

Mexico, 4 March 2009
GAC Communiqué – Mexico City

I. INTRODUCTION

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Mexico City, during March 1-4, 2009.

38 members, 2 observers and one invited country participated in the meeting. 2 members participated remotely.

The Governmental Advisory Committee expresses warm thanks to AMIPCI of Mexico for hosting the meeting in Mexico City and ICANN for supporting the GAC meeting.

II. IDN ccTLDs

The GAC welcomes the release of the second version of the Draft Implementation Plan for the IDN ccTLD Fast Track Process which has been amended as a result of public comments. However, it does not address the important issue of the cost recovery rationale for the imposition of fees. Nevertheless, it represents a good basis for further discussions.

The GAC comments on the Draft Implementation Plan for the IDN ccTLD Fast Track Implementation plan released prior to the Cairo meeting are attached at Annex A. The GAC reiterates its view that documentation of responsibilities and fees should be kept voluntary.

The GAC notes the growing interest and level of preparedness in many countries and territories to introduce IDN ccTLDs under the fast track process. The GAC hopes that the development of the IDN ccTLD fast track and new gTLD implementation plans should proceed smoothly and that decisions on their rollouts will be taken by the Board in its 2009 annual meeting. In the event of any delay in the new gTLD implementation plan, the GAC believes that the IDN ccTLD fast track should not be affected by such a delay.

The GAC appreciates the exchange of views on these issues with the ccNSO.

III. New gTLDs

The GAC's comments on the new gTLD Program: Draft Applicant Guidebook, posted on 24 October 2008, are attached at Annex B.

While recognising the enormous amount of work that ICANN staff accomplished in preparing the Draft Applicant Guidebook version 2, the GAC regrets that the late posting of the document did not allow the GAC sufficient time to consider and provide comments on the proposed changes. The nearest opportunity to comment on the Draft Applicant Guidebook version 2 for the GAC will be the meeting in Sydney.

The GAC appreciates engagement inter-sessionally with ICANN staff providing an overview of the changes made to the Draft Applicant Guidebook version 2 as a result of the public comments received on the initial version, given the GAC's desire to ensure that the recommendations contained in the GAC new gTLD principles document are incorporated.

The GAC appreciates the exchange of views on these issues with the GNSO.

IV. Contractual issues between intergovernmental organizations and ICANN

Experience from the 2003 round of new gTLDs leads the GAC to propose that, in specific cases, when the applicant is an intergovernmental organization bound by treaty obligations, the relevant adjustments should be made to standard ICANN contractual provisions in order to ensure that public international law is fully respected by ICANN contractual arrangements and policies.

In this regard, the GAC noted with concern the extended delay in the completion of contract negotiations with the Universal Postal Union for the .post sTLD, and urges ICANN to quickly conclude negotiations in line with the above principles.

V. GAC input to the PSC report

In line with its commitment taken in Cairo, the GAC has communicated to the Board its input to the 19 September 2008 PSC report Improving Institutional Confidence in ICANN. The GAC letter of 22 December 2008, is attached at Annex C.

The GAC would welcome an early opportunity to discuss an agreed joint approach to the review of the GAC's role within ICANN as outlined in Annex A, Art 7 of the September 2006 Joint Project Agreement between ICANN and the US Government.

Pending clarification of the Board's intentions with regard to the PSC report, Improving Institutional Confidence Plan, of 27 February 2009, the GAC would anticipate commenting on the report in Sydney.

VI. IPv4 to IPv6 transition

The GAC welcomed the interaction with the NRO which confirmed the importance of the management of IPv4 resources in the public interest and urgency in promoting IPv6 deployment.

VII. Interaction with the Board

In order to facilitate better GAC input to ICANN policy making, the GAC proposes that all documents to be considered at ICANN meetings, be posted not less than 15 working days before the meeting. In the event that this is not possible, the GAC may need to defer discussion until the subsequent meeting.

The GAC welcomes the agreement by the Board for greater involvement in the planning of the schedule for future meetings, starting with the Sydney meeting, in order to facilitate the participation of GAC members in other ICANN events.

* * * *

The GAC warmly thanks all those among the ICANN community who have contributed to the dialogue with the GAC in Mexico City.

