
ICANN70 | Virtual Community Forum - GAC Discussion on Subsequent Rounds of new gTLDs
Wednesday, March 24, 2021 – 10:30 to 12:00 EST

GULTEN TEPE:

This session will begin may. I ask technical support to start the recording, please? Welcome to the ICANN70 GAC discussion on subsequent rounds of new gTLDs being held on Wednesday 24th of March. We will not be doing a roll call for the sake of time but GAC members attendance will be available in the annex of the GAC communique, and minutes may I remind GAC representatives in the attendance to indicate their presence by updating their participant name to reflect their full name, and affiliation.

If you would like to ask a question or make a comment, please type it by starting and ending your sentence with question or comment to allow all participants to see your request. Interpretation for GAC sessions include all 6 U.N. languages and Portuguese. Participants can select the language they wish to speak or listen to by clicking on the interpretation icon located on the Zoom tool bar. Your microphone will be muted for the duration of the session unless you get into the queue to speak.

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like all other ICANN activities, is governed by the ICANN Expected Standards of Behaviour. You will find the link in the chat for your reference. With that, I would like to leave the floor to Manal Ismail, GAC chair. Manal, over to you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Gulten, and welcome back everyone. It's now time to continue and finalize our discussion on subsequent procedures. This is the third, and last session on the topic, and it is scheduled for 45 minutes.

And I know we have 2 remaining issues to discuss, and not much time so please allow me to hand over directly to our topic leads Luisa Paez GAC vice-chair and GAC representative of Canada, and Jorge Cancio GAC vice-chair and GAC representative of Switzerland. So over to you Luisa. Are you going to start or --

LUISA PAEZ: Thank you Manal.

MANAL ISMAIL, GAC CHAIR: Okay.

LUISA PAEZ, GAC VICE CHAIR: Wonderful thank you, and hello everyone there is Luisa Paez for the record Canadian GAC representative current vice chair, as well as topic -- one of the topic leads on subsequent procedures. As Manal mentioned this is our third and final session on subsequent procedures within the GAC. Yesterday, we discussed the applicant support program, closed general risk, and GAC advice and GAC early warnings.

Today, in our 45 minutes we will be discussing community-based applications, auctions and mechanisms of last resort, and finally, next steps in regards to further potential GAC advice, or potential GAC input in following steps. So, if we can go to the community based application slide please, I believe it's 23. Wonderful. In regards to the community-based applications so in summary we wanted to highlight some of the key changes. The PDP working group supported the overall approach used in the 2012 round including the continued prioritizing of -- including to continue to prioritize the applications in contention sets that have passed the community priority evaluation.

As well with a view to make the community priority evaluation, which the acronym is CPE, processes more efficient transparent and predictable, the working group recommends first, amended community priority evaluation guidelines should be considered a part of the policy adopted. ICANN org to consider efficiency in improvements, costs and timing. That all CP procedures, and dispute provider rules must be published before the application submission. And finally, regarding the definition of community, the working group does not appear to be seeking to establish a broader definition, instead

relying on the existing criteria for the CPE review.

Finally, important to note in regards to the implementation guidelines, there was some additions which address various GAC comments. In particular regarding recognition of communities beyond economic communities, with the formal membership structure such as marginalized groups, including linguistic, cultural, and ethnic minority groups. If we could go to the next slide please.

In regards to GAC positions to date on this topic, GAC encouraged that GNSO to improve the community priority evaluation process in order to address the important shortcomings and uncertainty such as the effectiveness, predictability, transparency and independent appeal mechanism. The GAC also noted that the definition of community would serve clarification as well as the criteria to be qualified as such.

And finally the GAC encouraged the consideration of measures to ensure more grass root participation and expertise in the community evaluation panel in order to improve their understanding about how different communities are recognized, organized, administered or developed. If we can go to the next slide please. Wonderful. In regards to a proposed next steps for the GAC's consideration, the GAC may wish to assess whether its expectations have been met by the final recommendations included in the SubPro final report regarding community-based applications. The GAC may also consider supporting the ALAC minority statement, minority statement on [inaudible] from the PDP working group for example I quote from the ALAC minority

statement.

An implementation guidance to address impediment to providing both awareness and recognition of the community members, for the CPE criterion while allowance has been made in respect of recognition to compel consideration the views of the relevant community related experts, especially in cases where recognition of the community is not measurable, no similar allowance has been made in respect of measuring awareness where such measurement could also be prevented or impaired.

And finally under recommendation 34 and I quote falls short by not also stipulating that the short listing and selection of the CPE providers by ICANN org be subject to community input as a proactive measure for the community to help ICANN org select the most suitable CPE providers for subsequent procedures, and as I mentioned the CPE stands for community priority evaluation.

