceptable for an application window to open for only one or a limited subset of categories of gTLDs e.g. a .Brands only application window?

No comments at this stage.

2.f: Any other issues related to this overarching subject

Not at this stage.

3. Future new gTLDs assessed in “rounds”.

Recommendation 13 of the 2007 Final Report stated that “Applications must initially be assessed in rounds until the scale of demand is clear.” However, it was acknowledged that Recommendation 13 could be modified, provided there is data and evidence that supports an alternative mechanism. This PDP WG may want to consider these suggested actions/questions to help determine if a change to the policy is warranted:

- Define, capture data, and analyze metrics to understand “scale of demand”
- Define, capture data, and analyze metrics other than “scale of demand” that may help in determining if an alternative application acceptance mechanism should be considered
- Determine if any other New gTLD Program reviews may benefit deliberations on this subject.

3.a: Should we continue to assess applications for new gTLDs in “rounds.” If not, how could you structure an alternative application window for accepting and assessing applications while at the same time taking into consideration public comments, objections, evaluations, contention resolution etc?

This will depend in part on the evaluations made of relevant aspects of the recent round.

While the GAC has not yet considered the merits of all options, it should be noted for the sake of discussion that one alternative to “rounds” is a permanent process of ICANN accepting applications for new gTLDs within an agreed policy and operational framework: in effect, “continuous delegation.” This could provide long-term certainty, reduce opportunities for gaming the system and enable more efficient allocation of resources by ICANN, the community and applicants. There are several aspects of this to be worked through should it be explored further, including:

- A capacity for timely adjustment to the framework to respond to emerging issues, including public policy issues.

- A possible mechanism to ensure that when there is an application for a certain string, communities or other stakeholders that have an interest in the same string are (a) alerted to the application and (b) have an opportunity to apply for the string within a specified window, and/or (c) have some say on determining what uses the string will be put to should it be delegated.
- An objective analysis of relative resource demands on ICANN, the community and applicants.

3.b How would the assessment of applications in a method other than “rounds” impact rights holders, if at all?

No comments at this stage.

3.c Does restricting applications to “rounds” or other cyclical application models lead to more consistent treatment of applicants?

Not necessarily. An ongoing process of accepting applications within an agreed framework could presumably treat applicants equally consistently.

3.d: Should rounds or other cyclical application models be used to facilitate reviews and process improvement?

No comments at this stage

3.e Do rounds lead to greater predictability for applicants and other interested parties?

No comments at this stage.

3.f: Do rounds add latency to the evaluation and approval of an application, leading to longer times to market?

No comments at this stage.

3.g: Do “rounds” create artificial demand and/or artificial scarcity?

No comments at this stage

3.h: Does time between rounds lead to pent up demand?

No comments at this stage.

3.i: What is an ideal interval between “rounds”? Please explain.

No comments at this stage.

Any other issues related to this overarching subject.

No comments at this stage.

4. Predictability should be maintained or enhanced without sacrificing flexibility. In the event changes must be introduced into the new gTLD Application process, the disruptive effect to all parties should be minimized.

The PDP Working Group has discussed this issue and does not believe that there will need to be policy development with respect to this issue. It should be noted and taken into account that there have been measures taken in the wider ICANN

community that may help address some of the issues related to the subject of predictability, including the advent of new liaisons between Supporting Organizations (SOs) and Advisory Committees (ACs) and the GNSO actively seeking early engagement with other SOs and ACs, particularly with the GAC. In addition, the new GNSO processes developed by the Non-PDP Policy and Implementation Working Group should help to resolve problems that are only identified at a later stage, in a more consistent, predictable, and transparent manner, for not only this PDP-WG, but future GNSO efforts.

4.a: Was the round of 2012 sufficiently predictable given external factors, while balancing the need to be flexible? Please explain.

The GAC appreciates the importance of predictability at the pre-application, application and ongoing post-application stages, especially during the 2012 round – the first of its kind, a fact that may have justified a number of adjustments during the implementation phase.

However, this should not be the prime or only consideration.

It is difficult for the GAC (or anyone else) to assess whether the round was “sufficiently predictable.” The GAC responded to and advised on emerging issues on their merits. Such a large-scale exercise, with what turned out to be few useful precedents, was always going to require flexibility and adjustment.

4.b: Do the changes implemented as a result of the establishment of Cross Community Working Groups and the adoption of the principles and processes from the Policy and Implementation Working Group suffice to maintain predictability of the application process while at the same time provide for the needed flexibility to address changes of circumstances

A cross-community working environment is essential to the development of policies that are both workable and maximise benefits to all relevant stakeholders. The GAC is committed to participating in cross-community processes to the extent that its resources permit. Cross-community work also means the involvement of all relevant SOs and ACs, performing their roles as defined in the ICANN framework.

