

20 August 2020

**Re: New gTLD Subsequent Procedures PDP WG Draft Final Report**

Mr. Maarten Botterman  
Chair, ICANN Board

Dear Maarten,

We write to you as the Co-Chairs of the GNSO's New gTLD Subsequent Procedures Working Group (WG), which is tasked with calling upon the community's collective experiences from the 2012 New gTLD Program round to consider potential changes that may be needed to the existing 2007 Introduction of New Generic Top-Level Domains policy recommendations and implementation. We are pleased to share that the Working Group has reached an important milestone by publishing its [draft Final Report](#) for public comment on 20 August 2020.

The purpose of this public comment period is to obtain input on recommendations that have changed substantively since publication of the Initial Report and Supplemental Initial Report, as well as a limited number of specific questions. We would like to strongly encourage the Board to review the draft Final Report and provide feedback on the draft recommendations, implementation guidance, and limited number of questions on select topics.

As has been the case throughout the lifecycle for this Working Group, it is actively seeking engagement with the Board to ensure that the Working Group takes into account the perspectives and concerns of Board members during the multistakeholder Policy Development Process (PDP). We believe that the input from the Board to the Initial and Supplemental Initial Reports was incredibly valuable to the Working Group and played a significant role in our discussions.

Although we would appreciate the Board's view on all of the topics, we want to draw your attention to a couple of topics for which you previously provided input. These include (i) private resolution of contention sets (Topic 35 in the draft Final Report), and (ii) closed generics (Topic 23 in the draft Final Report). With respect to private resolution of contention sets, your letter of 18 December 2018 ("Letter") states:

- *One of our major concerns in reading the discussions in the Supplementary Final report relates to new procedures that may be open to abuse in ways that have not yet been understood. We would like to better understand the analysis that has gone into determining the likelihood, and types, of abuse that may open up with any new procedures.*

*We believe that any new recommendations should guard against bad faith applications to the extent possible. These concerns mostly center on the issues of auctions of last resort and on private auctions. We take special note of the possible practice of participating in private auctions for the sole purpose of being paid to drop out. We also take note of the abuse that becomes possible in alterations to the change request mechanisms.*

- *The Board has concerns about whether, and in what ways, the availability of private auctions incentivizes applications for purposes other than actually using the string; and we are interested in how these incentives for abuse might be minimized.*

In our Draft Final Report, in an attempt to address these concerns, the Working Group proposes a new standard that all applications are submitted with a bona fide (“good faith”) intention to operate the gTLD. We have also suggested a set of factors that *could* be used to help assess a bona fide intention to operate the TLD as well as some transparency requirements when contention sets are resolved privately. The Working Group would like to know whether these new elements address your concerns, or if not, we would like to know more about what it considers to be “abuse” as referenced in its Letter in as much detail as possible.

With respect to the issue of “closed generics”, the Working Group has been unable to reach agreement on whether closed generics should be allowed, not allowed, or if allowed, under what conditions. We take note of the Board’s July 27, 2015 letter to the GNSO where it states:

*As a result, the NGPC requests 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.*

The Working Group spent considerable time discussing whether this meant that the ICANN Board resolved that all future closed generics must serve a public interest goal if they were to be allowed, or whether it was just attempting to understand the GNSO’s thoughts on closed generics in general. We would like to understand the Board’s view on the topic of closed generics as it would help guide our future discussions. The Working Group has also published [three recent proposals](#) on the future treatment of Close Generics. Although none of these have been endorsed by the Working Group, we would like to understand whether any of these proposals at a high level are heading in a direction in line with the Board’s views.

One of the lessons learned from the 2012 round of new gTLDs was that waiting until after the completion of the PDP to get feedback from the ICANN Board resulted in forcing the Board to make decisions outside the PDP process. By engaging with and providing ongoing opportunities for input from the ICANN Board, ICANN org, as well as to the Supporting Organizations, Constituencies and Advisory Committees, the GNSO community will be better positioned to resolve any known issues within the PDP process.

The Board's input is therefore invaluable at this stage. If possible, please submit comments and input by 30 September 2020. If the Board has questions about the report or would like to discuss further, please do not hesitate to contact us.

*Best regards,  
Cheryl Langdon-Orr and Jeff Neuman (WG Co-Chairs)*