

ICANN | GAC

Governmental Advisory Committee

ICANN70 Virtual Community Forum, 25 March 2021

GAC Communiqué – ICANN70 Virtual Community Forum¹

The GAC ICANN70 Communiqué was drafted and agreed remotely during the ICANN70 Virtual Community 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 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 March 2021. Per ICANN Board resolution² on 14 January 2021, in response to the public health emergency of international concern posed by the global outbreak of COVID-19, ICANN70 was transitioned from an in-person meeting in Cancún, Mexico, to a remote participation-only ICANN meeting.

Seventy two (72) GAC Members and five (5) Observers attended the meeting.

The GAC meeting was conducted as part of the ICANN70 Virtual Community Forum. All GAC plenary and working group 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 Resolutions 2021.01.14.02 – 2021.01.14.04 at <https://www.icann.org/resources/board-material/resolutions-2021-01-14-en#2.a>

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, including related Recommendations from the Second Security, Stability and Resiliency of the DNS Review (SSR2)
- Registration Data/WHOIS

ICANN Board responses to the GAC's questions and statements presented during the meeting are available in the transcript of the GAC/ICANN Board meeting, in Annex. Some additional questions not discussed during the meeting have been provided to the ICANN Board in writing.

Meeting with the At-Large Advisory Committee (ALAC)

The GAC met with members of the ALAC and discussed:

- Expedited Policy Development Process (EPDP) on gTLD Registration Data
- Subsequent Rounds of New gTLDs
- Accountability and Transparency Review Recommendations (ATRT3)

Meeting with the Generic Names Supporting Organization (GNSO)

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

- EPDP Phase 2A
- DNS Abuse Mitigation, including related SSR2 Recommendations
- GNSO Work Stream related to Accuracy of Registration Data
- Approval of the SSAD Recommendations that Lack Consensus

Cross Community Discussions

GAC Members participated in relevant cross-community sessions scheduled as part of ICANN70, including a session on Registry Voluntary Commitments.

ICANN org Finance and Planning Update

The GAC received a very informative update on Finance and Planning by the ICANN org, and conveys its appreciation to the organization for this presentation.

III. Internal Matters

1. GAC Membership

The GAC welcomed St. Vincent and the Grenadines as a Member. There are currently 179 GAC Member States and Territories and 38 Observer Organizations.

2. GAC Leadership

The GAC thanked its outgoing Vice-Chair, Ms. Luisa Paez (Canada) for her valuable support and contribution to the GAC during two one-year terms. The end of the ICANN70 meeting marks the start of a new term for the incoming GAC Chair/Vice Chair Team:

Manal Ismail (Egypt) (Chair)

Jorge Cancio (Switzerland) (Vice-Chair)

Jacques Rodrigue Guiguemde Ragnimpinda (Burkina Faso) (Vice-Chair)

Pua Hunter (Cook Islands) (Vice-Chair)

Pär Brumark (Niue) (Vice-Chair)

3. GAC Working Groups

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

The GAC PSWG led three sessions to update the GAC on PSWG activities and DNS Abuse including detailed review of the SSR2 recommendations. The GAC received an informative presentation by a panel of experts on DNS over HTTPS (DoH) that highlighted advantages in terms of DNS security and privacy. Some GAC members, however, noted possible public policy implications with use of this technology. As a result, the GAC intends to continue to follow-up on emerging technologies with an eye on the public interest.

The PSWG's recent activities include continued advocacy on the need for the community to work together to prevent, deter, and mitigate DNS Abuse. This work focuses on roles that different stakeholder groups may play in this effort including consumer/business education and proactive measures to prevent abuse. The PSWG highlighted the existing DNS Abuse definitions that the community and ICANN org have produced already, including those contained in the Registry and Registrar contracts, which should form a common foundation for future work. The PSWG also noted in its outreach to ICANN org and ICANN Community, the focus on DNS Abuse, discussing possible steps forward which include assessing how contract provisions may improve responses to DNS Abuse.

The PSWG continued its active participation to support the GAC Small Group towards the development of EPDP Phase 2A recommendations on the treatment of data from legal entities and

pseudonymized email addresses in gTLD Registration Data Services. The PSWG also signaled its intent to contribute to the scoping efforts on registration data accuracy and to support the GAC in ensuing policy development efforts. Members of the PSWG continue to support the GAC in the Implementation Review Team for Phase 1 of the EPDP.

