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Governmental Advisory Committee

Abu Dhabi, United Arab Emirates, 1 November 2017

GAC Communiqué – Abu Dhabi, UAE [1]

I.   Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Abu Dhabi, United Arab Emirates from 28 October to 3 November 2017.

84 GAC Members and 11 Observers attended the meeting.

The GAC meeting was conducted as part of ICANN60. All GAC plenary and working group sessions were conducted as open meetings.

II.   Inter-Constituency Activities and Community Engagement

Meeting with the ICANN Board

The GAC met with the ICANN Board and discussed:
- Next steps with regard to the IRP Final Declaration on applications for .amazon and related strings.
- Resolving potential conflicts between GAC advice and final recommendations of the GNSO PDP on IGO-INGO Access to Curative Rights Protection Mechanisms.
- Resolving apparent problems with access to WHOIS data in light of the General Data Protection Regulation.
- 2-character country codes at the second level and communications between ICANN Org and the GAC.
- The "temporary pause" requested by the Board with regard to the Security, Stability and Resiliency Review (SSR2).
- Lowering barriers to participation in ICANN processes.

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[1] To access previous GAC Advice, whether on the same or other topics, past GAC communiqués are available at: https://gac.icann.org/contentMigrated/icann59-gac-communique

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Meeting with the Generic Supporting Organization (GNSO)

The GAC met with the ICANN Board and discussed:
- The re-convened Policy Development Process (PDP) dealing with Red Cross Red Crescent protections.
- Current PDPs and options for more effective GAC engagement.
- Implementation of recommendations of the GAC-GNSO Consultation Group.
- The appointment of Mr. Julf Helsingius as the new GNSO Liaison to the GAC.
- The election of Dr. Heather Forrest as the next Chair of the GNSO Council.
- Lowering barriers to participation in ICANN processes.

Meeting with the Country Code Names Supporting Organization (ccNSO)

The GAC met with the ccNSO and discussed:
- Geographic names as gTLDs.
- Progress with the PDP on Retirement of ccTLDs.
- Lowering barriers to participation in ICANN processes.

Meeting with the At-Large Advisory Committee (ALAC)

The GAC met with the ALAC and discussed:
- Country and territory names as TLDs.
- Community Based Applications.
- Preparation of a joint GAC-ALAC statement on lowering barriers to participation in ICANN processes.

Meeting with the Non-Commercial Users Constituency (NCUC)

The GAC met with the NCUC and discussed:
- The work and general policy views of the NCUC.
- ICANN jurisdiction.
- Geographic Names.
- Balancing law enforcement and privacy interests.

Meeting with ICANN's Multi Stakeholder and Strategic Initiatives (MSSI) Staff

The GAC met with ICANN Multi Stakeholder and Strategic Initiatives (MSSI) staff and discussed current and pending specific and structural reviews, including timelines, structure, team selection, scope of work and problems with simultaneous reviews.

Meeting with Competition, Consumer Trust and Consumer Choice Review Team (CCT-RT)

The GAC was briefed on the work of the Competition, Consumer Trust and Consumer Choice Review Team by members of the team. GAC Members will continue to follow the work of the team as it finalizes its recommendations.

Cross Community Discussions

GAC Members participated in relevant cross-community sessions scheduled as part of ICANN60.

As part of its efforts on combating DNS abuse, the PSWG hosted a Cross Community Session to discuss the establishment of reliable, public and actionable DNS Abuse reporting mechanisms for the prevention and mitigation of abuse, and to enable evidence-based policy making. The session confirmed the need for publication of reliable and detailed data on DNS Abuse, as contained in the Domain Abuse Activity Reporting (DAAR) tool. The PSWG will develop a set of draft GAC principles in this regard.

III.   Internal Matters

1. GAC Elections

The GAC elected Manal Ismail (Egypt) as Chair to complete the two-year term of Thomas Schneider.

The GAC elected as Vice Chairs:
- Guo Feng (China)
- Ghislain de Salins (France)
- Milagros Castañon (Peru)
- Chérif Diallo (Senegal)
- Pär Brumark (Niue)

The GAC expressed its sincere appreciation to Thomas Schneider for his valuable service as GAC Chair since 2014. Under his guidance the GAC has made major improvements in its working methods and successfully dealt with a series of challenging issues including the IANA transition.

