

# ICANN | GAC

## Governmental Advisory Committee

Barcelona, Spain, 25 October 2018

### GAC Communiqué – Barcelona, Spain<sup>1</sup>

## I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Barcelona, Spain, from 20 to 24 October 2018.

Ninety (90) GAC Members and nine (9) Observers attended the meeting.

The GAC meeting was conducted as part of ICANN63. 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:

- Recommendations of the reconvened GNSO PDP dealing with Red Cross Red Crescent protections.
- The applications for dot.Amazon.
- 2-character country and territory codes at the second level.
- The GNSO PDP on IGO-INGO Access to Curative Rights Protection Mechanisms.
- Development of a Unified Access Model for non-public WHOIS data.
- The ICANN v. EPAG legal case.
- Progress in the GNSO Expedited Policy Development Process.
- The High Level Governmental Meeting held in Barcelona.

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<sup>1</sup> To access previous GAC Advice, whether on the same or other topics, past GAC communiqués are available at: <https://gac.icann.org/contentMigrated/icann62-panama-communicue>

## **Meeting with Generic Names Supporting Organization (GNSO)**

The GAC met with members of the GNSO Council and discussed:

- The operation of, and proposed improvements to, the GNSO Policy Development Process.
- Issues associated with the Final Report of the PDP on IGO-INGO Access to Curative Rights Protection Mechanisms, including reconciliation with previous GAC advice.

## **Meeting with Country Code Names Supporting Organization (ccNSO)**

The GAC met with members of the ccNSO and discussed:

- WHOIS status and impact of GDPR on European ccTLDs
- ccNSO priorities for 2019

## **Meeting with At-Large Advisory Committee (ALAC)**

The GAC met with ALAC and discussed:

- Further expansion of the gTLD space.
- GDPR-related issues.

The GAC and ALAC agreed on a follow-up joint statement on enabling inclusive, informed and meaningful participation in ICANN. This statement is attached to the Communiqué.

## **Meeting with Public Technical Identifiers (PTI)**

The GAC met with members of the PTI Board and discussed:

- IANA and PTI functions
- PTI Board priorities
- KSK Rollover

## **Cross Community Discussions**

GAC Members participated in relevant cross-community sessions and high interest topics scheduled as part of ICANN 63, including the Expedited Policy Development Process; the General Data Protection Regulation; and Innovation in Top Level Domains.

### III. Internal Matters

#### 1. GAC Membership

The GAC welcomed Laos as a new member. There are currently 178 GAC Members and 36 Observers.

The GAC expressed its deep appreciation to a number of long-standing participants who are leaving after significant and exemplary service, in particular Ambassador Benedicto Fonseca Filho (Brazil), Mr Thomas de Haan (Netherlands), Ms Elise Lindeberg (Norway) and Mr Ornulf Storm (Norway).

#### 2. GAC Working Groups

- **GAC Public Safety Working Group (PSWG)**

The PSWG discussed the serious impact of ICANN’s Temporary Specification for gTLD Registration Data on Law Enforcement investigations and on that of their cybersecurity partners. The lack of details regarding what constitutes a “reasonable access” to redacted WHOIS data continues to further hamper investigations and prolong the exposure of victims to crime and abuse.

Participants in the Working Group agree that effective investigations to determine identifying information for criminal acts and the protection of victims require an access model providing centralized, lawful direct access to non public WHOIS data. Capabilities to support critical investigative techniques such as reverse lookup and historical queries should be explored. The PSWG believes this can be achieved in compliance with relevant Data Protection Laws, leveraging technologies such as the Registration Data Access Protocol (RDAP) and data anonymization, where applicable.

- **GAC Human Rights and International Law Working Group (HRIL WG)**

The working group discussed internal matters, including an initial exchange on possible updates to its current work plan. An updated version will be further discussed intersessionally. An exchange was held on the adoption of the Framework of Interpretation (FoI) and considerations relating to the Human Rights Core Value (HRCV), where some members expressed their concerns on its perceived shortcomings. The WG members will share and develop intersessionally ideas and options on potential implementation of the HRCV within the GAC for further discussion at ICANN64 as appropriate. The WG received written information from ICANN org on its work regarding a Human Rights Impact Assessment (HRIA) on ICANN org activities, and looks forward to a face-to-face exchange with ICANN org at the Kobe Meeting.