During ICANN70, the PSWG held discussions with: ICANN org including representatives of the Office of the Chief Technology Officer, the Security Stability Resiliency team, Global Domains & Strategy, and Contractual Compliance; the Security and Stability Advisory Committee (SSAC); the At Large Advisory Committee (ALAC); Registry and Registrar Stakeholder Groups (RySG, RrSG); and the Intellectual Property and Business Constituencies of the GNSO (IPC and BC).

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

The HRILWG Co-Chairs updated the GAC on the working group's assessment and implementation work regarding Work Stream 2 (WS2) recommendations on Diversity and the Human Rights Core Value. Members of ICANN org WS2 Cross-Functional Project Team provided an update to the GAC on the org's implementation planning, highlighting the priorities throughout FY21 and beyond.

Among the next steps relative to the recommendations implementation process, the HRILWG will be consulting with UNESCO to explore its "Universality Indicators for the Internet" issued in 2019 which measures how elements of diversity, disability, language, human rights, among others, are represented in the Internet environment in a given country. The HRILWG will continue reporting periodically to the GAC and its leadership through the GAC tracking tool.

The HRILWG co-chairs reiterated the call for GAC volunteers to participate in the WS2 implementation effort, whether by joining the HRILWG or contributing to the implementation of a different set of recommendations.

4. GAC Operational Matters

The GAC addressed and reviewed a number of matters designed to improve the effectiveness and efficiency of GAC operations including:

- Introduction of a modified Communiqué drafting process for ICANN70, which included additional opportunities prior to the meeting to identify topics and submit proposed text as well as an expanded post-meeting review period – extending the review period to 72 hours;
- Development of a new GAC Action/Decision Radar tool to help identify and track community obligations, work efforts and issues of importance to the committee; and
- Retirement of two GAC Working Groups:
 - The GAC Working Group to Examine the Protection of Geographic Names in Any Future Expansion of gTLDs
 - The GAC Working Group to Examine the GAC's Participation in NomCom.

IV. Issues of Importance to the GAC

1. DNS Abuse

DNS Abuse should be addressed in collaboration with the ICANN community and ICANN org prior to the launch of a second round of New gTLDs. The GAC supports the development of proposed contract provisions applicable to all gTLDs to improve responses to DNS Abuse. The GAC also emphasized the importance of taking measures to ensure that Registries, Registrars and Privacy/Proxy Services providers comply with the provisions in the contracts with ICANN, including audits. The GAC welcomes the recently-launched DNS Abuse Institute and encourages community efforts to cooperatively tackle DNS Abuse in a holistic manner.

2. Public Interest Commitments (PICs)

If a subsequent round of New gTLDs occurs, additional mandatory and voluntary PICs should remain possible in order to address emerging public policy concerns. ICANN's mandate clearly contemplates contract requirements such as voluntary and mandatory PICs, that promote the security, stability, reliability, and resiliency of the DNS.

3. Rights Protection Mechanisms

The GAC reviewed Phase 1 Final Report on the Rights Protection Mechanisms (RPMs) PDP and discussed preparation for providing early input to inform the initiation of the upcoming Phase 2 RPMs PDP set to review the Uniform Domain Name Dispute Resolution Policy (UDRP). The GAC also acknowledged the economic consequences caused by online piracy and the necessity of taking measures to comply with the contracts with ICANN, including disclosure of registration data.

4. Subsequent Procedures of new gTLDs

The GAC discussed Subsequent Rounds of New gTLDs, following the GNSO Council adoption of the Final Report of the New gTLD Subsequent Procedures Policy Development Process (SubPro PDP). GAC Vice-Chairs provided an overview to GAC members on priority topics to the GAC:

- Clarity and Predictability of Application Process
- Public Interest Commitment (PICs) and Global Public Interest
- Applicant Support and Participation of Underserved Regions
- Closed Generic TLDs
- GAC Early Warnings and GAC Advice
- Community Based Applications
- Auctions/Mechanisms of Last Resort

On predictability, some GAC members shared concerns relative to the implementation of the Standing Predictability Implementation Review Team (SPIRT) and the added layer it may create regarding GAC consensus advice. GAC members agreed that further clarification on the implementation of the SPIRT should be encouraged, as well as on the role the GAC will play in it, especially in light of Implementation Guidance 2.3 suggesting direct dialogue between the SPIRT, ICANN org and the ICANN Board on GAC Consensus Advice, in which the GAC expects to be included as well. Furthermore, GAC members emphasized the importance of the opportunity for equitable participation on an equal footing on the SPIRT by all interested ICANN communities.