So I'll stop here, and see if there are any questions or initial thoughts or comments from GAC members? And Manal or Jorge, you let me know in there are any raised hands or comments? I'm just catching up here with the chat. So no comments as of yet I think. There's no hands raised. Oh, I see one. Kavouss, please go ahead.

IRAN: Yes, good afternoon in Geneva time. Good morning in Canada time. I think I raised the issue 2 times and I do it for the third time. You raised some questions to GAC. GAC way wish to assess and so on and so forth and GAC may wish to consider. Do you still expect some reaction by GAC? Thank you.

LUISA PAEZ, GAC VICE CHAIR: Thank you, Kavouss. I think we just always want to ensure, and give the opportunity to GAC members to provide any final thoughts or comments as we believe this is the moment to do so in regards to the process, provide any comments to the Board, so we believe it's an appropriate moment to ensure -- to check in of course with all GAC membership in regards to this particular comments, but again it is in regards to any potential comments or potential advice we would like to make to the Board.

There will also be the public comment and we will be discussing at the end of today's session potential next steps for the GAC in terms of potential input so there's always -- today's ICANN70 communique but there's also the public comment and subsequent procedures final reports that the GAC may wish to provide consensus input. Yeah, so I'll leave it up to there for now and see if there's -- or as well any questions in this regard.

IRAN: A follow-up question that if you, if GAC decides to do something, what is vehicle for that? You say that we send it to the Board. How we send to the Board? By a short sentence or sentence in communique? I don't think that we need to have an advice on that, so we expect from you good advice chair to say what are the vehicles if you want to send something to the Board, and what is the effectiveness that this is say apart from what we have already said is to repeat again, so we have repeated many many times, and we have to repeat it again. Just a guidance, thank you.

LUISA PAEZ, GAC VICE CHAIR: Thank you, Kavouss. I will first -- I'll let Manal take the floor and then we can further discuss your comment. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much Luisa, and thank you Kavouss for the important points you raise. As Luisa mentioned, there are 2 opportunities for feedback. We normally provide advice to the Board, but also, there is the public, public comment period that is coming as well.

So it's important that we have collective views on anything new that we would like to, to flag or, or reiterate. I take your point that we should be consistent, and we should either reiterate something, or provide new input that was not taken into consideration. But otherwise -- and we are -- that's why due to your, again excellent points you made yesterday, we're digging all past advice on points that we intend to

reflect in this the new communique to make sure we are consistent and on solid grounds.

And we already heard yesterday from ALAC that they are also looking into providing input, so in terms of the opportunity, it is there. Whether we have something to submit or not, I think this is what Luisa was asking, but I'll stop here. And I see Jorge's hand up as well.

JORGE CANCIO, GAC VICE CHAIR: Shall I proceed?

MANAL ISMAIL, GAC CHAIR: Please Jorge, over to you Luisa to moderate. So Jorge and then --

JORGE CANCIO, GAC VICE CHAIR: Okay thank you. Thank you so much Manal. Yes, I think that you already explained the state we are on. We have some final slides at the end of this session where we will come back to next steps, and, of course, we are in the hands of the GAC membership, so there's a lot of preparatory work.

The GAC scorecard on subsequent procedures the briefing paper, and the discussions we are offering here but of course it's up to the GAC membership to come up with language that is normative in the sense of presenting positions, be it for the public comment period, or vis-a-vis

the Board. It's really up to the membership to come forward. Thank you.

LUISA PAEZ, GAC VICE CHAIR: Thank you Jorge. As well to Manal. And Kavouss, is that a new hand? Please go ahead and take the floor.

IRAN: Yes, it's a new hand. I suggest that GAC consider both approaches that our distinguished chair mentioned. One, to send something very, I would say preferably joining the ALAC if there is a text available by them and by you too, good vice chair if you could prepare something and join having the joint comment I have seen many joint comment earlier part of the ICANN the last ten years so nothing prevent us to do that.

Second we also encourage and sometimes maybe a bit more than encourage the GAC members to provide any comment if there is a still time available for the public comment. These are the 2 I said -- for consideration. I said do not -- did not say we said consider both approaches in parallel. Thank you.

LUISA PAEZ, GAC VICE CHAIR: Thank you Kavouss that's very helpful in regards to a joint -- a potential joint statement between the GAC and the ALAC, obviously if there is a collective agreement within the GAC as well as any potential further

input in regards to the public comment on subsequent procedures final report. Absolutely. So those points have been taken Kavouss. Thank you.

