

ICANN | GAC

Governmental Advisory Committee

ICANN68 Virtual Policy Forum, 27 June 2020

GAC Communiqué – ICANN68 Virtual Policy Forum¹

The GAC ICANN68 Communiqué was drafted and agreed remotely during the ICANN68 Virtual Policy Forum. The Communiqué was circulated to the GAC immediately after the meeting to provide an opportunity for all GAC Members and Observers to consider it before publication, bearing in mind the special circumstances of a virtual meeting. No objections were raised during the agreed 48-hour timeframe before publication.

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met via remote participation, from 22 to 25 June 2020 (Kuala Lumpur local time). Per ICANN Board resolution² on 8 April 2020, in response to the public health emergency of international concern posed by the global outbreak of COVID-19, ICANN68 was transitioned from an in-person meeting in Kuala Lumpur, Malaysia, to a remote participation-only ICANN meeting.

Seventy-eight (78) GAC Members and three (3) Observers attended the meeting.

The GAC meeting was conducted as part of the ICANN68 Virtual Policy Forum. All GAC plenary sessions were conducted as open meetings.

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

² See resolution at <https://www.icann.org/resources/board-material/resolutions-2020-04-08-en>

II. Inter-Constituency Activities and Community Engagement

Meeting with the ICANN Board

The GAC met with the ICANN Board and discussed:

- Subsequent Rounds of New gTLDs
- DNS Abuse Mitigation and related issues associated with
 - Privacy/Proxy Services
 - Proactive Anti-Abuse Measures
 - Accuracy of gTLD Registration Data
- Domain Name Registration Directory Service and Data Protection
- Upcoming topics of GAC Interest

ICANN Board responses to the GAC's questions are available in the transcript of the GAC/ICANN Board meeting, appended to this document.

Cross Community Discussions

GAC Members participated in relevant cross-community sessions scheduled as part of ICANN68, including:

- DNS Abuse and Malicious Registrations during COVID-19;
- The DNS and the Internet of Things: Opportunities, Risks and Challenges; and
- ICANN and COVID-19 - Advancing Policy Work in the Current Environment.

III. Internal Matters

1. GAC Membership

There are currently 178 GAC Member States and Territories and 38 Observer Organizations.

2. GAC Working Groups

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

The GAC PSWG led two sessions with the GAC on DNS abuse mitigation measures and briefed GAC Members on its ongoing efforts to combat COVID-19 linked fraud and abuse. While it was noted that many Registrars showed a strong willingness to communicate with Public Safety officials during

this pandemic, and to review domains referred by them, there were nonetheless concerns expressed by Law Enforcement at the continued use of Privacy/Proxy services by those seeking to exploit the pandemic (~65% of the domains referred appeared to use such services), and the resulting delays in investigations. The PSWG also highlighted the need for governments, ICANN, and the Community to take a multi-pronged approach to combating DNS abuse, including consumer and business education and awareness raising, and robust enforcement of applicable ICANN contract provisions.

Members of the PSWG also participated in the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data and the Cross-Community Session on DNS Abuse. Finally, the PSWG held discussions with ICANN's OCTO and SSR teams, the Security and Stability Advisory Committee, the Registry and Registrar Stakeholder Groups, and the Intellectual Property and Business Constituencies of the GNSO.

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

The GAC Underserved Regions Working Group (USRWG) updated the GAC on future initiatives in response to the COVID-19 situation, to be conducted in collaboration with the ICANN Community and ICANN's Government Engagement and Global Stakeholder Engagement teams.

The GAC USRWG has completed the review of the current GAC Travel Support Rules according to its work plan and will seek GAC input and approval after the ICANN68 Meeting.

- **GAC Universal Acceptance and IDN Working Group (UA-IDN WG)**

The Chair of the GAC Universal Acceptance and IDN Working Group (UA-IDN WG) reported on the group's intersessional activities since ICANN67. Among other activities, UA-IDN WG members have worked to prioritize their 2020 work plan effort to focus on (1) developing a basic introductory information document on Universal Acceptance to be shared with GAC members for their use at the national level; and (2) awareness building among and communications to governments on UA-IDN matters.

The UA-IDN WG Chair shared that the group is closely coordinating with the Universal Acceptance Steering Group (UASG) and the UA Communications Working Group (UA Comms) on communications plans and strategies. This includes the development of UA-related content for use by governments and relevant authorities, and a potential webinar series aimed at informing GAC members and their colleagues about Universal Acceptance developments and initiatives. The UA-IDN WG Chair also noted that the group hopes to seek GAC endorsement of the group's draft Terms of Reference (originally shared prior to ICANN67) shortly after the ICANN68 meeting.

3. GAC Elections

The 2020 election process for GAC Chair and Vice-Chairs will be initiated shortly after the ICANN68 meeting. The initial nomination period will close on 2 September 2020. If needed, a voting process

will be conducted until 20 October 2020, during the ICANN69 meeting, at which time the election results will be announced.