The next GAC meeting will take place during the period of the ICANN meeting in Sydney, Australia.

Mexico City, 4 March 2009

GAC Comments¹ on the Draft Implementation Plan IDN ccTLD Fast Track Process

GAC supports the introduction of IDN ccTLDs and believes that the procedure for delegation of an IDN ccTLD should be similar to that of the ASCII ccTLD and should equally follow GAC ccTLDs principles: [*"Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains"*](#).

Module 7: Discussion of Additional Topics

7.1. Relationship between ICANN and IDN ccTLD Operator

- IDN ccTLDs should be similarly treated as ASCII ccTLDs.
- The GAC emphasizes that it is primarily for the local Internet community, including the relevant government or public authority, to determine the manner in which a string should be selected, the manner in which a registry operator should be selected and the registry policy that should apply for the selected IDN ccTLD.
- A documented relationship between ICANN and IDN ccTLD operators should be kept voluntary.
- A documented relationship on the basis of the proposed “Documentation of Responsibilities”, either as it stands today or in a modified format, may be encouraged but should not be a condition for IDN ccTLD delegations.
- As it has always been the case, it's in the best interest of IDN ccTLD operators and the entire IDN community to adhere to all relevant IETF standards including IDNA protocol, IDN Guidelines and commit to complying with future protocol updates.

7.2. Financial Contributions

- IDN ccTLDs should be similarly treated as ASCII ccTLDs.
- Financial contributions should be calculated on a cost recovery basis. Full disclosure and breakdown of the costs involved in the IDN program would be desirable for better understanding of possible cost recovery models.
- Financial contributions should be kept voluntary and should not be a condition for IDN ccTLD delegations.
- Further information, from ICANN staff, on the different possible cost recovery mechanisms and concrete proposals would help advance positions on the subject.

7.3. Association of IDN ccTLD Operators with the ccNSO

- The GAC supports the suggestion of participation of new IDN ccTLD operators to the ccNSO.
- Early association of new IDN ccTLD operators to the ccNSO would maintain a channel of ongoing exchange of information that would help fine tune the fast track process and guide the ccNSO Policy Development Process (PDP).

¹ Comments submitted by GAC in this document are comments on Draft Implementation Plan revision 1 posted on the 26th of November 2008. GAC intends more elaborate comments on the Updated Draft Implementation Plan revision 2 posted on the 19th of February 2009 by the ICANN Sydney meeting.

7.4. Discussion of Contention Issues with Existing TLDs and new gTLD Applications

- ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant government or public authorities.
- Early coordination between both, the new gTLD process and the IDN ccTLD fast track process, should be encouraged.
- New gTLD applicants are encouraged to take early contact with relevant governments if their applications may be considered as representing country or territory names.
- Should contention still arise between a new gTLD and a new IDN ccTLD, meeting all criteria set for the fast track, priority should be given to the IDN ccTLD string.

7.5. IDN Table Procedure

- Collaboration, between language communities using same languages or same script, should be encouraged.
- Outcome recommendations of such language communities' working groups should feed into the IDN ccTLD fast track process and guide the work of the ccNSO PDP.
- Different requirements of different language communities should be considered, despite the fact that protocol rules cannot differentiate between such languages if they are represented by the same script, it is recommended that registries manage that differentiation.
- The GAC looks forward to a tutorial on this issue during the Sydney meeting and will provide more detailed comment on this issue at that meeting.

7.6. Proposed Evaluation of Fast Track the Process

- The GAC supports the suggested evaluation every 12 months to help an ongoing fine tuning of the process.
- Such annual evaluation should not delay the finalization of the ccNSO PDP.

Annex B

GAC comments on the new gTLD Program: Draft Applicant Guidebook

(posted 24 October 2008)

As stated as early as 1999 in its GAC Operating Principles, and subsequently in its Principles on ccTLDs and Principles on new gTLDs, the GAC considers that the Internet naming and addressing system is a public resource that must be managed in the interests of the global Internet community.

The GAC's main concern is to ensure that the careful expansion of the domain name space does not cause any threat to the stability and security of the Internet. This is a strategic issue for the future of the DNS and its contribution to the global information society.

