



30 April 2021

Maarten Botterman
Chair, ICANN Board of Directors

Subject: ALAC Correspondence Regarding 16 April 2021 ALAC Advice to the ICANN Board

Dear Maarten,

It is with pleasure that I am hereby sharing ALAC Advice to the ICANN Board on Subsequent Procedures.

This Advice was initially developed after the ALAC submitted a statement to the GNSO New gTLD Subsequent Procedures Policy Development Process Working Group on the completion and delivery of its Final Report of 22 December 2020. The ALAC and CPWG formally reviewed, approved and submitted the Advice to the Board on 16 April 2021.

The ALAC advice to the ICANN Board is in respect of the Board's consideration, approval, or adoption for onward operational design and/or implementation of the SubPro WG's recommendations as put forth by the GNSO Council. Summarily, our advice relates to 12 aspects of the SubPro Final Report policy recommendations for the New gTLD Program.

The ALAC welcomes further discussion with the Board to ensure full understanding of this Advice, and having ICANN address the issues identified. Please find the ALAC Advice on the following pages.

Warm regards,

Maureen Hilyard
Chair, At-Large Advisory Committee



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AL-ALAC-ST-0421-02-01-EN
ORIGINAL: English
DATE: 16 April 2021
STATUS: Ratified

AT-LARGE ADVISORY COMMITTEE
ALAC Advice to the ICANN Board
on the Subsequent Procedures PDP Recommendations

Introduction

On [18 January 2021](#), the At-Large Advisory Committee (ALAC), on behalf of the At-Large community, submitted a [statement](#) to the GNSO New gTLD Subsequent Procedures Policy Development Process Working Group (“PDP WG”) on the completion and delivery of its Final Report of 22 December 2020 (“WG Final Report”). The ALAC extended its congratulations and gratitude for all the work undertaken by members of the PDP WG since 2016. The [ALAC statement](#) was drafted by CPWG Subsequent Procedures Small Team members Justine Chew, Alan Greenberg, Christopher Wilkinson, Jonathan Zuck, Marita Moll, and Yrjö Lansipuro, who had been presenting on the deliberations of the said PDP WG to the [At-Large Consolidated Policy Working Group \(CPWG\)](#) on a weekly basis, all leading up to the development of the ALAC statement.

The final ALAC statement highlighted the ALAC’s concerns and/or dissent in respect of the PDP WG’s recommendations and implementation guidance as contained in the Final Report, in 8 areas/topics. Those were (1) DNS Abuse Mitigation, (2) Enforceability of Public Interest Commitments (PICs) and Registry Voluntary Commitments (RVCs), (3) Closed Generics, (4) Applicant Support, (5) Auctions and Private Resolution of Contention Sets, (6) Community Priority Evaluation (CPE), (7) Geographic Names at the Top Level, and (8) ALAC Standing in Community Objection.

Following the submission of the ALAC statement to the PDP WG for inclusion in the New gTLD Subsequent Procedures PDP Final Report, the ALAC also resolved to issue [ALAC advice](#) to the ICANN Board with respect to the recommendations contained in that Final Report. ICANN Policy staff in support of the At-Large community created a [workspace](#) for the advice.

On 16 March 2021, provisional ALAC advice was developed and presented to the CPWG for input. The CPWG provided input on the CPWG Small Team points of consensus, and ICANN Policy staff in support of the At-Large community circulated the provisional advice on the CPWG mailing list and posted it to its [workspace](#). A revised draft of the advice (updated on 2 April 2021), posted on a Google Doc, was 5 April 2021 circulated with a final call for comments to the CPWG mailing list, and targeted for settlement at the [CPWG meeting of 7 April 2021](#).

On [12 April 2021](#), the CPWG Small Team Lead Justine Chew finalized the ALAC advice. The ALAC Chair, Maureen Hilyard, requested that the advice be ratified by the ALAC before submission to the ICANN Board.

On 16 April 2021, staff confirmed the online vote resulted in the ALAC endorsing the statement with 15 votes in favor, 0 votes against, and 0 abstentions. Please note 100% (15) of the 15 ALAC Members participated in the poll. The ALAC Members who participated in the poll are (alphabetical order by first name): Abdulkarim Oloyede, Carlos Raul Gutierrez, Dave Kissoondoyal, Gregory Shatan, Holly Raiche, Joanna Kulesza, Jonathan Zuck, Justine Chew, Marita Moll, Matthias Hudobnik, Maureen Hilyard, Pari Esfandiari, Sarah Kiden, Sindy Obed, and Sylvia Herlein Leite. You may view the result independently under:

<https://www.bigpulse.com/pollresults?code=1341919Bj7GLD4kpn6QK7JvpcM>

AT-LARGE ADVISORY COMMITTEE
ALAC Advice to the ICANN Board on
the Subsequent Procedures PDP Recommendations

Executive Summary

The ALAC notes with appreciation the work of the Subsequent Procedures PDP Working Group (SubPro WG) in producing the Subsequent Procedures PDP Working Group Final Report of 20 January 2021 (SubPro Final Report) after close to 5 years of policy development work.

While we acknowledge that the SubPro WG Members have been successful in arriving at consensus on many recommendations and implementation guidance which are expected to steer implementation of Subsequent Procedures for an improved New gTLD Program¹, we are equally disappointed that they were unable to do the same for what we believe to be several key aspects of Subsequent Procedures.

As a result, and with the goal of safeguarding the interests of individual Internet end users, the ALAC, on behalf of At-Large, is obliged to provide the following advice to the ICANN Board in respect of the Board's consideration, approval, or adoption for onward operational design and/or implementation of the SubPro WG's recommendations as put forth by the Generic Names Supporting Organization (GNSO) Council.

Summarily, our advice relates to 12 aspects of the SubPro Final Report policy recommendations for the New gTLD Program:-

1. New gTLD Program Objectives and Metrics

- Any expansion of the New gTLD Program must be beneficial to all stakeholders.
- Program Objectives must be sufficiently reviewed and particularized to enable formulation of suitable metrics for effective evaluation beyond just general consumer choice, and Domain Name System (DNS) marketplace competition aspects.
- Any expansion of the domain namespace must not compromise the stability, security and resiliency of the DNS.

2. CCTRT Recommendations related to Subsequent Procedures

- The Competition, Consumer Trust, and Consumer Choice Review Team (CCTRT) Report of 2018² focused on two things: intention (goals, objectives) and data, therefore the relevant recommendations represent important inputs.
- Our concerns remain over the actions (or lack thereof) by the SubPro WG with respect to CCTRT Recommendations #14, #15, #16 (to do with DNS Security Abuse) and #29, #31 and #32 (to do with the Applicant Support Program), resulting in deficiencies which we hope the ICANN Board will shepherd the community and ICANN Org in addressing.
- Our concerns also remain over the seemingly lack of policy direction in respect of CCTRT Recommendation #12(1) (to do with user expectation regarding the relationship of content of a gTLD to its name), an omission which we hope the ICANN Board will consider addressing.
- While noting ICANN Board's action on the CCTRT recommendations through its resolutions of 1 March 2020³ and 22 October 2020⁴, we strongly advise the ICANN Board to ensure that all

¹ The New Generic Top-Level Domains Program

² See: The Competition, Consumer Trust, and Consumer Choice Review Team (CCTRT) Report of 2018 found at <https://www.icann.org/public-comments/cct-final-recs-2018-10-08-en>

³ See: ICANN Board Action on Final CCT Recommendations, 1 Mar 2019 found at <https://www.icann.org/en/system/files/files/resolutions-final-cct-recs-scorecard-01mar19-en.pdf>

⁴ See: ICANN Board Action on Final CCT Recommendations, 22 Oct 2020 found at <https://www.icann.org/en/system/files/files/cct-pending-recs-board-action-22oct20-en.pdf>

prerequisite and high priority CCTRT recommendations are implemented, at the latest, prior to the launch of the next round.