The GAC also expressed its thanks to outgoing Vice Chair Mark Carvell (United Kingdom) for his many years of exemplary service to and participation in the GAC.

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2. GAC Working Groups: Updates as reported to the GAC

The GAC Public Safety Working Group (PSWG) thanks Alice Munyua, who has stepped down from her role as co-chair of the PSWG, for her valuable contribution in the creation and development of the PSWG.

In relation to WHOIS/RDS, the PSWG highlighted the critical importance of maintaining access for public safety agencies and other users with legitimate purposes, including the general public. The PSWG will contribute to the development of practical solutions that are compliant with applicable laws, for consideration by the GAC.

The PSWG will assess and improve the effectiveness of safeguards against DNS Abuse, including through possible GAC comments on the new sections of the Competition, Consumer Choice and Consumer Trust Review Team draft report and contributions to the development of the Consumer Safeguards Director role at ICANN.

The PSWG will continue the development of its future strategy and work plan, as well as general criteria for leadership selection, for possible endorsement by the GAC at ICANN61.

The GAC Working Group to Examine the Protection of Geographic Names in any Future Expansion of gTLDs met and analyzed the ways for it and the GAC to participate in the new "Work Track 5" on geographic names of the New gTLD Subsequent Procedures PDP Working Group.

The Working Group decided:

> To ask the GAC leadership to identify a small group of GAC colleagues to
> join Work Track 5 and organize the work of this group; and
> to continue its work as currently established and to act as a space for analyzing
> the development of the activities of Work Track 5.

A summary of the two open sessions on geographic names as TLDs organized by the GNSO during the ICANN 59 meeting in Johannesburg was distributed.

The GAC Working Group on Under-Served Regions (USR WG) undertook its 4th regional capacity development workshop for the year during ICANN60.

The WG presented a schedule of its upcoming capacity development workshops as follows:
1. Nepal, February 2018
2. Puerto Rico, March 2018
3. Senegal, April 2018

4.   Panama, June 2018

The USR WG continues to use a pre-workshop survey to determine the needs of participants and develop a demand driven agenda and approach. Additionally, a post-survey workshop is administered to evaluate the workshops in order to inform and improve future approaches.

As part of the capacity development and outreach work with the ICANN Government Engagement (GE) and the Global Stakeholder Engagement (GSE) teams, the USR WG will provide support in the form of summary documents containing details of the various work streams, Policy Development Processes (PDPs), Cross Community Working Groups (CCWGs) and activities taking place in ICANN to assist GAC members from under-served regions with effective participation and engagement.

Additionally, the USR WG discussed the following documents for endorsement by the GAC:
1.   Capacity Development Evaluation Framework;
2.   Templates for Planning and Reporting on the Capacity Development workshops;
3.   The FAQ for delegation and re-delegation of ccTLDs

The USR WG appointed a new Co-Chair, Ms. Shelley-Ann Clarke Hinds, from Trinidad and Tobago.

The USR WG called for volunteers to actively participate in the Policy Development Processes (PDPs) and Cross-Community Working Group (CCWG) work streams currently in progress; that is:

·   The new gTLD Subsequent Procedures PDP, specifically Work Track 1 which is dealing with "Support for Applicants from Developing Countries".
·   Work by the Competition, Consumer Trust and Consumer Choice Review on developing country issues.
·   CCWG on New gTLD Auction Proceeds.
·   CCWG Accountability WS2 subgroup on Diversity.

The USR WG provided the GAC with an update on the Onboarding program. This is designed to facilitate orientation for newcomers as part of an overall effort to reduce barriers to participation."

The USR WG will start working with GAC Support Staff to prepare GAC responses to a questionnaire provided by ICANN Org to help inform an upcoming community consultation regarding ICANN Community travel support guidelines.