Wondering if there's any other GAC members that have any further questions? Also mindful of time, if there's no further comments, or questions on this topic perhaps we can go to the next one? And again we can always come back to this topic. Thank you. Go ahead, Jorge.

JORGE CANCIO, GAC VICE CHAIR: Thank you so much, Luisa. So, we have -- check the slides -- yes we have the right slide. As last of the priority issues we have identified, we have auctions and mechanisms of last resort. This is a very complex topic with a lot of details within the recommendations, so I would suggest that you look into the briefing paper, specifically into page 21 and 22 of the briefing paper on subsequent procedures. There you will find the corresponding section on auctions procedures from the GAC scorecard.

And the final PDP recommendations on this matter are found in the recommendation 35, and it's different parts. Just to give you an overview, the first part of recommendation 35 affirms that the applicants may, resolve contention -- contentions -- this is a means where there are different applications on the same string -- within a pre established time-frame in accordance with the Applicant Guide Book. If there is no mutual agreement, a claim to support a community by one

party would be a reason to award priority to that application.

This is the so-called priority for community-based applications we just discussed, and if there is no such claim, and no mutual agreement, the contention will be resolved through an ICANN auction of last resort, and, of course, ICANN Board may use expert panels to make community priority evaluation determinations as we saw under community-based applications.

The recommendation 35.2 mentions that the Applicant Guide Book must reflect that applicants will be permitted to creatively resolve contention sets in different manners, included -- including but not limited to business combinations or other forms of joint ventures and priority resolutions including private auctions, and on this specific mention of private auctions we have to specify that this mention of private auctions did not find consensus within the working group, and therefore has not passed as far as we understand as part of the recommendations to the Board. Recommending 35.3 then provides for the obligation that applications must be submitted with a bona fide, with a good faith intention to operate the gTLD.

This means that applicants shall not submit applications for the purpose of financially benefitting from the resolution of contention sets, as was apparently the case in the 2012 round in some instances. So this is one way of avoid gaming of the rules related to contention sets. We also have recommendation 35.4 that mentioned, or referred to the system to be used for these auctions of last resort by ICANN, and

the original recommendation was to use the so-called second price auction method in which bidders would submit a sealed bid auction rather than the ascending clock option used in 2012.

It was intended to control raise of prices in those auctions but this is, again an aspect that didn't find consensus within the GNSO subsequent procedures working group so this is not really part of the recommendations from GNSO to the Board. Of course, ICANN auctions of last resort shall only take place after all other evaluation procedures objections and so forth have taken place so this comes at the very end of the process.

And the GAC and some members of the subsequent procedures working group have shared their concerns with gaming and abuse of private auctions in future rounds, and there hasn't been full consensus on the proportionate safeguards to address these concerns in this complex issue. As said before the -- mentioned, private actions and also the recommendations related to the system of auctions to be used by ICANN didn't find consensus in the working group. So if we go to the next slide this is an overview of the positions we have held in if the past.

Basically in the GAC consensus input we filed in September, when the draft recommendations went to public comment. And first of all, as GAC, we recognized that the bona fide, the good faith, provisions are aimed to reduce potential gaming but at least our opinion -- and this is shared I think with ALAC -- is that the punitive measures of or the control measures are noncompliance or non-submission to these on bona fide

contention measures are not sufficiently defined so that's the first point.

The second point is that we reaffirmed -- and this is a view that comes from the 2012 round -- that auctions should not be used in contentions between commercial and noncommercial applications. And finally, we reiterated our opinion that private auctions, this means auctions outside of ICANN, auctions organized by applicants themselves in contention sets, should be strongly disincentivized as during the last round this gave rise to a lot of concerns. So if we go to the final slide on this issue, really these are our suggestions from Luisa and myself, Benedetta and the leadership who is following this for GAC consideration.

So, we could be during the forthcoming public comment period, or directly to the Board, reiterate the importance of having punitive measures or control measures of some kind for making sure that the bona fide intention closes. The good faith intention clauses are really abided by and are enforced. This is one point.

A related pointed is whether we want to consider further input, or recalling prior inputs on private auctions. As said before this is not really part of the recommendations to the Board as it didn't find consensus, but nonetheless its on the other hand it's not excluded. That they could be used.

And we could also seek further language disincentivizing auctions of

last resort, and in this regard we could support the ALAC minority statement language on this item that says that the use of bona fide intent information is limited to applicants to participate in objections of private resolution mechanisms and that this affirmation should apply to all applicants, not just to those who fall into contention sets. So this rule that applicants commit to not be filing an application just to game the system should be general.