3. DNS Abuse Mitigation

- The ALAC deems the SubPro WG's approach of Recommendation 9.15 (which is to defer the issue of DNS Abuse mitigation solely to a wider ICANN community effort or "holistic approach") as foregoing a valuable opportunity to modernize existing contracts with Registries and Registrars in order to contractually compel more immediate, increased efforts to stem 'abuse' (as defined by the contracted parties themselves).
- The ALAC opines that a new application round represents a carrot and a more immediate avenue to draw contracted parties to negotiate improvements to their own DNS Abuse mitigation efforts; absent this incentive, such improvements are likely perceived as merely expensive new regulation.
- Notwithstanding, the ALAC believes that the landscape of DNS Abuse continues to evolve and that anti-abuse measures must be continuously updated, if not widened, to also recognize and address new forms of harm being perpetrated by bad actors.
- Therefore, if the ICANN Board sought to agree with the suggested "holistic approach", then the ALAC strongly urges the Board to also ensure that not only must those community discussions take place promptly, but that they be completed with outcomes put in place prior to the launch of the next round of applications for New gTLDs. To this end, we believe it is imperative for the ICANN Board consider the following inputs:
 - Prior ALAC Advice on DNS Abuse⁵;
 - The SSR2 Final Report recommendations touching on contracts, compliance, and transparency around DNS Abuse⁶;
 - The SSAC's proposition in SAC114 Recommendation 3 regarding best practices for mitigation of the domain name abuse⁷;
 - The SSAC's proposal in SAC115 for a Common Abuse Response Facilitator to streamline abuse reporting and minimizing of abuse victimization, as well as the call to ensure a much wider community participation in broadening the definition of DNS Abuse to one that is not merely confined to the perspectives of contracted parties⁸; and
 - An expected proposal for concrete action on DNS Abuse Mitigation arising from the work being undertaken by the GAC Public Safety Working Group (PSWG)⁹.

4. Enforceability of Public Interest Commitments (PICs) and Registry Voluntary Commitments (RVCs)

- We noted the ICANN Board's expressed concern that ICANN may end up enforcing contract provisions that lie outside its remit. However, the ALAC opines that any need to minimize ICANN regulation that falls outside its remit must not displace the exigency for all provisions in contract with ICANN to be enforceable and to be enforced by ICANN Contractual Compliance.
- Any provision that ICANN does not intend to enforce should not appear in contracts with Registries and/or Registrars.
- Should a jurisdictionally competent dispute resolution procedure determination or ruling of unenforceability (on whatever grounds) be served on ICANN, the ICANN Board must take

⁵ See: ALAC Advice AL-ALAC-ST-1219-03-00-EN of 24 December 2019 found at https://atlarge.icann.org/advice_statements/13747

⁶ See: Recommendations 8 to 15 in Section E of the Second Security, Stability, and Resiliency (SSR2) Review Team Final Report dated 25 January 2021 found at <https://www.icann.org/en/system/files/files/ssr2-review-team-final-report-25jan21-en.pdf>

⁷ See: SAC114 Recommendation 3 found at <https://www.icann.org/en/system/files/files/sac-114-en.pdf>

⁸ See: SAC115 SSAC Report on an Interoperable Approach to Addressing Abuse Handling in the DNS, found at <https://www.icann.org/en/system/files/files/sac-115-en.pdf>

⁹ As reported during the GAC PSWG Update at ICANN70 on 23 March 2021

action to remedy such unenforceability, by preserving, where feasible, the original intention of the affected PIC or RVC through negotiation with all impacted contracted parties or other actions. Such actions could, if necessary, include Bylaw amendments.

- The ALAC notes that the ICANN Bylaws Article 1, Section 1.1(c) reads “*ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet’s unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a)*”. The parenthetical expression clearly says that ICANN cannot impose its own rules or restrictions in regard to content. There is therefore no restriction on ICANN enforcing commitments made by TLD operators in their contracts with ICANN that are in the pursuit of their own business interests.
- The ALAC believes that SubPro WG’s Affirmation 41.1 and Recommendation 41.2 are to apply equally to PICs and RVCs; and recommends that the ICANN Board direct that ICANN Contractual Compliance’s role in publishing more information on compliance action to encompass information on standards and thresholds for assessing registry practices, including guidelines on how each threshold is derived and applied to determine compliance or non-compliance of a PIC or an RVC for purposes of imposing sanctions and/or triggering/effecting Registry Agreement termination.
- At the time that PICs were first introduced, the ALAC was assured that they would be enforceable by Contractual Compliance and not solely through PIC Dispute Resolution Procedures (PICDRPs). PICDRPs require that the entity initiating the dispute must show measurable harm. It should not be necessary to show harm to have contracts enforced and the Board must ensure that the original commitment is honored.
- As such, the ALAC recommends that the Board instigate a review of the PICDRP to allow for complaints against any alleged registry violation of a PIC or RVC to be taken up and determined not only where the complainant is able to show evidence of significant harm suffered (as is currently required) but also on the grounds of foreseeable harm to themselves or even a third party.

5. Universal Acceptance

- The ALAC remains convinced that any expansion of the new gTLD market must actively and effectively facilitate the inclusion of the next billion Internet end-users, i.e. those who depend on Internationalized Domain Names (IDNs) and IDN-emails and that Universal Acceptance (UA) is key in ensuring this outcome.
- Therefore, while the ALAC recommends that the ICANN Board lead the pursuit of greater action towards UA-adoption through specific measures such as, including a metric on UA adoption by third parties as a measure of success for the New gTLD Program, and encouraging increased promotion for UA-readiness by contracted parties and with new applicants.

6. Name Collision

- The ALAC supports the ICANN Board’s continued keen interest in the outcome of the SSAC’s Name Collision Analysis Project (NCAP) and its impact on Subsequent Procedures and the future rounds of the New gTLD Program.
- We join the SSAC in recommending that the ICANN Board, prior to authorizing the addition of new gTLDs to the root zone, receive and consider the results of the NCAP, pursuant to Board Resolution 2017.11.02.30.
- Further, we strongly advocate for the recommendations of SSAC resulting from the NCAP Studies 2 and 3 (as approved by the ICANN Board) to be implemented prior to the launch of the next round of applications for New gTLDs; or in the alternative, that delegation of any applied-for strings which pose a risk of name collisions be withheld until the NCAP studies are completed and recommendations are addressed in implementation, retrospectively for the next round.