The introduction of new gTLDs must therefore be viewed as a means to enhance the social and economic value of the name space. It should be conducted with a view to provide benefits for the users, while respecting the legitimate rights and expectations of other stakeholders, and reducing the risks of confusion or market distortions. It should pay attention to a fair and equitable treatment of not only applicants but the affected communities.

In this context, the GAC wishes to provide the following comments in the perspective of further community-wide discussions:

General vision of the Domain Name Space

ICANN's bylaws contain as a core value "the introduction and promotion of competition in the registration of domain names where practicable and beneficial in the public interest".

In this context, the GAC considers that the study requested by the Board in its meeting of October 18, 2006, on "economic questions relating to the domain registration market" and particularly on "whether the domain registration market is one market or whether each TLD functions as a separate market" would have provided useful insights to develop a common vision within the whole Internet community and a needed reference framework for many of the pending issues regarding the introduction of new gTLDs.

In the absence of such a study, key decisions and stakeholder responses remain ill-informed about market and competition issues associated with the planned broad expansion of the domain space. For this reason, the GAC recommends that the requested study be completed as soon as possible to allow the ICANN community to make informed decisions about this important issue.

Limits of the single-fee structure

The GAC has concerns about the proposed single fee structure and its deterrent effect on the prospective proposals for new domains emanating from innovative SME or developing countries, as well as those serving non-commercial purposes.

In particular, it is likely that some proposals addressing specific cultural, linguistic, local or regional communities may not be able to afford the entry costs and recurring costs envisaged in the current framework. Many countries and territories have significant linguistic and cultural minorities who stand to benefit from an Internet tailored to their particular needs with a DNS reflecting their particular cultural and social needs and aspirations. ICANN should give urgent consideration to the immense potential for social and cultural exploitation of gTLDs both in Latin and other scripts.

The GAC proposes therefore that consideration be given to the introduction of a new type of TLD which could be designated in the new gTLD round, the scTLD – social and cultural TLD which would be designed to address the needs and interests of a clearly defined social and/or cultural community and would essentially be non-commercially based. The GAC would be willing to discuss with other stakeholders the characteristics that such a new class of TLDs might have.

Fee level and management of surplus

The GAC notes a lack of transparency about cost evaluation principles applied in determining the current fee level and how these compare with previous new gTLD Rounds. In this context, GAC recalls that the fee structure should also encourage a level playing field between new applicants and incumbent gTLD operators, especially for those new gTLDs that will be commercially run. High start-up costs mean higher initial prices for registrants and a greater risk of failure for the registry, which would be prejudicial both to competition and stability. The GAC fears the current fee level will not be conducive to innovation and will unduly favour well-financed applicants and purely commercial proposals.

Moreover, and in line with GAC comments on the PSC report regarding the general budget of ICANN, community consensus should be sought on appropriate uses for any revenue surplus.

Importance of contract compliance

It is essential that ICANN show sufficient capacity to enforce contract compliance of both existing and new registries, and indicates how it intends to do so.

Reducing the cost to business (defensive registration)

The GAC shares the concerns of business stakeholders about a range of overarching issues relating to overall costs to business. In particular efforts should be made to help limit the need for defensive registrations in the new gTLDs.

This also includes ensuring that registries provide appropriate mechanisms to prevent fraudulent registrations. The GAC believes it is important to gain a clear understanding of the views of the business community on those issues.

Auctions versus Competitive bidding

Auctions have been used in the past by governments to allocate public resources (with revenues accruing to public finances) but as a private sector corporation, ICANN is an unusual position regarding its "gate-keeper" function for the Domain Name System. The GAC questions whether it would be appropriate for ICANN to select operators for new gTLDs based on auctions in which the bidders are required to compete by offering to pay ICANN the highest possible fee for the right to operate a new gTLD registry.

IDNs

The introduction of domain names in non-Latin scripts is a fundamental development of the Domain Name Space, necessary to fulfill the vision of an Internet accessible to everybody in his/her own language.

In view of the explicitly manifested need in some countries which are not using Latin script, the GAC believes it remains crucially important to progress the IDN ccTLD fast track successfully to implementation in 2009.