IV. Issues of Importance to the GAC

1. Subsequent Rounds of New gTLDs

The GAC prioritized consideration of policy issues related to Subsequent Rounds of new gTLDs during ICANN68, notably by devoting three GAC sessions to this topic, reviewing the GAC Scorecard, and by engaging in the GNSO New gTLD Subsequent Procedures PDP Working Group (Sub Pro PDP WG) meeting. The GAC wishes to thank the Sub Pro PDP WG Co-Chairs for their participation in GAC sessions on this topic, and recognizes the extensive and diligent work of the Sub Pro PDP WG to deliver the Final Report.

The GAC considered an update from the Sub Pro PDP WG Co-Chairs on work conducted since ICANN67, in particular consideration by the WG of the intersessional compilation of individual GAC Members input, and the Sub Pro PDP WG timeline. The GAC notes that the draft final report is expected to be posted for public comment in July 2020 for 40 days.

Some GAC members expressed concerns with the use of a standard 40-day public comment proceeding for a topic of high priority to the GAC and the ICANN Community. The Sub Pro PDP WG Co-Chairs noted such concerns while confirming that the final report will be delivered to the GNSO Council at the latest by the end of this calendar year.

The Sub Pro PDP WG Discussed two pending topics during ICANN68 and provided an update to the GAC:

1. Private Resolutions of String Contentions
2. Predictability Framework for Next Rounds of New gTLDs

Regarding auctions as a private mechanism to resolve string contentions, some GAC Members expressed concerns, in light of prior GAC positions on the issue, asking why other options are not being further considered by the WG. As to mechanisms to provide for predictability to applicants in future rounds, WG Co-Chairs flagged that the PDP WG recommends establishing a new Predictability Framework along with a new Standing Predictability Implementation Review Team (SPIRT) and noted initial community support of such recommendation. While the GAC appreciates the efforts of the WG to create a Predictability Framework, some GAC members raised doubts on the added-value of a SPIRT, and expressed concerns that its creation, if adopted, could add complexity to the current procedure and potential inconsistency with existing roles and responsibilities according to the ICANN Bylaws. It was proposed that if established, the new mechanism be lean, inclusive and transparent.

GAC Vice-Chairs provided an overview of the following priority topics identified by the GAC during ICANN67:

- Applicant Support
- Closed Generics
- Public Interest Commitments/Global Public Interest
- GAC Early Warnings/GAC Advice
- Community Based Applications

Some GAC members expressed the view that the lack of a formal PDP WG recommendation on the delegation of closed generics would imply that the relevant Board Resolution from the 2012 round would still apply. Additionally, while supporting a new round of new gTLDs in principle, some GAC members recalled the importance of a cost/benefit analysis being conducted prior to the next round.

GAC leaders and topic leads will continue to coordinate intersessional work on the high-interest topics, using the GAC Scorecard as the basis. The agreed next step is to develop GAC consensus input to the public comment period expected in July 2020 on the PDP WG Final Report. Interested GAC Members are encouraged to consult the GAC Scorecard on Subsequent Rounds of New gTLDs and to approach GAC topic leads in order to contribute on any of the relevant policy topics.

2. EPDP on gTLD Registration Data

Need for Evolution of any Proposed SSAD

The GAC small group highlighted the need for any final Phase 2 recommendations to include an effective mechanism for the SSAD to evolve, including in response to future legal guidance. Such evolution should be consistent with the Phase 2 policy recommendations, particularly with regard to the topic of what categories of disclosures may become subject to automated responses.

Legal vs. Natural, Data Accuracy

The GAC would request the Board to obtain an update from the GNSO, as soon as possible, on its progress towards developing a specific plan to continue the policy development process to address the unresolved issues related to distinguishing between natural and legal entities, and ensuring data accuracy. Such future policy efforts should start as soon as possible following the publication of the Phase 2 EPDP Final Recommendations and conclude to the extent practicable 6 months after. Further, the GAC notes that the GAC and other Advisory Committees such as the SSAC and ALAC should participate in any scoping or terms of reference for these future efforts.

The Temporary Specification for gTLD Registration Data specifically recognized that: *“ICANN’s mission directly involves facilitation of third party Processing for legitimate and proportionate purposes related to law enforcement, competition, consumer protection, trust, security, stability,*

resiliency, malicious abuse, sovereignty, and rights protection". ICANN is required by Section 4.6(e) of the Bylaws, subject to applicable laws, to *"use commercially reasonable efforts to enforce its policies relating to registration directory services,"* including by working with stakeholders to *"explore structural changes to improve accuracy and access to generic top-level domain registration data," "as well as consider[ing] safeguards for protecting such data."*

Moreover, the Temporary Specification Principles for Processing required that data shall: *"be accurate and, if necessary, kept current, as appropriate to the purposes for which they are Processed ('accuracy')"* (at ¶1.4). This requirement is consistent with Article 5(d) of the EU General Data Protection Regulation. Moreover, Phase 1 of the EPDP recognized that accuracy was expected to be considered in Phase 2 (see Recommendation 4 and accompanying footnote).