The GNSO PDP processes provides for early and continuing engagement of other SO/AC participants. However, it remains a GNSO process, which needs to be complemented by the input from other SOs and ACs, including input to the Board when prior feedback from such constituencies has not been appropriately reflected in the results of the PDP process.

4.c: What are the impacts on applicants, users and related parties from a process that lacks predictability?

It would seem appropriate to ask the applicants, both successful and unsuccessful, e.g. those who submitted community based applications.

4.d: Any other issues related to this overarching subject:

Many gTLD policy issues require resolution at the global rather than the national level. For many purposes, in practice this means resolution within ICANN processes to ensure consistency, as application of national laws country-by-country may not be sufficient. The GAC – and others – need a degree of flexibility to respond to emerging issues in this global space which is operated by ICANN and the community according to contractual arrangements and community-developed policies and procedures. The need for such flexibility continues after the conclusion of a GNSO PDP.

5. Community engagement in new gTLD application processes.

The subject of community engagement was not anticipated by the New gTLD Subsequent Procedures Discussion Group to require any type of policy development specific to New gTLDs. This issue is not isolated to New gTLDs, and as such, steps to increase opportunities for community engagement or outreach have already been implemented. For instance, the GNSO PDP Manual requires that outreach to Supporting Organizations (SOs), Advisory Committees (ACs), Stakeholder Groups, and Constituencies be conducted at certain intervals to ensure they are aware of the issue being discussed. In addition, many of the SOs and ACs maintain liaisons between their groups to ensure they remain informed and are able to communicate concerns back and forth. Beyond these proactive engagement measures, the PDP process is open and transparent, so any member of the community is welcome to participate. As well, the implementation of New gTLD policy via the AGB, allowed for participation from any aspect of the community, and this is expected to be the case for any subsequent implementation activities. Recognizing that no matter how much planning and coordination is done at the policy development and policy implementation stages, there will always be unforeseen issues, and these issues should be dealt with in a predictable fashion.

5.a: Are there circumstances in which the application window should be frozen while unforeseen policy issues are considered and resolved? If so, should there be a threshold or standard that must be reached before considering an application window?

No comment at this stage.

5.b: If the Board is faced with questions that cannot be addressed by the policy recommendations they were sent, must the Board bring the issue back to the GNSO and PDP process (eg. the GNSO Expedited PDP or GNSO Guidance Process)?

The GAC would expect the Board to have regard to all available evidence and advice, including advice from the GAC. Reverting to applicable GNSO and PDP processes appears to be one of a range of options the Board could consider. Others might include seeking expert advice on specialised issues.

Experience from the recent round suggests that conclusion of a PDP on such a wide-ranging set of issues is unlikely to be an end-point agreed by all stakeholders in practice. The GAC will make every effort to participate in any agreed post-PDP policy processes.

5.c: Should a standard be established to discriminate between issues that must be solved during an open application window and those that can be postponed until a subsequent application window? Please give an example.

No comment at this stage.

Any other issues related to this overarching subject:

Procedures for implementing new expansions should ensure and enable participation from all relevant stakeholders from the affected communities, both empowering them to take part as applicants – especially from underserved regions - and to have a fair say when their legitimate interests are affected by TLD applications.

6. Limiting applications in total and/or per entity during an application window.

Application limits were not discussed in the 2007 Final Report. In the event that the PDP-WG undertakes policy development with respect to application limits, it will need to define the application limitation mechanism, assess and resolve any questions related to the legality of the mechanism, establishing requirements, establishing validation and enforcement measures, among other elements. Limits to the total number of applications in an application window and/or total number of applications from a single entity, at a minimum, should be considered. For the total number of application in an application window, this could refer to the absolute number of applications accepted, the number of unique strings accepted (or delegated), or other limiting factor.

6.a: Should a limit for the total number of applications for an application window and/or from a single entity be established? If so, what should be the limiting factor (e.g., total application, total number of strings, etc.) and why?

No comments at this stage.

6.b: If a limit for the total number of applications for an application window and/or from a single entity is established, how would the appropriate amount of applications be set to establish this limit?

No comments at this stage.

6.c: If a limit for the total number of applications for an application window and/or from a single entity is established, what mechanism(s) could be used to enforce limit(s)?

No comments at this stage.

6.d: How would a limit on the total number of applications for an application window and/or from a single entity impact fees?

No comments at this stage.

6.e: Would limits to the total number of applications for an application window and/or from a single entity be considered anti-competitive? Please explain.

No comments at this stage.

6.f: Do limits to the total number of applications for an application window and/or from a single entity favor “insiders?”

No comments at this stage.

6.g: Any other issues related to this overarching subject:

No comments at this stage.

I remain at your disposal and for any questions, please email the GAC Leadership at gac-leadership@icann.org.

Best regards,

Yours sincerely,

A handwritten signature in black ink, appearing to read "Th. Schneider". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Thomas Schneider
Chair, Governmental Advisory Committee