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The GAC Human Rights and International Law Working Group (HRILWG) received an update from the Human Rights Sub-Group of the Cross Community Working Group on Accountability regarding the progress in developing the Framework of Interpretation (FoI) and considerations relating to the Human Rights Core Value in the ICANN Bylaws, including reference to the UN Guiding Principles on Business and Human Rights. An information exchange on implementation efforts of the FoI was held with the Cross Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights (CCWP-HR). Information was also provided by ICANN's Senior Vice-President on strategy concerning actions being undertaken by ICANN Org to implement the framework in its operations and activities.

The GAC Working Group to Examine GAC's Participation in NomCom: The session was cancelled due to a conflict with the WT5 session on geographic names. A conference call will be organized before ICANN 61 to review the draft document currently in preparation.

3. Board GAC Implementation Recommendation Working Group (BGRI-WG)

The BGRI-WG met, adopted a definition of what constitutes GAC advice, and agreed on a continuing program of work focused on oversight of how ICANN tracks and implements GAC advice.

4. GAC Operating Principles

The GAC discussed options for reviewing its overall framework of Operating Principles and will engage with ICANN staff inter-sessionally on further development of approaches.

IV.   Enhancing ICANN Accountability

Procedures for GAC participation in the Empowered Community

The GAC agreed to adopt guidelines for its participation in the Empowered Community. These guidelines will be available on the GAC website and reviewed periodically.

V.   Follow-up on Previous Advice

1. Application for .amazon and related strings

The GAC met with representatives of the Amazon corporation and discussed developments regarding the company's applications, particularly in light of the recent Independent Review Panel Final Declaration. The GAC and Amazon representatives noted a proposal aimed at providing a mutually acceptable solution vis-à-vis the

objections previously expressed by the Amazon Cooperation Treaty Organization's (ACTO) member states. The GAC took note of statements made by ACTO member state representatives to the effect that they would submit such a proposal to their competent authorities.

The GAC also discussed the request from the ICANN Board, pursuant to Board Resolutions 2017.10.29.02 and 2017.10.29.03, in which the Board asks the GAC:
1. If it has
   i.   Any information to provide to the Board as it relates to the "merits-based public policy reasons" regarding the GAC's Advice that the Amazon applications should not proceed; or
   ii.   any other new or additional information to provide to the Board regarding the GAC's advice that the Amazon applications should not proceed.
2. If the GAC has any such information, to provide it to the Board by the end of the ICANN 61 meeting.

Several GAC members expressed concerns about elements contained in this Board decision, which might set a worrisome precedent both in terms of process and substance. In that context, the GAC will consider further how to react to the Board 's request. However, and without prejudging how this should be linked to the Board's request, the GAC converged on the interest of providing additional information.

The GAC expressed the need to find a mutually acceptable solution in the case of the .amazon gTLD applications for the countries affected and for the Amazon corporation.

Several GAC members expressed serious concerns about both the process followed to date in this matter and the merits of the applications from the Amazon company. A statement from the governments of Brazil and Peru summarizing their concerns in this regard will be incorporated into the record of the meeting. The GAC draws the attention of all parties to the final transcript of the relevant sessions where these issues were discussed, these will be available here: https://schedule.icann.org/event/CbHz/gac-meeting-with-amazoncom.

2. 2-Character Country Codes at the 2nd Level

Several GAC members expressed their strong concern that the ICANN CEO's response to previous GAC statements on this issue have not addressed the specific matters raised in Section 5 of the Johannesburg Communiqué. This concern was discussed at the GAC's meeting with the ICANN Board in August 2017. The GAC expects further efforts by ICANN Org to address, by appropriate mechanisms and with priority, concerns relating to this issue, as well as initiatives to improve communications between GAC members and ICANN Org.

3. Red Cross and Red Crescent Protections

Following its most recent advice adopted in the Copenhagen and Johannesburg Communiqués, the GAC welcomed the progress made by the GNSO's re-convened PDP Working Group on the Protection of IGO-INGO Identifiers in All gTLDs, tasked with re-examining the GNSO's past recommendations on the protection of Red Cross and Red Crescent designations, names and identifiers – particularly of the names of national Red Cross and Red Crescent societies.

The GAC noted that the acronyms of the International Committee of the Red Cross (ICRC, CICR, MKKK) and of the International Federation of Red Cross and Red Crescent Societies (IFRC, FICR) are defined to fall outside of the remit of the reconvened GNSO Working Group and recalled its advice (Durban Communiqué, 2013) that these acronyms be made to benefit from the same cost neutral mechanisms to be worked out for the protection of acronyms of IGOs.