7. Closed Generics

- In the present absence of consensus policy recommendations by SubPro WG with respect to Closed Generics, the ALAC advises the ICANN Board to direct ICANN Org to suspend any processing or acceptance of any applications for Closed Generics until such time consensus policy is adopted on how to address applications for Closed Generics which serve a global public interest.

8. Applicant Support

- The ALAC finds the Applicant Support Program (ASP) to be another area for which a lack of concrete policy guidance and evaluation metrics. While the SubPro has made some recommendations to improve the ASP, the evident absence of specific goals hinders proper evaluation of program objectives and performance.
- We also question the wisdom of leaving many key aspects for development by a Dedicated Implementation Review Team (IRT) – such as addressing a risk of gaming, assessment of willful gaming and penalties to deter the gaming, and development of the Bid Credit for Applicant Support qualifiers – since these would conceivably involve questions of policy where the community’s input would prove crucial. Faced with this situation, we call for priority for ALAC membership in the Dedicated IRT.
- From an implementation standpoint, we strongly advise the ICANN Board to direct ICANN Org, firstly, to secure a larger fund to meaningfully support the ASP in the next round, and secondly, to take a more active coordinating role in the ASP pro-bono assistance mechanism.

9. Auctions and Private Resolution of Contention Sets

- The ALAC continues to strongly oppose not only allowing private actions in subsequent procedures but also the use of a second-price, sealed bid auction instead of the Vickrey auction solution as the mechanism to resolve contention sets.
- We share the Board’s concerns towards an applicant’s ability to ‘shuffle funds between private auctions’. This ability for a loser to apply proceeds from one private auction to fund their other private auctions only really benefits incumbent multi-TLD registry operators or multiple-string applicants, and clearly disadvantages single-TLD/niche applicants. With ongoing and increasing consolidation of the domain name industry, allowing private auctions will likely exacerbate the advantage for merged contracted parties, leading to less competition among registries.
- Thus, we believe there should be a ban on private auctions. Also, 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.
- We also believe that the use of a bona fide intent affirmation – whether for all applicants or otherwise – where factors for establishing a lack of bona fide intent are too subjective, and without deterrence through penalty, serves little purpose.
- As for the proposed Contention Resolution Transparency Requirements framework, we do not agree with the protections for disclosing applicants and advise the Board to ensure that all terms of every concluded private resolution be disclosed to ICANN Org (subject to a non-disclosure commitment by ICANN Org where necessary) as data to support and inform future policy work.

10. Community Priority Evaluation (CPE)

- The ALAC applauds the SubPro WG’s inclusion of many of the At-Large suggestions to reform and improve the CPE process, evaluation criteria procedures and guidelines in the SubPro Final Report. However, the SubPro WG recommendations fell short on 2 counts for which we call on the ICANN Board to redress:-

- Implementation Guidance 34.4 fails to address an unreasonable impediment to proving **both “awareness and recognition** of the community members” for CPE Criterion 1-A; the allowance made only in respect of the “recognition of community members” aspect ignores the conjunctive “and” in Criterion 1-A, such that a worthy community applicant would still forfeit valuable points where “awareness of the community members” is also not measurable.
- Implementation Guidance 34.12 fails to stipulate that the shortlisting and selection of CPE provider(s) by ICANN Org be subject to community input as a proactive measure for selecting the most suitable CPE Provider for subsequent procedures in order to avoid a repeat of the widespread criticisms resulting from the CPE evaluations for the 2012 round of applications.

11. Geographic Names at the Top Level

- Despite the welcomed retention of much of the 2012 AGB implementation relating to Geographic Name at the Top Level (and their adoption as new consensus policy in place of the much less favourable ones in the GNSO 2007 Consensus Policy), the ALAC remains concerned over the insufficient support within the community for the need to respect and take into consideration the voice of stakeholders to future applications for strings matching many names with geographical meaning.
- We ask the ICANN Board to consider the public interest ramifications and serious potential consequences in allowing applications for Non-Capital City Name strings which do not clearly allude to and/or commit applicants to whether the TLD will be used primarily for purposes associated with that city name. We opine that stronger preventive protection for such strings is merited to prevent unintended consequences. Therefore, we reiterate our call for applications for strings which match the names of non-capital cities meeting specified criteria¹⁰ to be accompanied by letters of support/non-objection from relevant local governmental/public authorities irrespective of the applicant’s declared use of the TLD.
- The ALAC also asks that the ICANN Board consider directing ICANN Org to provide a Notification Tool exclusively to GAC Members who wish to be informed of any applications for strings matching any names with geographical meaning as submitted by participating GAC Members under any established conditions or criteria.
- Lastly, we are disappointed at the lack of community-wide support for an ICANN Org-provided opt-in update system for interested parties to automatically keep them informed on application(s) for specified string(s), a tool we see simply as a logical extension of SubPro WG’s Implementation Guidance 20.5.

12. ALAC Standing in Community Objection

- The 2012 AGB Sections 3.2.2 and 3.2.2.4 appear to suggest that the ALAC is required to prove 2 elements to qualify for standing for a community objection.
- It is incomprehensible that the ALAC, while on the one hand, funded by ICANN Org to file objections, should have any of its Community Objections, which would be derived through a bottom-up participative process, be dismissed on the ground of a ‘lack of standing’ to file such objections.
- Therefore, the ALAC strongly recommends that it be granted, under no uncertain terms, automatic standing to file Community Objections in Subsequent Procedures and in future rounds of the New gTLD Program.

¹⁰ Suggested criteria appear on page 15 of this Advice.

Context and Rationale

The contexts and rationales for each of the above-mentioned aspects are set out as follows.

1. New gTLD Program Objectives and Metrics

1.1 Any Expansion of the New gTLD Program Must be Beneficial to All Stakeholders

The ALAC maintains that there is no rush to facilitate new applications for gTLDs, and there remains the need to properly assess actual benefits of the New gTLD Program (Program) has brought about (or not) beyond just general consumer choice, and Domain Name System (DNS) marketplace competition aspects.

Notwithstanding, should a next round proceed, it is vitally important to improve the application and evaluation processes to get them to an acceptable level, beyond merely increasing efficiency but more importantly, to take into serious consideration questions around Program objectives, how those are met (or not), but not at the expense of realizing benefit(s) and fairness for non-contracted party stakeholders, especially those who do not normally participate in ICANN's policy development activities.¹¹

1.2 Program Objectives Must be Sufficiently Reviewed and Particularized to Enable Formulation of Suitable Metrics for Effective Evaluation

First and foremost, absent clear objectives, against which to measure progress or to evaluate the Program, "metrics" are far less useful. Furthermore, "objectives" are a matter of policy, not implementation and ought to have been established through policy development. In particular, the ALAC are focused on clear, measurable objectives with regards to Consumer Trust, DNS Abuse, Universal Acceptance and expanded local/community participation in gTLDs.¹² The latter must include objectives and metrics surrounding Applicant Support, Community Priority Evaluation, mentoring and regional applications for new strings/TLDs. In fact, at this stage, the only clear rationale for a new round would be for expanded and diversified participation in the program. As such, no further rounds should proceed without clear objectives surrounding applicant diversity both economic and geographic.