Geographic names

The GAC expects ICANN to apply GAC gTLD principles in respect to the handling of geographic names and in particular principles 2.2¹ (including place names) and 2.7² that are not comprehensively addressed in the implementation proposals.

Strings being meaningful representations or abbreviations of a country and territory name in any script or language should not be allowed in the gTLD space until the related IDN ccTLD policy development processes have been completed

The proposed introduction of new gTLDs and in particular any process relating to the protection of geographic names should not result in an unreasonable administrative burden for government administrations.

These views relate to the GAC's analysis of the Draft Applicant Guidebook posted by ICANN staff on 23 October 2008. The GAC will seek to provide ICANN with any additional comments it feels appropriate on the Draft Applicant Guidebook version 2 posted on 18 February 2009 before or during its meeting in Sydney.

¹ ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.

² Principle 2.7 states: "Applicant registries for new gTLDs should pledge to: a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD; b) to ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD."

GAC comments on the PSC Report Improving Institutional Confidence in ICANN

The GAC welcomes the report of the PSC and the opportunity to provide comment. The report provides a useful framework to discuss the potential evolution of ICANN in a post-JPA environment. The GAC believes ICANN should continue to operate as a multi-stakeholder organization, with balanced participation of all interested parties, including governments in their role of providing support and advice on public policy issues.

IDNs, a potentially broad range of new TLDs and the migration from IPv4 to IPv6 will represent both - major evolution in and challenges for the naming and addressing system. ICANN must therefore be able to continue to fulfill its mission in an efficient manner in this evolving environment. The end of the JPA in September 2009 is a natural target date to conduct a reflection on how to ensure ICANN's long-term viability and reinforce institutional confidence in the organization.

This document presents a contribution by the GAC on the five themes identified by the PSC report and also on the specific question of the role of governments and the modalities for the continuation of the consultation process in a truly multi-stakeholder and participatory manner.

1. Safeguarding ICANN against capture

The GAC notes that the PSC-led consultations have illustrated many possible dimensions of the notion of capture. It is important, however to ensure that safeguards against capture extends to the ICANN policy making process as well as to ICANN as an organization.

The GAC believes that a key contributing factor in that respect will be **the fully multi-stakeholder nature of ICANN's policy development processes** and their capacity to build and achieve true consensus and engage the whole community in the pursuit of the wider common interest of all users of the Internet.

The in-depth interaction between constituencies must be encouraged as early as possible and throughout the Policy Development Processes in order to create better awareness and understanding of underlying issuers and drivers.

More attention should be given in the PSC process to possible improvements of ICANN's policy development and decision-making processes, as they represent the best guarantee against capture by any actor or group of actors.

2. Accountability to all actors

GAC's advice on accountability as provided during the Los Angeles ICANN meeting remains valid and we acknowledge that many elements of it have been taken into account in *ICANN's Accountability and Transparency Frameworks and Principles*. Furthermore:

1. **Accountability should apply** to all stages of PDPs and to all stakeholders.

While the Board has final decision-making responsibility, **Board legitimacy** directly derives from the degree to which its decisions reflect consensus articulated by the community. The Board's accountability and **respect for such "due process"**, including the due consideration of GAC's advice on matters of public policy, also lies at the very core of ICANN's legitimacy as a multi-stakeholder organization. It is the primary basis for institutional confidence and the strongest guarantee of ICANN's independence.

2. The GAC also feels that the proposed **provisions for Board dismissal would not, by themselves, provide sufficient incentive for day-to-day accountability**; such extreme remedy might even destabilize ICANN further in a situation of crisis; additional provisions guaranteeing continuity of operations in the unlikely case the procedure is used would therefore be necessary.
3. Efforts in favor of **transparency should not lead to information overload**, reducing the capacity of the community to effectively follow and contribute to processes. ICANN needs to prioritize its projects and implementation plans more effectively to reduce such overload. Furthermore, clearly structured documents and summaries, preferably in all UN official languages, are essential.
4. **Clear timing constraints on the release of documents to be examined in face-to-face meetings** are needed to guarantee that all stakeholders have sufficient time to examine them. This is particularly important for GAC members because they have to follow specific domestic consultation procedures. Summaries of working documents in other languages would also significantly facilitate participation.
5. Staff work on policy implementation requires further improvements in terms of transparency and communication, in particular regarding **how public comments are considered and taken into account** in the development of the next version of any implementation document. The GAC believes that staff, when supporting those processes, has a key role to ensure that all participants appropriately identify issues at stake at each step of the iterative consultations, through clearly formatted documents.
6. **The GAC also emphasizes that Contract compliance and enforcement** are fundamental components of both institutional confidence and accountability.

