**GNSO Council Small Team Review of the SubPro Operational Design Assessment (ODA)**

A Council small team has reviewed the SubPro Operational Design Assessment (ODA), appreciates the opportunity to provide input, and wishes to recognize the substantial, high quality work that went into the report. The timing of the upcoming Board workshop limited the depth of the review and obviated the opportunity for full Council consideration. However, we believe this brief contains several common sensical observations, and also believe that Board consideration of the ODA should not be delayed or tolled in any way. For brevity’s sake we list the observations along with the rationale for each.

**Observation: The Board should complete consideration of the ODA, go on to approve the SubPro Policy Recommendations, and launch the IRT at the earliest, with no iteration of the ODA or delays to allow for additional public comment.**

* the ODA made a number of observations that support adoption of the policy recommendations:
  + “a majority of the SubPro Final Report outputs are implementable and can be embodied in the New gTLD Program,”
  + “the SubPro Final Report outputs encompass mechanisms to support diversity, predictability, and innovation,” and
  + “the Global Public Interest (GPI) was central to the discussions involved in this Policy Development Process (PDP).”
* Council (and Bylaw objectives) include the timely approval of the Council’s unanimously adopted SubPro recommendations, which were informed by several years of public participation.
* The few remaining recommendations where the ODA signaled that uncertainty or risk remains (i.e., the handling of CPEs, the scope of appeals and challenge mechanisms, and other contention resolution mechanisms) are better left to implementation where public iteration is instrumental; in fact, such issues are the IRT’s raison d’être.

**Observation: The Board need not choose between the Options in order to approve the SubPro recommendations and initiate the IRT.**

* The small team was unable to draw a bright-line distinction between Options 1 and 2 and believes the Board and community suffers the same confusion absent additional, detailed briefings, which would absorb scarce staff, Board and community time.
* Working through the Options during IRT will provide the opportunity to ameliorate the “sticker shock” caused by the ODA pricing model.
* It makes more sense to pick from “column A and B” during implementation as the risks and benefits will become clear during that phase. Even at this stage, we see advantages in both Options but need more information to confirm them. A transparent IRT is the place to perform that analysis and make those calls. For example:
  + Making cost effective choices between automated, manual, and in-between approaches (and bespoke vs commercially available approaches) as process details, costs and demand become clearer during implementation.
  + Optimal batching or application flow rate (now quoted at 450 applications annually) can be developed as process details are worked out. We see customer, community and communications-related difficulties in limiting the batches in the way described in the ODA and believe these can be worked out during implementation.
* Identifying the risk that Option 2 might collide with unanimously adopted policy recommendations, the ODA calls for “a detailed review of all SubPro Final Report outputs to identify any other areas [of Option 2] that may not be consistent with the outputs to inform further discussion.” This analysis is best conducted transparently in an IRT where the GNSO can be called upon to reconsider policy recommendation in the name of efficiencies or other outcome improvements.

**Observation: The ODA concern regarding recovery / non-recovery of development costs can be ameliorated by spreading fee-recovery of those costs over future rounds and by selecting an economical approach from the A and B options during implementation.**

* Many were surprised by the fee increase. The SubPro Final Report recommended that development costs could and should be spread over rounds. (See SubPro §§153-15.6.)
* Balancing the different systems approaches during implementation will provide an opportunity to improve efficiencies and lower the overall cost without impacting processing volumes and quality. Successful enterprises typically approve product and project launches with the understanding that reasonably efficiencies will be gained during development.

**Observation: The RSP Pre-evaluation Program should be included in the Program regardless of “Option adopted,” and its design & implementation should be started now by the Board.**

* RSP pre-evaluation enjoyed wide community support, would add consistency to the Program, and reduce application costs & duplicative effort. Dropping it to gain some schedule time without exploring other options, flies in the face of considerable community development and consensus.
* The benefits are accepted and well-documented in the public record.
* A “tall pole” in the ODA schedule, RSP pre-evaluation could be launched now to gain schedule contingency. Since it is separately funded by RSP evaluatees, the effort is independent from the rest of the SubPro Program. Since a “next round” is likely, launching this effort now would be “cheap insurance.”
* RSP Pre-evaluation Program will be of benefit whenever launched as existing TLDs are seeking alternate RSPs. A Japanese adage states: “the best time to plant a tree is ten years ago; the second-best time is today.”

**Observation: Contrary to the ODA indication, the SubPro recommendation:**

***the Terms and Conditions must only contain a covenant not to sue if, and only if, the appeals/challenge mechanisms set forth under Topic 32 of this report are introduced into the program…***

**does not put at risk the enforceability of the Covenant Not to Sue in the TLD Application Terms and Conditions.**

* The ODA repeats an earlier Board concern that applicants, not satisfied with appeals/review mechanisms, could seek to obviate the covenant not to sue. That is not the intent of this SubPro recommendation, which only seeks to ensure that some review process exists for each step of the evaluation and contention resolution processes. The SubPro public record verifies this.
* The intent of the SubPro working group can be confirmed and codified during the implementation phase. If this does not turn out to be the case, the Board can ask the Council to reconsider this policy recommendation.

**Observation: The SubPro Final Report regarding appeals and challenge mechanisms does not open the door to unnecessary cost, delay, or gaming.**

* The ODA indicates that allowing challenges to evaluation decisions may cause unnecessary cost and delay, and that the issue is already addressed by Extended Evaluation. However, the SubPro report sought only to cure the potential issues associated with the possibility that those performing the extended evaluations were the same as those persons that conducted the initial evaluation. Efficient mechanisms for resolving this concern are described in the SubPro report (e.g., finding a different “set of eyes” for extended evaluation) and can be formalised during the implementation phase.
* The ODA also expresses concerns that the increased breadth of who would have standing to file a challenge/appeal would lead to abuse or gaming. The SubPro implementation guidance on this issue suggests consolidation and other mechanisms for minimising this concern. Again, the appropriate place for this balancing between expanded standing and associated negative impacts can be worked out in the implementation phase.

**Observation: The ODA recommendation that applicants be permitted to change TLD labels in order to reduce contention, inappropriately amends the unanimously approved SubPro policy recommendation on this topic.**

* The SubPro PDP WG discussed this option specifically and decided to not endorse a proposal affording all applicants the opportunity to amend their strings in the event of contention. The policy recommendations provided for such a remedy in the case of Brand TLDs only; the SubPro report provides the rationale for that conclusion.
* Even though reduced in number, contention sets will still exist and must be competently and consistently processed. Rather than seeking to amend the GNSO approved policy recommendations, improvements to contention set resolution implementation, procedures and operation must be made.

Thank you again for this opportunity and for taking the time to read and consider these points. The Council stands ready to take part in any ensuing dialogue.