There was, at the very least, an implied requirement to justify the 2012 round with improved competition, choice and consumer trust. Now, all pretense for a justification has been replaced with "we said we would do it," and the only clear objective is greater predictability and "fairness" for applicants. This *fait accompli* approach to a new round is fraught with pitfalls and, without prescribed benefits, the likely consequences to expanding the root are placed in stark relief.

Among others, the ALAC would like to see goals set and measured related to Consumer Trust including:

- Frequency of direct use (rather than redirect, QR code, etc.), commercial activity or consensual data sharing;
- Awareness of complaint channels (PICDRP and RRDRP); and
- More granular reports on merit of complaints, action taken by whom, and responsiveness of registries and/or registrars to complainant to begin with.

¹¹ This is in line with the ICANN Bylaws Section 1.2(a), "*In performing its Mission, ICANN must operate in a manner consistent with these Bylaws **for the benefit of the Internet community as a whole**, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and open entry in Internet-related markets.*"

¹² For the full list of metrics suggested by the ALAC, including for Universal Acceptance adoption, a communications plan, applicant support, EBERO and IDNs, see Appendix A attached hereto.

1.3 Any Expansion of the Domain Namespace Must Not Compromise the Stability, Security and Resiliency of the Domain Name System

As for upholding ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems, we wish to simply draw the ICANN Board's attention to SAC114¹³ Recommendation 1 which we strongly support. We also refer the Board's attention to the SSAC's concerns in relation to stability of the DNS Root Zone as set out in SAC114 Recommendation 4, Section 3.2.6 insofar as they relate to SubPro WG Implementation Guidance 26.5, 26.6 and 26.8.

2. CCTRT Recommendations related to Subsequent Procedures

In large part, the recommendations in the Competition, Consumer Trust, and Consumer Choice Review Team (CCTRT) Report of 2018¹⁴ focused on two things: intention (goals, objectives) and data. For example, CCTRT Recommendation 1 calls for the formalization and integration of data collection and metrics into all ICANN activities. Without clear, measurable objectives for a new round, there simply will not be any way to evaluate the Program in a meaningful way. We are concerned that if a new round is being justified as creating "competition", then a commitment needs to be made to get the necessary data from registries and registrars to adequately measure competition. If the objective of a new round is to improve consumer trust in the DNS then developing baseline metrics for consumer trust is essential so that improvements can be objectively measured.

The ALAC has noted the ICANN Board's action the CCTRT recommendations which were assigned to SubPro WG and/or passed through to SubPro WG by the ICANN Board in its resolutions of 1 March 2020¹⁵ and 22 October 2020¹⁶, as well as SubPro WG's responses to these CCTRT recommendations. We will continue to monitor onward action on this front by ICANN Org as directed by the ICANN Board, and we expect to be able to continue to provide input to the same.

We continue to express concerns over the actions (or lack thereof) by the SubPro WG with respect to CCTRT Recommendations #14, #15, #16 (to do with incentives for anti-abuse measures and data collection to identify DNS Security Abuse) as well as CCTRT Recommendations #29, #31 and #32 (to do with the Applicant Support Program). We hope that the ICANN Board will take action to shepherd the community and ICANN Org towards addressing these deficiencies in the SubPro Final Report.

Further, the seemingly lack of policy recommendation by SubPro WG in addressing CCTRT Recommendation #12(1) (to do with incentives to meet user expectation regarding the relationship of content of a gTLD to its name) also concerns us from an individual end users' perspective. The ALAC sees this as a matter for ongoing pursuit and for the ICANN Board's consideration.

Apart from these, we think that sufficient consideration has been given by either the ICANN Board or SubPro WG or both to the remaining CCTRT recommendations, namely Recommendations #9, #12(2) and (3), #23, #25, #30, #34, #35.

Having said that, the ALAC strongly advises the ICANN Board to ensure that all prerequisite and high priority CCTRT recommendations are implemented, at the latest, prior to the launch of the next round.

¹³ See: SAC114 found at <https://www.icann.org/en/system/files/files/sac-114-en.pdf>

¹⁴ See: The Competition, Consumer Trust, and Consumer Choice Review Team (CCTRT) Report of 2018 found at <https://www.icann.org/public-comments/cct-final-recs-2018-10-08-en>

¹⁵ See: ICANN Board Action on Final CCT Recommendations, 1 Mar 2019 found at <https://www.icann.org/en/system/files/files/resolutions-final-cct-recs-scorecard-01mar19-en.pdf>

¹⁶ See: ICANN Board Action on Final CCT Recommendations, 22 Oct 2020 found at <https://www.icann.org/en/system/files/files/cct-pending-recs-board-action-22oct20-en.pdf>

3. DNS Abuse Mitigation

The SubPro WG has resolved to leave the issue of DNS Abuse mitigation solely to the wider ICANN community in opining it to be not a challenge which is specific to new gTLDs. This is reasonable, on its face, but the ALAC opposes this approach because we opine an ancillary role of the WG to be the *modernization* of the contracts with Registries and Registrars. The contracts that came out of the 2012 round serve as models for *modernization*, i.e. revisions to existing/older contracts, revisions aimed at contractually compelling contracted parties to undertake more immediate and increased efforts to stem such DNS Abuse as is already defined by the contracted parties themselves.

A new application round is a carrot to bring the contracted parties to the table to negotiate improvements to their own DNS Abuse mitigation efforts. Absent the incentive of a new round, such improvements are perceived as merely expensive new regulation. Hence, the SubPro WG's approach in declining to develop immediate policy recommendations for *modernizing* contracts represents a lost valuable opportunity to drive action by contracted parties.

Notwithstanding, from the perspective of end-users, the landscape of DNS Abuse is not certainly not static but one that the ALAC believes continues to evolve, exposing end-users to new forms of harm being perpetrated by bad actors. For this reason, the ALAC believes that anti-abuse measures must be continuously updated, if not widened, to recognize and address new forms of harm beyond any existing identified types of abuse.

Therefore, in the event the ICANN Board sought to agree with the “holistic approach” suggested in the SubPro PDP WG's Recommendation 9.15, the ALAC strongly urges the Board to also ensure that those community discussions take place promptly, be completed and that the outcomes of those efforts be put in place prior to the launch of the next round of applications for New gTLDs. To this end, we also believe it is imperative that the ICANN Board consider the following inputs:-

3.1 Prior ALAC Advice on DNS Abuse

Many, if not all, of the ALAC's eight recommendations in its prior Advice to the Board¹⁷ regarding DNS Abuse remain highly relevant, whether the holistic approach is adopted or not. The GNSO's existing consensus definitions of “abuse” and “malicious use of domain names” already present a strong foundation for immediate action to address insufficiency of the status quo in fulfilling ICANN's commitments or operations to fight DNS abuse. Specific recommendations such as directing ICANN Org to establish low thresholds for identifying bad actors, reinforcing an explicit mandate to ICANN Contractual Compliance to regularly use the audit function to root out “systemic” abuse, not to regulate content, but to proactively exercise enforceability to mitigate DNS abuse; and ceasing to process registrations with non-pre-approved “third party” payments are all actionable save for a lack of will.