- **GAC Working Group on GAC Participation in NomCom**

The Working Group met with the GAC in plenary and was briefed by the leadership of the Nominating Committee (NomCom) on committee operating procedures including confidentiality. A suggestion that the recently submitted GAC criteria for Board appointments be updated annually was noted. The GAC was also briefed on implementation of the NomCom review. The GAC will give further consideration to whether to resume its place on the NomCom.

- **GAC Underserved Regions Working Group (USRWG)**

The GAC Underserved Regions Working Group in collaboration with ICANN's Government Engagement Team developed a Capacity Building Evaluation Report that will be shared with the GAC for comments with a view to endorsement during ICANN64.

### **3. Board-GAC Review Implementation Working Group (BGRI)**

ICANN Board and GAC members met in GAC plenary session and:

- Agreed to change the name of the group to "Board-GAC Interaction Group"
- Noted the Board's proposed timeline for responding to the Barcelona Communique
- Reviewed and noted feedback on the Board's continuing initiative to ensure that the status of historical and current GAC advice is accurately recorded and tracked.

### **4. Independent Secretariat**

Independent secretariat services provided to the GAC by the Australian Continuous Improvement Group (ACIG) will cease on 31 December 2018. The GAC expressed its deep appreciation to ACIG for the excellent service that they provided to the GAC since 2013. The GAC is considering options for a future independent secretariat and is working with ICANN Org to ensure that staff resources support the GAC's workload.

### **5. GAC Elections**

The GAC elected Manal Ismail (Egypt) as Chair for the term March 2019 - March 2021.

The GAC elected as Vice-Chairs for the term March 2019 - March 2020:

Chérif Diallo (Senegal)  
Pär Brumark (Niue)  
Thiago Jardim (Brazil)  
Olga Cavalli (Argentina)  
Luisa Paez (Canada)

## 6. GAC Operational Matters

The GAC established a Working Group on GAC Operating Principles Evolution. The WG will be co-chaired by Guo Feng (China) and Par Brumark (Niue). The task of the WG is to review and make recommendations on the structure and substance of the GAC Operating Principles.

The GAC also reviewed work planned or underway on meeting attendance, onboarding of new members and travel support guidelines.

## IV. Other Issues

### 1. High Level Governmental Meeting (HLGM)

The GAC expressed its sincere appreciation to the Government of Spain for hosting the fourth High Level Governmental Meeting. The meeting was attended by 124 delegations and addressed a range of issues including opportunities for government in ICANN post-IANA transition; cybercrime, data protection and privacy; the role and impact of Internet technological evolution on ICANN; and the global digital agenda and Internet policies.

The views of one intervention were discussed in the context of this communique drafting. In this context, some GAC members raised the need to find ways and means to address the right of citizens of the concerned countries regarding DNS and TLD affairs to prevent the negative impacts of Unilateral Coercive Measures<sup>2</sup> and sanctions. Some other countries do not share those views.

### 2. WHOIS and Data Protection Legislation

The GAC reviewed developments across ICANN with regard to WHOIS access and compliance with data protection laws including the GDPR, and GAC members participated in cross-community sessions and the Expedited Policy Development Process (EPDP). The GAC had an exchange of views with the Non-Commercial Stakeholder Group and the Intellectual Property Constituency on developments with regard to the EPDP and Unified Access Model.

Protecting the public in the context of the domain name system requires balancing data protection and the legitimate and lawful practices associated with protecting the public, including to combat illegal conduct such as infringement of intellectual property, promote cyber-security and user confidence and consumer trust in the Internet, protect consumers and businesses. Prior GAC Advice and current ICANN Bylaws recognize these vital interests. Moreover, both the Article 29 Data Protection Working Party and the European Data Protection Board have recognized that

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<sup>2</sup> The term “unilateral coercive measures” usually refers to economic measures taken by one State to compel a change in the policy of another State (source: [www.unhcr.org](http://www.unhcr.org))

“enforcement authorities entitled by law should have access to personal data in the Whois directories” and stated their expectation that ICANN should “develop a WHOIS model that will enable legitimate uses by relevant stakeholders, such as law enforcement.”<sup>3</sup>

The current Temporary Specification has created a fragmented system for providing access consisting of potentially thousands of distinct policies depending upon the registrar involved. This lack of consistent policies to access non-public information causes delays. If investigations are delayed or stopped, the potentially injurious conduct continues to harm the public with negative results that include physical and financial harm. Hence, time is of the essence for implementation of a final specification governing gTLD directory services and developing a unified access model for third-party access to non-public WHOIS data.

