

26 September, 2018

RE: New gTLD Subsequent Procedures PDP WG Initial Report

Cheryl Langdon-Orr, Co-Chair
Jeff Neuman, Co-Chair
GNSO New gTLD Subsequent Procedures PDP Working Group

Dear Ms. Langdon-Orr and Mr. Neuman,

I am writing in response to the request in your 10 July 2018 [letter](#) for the Board to provide feedback on the New gTLD Subsequent Procedures Policy Development Process (PDP) Working Group's Initial Report. The Board is impressed by the level of detail that the Working Group has gone to in analyzing the results of the current new gTLD round and the serious effort that is being made to reach consensus on the policies related to each of the issues. We understand that the policy recommendation for the Generic Names Supporting Organization (GNSO) will be built upon existing policies and the Application Guidebook (AGB) instructions unless, and except, for where they have been modified based on Subsequent Procedures PDP consensus. The Board also appreciates the efforts the GNSO and the PDP leadership have taken to include other stakeholders in the discussions on the various issues in the PDP working group and subgroups. Since there are a number of areas the PDP Working Group is still considering, the Board may have comments in the future as discussions advance.

There were a few issues that the Board would like to comment on:

- In regard to Global Public Interest, section 2.3.2, with the growing reliance on PICs as a method of resolving public interest issues within an application, the Board remains concerned with the lack of definition of the global public interest in the context of Public Interest Commitments (PIC) and the Public Interest Commitments Dispute Resolution Procedure (PICDRP). As discussed further below, the Board would like to see additional work fleshing out what is meant by the public interest in this context and additional recommendations concerning PIC enforceability.
- The Board appreciates the approach being taken to deal with the serious issue of Closed Generics, especially with the complex issues related to the public interest and public interest goals in the use or restriction of generic terms in any language. We are aware of the continuing conflicts among competing aspects of the public interest in this area and are concerned about the scalability of any proposed solution. This issue has been pending for some time. In 2015, the Board enacted a resolution on closed generics that provided as follows:

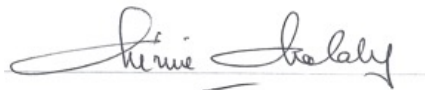
“The NGPC is also requesting that the GNSO specifically include the issue of exclusive registry access for generic strings serving a public interest goal as part of the policy work it is planning to initiate on subsequent rounds of the New gTLD Program, and inform the Board on a regular basis with regards to the progress on the issue.”

Because these difficult questions on how to define the public interest and public interest goals have been pending for several years, the Board re-emphasizes that it remains critical for the Subsequent Procedure group to further flesh out these concepts in all proposed options for addressing closed generics.

- Regarding question 2.7.4.e.2 on “gaming” or abuse of private auction, the Board believes that applications should not be submitted as a means to engage in private auctions, including for the purpose of using private auctions as a method of financing their other applications. This not only increases the workload on processing but puts undue financial pressure on other applicants who have business plans and financing based on their intention to execute the plan described in the application. In particular, we are concerned about how gaming for the purpose of financing other applications, or with no intent to operate the gTLD as stated in the application, can be reconciled with ICANN's Commitments and Core Values.
- Regarding Applicant reviews, section 2.7.7, the Board is interested in recommendations for a mechanism that can be used when there are issues that block an application moving forward.
- The Board is concerned about unanticipated issues that might arise and what mechanism should be used in such cases. The Board understands that the PDP Working Group is discussing a Predictability Framework that could potentially be used to address these types of issues. The Board looks forward to the outcomes of these discussions.
- Regarding timelines for future rounds, the Board requests that the PDP Working Group consider the issue of round closure and what criteria or mechanism could be used to close a round.
- The Board looks forward to further discussions in the PDP on Name Collisions, Applicant Support and the Predictability Framework as each of these may have significant operational impact. On Name Collisions there may be an opportunity to combine work being done by SSAC on the collision risk with the work being done in the PDP to achieve a consensus solution to this issue.

Again, the Board appreciates the efforts and time being devoted by the Subsequent Procedure Working Group and its leadership. We are available to respond to any specific questions the PDP WG might have for the Board.

Best regards,



Cherine Chalaby
Chair, ICANN Board of Directors