3.2 The SSR2 Final Report Recommendations 8-15

Recommendations 8 to 15 in the Second Security, Stability, and Resiliency (SSR2) Review Team Final Report¹⁸ also provide detailed and well thought out recommended actions by the ICANN Board and ICANN Org involving contracts, compliance, and transparency around DNS Abuse. The ALAC strongly supports these recommendations and advises the ICANN Board to approve and adopt them for implementation.¹⁹

¹⁷ See: ALAC Advice AL-ALAC-ST-1219-03-00-EN of 24 December 2019 found at https://atlarge.icann.org/advice_statements/13747

¹⁸ See: Recommendations 8 to 5 in Section E of the Second Security, Stability, and Resiliency (SSR2) Review Team Final Report dated 25 January 2021 found at <https://www.icann.org/en/system/files/files/ssr2-review-team-final-report-25jan21-en.pdf>

¹⁹ See: ALAC statement AL-ALAC-ST-0421-01-00-EN on the Second Security, Stability, and Resiliency (SSR2) Review Team Draft Report, 8 April 2021 found at https://atlarge.icann.org/advice_statements/13819; and ALAC

3.3 The SSAC's proposition in SAC114 Recommendation 3

The ALAC supports this proposition in Recommendation 3, which reads as follows,

“That the ICANN Board, prior to launching the next round of new gTLDs, commissions a study of the causes of, responses to, and best practices for mitigation of the domain name abuse that proliferates in the new gTLDs from the 2012 round. This activity should be done in conjunction with implementing the CCT Review Team’s relevant recommendations. The best practices should be incorporated into enforced requirements, as appropriate, for at least all future rounds.”²⁰

3.4 The SSAC Recommendations in SAC115

The SSAC has in SAC115 proposed the creation of a Common Abuse Response Facilitator as a coordinating body to streamline abuse reporting and for minimizing abuse victimization, as well as issued a call to ensure that there be much wider community participation in efforts to evolve the definition of DNS Abuse.²¹

The ALAC supports the concept and intended function of this Common Abuse Response Facilitator, which is *“to independently convene, facilitate, guide and provide clarity and predictability to all stakeholders in the greater DNS ecosystem”* in combating DNS Abuse. We also strongly support the SSAC’s recommendation for this coordinating body *“to develop and implement a functional Internet-wide community model to directly confront the problem of Internet abuse, including DNS abuse”*, in order to facilitate the evolution and broadening of the definition of “DNS Abuse”, beyond that narrow remit adopted by contracted parties, to include what the greater Internet community, i.e. non-ICANN contracted party stakeholders and beyond, believes constitute DNS Abuse.

The ALAC therefore calls on the ICANN Board to consider how it can support the creation and functioning of such a Common Abuse Response Facilitator.

3.5 The Upcoming GAC PSWG Proposal for Concrete Action on DNS Abuse Mitigation

The ALAC is encouraged by progress on the work of the GAC’s Public Safety Working Group (PSWG)²² on its *Strategic Goal 1: Develop DNS Abuse and Cybercrime Mitigation Capabilities*, particularly around (a) 1.2 cooperation with Registries on improving prevention and response to security threats; (b) 1.3 cooperation with Registrars on proactive anti-abuse measures; and (c) 1.4 input from ccTLDs on best practices for adoption in gTLD space.

Although we also note the PSWG’s challenges in progressing its *Strategic Goal 2: Preserve and improve domain registration data effectiveness*, particularly 2.10 CCTRT recommendation on collection and publication on the chain of parties responsible (e.g. resellers) for gTLD DN registrations, the ALAC remains confident in the PSWG’s overall goals for this area.

The ALAC calls on the ICANN Board to anticipate, and consider in due course, the PSWG’s proposal for concrete action on DNS Abuse mitigation.

Statement AL-ALAC-ST-0320-02-01-EN on the Second Security, Stability, and Resiliency (SSR2) Review Team Draft Report, 20 March 2020 found at https://atlarge.icann.org/advice_statements/13767

²⁰ See: SAC114 SSAC Comments on the GNSO New gTLD Subsequent Procedures Draft Final Report, Recommendation 3 found at <https://www.icann.org/en/system/files/files/sac-114-en.pdf>

²¹ See: SAC115 SSAC Report on an Interoperable Approach to Addressing Abuse Handling in the DNS, found at <https://www.icann.org/en/system/files/files/sac-115-en.pdf>

²² As reported during the GAC PSWG Update at ICANN70 on 23 March 2021

4. Enforceability of Public Interest Commitments (PICs) and Registry Voluntary Commitments (RVCs)

The ICANN Board has expressed concern that ICANN may end up enforcing contract provisions that lie outside its remit. While the ALAC appreciates the need to minimize ICANN regulation that falls outside its remit, it should go without saying that all provisions in contract with ICANN must be enforceable and must be enforced by ICANN Contractual Compliance. Any provision that ICANN does not intend to enforce should be removed from the contract.

The significance of PICs and RVCs, in particular, is that they are often added to the contract to address public interest concerns, whether expressed by the ALAC, GAC or SSAC. Absent enforcement of such provisions, these “commitments” are merely window dressing. Whatever the procedure, contracted parties need a mechanism to make commitments to which they will be held. Such commitments should be expressed as explicitly and clearly as possible and ICANN Contractual Compliance should review each of these provisions for enforceability (in consultation with ICANN Legal, if necessary) prior to any contract finalization, and subject always to Board approval. If Contractual Compliance were to find any provision of a contract unenforceable, that provision needs to be either removed or rewritten to ensure its enforceability.

The SSAC alluded to an example of our concern for the need to critically ensure both the enforceability and enforcement of PICs (and by extension, RVCs) -- that pertaining to SubPro WG’s Recommendation 24.3 with respect to “intended use” as a defining characteristic for determining whether to automatically place in the same contention set or not, applications for strings which appear visually to be a single and plural of one another²³. While we acknowledge that the “intended use” characteristic may be a workable way to distinguish some such strings, there remains huge doubt on the efficacious use of this characteristic across different Latin-script languages. Further, SubPro WG’s Recommendation 24.5 which, in effect, recommends the inclusion of a mandatory PIC in a Registry Agreement that “*must also include a commitment by the registry that it will require registrants to use domains under the TLD in line with the intended use stated in the application*” is a seemingly feasible way to uphold such conduct, but only if there can be no doubt as to the enforceability and strict enforcement of such PICs.

The ALAC acknowledges that parties contracting with ICANN may rely on available or pre-arranged dispute resolution mechanisms should they wish to dispute the enforceability of a PIC or RVC provision in their contract, and that use of such mechanisms may result in a determination or ruling that a provision is indeed unenforceable by ICANN. In the event that such a determination or ruling of unenforceability (on whatever grounds) is served on ICANN, the ICANN Board must take action to remedy such unenforceability in 3 ways: (1) where feasible, to preserve the original intention of a PIC or RVC which led to that provision in the first place; (2) if that provision that has been rendered unenforceable matches or is similar to provisions in other ICANN-inter parte contracts, ICANN Org must enter into negotiations with the impacted contracted parties to preserve that the original intention of the affected provision in an agreeable manner; and (3) if necessary, consider, with Bylaw-mandated community involvement, modification of the ICANN Bylaws to ensure that PICs and RVC are enforceable.