And ALAC further proposed in its minority statement that in any case, the factors for establishing a lack of good will are too subjective, and without deterrence or penalty and this would amount to window dressing if they are not accompanied by some control measures. So we may also want to side with ALAC on this point. And this is what we have. In this slide I see that there have been some comments.

One related still to the community-based applications from Nigel Hickson supporting ALAC, especially on 34.2 of the community priority evaluation. So we take note of that. And Justine CHEW from ALAC elaborating on the community priority evaluation. I think we can take note of that as well as Benedetta mentioned. And now it's really the time for you to share your opinions, your comments, your suggestions related to auctions and mechanisms of last resort.

If time permit I think we have about 6 minutes, and then we will have to go to the last slides. We can also of course discuss community-based applications.

Pause for a minute and check also the list if there are any hands up. I

see we have Kavouss. Kavouss, please proceed.

IRAN:

Yes, thank you very much. All of these are ideas. It's difficult to convert them to the applicable procedures. Bona fide should have criteria. It's difficult to have criteria. What is bona fide? It's -- you have some people maybe bona fide in it the view may not be bona fide. It's very very difficult to have that one. Very difficult. But it doesn't mean that we should not take any action.

I think just to have -- not to have any difficulty we have 2 type of communication to the Board. One is advice, can capital A, and the other is I call them statement or declaration. So we could put in our statement to ICANN something along the line of what ALAC mentioned a slightly modify that when it said that it should not be applied only to contentious but we should say it should be supplied -- but in particular not to the contentious. Make a little bit difference on that I hope our distinguished colleague Jorge and Louisa will take that into account. But the difficulty is all of them -- most of them is subjective.

It's very very difficult but let us try step by step to see what we can do. Communicate in the declaration or a statement to the Board something along the line of the ALAC plus some edits and so on and so forth and second encourage the GAC members on seriously take that into account and provide comment during the remain -- I don't know Jorge please correct me the time for the public comments and to see a would

be the action of the Board. But it would be difficult. Punitive I don't believe that punitive it will -- the only punitive that worked outside the ICANN for example we have it somewhere -- is that if something is comes, and in the view of the Board does not comply with the requirements that is sufficient would not be accepted.

Would be rejected. That is the only thing. But it's difficult to have such a punitive. There's no financial punitive. There's only procedure punitive. So I think Jorge, you're a lawyer. You can understand what I'm saying. So it is one of the move the difficult but let us start. Let us do something and let us not to be I would say indifference. Thank you.

JORGE CANCIO, GAC VICE CHAIR: Thank you, Kavouss. Thank you. I was taking notes of your intervention. I sense from your comments that there is appetite to side, or at least consider the ALAC inputs to the Board. There we have let's say two sides, we have the minority report, or minority position that the ALAC filed in January when the final report was being finalized in the GNSO PDP working group, and as they informed us yesterday evening, at least on European time -- they are working on an ALAC advice will build on their minority statement from January.

So as soon as that ALAC advice is out, I think we will have a very close look at it, and see, at least from the topic lead's view, what we could support and inform the GAC accordingly, and seek the opinion from GAC colleagues on that, and that could be a basis of course for a

submission to the public comment period together with what we have been discussing these days.

So I wonder whether there are any other comments on community-based applications? Or on auctions mechanisms of last resort? I know that in the build up to, to this meeting there were some delegations who expressed interest in these two issues. It's really now the time to come forward, take the floor, and say what's your opinion. Or you might of course choose to propose directly some communicate language for the communicate. But I see Kavouss raising his hand again.

IRAN:

Would you go to the previous slide? I need to add something to what you had about the auction, and it says that the -- maybe previous one say that when all actions were taken. Okay.

I think we have to adhere that when all other evaluation procedures and objectives etcetera similar to were taken, and all effort are exhausted. This is important element. All efforts are exhausted, is not only taking into account but efforts are exhausted. In that cases that something. I'm sorry, I take the floor because you refer to my intervention again. That means I have spoken too much. I'm sorry, I apologize.

JORGE CANCIO, GAC VICE CHAIR: Not at all. Thank you so much Kavouss. Thank you for that elaboration on that point, which referred to what is a summary of the final recommendations. But, I also have noticed that there's been some movement in the chat with Nigel Hickson referring that he thinks it makes sense that all applicants regarding recommendation 35.3 apply with the intent to use a name rather than seeking financial gain through speculation of contention.

Recognize this is not trivial of course to enforce. So I read this as also siding, or endorsing the view that we, as GAC, expressed in the public comment period from September, and what ALAC is expressing. So, if there are no other comments here, I would perhaps pass the floor to Luisa. Is that okay for you? And we go to the last slides?