VI. Other Issues

1. ICANN Jurisdiction

The GAC noted the most recent outputs of the CCWG-Accountability Sub-Group on Jurisdiction and participated actively in the cross-community session on jurisdiction.

The GAC reiterates its support for the open, multistakeholder process by which the recommendations were developed.

Several GAC members, however, expressed major concerns regarding the draft report from the sub-group on jurisdiction. These members consider that it falls short of the objectives envisaged for Work Stream 2, and that its recommendations only partly mitigate the risks associated with ICANN's subjection to US jurisdiction, which makes the adoption of the report unacceptable.

Several other GAC members welcomed the recommendations on jurisdiction and stressed in particular the importance of industry having options, including a menu, for choice of law and venue for contracts with ICANN.

GAC members will continue to engage with development of relevant recommendations from the CCWG-Accountability process including through the public comment process.

2. New gTLDs Subsequent Procedures PDP

The GAC met with the Co-Chairs and members of the GNSO PDP on New gTLD Subsequent Procedures and had a useful exchange of views on applicant support and community based applications. The GAC and the PDP Working Group will continue to explore ways of more efficiently capturing GAC input to the PDP work.

3. Review of all Rights Protections Mechanisms

The GAC received a comprehensive briefing on the GNSO PDP to Review all Rights Protection Mechanisms (RPMs) in all gTLDs and related issues. Members noted the public policy implications of this work and the value of engaging with relevant experts, notably WIPO and government agencies at the national level.

4. Next High Level Governmental Meeting: Barcelona

The GAC was briefed by the Spanish Government on arrangements for the High Level Governmental Meeting to be held as part of ICANN 63 in Barcelona, including possible agenda topics.

VII. GAC Consensus Advice to the Board

The following items of advice from the GAC to the Board have been reached on the basis of consensus as defined in the ICANN Bylaws.[2]

1. Intergovernmental Oganization (IGO) Protections

The GAC recalls its longstanding advice on the topic of IGO protections and is closely monitoring the ongoing PDP on IGO-INGO Access to Curative Rights Protection Mechanisms. The GAC remains open to working with the GNSO to try to find a mutually-agreeable resolution to this issue. The GAC also recalls the values of openness,

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[2] Bylaws s.12.2.(a)(x) The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee advice, it shall so inform the Governmental Advisory Committee and state the reasons why it decided not to follow that advice. Any Governmental Advisory Committee advice approved by a fullGovernmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection (**"GAC Consensus Advice"),** may only be rejected by a vote of no less than 60% of the Board, and the Governmental Advisory Committee and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee will state whether any advice it gives to the Board is GAC Consensus Advice.

transparency and inclusion, and representativeness and process integrity, that are respectively enshrined in ICANN's Bylaws and GNSO Operating Procedures.

a. The GAC advises the ICANN Board to:
i.   review closely the decisions on this issue in order to ensure that they are compatible with these values and reflect the full factual record.

RATIONALE

Although the ICANN Community is still awaiting the final report for the PDP on IGO-INGO Access to Curative Rights Protection Mechanisms, preliminary communications indicate that the Working Group's proposal will conflict with GAC advice on the issue and GAC input to the PDP as well as the comments of over 20 IGOs who submitted comments to the Working Group's draft report. The Board plays an important role in ensuring the proper application of the ICANN Bylaws and GNSO Operating Procedures, and the GAC expects that a basic safeguard would be a close Board review of GNSO policy recommendations, especially where such recommendations directly contradict GAC advice.