The ALAC notes that the ICANN Bylaws Article 1, Section 1.1(c) reads “*ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet’s unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a)*”. This wording was carefully considered and crafted during the CCWG-Accountability. The intent of the parenthetical expression was to ensure that ICANN cannot impose its own rules or restrictions in regard to content. To be clear, ICANN should have no part in imposing such rules and regulations reflecting its own standards. But PICs and RVCs are not in any way decided by or imposed by ICANN. They are commitments made by TLD operators in their contracts with ICANN that are in the pursuit of their own business interests.

²³ See: SAC114 SSAC Comments on the GNSO New gTLD Subsequent Procedures Draft Final Report, Recommendation 6 found at <https://www.icann.org/en/system/files/files/sac-114-en.pdf>

The ALAC supports SubPro WG's Affirmation 41.1 and Recommendation 41.2 for ICANN Contractual Compliance to publish more information on compliance action and believes such direction must apply equally to PICs and RVCs. The ALAC further recommends that the ICANN Board also direct that such information encompass Contractual Compliance standards and thresholds for assessing registry practices, including guidelines on how each threshold is derived and applied to determine compliance or non-compliance of a PIC or an RVC (whether by an act or omission by a registry) for purposes of imposing sanctions and/or triggering or effecting Registry Agreement termination.

When PICs were initially conceived and introduced by the Board during the first round of new gTLDs, the only mechanism provided to enforce these PICs was the PIC Dispute Resolution Procedure (PICDRP). The ALAC objected strenuously that one should be able to register a complaint with ICANN Contractual Compliance regarding PICs which are not being adhered to and have such complaints investigated and acted upon. It should not be necessary to show measurable harm caused by the infraction, as required by the PICDRP. As an example, a consumer protection organization or government entity should be able to identify a PIC infraction which potentially harms consumers, without having to demonstrate that it (the consumer protection organization or government entity) had itself been harmed. The ALAC was assured that PICs would be enforceable without having to file a PICDRP. It is unclear to what extent this commitment is currently being adhered to. It is essential that going forward, the Board ensure that PICs and RVCs be enforceable by Contractual Compliance without having to file a PICDRP. That of course does not preclude some harmed party using the PICDRP if that is its preferred method of remediation.

As such, the ALAC recommends that the Board instigate a review of the PICDRP to ensure that complainants of alleged violations of PICs or RVCs by a registry must have an avenue to raise and see through their complaints even if they were unable to provide evidence of having suffered significant harm, as we cannot always expect that a (genuine) complainant would be able to show such evidence of such harm suffered that is presently required with a PICDRP filing. PICDRP should be a mechanism allowing for the prevention of foreseeable harm, not just to remedy actual harm suffered, by the complainant or by a third party, as the case may be.

5. Universal Acceptance

The ALAC remains convinced that any expansion of the new gTLD market must actively and effectively facilitate the inclusion of the next billion Internet end-users, i.e. those who depend on IDNs and IDN-emails. We also believe that Universal Acceptance (UA) is key to ensuring this outcome.

It therefore follows that with reference to Affirmation 11.1 in the SubPro WG Final Report, we opine the mere expression of "*welcoming and encouraging the work of the Universal Acceptance Initiative (UAI) and the Universal Acceptance Steering Group (UASG)*" even if "*strongly*" has no real effect on the goal of promoting UA.

It thus follows that the UASG remains the body within ICANN primarily charged with the burden of promoting UA. To this end, in addition to maintaining the funding and support for the UAI and UASG, the ALAC recommends that the Board also lead in the pursuit of greater action towards UA-adoption via:-

5.1 Metric on Adoption of UA

- ICANN must include a metric on UA adoption by third parties as a measure of success for the New gTLD Program because without greater adoption of UA, any expansion of the Program would not facilitate inclusion of the next billion Internet end-users.

5.2 Promotion of UA-readiness

- ICANN must strongly encourage registries and registrars which are owned by the same entity to be UA-ready in any new gTLD application since these are the entities best positioned to offer IDN TLDs/SLDs.
- The application process must require all applicants to state:
 - The level of UA-readiness of their Registry operations, including whether they have policies in place to respond to IDN-email or to introduce IDNs.
 - The level of readiness, both at Registry and Registrar levels, to accept IDN SL domain name registrations.

We note that our recommendations for the promotion of UA-readiness is echoed by the SSAC in SAC114.²⁴

6. Name Collision

The ALAC supports the ICANN Board's continued keen interest in the outcome of the SSAC's Name Collision Analysis Project (NCAP)²⁵ and its impact on Subsequent Procedures and the future rounds of the New gTLD Program in upholding the Board's mandate to preserve the operational stability, reliability, security, global interoperability, and resiliency of the DNS and the Internet.

Given that the SubPro WG did not have the benefit of knowing the outcomes and recommendations of the NCAP Studies 2 and 3 at the time it completed its Final Report, notwithstanding the existence of recommendations on Name Collision in the Final Report, the ALAC joins the SSAC in recommending that the ICANN Board, prior to authorizing the addition of new gTLDs to the root zone, receive and consider the results of the NCAP, pursuant to Board Resolution 2017.11.02.30²⁶. Further, we strongly advocate for the recommendations of SSAC resulting from the NCAP Studies 2 and 3 (as approved by the ICANN Board) to be implemented prior to the launch of the next round of applications for New gTLDs. We believe this course of action to be consistent with Recommendation 17 in the SSR2 Review Team Final Report.²⁷

If the application period for the next round were to commence before the NCAP Studies 2 and 3 were completed or before the resulting recommendations of SSAC (as approved by the ICANN Board) are to be implemented, then the ALAC advocates that delegation of any applied-for strings which pose a risk of name collisions must be withheld until the NCAP studies are completed and recommendations are addressed in implementation, retrospectively for the next round to ensure that applicants commit to adopting any requirements under the implementation.

²⁴ See: SAC114 SSAC Comments on the GNSO New gTLD Subsequent Procedures Draft Final Report, Recommendation 4, in particular Sec. 3.2.2, at <https://www.icann.org/en/system/files/files/sac-114-en.pdf>

²⁵ See: ICANN Board resolution of 25 March 2021 in accepting the NCAP Study 1 and proceeding with Study 2, found at <https://www.icann.org/resources/board-material/resolutions-2021-03-25-en#2.b>

²⁶ See: SAC114 Recommendation 7 found at <https://www.icann.org/en/system/files/files/sac-114-en.pdf>

²⁷ See: Recommendation 17 in Section F of the Second Security, Stability, and Resiliency (SSR2) Review Team Final Report dated 25 March 2021, found at <https://www.icann.org/en/system/files/files/ssr2-review-team-final-report-25jan21-en.pdf>

7. Closed Generics

The ALAC fully supports the GAC advice to the ICANN Board, "*For strings representing generic terms, exclusive registry access should serve a public interest goal*" as contained in its ICANN46 Beijing Communique.²⁸

In the present absence of consensus policy recommendations by SubPro WG on how to address Closed Generics – recommendations which the ICANN Board had asked for – the ALAC advises the ICANN Board to direct ICANN Org to suspend any processing or acceptance of any applications for Closed Generics until such time the GNSO provides consensus policy recommendations on how to address applications for Closed Generics which serve a global public interest.