This requirement is also consistent with the GAC's advice in its 2017 Abu Dhabi Communiqué which recalled the 2007 GAC Principles Regarding gTLD WHOIS Services recognizing the need for accurate registration data (*"gTLD WHOIS services should provide sufficient and accurate data about domain name registrations and registrants subject to national safeguards for individuals' privacy"*).

Hence, data accuracy is called for to facilitate ICANN's mission, for consistency with GDPR, the expectations of the EPDP Phase 1 team, and prior GAC advice.

Data Controllership

The GAC expects more clarity on the status and role of each of the data controllers and processors in the SSAD model. To this end, the GAC urges ICANN org and the Contracted parties to complete the respective Data Protection Agreements between them as soon as possible so that they can be shared in a timely manner and support the IRT in its implementation activities.

Anonymized emails

The use of anonymized email may be a solution to protecting the registrant's identity while serving some of the legitimate domain name registration data access seekers' purposes. We therefore suggest a feasibility/legal study to guide the availability of a publicly accessible anonymized email by the Contracted Parties.

The EPDP team received legal guidance that anonymization as well as pseudonymization is "a useful Privacy Enhancing Technique/privacy by design measure" and noted DPA Guidelines recognizing that this technique may be used under appropriate circumstances.

3. DNS Abuse

The GAC heard presentations on the impact of COVID-19 related DNS Abuse and on efforts of authorities to counter abuse and provide awareness raising materials for consumers and businesses. Presenters noted the efforts of registries and registrars to address DNS Abuse both proactively and reactively, as well as the initiatives by SSAC and ICANN OCTO to support the

detection of abuse and collect and share best practices. The GAC commends these efforts, which have contributed to greater cybersecurity, preventing fraud, preserving public health and safety, and likely protecting lives.

The GAC believes capacity building and training initiatives should be prioritized by ICANN org, in terms of budgetary allocation and scheduling, for countries most affected and where the benefit would be the greatest.

The GAC notes that new efforts to tackle DNS abuse should not replace, but rather complement, existing initiatives to improve accuracy of registration data, such as the Accuracy Reporting System, and to implement policy on privacy and proxy services, which are currently on hold despite having been recommended by a number of review teams and endorsed by previous GAC advice.

The GAC calls on the Board to implement existing advice and on the ICANN community to seize this opportunity and commit to its different work streams on DNS Abuse, aiming for security, safety and the protection of individual and public rights and freedoms.

4. IGO Protections

The GAC received an update that the GNSO Council had adopted a revised charter concerning a focused working group to produce policy recommendations which address concerns raised over IGO access to a curative dispute resolution mechanism and is in the process of selecting a Chair prior to moving ahead with such policy effort.

5. CCWG-Accountability Work Stream 2 Implementation

The GAC Human Rights and International Law Working Group (HRIL WG) Co-Chairs updated the GAC on the current status of CCWG Accountability Work Stream 2 (WS2) Recommendations implementation. The Cross Community Working Party on ICANN and Human Rights (CCWP-HR) presented a sample of the Human Rights Impact Assessment (HRIA) tool intended to help ICANN Supporting Organizations and Advisory Committees (including the GAC) to organize and track implementation of the various WS2 recommendations. The GAC Chair encouraged GAC members to express their interest in either volunteering to participate in cross community efforts or to contribute to specific GAC implementation efforts that impact GAC operations.

GAC Members discussed issues related to the implementation of WS2 recommendations that are of interest to, or directly impact, the GAC. Discussions covered how these issues might be assessed, prioritized and implemented in an effective manner; and noted needs to continue work on the Work Stream 2 topics which cause concerns among some GAC Members.

One GAC member stated the difficulties it currently encounters in accessing to DNS resources in particular during the COVID-19 period. The concern of this GAC member supported by other GAC Members is reflected in the Minutes of the ICANN68 GAC meeting.

V. Follow-up on Previous Advice

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

1. EPDP on gTLD Registration Data

In line with its previous advice, the GAC observed the need to maintain WHOIS access to the fullest extent possible and noted that in its San Juan Communiqué it advised the ICANN Board to instruct ICANN org to "*Distinguish between legal and natural persons, allowing for public access to WHOIS data of legal entities, which are not in the remit of the GDPR*".

The GAC reiterates that this advice still stands and should be considered.

VI. Next Meeting

The GAC is scheduled to meet next during the ICANN69 Virtual Annual General Meeting on 17-22 October 2020.