Existing requirements in the Temporary Specification governing gTLD Registration Data are failing to meet the needs of the law enforcement and cyber-security investigators. Survey results<sup>4</sup> show a clear trend that, since its implementation, the Temporary Specification has significantly affected law enforcement and cyber-security professionals’ ability to investigate and mitigate crime using information that was publicly available in the WHOIS system previously:

- the current WHOIS system’s ability to meet law enforcement needs has been drastically reduced;
- investigations are delayed or discontinued;
- many cyber-security professionals do not know how to request access for non-public information;
- and many of those seeking access have been denied access.

Similar concerns exist for those involved in protecting intellectual property. Therefore, we think it would be useful for ICANN to provide a dedicated platform for the collection of evidence on the impact of the Temporary Specification.

The GAC welcomes the progress made by the EPDP and emphasizes the commitment of the GAC to contributing to the swift delivery of a comprehensive RDS policy. In view of the complexity of the subject matter, the GAC is of the opinion that there nonetheless exists a risk that the comprehensive policy may not be in place before the Temporary Specification expires. Therefore, the community should consider how to mitigate this risk.

The GAC remains committed to working with the community and the Expedited Policy Development Process (EPDP) to ensure that third parties are able to have timely and predictable access to redacted WHOIS information in a manner that complies with the applicable data protection laws. Although the EPDP Charter tasks the team with defining what is meant by “reasonable access,” community work on developing a unified access model should proceed in parallel and can complement the EPDP’s efforts.

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<sup>3</sup> Dec. 6, 2017 [letter](#) from Art. 29 Data Protection Working Party; July 5, 2018 [letter](#) from European Data Protection Board

<sup>4</sup> Sources: See section section 5.3.1 in the [Draft Report](#) of the Registration Directory Services 2 Review Team (31 August 2018) and joint [survey](#) from Anti-Phishing and Messaging Malware and Mobile Anti-Abuse Working Groups (18 October 2018)

### **3. New gTLD Subsequent Procedures**

The GAC was briefed by the leadership of the GNSO PDP on New gTLD Subsequent Procedures, and discussed options for further GAC engagement in the next phase of the PDP's work. It was noted that the range and complexity of the issues poses challenges for GAC participation, and an offer from the PDP leadership to assist with this was welcomed.

### **4. Geographic Names**

The GAC was briefed by the Co-Leads of Work Track 5 (Geographic Names) of the New gTLD Subsequent Procedures PDP and reviewed recent discussions on Alpha-3 codes in ISO-3166, non-capital city names and terms not included in the 2012 Applicant Guidebook.

### **5. dot.Amazon**

Colombia provided an update regarding the letter sent by the ACTO secretariat on 5 September 2018 in which the 8-countries Organization expressed its concerns on a possible assignment of the domain to the corporation Amazon Inc. without taking into consideration the cultural, economic, social and environmental interests of a sensitive region as is the Amazonia, while reiterating that ACTO countries have the right to participate in the governance of the domain name ".AMAZON"; including the participation in the establishment of public policies. A decision without proper consent in a multi-stakeholder approach framework, would be considered disadvantageous, and far from their interest over the Amazonian region. Colombia also informed of a note of concern addressed to the ICANN CEO by the Foreign Affairs Ministry and the ITs Minister in which the Government expressed its concern regarding a possible .amazon delegation without consent by the ACTO members.

### **6. Auction Proceeds**

The GAC reviewed developments in the Cross Community Working Group on New gTLD Auction Proceeds, in particular with regard to possible opportunities for underserved countries and regions. GAC members will consider making submissions to the public comment period for the CCWG Initial Report.