The ALAC strongly agrees that any future policy work on Closed Generics should involve experts in the areas of competition law, public policy, and economics and that it be performed by those in the community that are not associated with any past, present, or expectations of future work in connection with new gTLD applications or objections to new gTLD applications, because the absence such independence would prevent any future work from producing an outcome different to the one which resulted from the SubPro WG.

8. Applicant Support

The ALAC opines that all ICANN initiatives, and the Applicant Support Program (ASP) is no exception, require continuous evaluation, refinement and improvement. The only practical way to accomplish this is by setting measurable goals for each program. Evaluation of the Applicant Support Program, by the Competition, Consumer Choice and Consumer Trust Review Team (CCTRT), after the 2012 round, judged it to be a failure because there were no successful candidates and no mentoring took place. The WG has made some recommendations to improve the program but absent specific goals for these efforts, there is no basis to judge their success. For example, a goal could be to have a minimum number of successful candidates for support that, in fact, delegate a new string. Another objective could be indigenous ownership of a certain percentage of new strings. While the actual details of the program might be considered "implementation," the objectives for the program are certainly a question of policy.

Despite availability of resources such as the 2011 Final Report of Joint Applicant Support WG, and the 2012 implementation of the ASP, the ALAC is extremely concerned that the insufficiency of fresh policy guidance by the SubPro WG on the ASP will impact on the implementation work of a Dedicated IRT and the community's ability to influence necessary action by ICANN Org.

Our concern stems from the lack of guidance (or even direction) to address a risk of gaming, assessment of willful gaming and penalties to deter the gaming, and development of the Bid Credit for Applicant Support qualifiers to support their participation in any auction (where this contention set resolution mechanism of last resort were to apply). In light of this wide scope of work remitted to it, assurances for the community participation in or input to this Dedicated IRT becomes more essential. In this respect, we call for priority for ALAC membership in the Dedicated IRT given that the ALAC was co-charterer of the Joint SO/AC Working Group on New gTLD Applicant Support (JAS WG).²⁹

In addition, we strongly advise the ICANN Board to direct ICANN Org, firstly, to secure a larger ASP fund to meaningfully support a reasonable number of ASP qualifiers in the next round, and secondly,

²⁸ The GAC ICANN46 Beijing Communique is found at <https://gac.icann.org/contentMigrated/icann46-beijing-communicue>

²⁹ It should be noted that the At-Large continues to draw attention to the Applicant Support Program as an area where the SubPro WG has left too many details to the Dedicated IRT; discussing this at ICANN70, specifically at the At-Large Policy Session 3 entitled "Applicant Support: What Does Success Look Like?" held on 24 March 2021.

to take a more active role to coordinate (and not merely facilitate) the provision of pro-bono assistance to applicants in need, including applicant-offeror matching and initial inter-party discussion.

9. Auctions and Private Resolution of Contention Sets

The ALAC maintains its opposition to private auctions being allowed in subsequent procedures, as specifically permitted in SubPro WG's Recommendation 35.2 (and Recommendation 35.5 by implication). We remain concerned about attempts to "game" the application process through use of private auction and share the ICANN Board's concerns on the consequences of shuffling of funds between private auctions. The ability for a loser to apply proceeds from one private auction to fund their other private auctions only really benefits incumbent registry operators or multiple-string applicants and clearly disadvantages single-TLD/niche applicants. Having witnessed the consolidation in the domain name industry up to 2020, we believe there was merit to the concern that allowing private auctions would likely exacerbate the advantage for merged contracted parties. The most recent announcement of Ethos Capital acquiring majority control of Donuts Inc.³⁰ now reinforces this concern. Thus, we 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.

We also oppose the use of a second-price, sealed bid auction described in SubPro WG's Recommendation 35.4 because we opine that this second-price, sealed bid auction compromise, while superior to status quo, remains inferior to the Vickrey auction solution in deterring speculative applications.

It is unclear as to whether use of a bona fide intent affirmation as set out in SubPro WG's Recommendation 35.3 is limited to applicants who participate in auctions or private resolution mechanisms or not. If at all, this affirmation should apply to all applications, not just those that fall into contention sets. In any case, the factors for establishing a lack of bona fide intent are too subjective, and without deterrence through penalty, are ultimately just a mere attempt at window dressing.

In respect of the proposed Contention Resolution Transparency Requirements framework, (apart from opposing that private auctions be allowed) we do not agree with the protections for disclosing applicants. We believe full transparency of terms of any private resolution is absolutely necessary to gain data for program evaluation. Therefore, we advise the Board to ensure that all terms of every concluded private resolution be disclosed to ICANN Org (subject to a non-disclosure commitment by ICANN Org where necessary), in order for all data to be captured to inform future policy work (through aggregate, anonymized data).

10. Community Priority Evaluation (CPE)

The ALAC applauds the SubPro WG's inclusion of many of the At-Large suggestions to reform and improve the CPE process, evaluation criteria procedures and guidelines in the SubPro Final Report. However, we believe that two of the Implementation Guidance recommended by the SubPro WG still fall short in some respects and for which we hope the ICANN Board will redress.

Implementation Guidance 34.4 fails to address an unreasonable impediment to proving **both "awareness and recognition of the community members"** for CPE Criterion 1-A. While allowance has been made in respect of "*recognition*" to compel consideration the views of the relevant community-

³⁰ See: Business Wire, "Ethos Capital Acquires Majority Control of Donuts Inc.- Acquisition includes world's largest portfolio of top-level domain names", published on 31 March 2021 at <https://www.businesswire.com/news/home/20210331005950/en/Ethos-Capital-Acquires-Majority-Control-of-Donuts-Inc>.

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. By providing an allowance for “recognition” but failing to do the same for “awareness” - hence ignoring the operational effect of the conjunctive “*and*” - a worthy community applicant would still forfeit valuable points in cases where recognition of the community is not measurable and where awareness of the community members is also prevented or impaired. We call on the ICANN Board to address this omission.

Implementation Guidance 34.12 falls short by not also stipulating that the shortlisting and selection of CPE provider(s) by ICANN Org be subject to community input. Again, we call on the ICANN Board to institute this as a proactive measure for the community to help ICANN Org select the most suitable CPE Provider for Subsequent Procedures in the hope of avoiding a recurrence of the much criticized and maligned responses to the evaluations undertaken by the CPE Provider appointed for the 2012 round of applications.³¹

11. Geographical Names at the Top Level

While the ALAC are in general supportive of the recommendations in the SubPro WG Work Track 5 Final Report (insofar as they adopt the 2012 AGB implementation relating to Geographic Name at the Top Level as new consensus policy in place of the much less favourable GNSO 2007 Consensus Policy), we remain concerned over the insufficient support within the community for the need to respect and take into consideration the voice of stakeholders - including those beyond the ones who regularly participate in ICANN PDPs - to future applications for strings matching many names with geographical meaning.