2. Enabling inclusive, informed and meaningful participation in ICANN

a. The GAC advises the ICANN Board to instruct ICANN Org to:
i.   Develop a simple and efficient document management system that allows non-experts to easily and quickly access and identify documents, starting with defining minimal requirements that ensure that every document has a title and a date or reference number, identifies the author and indicates intended recipients, makes reference to the process it belongs to and explains the acronyms used in the document; and
ii. Produce easily understandable executive summaries, key points and synopses (using e.g. infographs, videos and other innovative ways of presenting information) for all relevant issues, processes and activities, so that also non-expert stakeholders will be able to (a) quickly determine if a particular issue is of concern to them and (b) if yes, to participate in the policy process easily and effectively, on equal footing with other stakeholders.
This should be done at least, but not only, before putting issues up for public comment. Attention should be paid to using plain English (and if possible translations into other languages) in order to allow non-English native speakers to understand the issues;

RATIONALE

This advice is consistent with a joint statement developed by the GAC and the At Large Advisory Committee (ALAC) which will be published separately.

One of ICANN's core values is to seek and support *"broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent"* (Bylaws Section 1.2.c.ii)

In the view of the GAC and the ALAC it is not only among ICANN's core values but also critical to ICANN's legitimacy to act in the global public interest to allow non-expert stakeholders to meaningfully participate in ICANN's processes and make their voices, their needs and interests heard, and duly take them into account in order to act and take decisions that are in fact, in the global public interest. These proposed measures will go some way to address this.

3. GDPR/WHOIS

a. **The GAC advises the ICANN Board that:**

    i. the 2007 GAC WHOIS Principles (attached) continue to reflect the important public policy issues associated with WHOIS services. Accordingly, ICANN should take these issues into account as it moves forward with its planning to comply with the European Union's General Data Protection Regulation (GDPR). In these principles, the GAC has notably recognized that WHOIS data (also known as Registration Directory Services) is used for a number of legitimate activities, including:

        1. Assisting law enforcement authorities in investigations and in enforcing national and international laws, assisting in combatting against abusive use of internet communication technologies;

        2. Assisting businesses, other organizations, and users in combatting fraud, complying with relevant laws, and safeguarding the interests of the public;

        3. Combatting infringement and misuse of intellectual property; and

        4. Contributing to user confidence in the Internet as a reliable and efficient means of information and communication by helping users identify persons or entities responsible for content and services online.

Accordingly,

b. **the GAC advises the ICANN Board that:**

    i. as it considers how to comply with the GDPR with regard to WHOIS, it should use its best efforts to create a system that

continues to facilitate the legitimate activities recognized in the 2007 Principles, including by:

1. Keeping WHOIS quickly accessible for security and stability purposes, for consumer protection and law enforcement investigations, and for crime prevention efforts, through user-friendly and easy access to comprehensive information to facilitate timely action.
2. Keeping WHOIS quickly accessible to the public (including businesses and other organizations) for legitimate purposes, including to combat fraud and deceptive conduct, to combat infringement and misuse of intellectual property, and to engage in due diligence for online transactions and communications.

In order to promote the public interest, and in response to the ICANN CEO's invitation to contribute questions pertaining to legal advice on the interpretation and application of the GDPR,

c. the GAC also advises the ICANN Board to:

  i. seek information from its outside counsel tasked with providing guidance on GDPR issues that addresses the following issues:

   1. What are the options under the GDPR to ensure the lawful availability of WHOIS/RDS data for consumer protection and law enforcement activities? In particular, are there changes to policy or the legal framework that should be considered with a view to preserving the functionality of the WHOIS to the greatest extent possible for these purposes and others also recognized as legitimate? This question includes tasks carried out in the public interest and tasks carried out for a legitimate purpose, including preventing fraud and deceptive activities, investigating and combatting crime, promoting and safeguarding public safety, consumer protection, cyber-security etc.
   2. What are the options under the GDPR to ensure the lawful availability of WHOIS/RDS data for the public, including businesses and other organizations? This question includes tasks carried out in the public interest and tasks carried out for a legitimate purpose, including preventing fraud and deceptive activities, investigating and combatting crime as well as infringement and misuse of intellectual property, promoting and safeguarding public safety, consumer protection, cyber-security etc.

Finally,

   d. the GAC also advises the ICANN Board that:

        i. it is urgent to address these issues and that the GAC should be fully involved in the design and implementation of any (including interim) solution and requests that ICANN practice transparency vis-à-vis the multistakeholder community in its GDPR activities.