### **7. Two-Character Country Codes at the Second Level**

The GAC had a robust dialogue with ICANN Board members concerning the substantive issue of options available to concerned governments in the case of applications to use two-character country and territory names at the second level of gTLDs; and the procedural issue of how the Board has dealt with previous GAC advice on this issue.

The GAC noted that the ICANN Board indicated it would put in place a webpage enabling governments to be notified when their two character codes are registered at the second level under new gTLDs. The GAC notes, however, that this measure does not address the request from some GAC members to be consulted prior to the release of their country codes at the second level under gTLDs. The GAC further notes that it would not address the procedural issue.

## **8. ICANN Accountability**

The GAC wishes to express its appreciation for the diligent and productive work performed by the CCWG-Accountability Work Stream 2, its Co-Chairs, its members and all its contributors.

The GAC has considered the CCWG's final report and recommendations and supports recommendations with regard to:

- Improving diversity.
- Framework of Interpretation for Human Rights
- Guidelines for standards of conduct presumed to be in good faith associated with exercising removal of individual ICANN Board directors.
- Improving the ICANN Office of the Ombudsman.
- Increasing SO/AC accountability.
- Improving staff accountability.
- Improving ICANN transparency.

If these recommendations are accepted by the Board, the GAC will work with the community in monitoring their implementation, particularly with regard to diversity, human rights and the impact of transparency recommendations on ICANN's dealings with governments.

The GAC is not in a position to approve or reject the recommendations on jurisdiction. Some GAC members support the recommendations. Other GAC members consider that they fall short of the objectives envisaged for Work Stream 2 and only partly mitigate the risks associated with ICANN's subjection to US jurisdiction. The reasons why these members object to approving the recommendations are documented in the dissenting statement submitted to the CCWG by Brazil.



## V. Consensus Advice to ICANN 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<sup>5</sup>:

### 1. Two-Character Country Codes at the Second Level

#### a. The GAC advises the Board to:

- i. Explain in writing how and why it considers it is implementing GAC advice on the release of country codes at the second level and
- ii. Explain in writing whether its Resolution of 8 November 2016 and its change from the preexisting release process (indicated in specification 5. 2 of the Registry Agreement, sentence 1) to a new curative process (under sentence 2) are compatible with GAC advice on this topic, or whether it constitutes a rejection of GAC advice. The GAC advises the Board to set out its explanation in writing by 31 December 2018. Previous GAC advice on this matter stands.
- iii. Ensure that its direction to the ICANN CEO to “engage with concerned governments to listen to their views and concerns and further explain the Board’s decision making process” (Board Resolution 2017.06.12.01) is fully implemented including direct engagement with those governments in order to fully address their concerns.

#### RATIONALE

This advice is adopted to support and oversee implementation by the Board of existing GAC Advice on the matter, including calling upon the Board to work towards resolution of countries concerns relating to the release of country codes as a result of the withdrawal of the release process in 2016.

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<sup>5</sup> Bylaws section.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 full Governmental 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.

## 2. IGO Protections

### a. The GAC advises the Board to:

- i. facilitate a substantive, solutions-oriented dialogue between the GNSO and the GAC in an effort to resolve the longstanding issue of IGO protections, on which it reaffirms its previous advice, notably with respect to the creation of a curative mechanism and maintenance of temporary protections.

### RATIONALE

The GAC understands that the GNSO has decided at this stage to not vote on the final report for the PDP on IGO-INGO Access to Curative Rights Protection Mechanisms, which adopted recommendations in direct conflict with longstanding GAC advice. Noting the positive advancements achieved to bridge the gap between GNSO and GAC advice on identifiers for the Red Cross, the GAC remains optimistic that a substantive dialogue with the GNSO could help both sides better understand the issues at play and reach a lasting solution that can provide IGOs with GAC-advised protections for their acronyms while addressing the concerns of the GNSO.