In particular, the ALAC reiterates its call for stronger preventive protection of Non-Capital City Name strings by requiring letters of support/non-objection from the relevant local governmental/public authorities irrespective of an applicant’s declared use of the TLD, where the non-capital city meets specified criteria (eg. has 100,000 inhabitants, hosts an international airport per IATA list). It is important to acknowledge that preventive protection ought to be available to such criteria-meeting non-capital city names, in ASCII, native script, in current and historical forms (eg. Kolkata/Calcutta). The absence of stronger preventive protection for Non-Capital City Name strings has serious potential consequences. We ask that the ICANN Board consider public interest ramifications in allowing applications for such strings which do not clearly allude to and/or commit applicants to whether the TLD will be used primarily for purposes associated with that city name. We also ask the Board to consider how, post delegation, aggrieved stakeholders are meant to have any violations committed by second level registrants to that TLD (i.e. against the condition of not using the TLD primarily for purposes associated with that city name) can be easily redressed.

The ALAC also asks that the ICANN Board consider directing ICANN Org to provide a Notification Tool exclusively to GAC Members who wish to be informed of any applications for strings matching any names with geographical meaning as submitted by participating GAC Members under any established conditions or criteria. We envisage such a Notification Tool to be similar to the one applicable to registrations for 2-character strings at the second level matching country codes, which is already available to GAC Members.

Further, we wish to note our disappointment at the lack of community-wide support for the provision by ICANN Org of an opt-in update system for interested parties to automatically keep them informed on application(s) for specified string(s). We see this opt-in update system simply as a logical extension of SubPro WG’s Implementation Guidance 20.5 which calls for “*Community members [to] have the option*

³¹ Among other sources, discontent with the CPE Provider appointed for the 2012 round of New gTLD applications and their CPE Guidelines of 2013 was discussed at ICANN68, specifically at the At-Large Policy Session entitled “New gTLD Applicants: Expanding the Circle” held on 23 June 2020.

of being notified if an applicant submits an application change request that requires an operational comment period to be opened at the commencement of that operational comment period.”

12. ALAC Standing in Community Objection

The ALAC requires automatic standing to file Community Objections, without which the ALAC would effectively be prevented from raising concerns against any application for a TLD which it views to be wholly not in the interests of individual end users, or deserving the benefit of a commitment from the applicant to mitigate stated concerns.

The ALAC views its responsibility to uphold the interests of individual end users with importance, and had for the 2012 New gTLD application round established a stringent bottom-up participative process involving all five of its Regional At-Large Organizations (RALOs) in deciding to file a Community Objection against an application. As a result of this procedure, the ALAC filed Community Objections against two applications for the <dot>HEALTH TLD.

While the Dispute Resolution panelist who heard and determined those objections did not explicitly dismiss them for a lack of standing, contradictory provisions in the 2012 Applicant Guidebook could allow for a Community Objection filed by the ALAC in future to be dismissed for lack of standing.

Affirmation 31.1 in the SubPro Final Report, *inter alia*, confirms that the ALAC is defined as an established institution for purposes of Objections in subsequent procedures, while Affirmation 31.4 confirms the ALAC’s standing to continue to be able to file Community Objections (and Limited Public Interest Objections) in subsequent procedures. With these affirmations, the ALAC can expect some funding for the filing of its selected objections in the next round of applications.

Section 3.2.2 ‘Standing to Object’ of the 2012 Applicant Guidebook (AGB) provides that an established institution associated with a clearly delineated community has standing to object, yet, section 3.2.2.4 requires an established institution associated with a clearly delineated community eligible to file a community objection to still prove two elements to qualify for standing for a community objection. Thus, these two sections in the 2012 AGB arguably conflict with each other when applied to the ALAC.

It is incomprehensible that the ALAC, while on the one hand, funded by ICANN Org to file objections, should have any of its Community Objections, which would be derived through a bottom-up participative process, be dismissed on the ground of a ‘lack of standing’ to file such objections. Having any of its Community Objections be dismissed on a ‘lack of standing’ would clearly not only constitute a waste of resources but a procedural impediment to the ALAC carrying out the task of voicing concerns through filing Community Objections. The ALAC strongly believes that any Community Objection that it files in future should be determined on the merits of the objection and not be procedurally dismissed for ‘lack of standing’. To ensure this outcome, the ALAC strongly recommends that it be granted, under no uncertain terms, automatic standing to file Community Objections in Subsequent Procedures and in future rounds of the New gTLD Program.

Appendix A: Suggested Metrics

Universal Acceptance (UA)

Adoption of UA

- ICANN must include a metric on UA adoption by third parties as a measure of success for the New gTLD Program because without greater adoption of UA, any expansion of the Program would not facilitate inclusion of the next billion Internet end-users.(see also our comments in answer to Q.63)

Promotion of UA-readiness

- ICANN must invest in being itself able and ready to communicate to registrants and end-users in languages/scripts for LGRs that have been released under the IDN Variant TLD Implementation.
- ICANN must strongly encourage registries and registrars which are owned by the same entity to be UA-ready in any new gTLD application since these are the entities best positioned to offer IDN TLDs/SLDs.
- The application process must require all applicants to state:
 - The level of UA-readiness of their Registry operations (if not .brand TLD applicant), including whether they have policies in place to respond to IDN-email or to introduce IDNs.
 - The level of readiness, both at Registry and Registrar levels, to accept IDN SL domain name registrations.

Communications plan

- Marketing/promotional events across regions/countries/cities and by whom - how many, and when the first and last events took place.
- Languages used at events and/or for materials other than in the 6 UN working languages.
- Whether events involved ICANN community members or third parties.
- Whether surveys were used to identify interests in Program - what kind of interest (to apply/operate standard, community or IDN TLDs vs general interest).
- Number of active follow ups vs unsolicited inquiries.

Application Support

- Number of enquiries, number of applications, distribution of applications by jurisdiction, first time/repeats; single vs existing or new portfolios; based on pre-existing trademarks or not.
- Classification of applications by main categories, distribution by incorporation/private, country, language, scripts etc.
- Numbers and responsibilities of ICANN Staff assigned to support applicants - numbers of staff, including out-sourced, assigned to evaluation.
- Budget available to finance pro-bono assistance.
- Third party financing: interest, outreach, T&C, amounts available etc.
- Mentorship program participation numbers.

EBERO

- More granular data/information and/or explanation on the five critical registry functions and respective threshold levels ICANN Org has used to determine the triggering vs non-triggering of an EBERO event: (i) DNS resolution for registered domain names; (ii) Operation of Shared Registration System; (iii) Operation of Registration Data Directory Services; (iv) Registry data

escrow deposits; and (v) Maintenance of a properly signed zone in accordance with DNSSEC requirements.

- How many events have triggered or come close to triggering EBERO since the launch of EBERO for 2012 round.

Internationalized Domain Names (IDNs)

- Clear reporting distinction in IDN applications by languages, scripts, jurisdiction etc. and the corresponding level of assignment of ICANN staff support and evaluators.