LUISA PAEZ, GAC VICE CHAIR: Thank you Jorge. That sounds good. As so this is the last slide. As we had recalled previously in today's session these are -- we have decided to identify potential next steps for previous GAC input, which we have already been discussing but in summary there's the opportunity to provide some communicate text or potential advice to the Board, or as our distinguished delegate Kavouss mentioned as well potential joint statements with the ALAC as well.

Then there's also the public comment period, another potential opportunity if there is of course consensus, and collective GAC input to provide into the final report before -- and this is before the ICANN Board

makes a vote in regards to the final report. So, just -- we wanted to present these different opportunities and see if there's any questions, comments, or any further inputs at this time? Kavouss, I see your hand is up. Thank you.

IRAN:

Yes, I would suggest Luisa, and Jorge, and our distinguished chair, Manal, when we send something to the Board as a statement or declaration taking ALAC and so on and so forth we should put an introductory sentence to that, saying that GAC considers that although the following text is not a GAC advice as referred to in bylaw paragraph X, Y, Z, however that -- or this statement, and declaration has been agreed by the entire GAC. So giving some sort of the recognition. Otherwise, I know the Board, I know they said -- observer this is not a consensus. We don't take -- we don't care. So I don't want that we face that.

We spent a lot of time, you spent a lot of good work and if we try to put something here Jorge, with the help of others, and dear Luisa, that will be very helpful saying that I don't want to repeat but I hope that you have taken note of what I said. Thank you.

LUISA PAEZ, GAC VICE CHAIR: Absolutely, Kavouss. I think this would be very important in order to signal the GAC consensus in whichever potential statement we send. So thank you for reiterating that. And we are taking note of. Manal please,

go ahead. Mind if you will that we have I guess more or less 5 minutes.
Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much Luisa, and just briefly to confirm what Kavouss said, that the Board already takes into consideration although not bylaw triggered, but they take into consideration the collective GAC input we provide collectively, and, in fact, we had a BGIG call it go through ICANN69 communique to discuss topics of interest to the GAC which qualifies I think to the category you mentioned where we have collective GAC input. It has its own weight, but it's not a GAC advice that would trigger the bylaws.

And I think this is a good thing that we try our positions before rushing into a GAC advice, so it's something good, and they take it into consideration. Thank you.

LUISA PAEZ, GAC VICE CHAIR: Thank you Manal, for clarifying that. Absolutely, I see Jorge your hand is up. Please go ahead Jorge.

JORGE CANCIO, GAC VICE CHAIR: Thank you Luisa. This is just to elaborate a little bit on what we are doing from our side from the topic lead side regarding the product of our discussions. For the information of all GAC colleagues, what we

are doing is preparing a text similar to what we did during the last meetings, where we summarized in as object objective a manner as possible the different points that have been raised during the discussions so that will go under the title of topics of interest for the GAC.

There will be a section at least we are going to propose a section -- on subsequent procedures, and we are drafting this with the invaluable help of Benedetta. So that will go to the communique, but this is more descriptive let's say, although as Manal said, it's always helpful for the GAC -- for the Board also -- to see it -- and to recognize what are the issues of importance to the GAC. But as said before, if GAC members are interested in having follow up advice our advice it's for them to propose and regarding the ALAC statement, I at least --

I'm sensing quite a lot of interest in having an endorsement from the GAC of that ALAC statement, of that ALAC advice, but probably that ALAC advice will only come after we finalize our meetings, so it will be something we will discuss inter-sessionally, how we endorse it, or to what extent we endorse it, and how we formulate our endorsement, although we of course take note of the suggestion that is Kavouss made before.

LUISA PAEZ, GAC VICE CHAIR: Thank you, Jorge. That was very clear, and a good way to perhaps end the session. Just seeing -- looking at the chat to see if there is aany

further comments or questions from the GAC. We do encourage you to review the GAC scorecard.

It's quite comprehensive and we will of course continue to have the opportunity to discuss text in the communique in the upcoming communique drafting sessions coming up, and again, I mean thank you for the fruitful discussions, for the comments. For the questions, and I think -- yeah we're at the top of the hour so we will be closing this session, but again continue to welcome any comments or proposed text, and as Jorge mentioned we will be sharing the proposed text to go in the body of the communique under the important issues to the GAC in terms of what has been discussed in this last 3 subsequent procedures GAC sessions.

And with that I will pass it onto Manal. Thank you very much.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Luisa, and Jorge, for the excellent presentation an excellent discussions, we should be moving now to the DNS abuse session, and I look forward to formulating any GAC collective input on the topic, but please for support staff please let me know when we're ready to start with the DNS abuse session.

[END OF TRANSCRIPTION]