The above list is not exhaustive and all mechanisms for reinforcing day-to-day accountability should be examined in the PSC process, including accountability of the organization towards **registrants**, who are not currently taken enough into consideration, although they are ultimately the principal source of the organization's budget.

3. Meeting the needs of the Internet Community of the Future (Internationalization)

The GAC appreciates the importance that the PSC have attached to the issue of internationalization in its reports. As a starting point, the GAC feels it is important for the community to articulate more precisely the objectives of the process of internationalization to ensure there is a common community expectation regarding outcomes.

From the GAC perspective, as Internet use continues to become more prevalent, not least in developing countries, it is essential that efforts continue to enable the effective participation of all stakeholders from all countries in the ICANN policy making process.

The GAC believes that internationalization of ICANN is indispensable to safeguard its global role as the coordinator of the Internet's system of unique identifiers ensuring its stable and secure operation.

The GAC notes with interest the suggestion that ICANN establish an additional legal presence in a jurisdiction that could provide it with an international not-for-profit status. The GAC looks forward to additional details as to choice of jurisdiction and how this would work in practice.

Furthermore, the concept of *internationalization* needs to be viewed broader than just the location and jurisdiction of ICANN's offices and staff. In particular, more concrete proposals need to be developed to reflect fully the international nature of the DNS itself. One relevant element in this respect should be the further attention to the principle that countries should not be involved in decisions regarding another country's country-code Top-Level Domain (ccTLD).

The GAC also urges the continuation of current activities for global outreach about ICANN's core functions and related activities being undertaken by the different stakeholder groups, including Governments. Such activities include, for instance, support for IDN deployment and capacity building of operators in developing countries on different topics relevant to DNS security, management and functioning.

Appropriate modalities to foster participation of government representatives from developing countries need to be explored in more detail in the work of the PSC,

The GAC also notes the efforts being undertaken by ICANN on real-time translation and transcription of ICANN meetings and encourages extending this practice to constituency and GAC sessions within the approved budget. The translation of the policy documents is a critical requirement for the participation of non-English speaking participants.

4. Financial accountability

The GAC notes that ICANN's budget has rapidly grown from \$5 million in the 2000-2001 budget year to an excess of \$61 million proposed for the 2009 financial year. The original objective for ICANN to achieve financial stability could now perhaps be considered to be largely achieved.

1. It may be appropriate for the ICANN community to determine **how future budgetary growth should be managed** in line with ICANN's limited core mission and mandate.
2. ICANN's non-profit status should mean not only that it does not pay dividends to shareholders, but also that it **should not be revenue-driven as an organization**.

3. Safeguards must also ensure that **the policy making process does not favour revenue-generating options** above those that reflect the broader public interest and community consensus on what is needed for ICANN technical coordination role.
4. GAC members think that **more systematic disclosure is needed on how resources are allocated and spent**, in particular regarding contracts with consultants and other third parties.
Moreover, some GAC members feel that a full transparency (disclosure) on payments made to individuals or organizations by ICANN, whether they be Board Members, independent contractors or as participants elsewhere in the ICANN process would also seem logical as part of any confidence-building exercise. Disclosure of sources of donations to ICANN would also seem to be a desirable step in improving institutional confidence.
5. **Specific accountability and transparency rules regarding ICANN's budget** (independent auditing, results-based budgeting, performance measuring metrics, etc.) are required in the absence of the traditional controls exercised by shareholders or membership. Independent professional assessment and report on possible cost reduction measures, efficiency improvements and surplus revenue use may be useful in this respect.
6. Broad community discussion on **possible uses of any surplus** would be necessary.

The PSC-led process should focus less on identifying additional sources of income for the organization, but more on detailed, results-based and transparent budgetary process. A willingness on the part of ICANN's management to "cap" its own budget will be a strong factor in fostering long-term confidence in the institution.