On Public Interest Commitments (PICs), GAC members observed that any future PICs need to be enforceable through clear contractual obligations, and consequences for the failure to meet those obligations should be specified in the relevant agreements with Contracted Parties. Additional mandatory and voluntary PICs should remain possible in order to address emerging public policy concerns. GAC members noted that currently there are no policy recommendations on DNS Abuse Mitigation in the Final Report, which remains a high priority issue.

Relative to the Applicant Support Program, GAC members observed the importance of fostering gTLD applications from a diverse array of applicants from all regions and that every effort be made to increase the number of applications from underrepresented regions. In this connection, GAC members also reiterated the GAC's support to proposals to reduce or eliminate ongoing ICANN registry fees to expand financial support.

Regarding Closed Generic TLDs, GAC Members noted support for the proposed suspension of Closed Generic TLD applications until policy recommendations and/or a framework on the delegation of closed generics which serve a public interest are developed by consensus, as per the At-Large minority statement. GAC Members drew the attention of the Board and the community to the GAC consensus comment on the SubPro PDP Draft Final Report, which elaborates and adds substance to the Beijing GAC Advice on Closed Generic TLDs.

On GAC Early Warnings/GAC Advice, in regard to recommendation 30.6, some GAC Members proposed to recall the compromise language presented by the GAC, as it may not always be possible for an applicant to address a specific concern expressed in a GAC Early Warning.

Relative to Community Based Applications, some GAC Members expressed support for a GAC alignment to At-Large positions in the ALAC Minority Statement, especially relating to Community Priority Evaluations (CPE).

On Auctions/Mechanisms of Last Resort, some GAC Members supported the At-Large Minority Statement on disincentivizing auctions of last resort and that the use of a bona fide intent affirmation should supplement applications, not only those which fall into contention sets.

In addition, in light of the SubPro PDP Final Report, the GAC shares the concerns expressed by some parts of the community about the need to adequately assess the costs and benefits of any new round of New gTLDs and highlights the SSAC's observation in its Comments on the GNSO New gTLD

Subsequent Procedures Draft Final Report that the “*fundamental tension*” between “*challenges to security, stability, and resiliency of the DNS*”, on the one hand, and “*safeguards and other protective measures,*” on the other, has not been adequately addressed.

GAC members discussed potential next steps for the GAC to consider, including:

- Review of advice envisaged by At-Large for ICANN70, which could provide a basis for a GAC consensus comment in the forthcoming Public Comment proceeding;
- A potential intersessional statement from the GAC to the ICANN Board (separately or jointly with the ALAC); and
- Potential GAC Consensus Advice to the ICANN Board before it votes on the SubPro PDP Final Report.

5. Domain Name Registration Data

EPDP Phase 2a

EPDP Phase 2a discusses important issues relevant to a functioning Domain Name System. For example, data suggests that only around 11.5% of domains may belong to natural persons who are subject to GDPR, while contact data from 57.3% of all domains was redacted. These data suggest that a much larger set of registration data was redacted as compared to what is required by relevant data protection laws.

The GAC reiterates, in line with the San Juan Communiqué, that the data of legal and natural persons should be distinguished from one another, and that public access to non-personal registration data of legal entities should be restored. The GAC is of the view that this would help restore the utility of the Registration Directory Service (RDS) by rendering accessible a larger set of non-personal registration data.

Considering the above, the GAC strongly supports the continuation of EPDP Phase 2A, with a view in particular to address the issue of distinguishing between natural and legal entities.

Accuracy

The GAC remains concerned about the absence of any Recommendations on the vital topic of accuracy in the EPDP Phase 2 Final Report.

The GAC reiterates, in line with its Minority Statement to the Phase 2 EPDP registration data recommendations and the ICANN69 Communiqué, that “*[t]he accuracy of domain name registration data is fundamental to both the GDPR and the goal of maintaining a secure and resilient DNS. The GDPR, as well as other data protection regimes and ICANN’s Registrar Accreditation Agreement, require data accuracy and such accuracy is critical to ICANN’s mandate of ensuring the security, stability, reliability, and resiliency of the DNS.*”

Accuracy of registration data is also an essential tool to mitigate DNS abuse. The recent SSR2 report recommends monitoring the enforcement of registry and registrar contractual obligations to

improve data accuracy. The GAC notes the ICANN org briefing on accuracy issued on 26 February and looks forward to follow-up by GNSO Council. The GAC looks forward to contributing to the scoping work on accuracy which is essential to further consideration of the issue. The GAC emphasizes that in the interim, pending the launch of the scoping exercise and possible subsequent policy work, ICANN Contract Compliance should ensure enforcement of the existing contract provisions relevant to the accuracy of domain name registration data.