RATIONALE

This advice reflects the view of governments that the continued and lawful availability of WHOIS/RDS data for consumer protection, intellectual property rights protection and law enforcement activities is a vital public concern and that ICANN should strive to explore all possible mechanisms under the GDPR to ensure that this data remains available for legitimate activities that protect the public and promote a safe, secure, and trustworthy online environment.

4. Applications for .amazon and related strings

   a. The GAC advises the ICANN Board to:

        i. continue facilitating negotiations between the Amazon Cooperation Treaty Organization's (ACTO) member states and the Amazon corporation with a view to reaching a mutually acceptable solution to allow for the use of .amazon as a top level domain name.

RATIONALE

The GAC recognizes the need to find a mutually acceptable solution for the countries affected and the Amazon corporation to allow for the use of .amazon as a top level domain name. The GAC considers that the Board could continue to assist in facilitating the negotiations between the parties.

VIII. Next Face to Face Meeting

The GAC will meet during ICANN 61 in Puerto Rico, scheduled for 10-15 March 2018.

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GAC PRINCIPLES REGARDING gTLD WHOIS SERVICES

Presented by the Governmental Advisory Committee
March 28, 2007

1.1 The purpose of this document is to identify a set of general public policy issues and to propose principles related to generic top-level domain (gTLD) WHOIS services, in line with the recommendations of the Tunis Agenda of the World Summit on the Information Society in November, 2005.

1.2 These principles are intended to guide the work within ICANN and to inform the ICANN Board of the consensus views of the GAC regarding the range of public policy issues associated with WHOIS services.

Public Policy Aspects of WHOIS Data

2.1 The GAC recognizes that the original function of the gTLD WHOIS service is to provide a look up service to Internet users. As the Internet has evolved, WHOIS data is now used in support of a number of other legitimate[1] activities, including:

1. Supporting the security and stability of the Internet by providing contact points for network operators and administrators, including ISPs, and certified computer incident response teams;

2. Allowing users to determine the availability of domain names;

3. Assisting law enforcement authorities in investigations, in enforcing national and international laws, including, for example, countering terrorism-related criminal offences and in supporting international cooperation procedures. In some countries, specialized non-governmental entities may be involved in this work;

4. Assisting in combating against abusive uses of ICTs, such as illegal and other acts motivated by racism, racial discrimination, xenophobia, and related intolerance, hatred, violence, all forms of child abuse, including paedophilia and child pornography, and trafficking in, and exploitation of, human beings.

5. Facilitating enquiries and subsequent steps to conduct trademark clearances and to help counter intellectual property infringement, misuse

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[1] Subject to applicable national law.

and theft in accordance with applicable national laws and international treaties;

6. Contributing to user confidence in the Internet as a reliable and efficient means of information and communication and as an important tool for promoting digital inclusion, e-commerce andother legitimate uses by helping users identify persons or entities responsible for content and services online; and

7. Assisting businesses, other organizations and users in combating fraud, complying with relevant laws, and safeguarding the interests of the public.

2.2   The GAC recognizes that there are also legitimate concerns about:
1. the misuse of WHOIS data, and

2. Conflicts with national laws and regulations, in particular applicable privacy and data protection laws.

Principles Applicable to WHOIS Services

3.1 The definition, purpose, and operation of gTLD WHOIS services should reflect and respect the different interests and concerns outlined in Section 2 above.

3.2. gTLD WHOIS services must comply with applicable national laws and regulations.

3.3 gTLD WHOIS services should provide sufficient and accurate data about domain name registrations and registrants subject to national safeguards for individuals' privacy in a manner that:

1. Supports the stability, reliability, security, and global interoperability of the Internet, from both a technical and public trust perspective; and

2. Facilitates continuous, timely and world-wide access.

3.4 Ongoing collaboration among all relevant stakeholders who are users of, affected by, or responsible for, maintaining WHOIS data and services is essential to the effective implementation of these principles.

Recommendations for Action

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4.1 Consistent with the above principles, stakeholders should work to improve the accuracy of WHOIS data, and in particular, to reduce the incidence of deliberately false WHOIS data.

4.2 The ICANN community, working with other stakeholders, should gather information on gTLD domain name registrations and registrants and how WHOIS data is used and misused. This information should be publicized and used to inform future debate on this issue.