The GAC is also aware that ICANN's current income structure creates a potential "over-dependency" on registry and registrar constituencies. Ensuring that such over-dependency does not lead to any suggestion of "capture" by ICANN's main channels of funding is essential to maintaining its independence and legitimacy.

5. Operational Security and Stability

Taking into account recent developments (for example, DNS vulnerability to the Kaminsky flaw) the GAC considers that ICANN should increase its attention on issues related the security and stability of the DNS that fall within its existing mandate. The vulnerability of the Internet is a growing concern in many countries, due to the increase of incidents and attacks targeting the DNS, some of which exploit existing vulnerabilities in the Internet's main protocols. Greater interaction between ICANN and the main bodies responsible for generating security-related standards and protocols would be valuable in providing for a more integrated approach at the global level.

6. Role of GAC/ governments in ICANN

The Board and GAC interaction has improved over the past years. This relationship could nevertheless be further elaborated, in order to improve the implementation mechanisms of any given GAC advice related to the public policy aspects of the issues falling within ICANN's mission as outlined in Article 1, Section 1 of its Bylaws, bearing in mind the special responsibility recognized to the governments by the Tunis Agenda. In this respect, the GAC notes the following:

1. The GAC would welcome an early opportunity to discuss an agreed joint approach to the review of the GAC's role within ICANN as outlined in Annex A, Art. 7 of the September 2006 Joint Project Agreement between ICANN and the US government.
2. The GAC operates in the expectation that its advice to the Board on public policy matters will be duly taken into account, both in the formulation and adoption of policies and that the Board will explain fully and openly the reasons why it may be problematic to do so. This is not to say that the GAC should have "precedence" over inputs from other constituencies, merely to recognize that when it comes to public policy parameters that need to be incorporated into such policy making, the expertise and competence lies with the GAC.
3. The GAC is ready to engage in further discussion with the Board and other constituencies with a view towards its evolution into a more efficient, responsive and well equipped organization, capable to advise the Board on the public policy aspects of the issues falling within ICANN's mission and to more fully interact and work together with other constituencies within ICANN. To this end, the GAC will continue with its own internal review of working methods to identify opportunities to accelerate positive change, and looks forward to working with other constituencies, ICANN staff and the ICANN Board to achieve this objective.

7. Moving forward

Post-JPA arrangements and the transition procedures are of crucial importance for all ICANN constituencies. The GAC understands that the Board is mindful of the expiration of the current JPA in September 2009 and has sought to initiate implementation of the Transition plan in early 2009. However:

1. **Community participation in defining the transition process is of fundamental importance** in building community's confidence in the institution and ensuring the Board respects the interests of, and is fully accountable to, the wider Internet community.
2. Merely consulting the community prior to the ICANN Board determining transitional measures would be insufficient for such a strategically important phase of ICANN's development.
3. Transition procedures should be developed and agreed by the ICANN community and submitted to the Board for endorsement after a traditional transparent cross-constituency "bottom-up" process. The Board should then respond with a clear proposal that takes account of all the wider concerns and recommendations on safeguards for the interests of all Internet stakeholders both inside and outside ICANN.

- The current timetable expecting the ICANN Board to receive the "final" Transition Action Plan, including implementation milestones for 2009" for "approval" in December during the special Board meeting of 11 December is over ambitious and has allowed the ICANN community only one public meeting for face-to-face consultations and consensus- building.

Instead of the two phases currently envisaged in the PSC report, the GAC therefore recommends distinguishing between:

- the current “analysis phase”, that would be concluded as planned in December 08,
- a “design phase” lasting until the June 09 meeting (with an intermediary review at the Mexico meeting) and devoted to a further refinement of the recommendations, and
- an “implementation phase”, starting immediately afterwards

Inter-constituency discussions in Cairo have provided an opportunity to initiate a truly "bottom-up" process, coherent with ICANN's multi-stakeholder nature. They should be continued during the proposed design phase.

The GAC hopes that these comments on the PSC report will serve as a useful addition to the ongoing cross-constituency debate on the evolution of ICANN.

22 December 2008