Policy Implementation

The GAC notes its previous advice within the Montréal Communiqué with regard to Phase 1 of the EPDP on gTLD Registration Data and the request for *“a detailed work plan identifying an updated realistic schedule to complete its work.”* The GAC observes with concern that the Phase 1 Implementation Review Team (IRT) continues without a current published schedule or milestones. The GAC also notes the continued work amongst the different phases of this EPDP including the Operational Design Phase (ODP) and, as expressed during the meeting with the Board, requests that an updated and current schedule is created and published for those elements that are under ICANN org’s control.

V. GAC 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 Bylaws³:

1. EPDP Phase 2 Final Report

Phase 2 EPDP is a step forward but the GAC has serious concerns relating to certain Recommendations and gaps in the Final Report of Phase 2 of the EPDP on gTLD Registration Data, as set forth in the GAC Minority Statement of 24 August 2020 (in Annex).

a. The GAC advises the Board:

- i. to consider the GAC Minority Statement and available options to address the public policy concerns expressed therein, and take necessary action, as appropriate.

RATIONALE

In its GAC Minority Statement, the GAC provides input on its public policy concerns regarding the ways that the Recommendations contained in the Final Report of Phase 2 of the EPDP on gTLD Registration Data:

- 1) currently conclude with a fragmented rather than centralized disclosure system;
- 2) do not currently contain enforceable standards to review disclosure decisions;
- 3) do not sufficiently address consumer protection and consumer trust concerns;
- 4) do not currently contain reliable mechanisms for the System for Standardized Access/Disclosure (SSAD) to evolve in response to increased legal clarity; and
- 5) may impose financial conditions that risk an SSAD that calls for disproportionate costs for its users including those that detect and act on cyber security threats.

The GAC is of the view that certain key recommendations and unaddressed topics in the Final Report of Phase 2 of the EPDP on gTLD Registration Data require further work and that the Board should assess how best to address them.

³ 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.

The GAC is also of the opinion that the Operational Design Phase (ODP) can focus the Board on some of the practical implementation challenges especially those involving cost apportionment.

The GAC looks forward to continued engagement with the Board and the community on these important issues.

VI. Follow-up on Previous Advice

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

1. CCT Review and Subsequent Rounds of New gTLDs

The GAC is seeking a coordinated approach on the implementation of the specified Recommendations from the CCT Review ahead of the potential launch of a new round of gTLDs.

Pursuant to GAC advice issued in Montréal (ICANN66), related correspondence with the ICANN Board and subsequent discussions, the latest on 23rd March during ICANN70, the GAC looks forward to be periodically updated on the ongoing consideration of the above mentioned advice, and, in particular, the Recommendations marked as "prerequisite" or "high priority", namely: 1, 5, 7, 9, 11, 12, 14, 15, 16, 17, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35; for example through a tracking tool that identifies the status of each Recommendation in terms of who is taking it forward, how it will be implemented and when it is expected to be completed, particularly in regard to Recommendations attributed to the Organisation and the ICANN Community (in addition to the Board).

The GAC also recalls its advice to the Board in the Helsinki Communiqué that "*An objective and independent analysis of costs and benefits should be conducted beforehand, drawing on experience with and outcomes from the recent round.*" Such analysis has yet to take place. In this regard, the GAC notes that the Operational Design Phase may provide the opportunity for this analysis to assist the Board as it considers whether a second round of New gTLDs is in the interest of the community as a whole.

2. IGO Identifiers

While the GAC welcomes the new GNSO Work Track on Curative Rights, the GAC recalls prior GAC Advice (e.g., from Johannesburg and Panama) and ICANN agreement on a moratorium for new registrations of IGO acronyms ahead of a final resolution of this issue.

VII. Next Meeting

The GAC is scheduled to meet next during the ICANN71 Virtual Policy Forum⁴ on 14-17 June 2021.

⁴ See ICANN Board Resolutions 2021.03.11.01 – 2021.03.11.04 at <https://www.icann.org/resources/board-material/resolutions-2021-03-11-en>