## VI. Follow-up on Previous Advice

**The following items reflect matters related to previous consensus advice provided to the Board.**

### 1. GDPR and WHOIS

We emphasize the GAC consensus advice from ICANN62 that urged ICANN to take all steps necessary to ensure the development and implementation of a unified access model that addresses accreditation, authentication, access and accountability, and applies to all contracted parties. We welcome ICANN's efforts to facilitate the necessary community discussion through the Unified Access Model papers and emphasize the need to drive these discussions towards concrete and timely results.

### 2. Dot Amazon Applications

The GAC welcomes the 16 September 2018 Board resolution on the .Amazon applications directing the ICANN President and CEO "to support the development of a solution that would allow the .AMAZON applications to move forward in a manner that would align GAC (Governmental Advisory Committee) advice and inputs on this topic".

The GAC notes that the rationale of the 16 September 2018 Board resolution states that "[t]he Board is taking this action today to further the possibility of delegation of the .AMAZON

applications ... while recognizing the public policy issues raised through GAC advice on these applications”.

The GAC recalls its latest advice on the matter where “[t]he GAC recognizes the need to find a mutually acceptable solution” for the Amazon countries and for the applicant, and calls upon the Board to continue facilitating work that could result in such a solution (GAC Communiqué, Abu Dhabi, 1 November 2017).

### **3. Protection of the Red Cross and Red Crescent Designations and Identifiers**

The GAC welcomes the progress made in the process of reconciliation between the GAC’s consistent advice and the GNSO’s past policy determinations on the issue of the protection of the Red Cross and Red Crescent designations and identifiers and marks its appreciation for the inclusive consultative process conducted under the auspices of the GNSO's reconvened Working Group on the Red Cross and Red Crescent names.

The Board is encouraged to adopt the GNSO Council's recommendations, which regard the reservation of the list of names of the 191 National Red Cross and Red Crescent Societies in relevant languages, as well as of the international organizations within the International Red Cross and Red Crescent Movement.

The GAC notes that the issue of the acronyms of the two international organizations within the Movement (ICRC and IFRC) were not covered under the abovementioned GNSO process and recalls standing GAC Advice that the temporary protections presently accorded to these acronyms remain in place until such time an appropriate resolution of this issue is reached.

## **VII. Next Face to Face Meeting**

The GAC will next meet during ICANN64 in Kobe, Japan, scheduled for 9-14 March 2019.

## ATTACHMENT:

### **Follow-up to the joint statement by ALAC and GAC (Abu Dhabi, 2 November 2017)**

The At-Large Advisory Committee (ALAC) and the Governmental Advisory Committee (GAC) thank the ICANN Board for its response to their joint statement “Enabling inclusive, informed and meaningful participation at ICANN”, issued at ICANN60 in Abu Dhabi on 2 November 2017.

In its response, the Board referred to the Information Transparency Initiative (ITI), launched in January 2018, which hopefully will lead to the creation of a document managing system that – as required by the ALAC and the GAC – will allow, even to non-expert stakeholders, a quick and easy access to ICANN documents. However, its development will take time. According to the ICANN website, its delivery is expected in December 2019.

In their joint statement, the ALAC and the GAC also asked ICANN to produce executive summaries, key points and synopses for all relevant issues, processes and activities – something that could be implemented without delay.

In its response, the Board referred to the current offer of monthly newsletters, pre-and post-meeting reports and video interviews, as well as to the ICANN Learn online platform. All these initiatives are commendable and likely to improve access to information and content regarding ICANN activities. However, they are not enough to reach the goal that the ALAC and GAC have in mind.

Particularly in policy development processes, non-expert stakeholders need executive summaries to be able to quickly determine, whether a particular issue is of concern to them, and if yes, to participate in the process easily and effectively, on equal footing with other stakeholders, even if ICANN is not in their full-time focus. Summaries should be provided at least, but not only, on issues put out for public comment. Clear and up-to-date information to facilitate quick understanding of relevant issues and high interest topics is key for inclusive, informed and meaningful participation by all stakeholders, including non-experts.

In the context of the IANA transition process, ICANN was able to offer timely and comprehensible information by breaking down complex issues into understandable components, which allowed interaction within the entire community. The ALAC and the GAC are now asking from ICANN that the same level of effort be made and the same service be provided to the community concerning information on all other relevant issues.