

Nairobi, 10 March 2010

## **GAC Communiqué – Nairobi**

### **I. INTRODUCTION**

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Nairobi, during March 6 - 10, 2010.

36 members and 3 observers participated in the meeting, whereas 2 members participated remotely.

The Governmental Advisory Committee expresses utmost gratitude to the Communications Commission of Kenya (CCK) and Kenya Network Information Centre (KENIC) for hosting the meeting in Nairobi and thanks ICANN for supporting the GAC meeting.

### **II. IDN ccTLD**

After discussions with ccNSO, the GAC adopted “GAC Interim Principles on IDN ccTLDs” (Annex A) as a contribution to the ongoing policy development process.

### **III. New gTLDs**

The GAC is grateful to receive updates on progress with the new gTLDs initiative, in particular with regard to the root scaling studies being undertaken and the Special Trade Mark Issues Review Team recommendations currently out for public consultation.

The GAC discussed a number of outstanding issues which it believes require resolution before the gTLD program should be launched. The Chair of the GAC sent the GAC comments on the Draft Applicant Guidebook v3 to the Chair of ICANN Board (Annex B) and the GAC is looking forward to the ongoing dialogue.

The GAC reiterates “the need to explore track differentiation between categories” as indicated in its Seoul communiqué. The Nairobi meeting has also revealed growing awareness in the community of the importance of further exploring this approach. The GAC therefore welcomes the proposal for the creation of a cross-community group to explore this topic and to report on it at the latest one month before the Brussels meeting.

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

### **IV. EoI**

The mandatory nature of the currently proposed Expression of Interest (EOI) model turns it into a slot reservation step and not a mere data-gathering exercise as initially intended and presented. Opening slot reservation and conferring certain rights to the participants against payment of a fee would constitute a *de facto* launch of the new gTLD application process. Should the Board intend to use an EOI mechanism as proposed, the GAC, after interaction

with the rest of the community, formally advises the Board to launch it only after the overarching issues have been resolved and the Draft Applicant Guidebook (DAG) finalized.

In that context, the GAC questions the benefits of pursuing further a separate EOI process, which could distract attention and resources from finalizing the new gTLD program. The GAC believes that public forum comments on the EOI and face-to-face discussions in Nairobi have helped identify ideas and concerns that can usefully inform the development of DAG v4, on which the community should focus.

## **V. Morality and public order issues**

The GAC continues to have concerns regarding the procedures outlined in DAG v3 for objections on the basis of morality and public order. The GAC questions the appropriateness of the phrase “morality and public order” and is unclear how the proposed mechanism would work in practice. The GAC believes this item should not be listed on the “closed items” list with respect to the new gTLD process and requests a more detailed briefing from the ICANN staff on the anticipated practical implementation of the approach.

## **VI. Law enforcement Due Diligence Recommendations**

The GAC received an update from law enforcement representatives on domain name abuse and their proposals to mitigate the negative effects of such abuse on consumers, including through further amendments to the Registrar Accreditation Agreement (RAA).

The GAC is aware that these proposals have been favorably reviewed by the high tech crime experts in the G8 and Interpol and will forward their statements of support to the Board separately. These law enforcement RAA amendment proposals will also be shared with the GNSO RAA working group. The GAC expects that these proposals will be thoroughly examined and taken into consideration.

## **VII. Security and Stability issues**

The GAC welcomes the update by ICANN staff regarding ICANN Strategic Initiatives for Security, Stability and Resiliency as well as the SSAC update on root scaling issues.

The GAC welcomes information about the "Global DNS-CERT Business Case" and the initiative to launch a global strategy concerning the medium-long term planning about security of the DNS presented in the recently published documents "Proposed Initiatives for Improved DNS Security and Resiliency".

Concerning the DNS CERT, the GAC recommends that ICANN informs the relevant GAC Representatives about its consultations with national and regional CERTs and is concerned about possible duplication of efforts.

The GAC notes progress on the analysis of the factors that provoke the expansion of the root zone file.

In the context of scaling the root, the increasing adoption of DNSSEC will be the major factor; an important milestone will be July 2010 with the anticipated signing of the root going live.

In particular the GAC notes that, in the context of the root scaling issue, “anycast” related questions have been identified as an additional element to be considered.

Furthermore, the GAC notes that, in the context of IDNs, the concept of "variants" requires further clarification.

The GAC finally notes that, in order to take a position on the technical limits to the number of new gTLDs that can be added over a certain time, SSAC needs further analysis with the actors involved.

## **VIII. Board/ GAC Joint Working Group on the Review of the Role of the GAC at ICANN**

The Board /GAC Joint Working Group (JWG) met at the Nairobi meeting. The Working Group discussed provision of GAC advice to the Board; the role of GAC liaisons; travel support to GAC members from developing countries and secretariat support for the GAC.

In particular, the JWG agreed that further consideration of the nature of GAC advice to Board, and its treatment once it has been generated, would assist the JWG in making any recommendations for improvements.

The JWG aims at finalizing its report at the Brussels meeting.

The GAC discussed various models for a secretariat where independence and sustainability would be fundamental considerations. A “hybrid” model, the details of which need to be refined – where a secretariat would be co-funded by governments and ICANN - was viewed as the most promising way forward. At the meeting The Netherlands, Brazil and Norway committed to contribute to fund such a hybrid model, if adopted, for an initial period of 5 years. The proposal will be worked on further inter-sessionally and a detailed proposal will be presented at the Brussels meeting with the purpose of seeking GAC approval.

## **IX. GAC Operating Principles**

The GAC adopted amendments to the Article IX of the Operating Principles (Annex C).

The GAC decided to engage in further revisions of its Operating Principles as a consequence of the work of the GAC/Board Joint Working Group and in this regard is considering the establishment of an ad hoc Group in the near future.

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

The next GAC meeting will take place during the period of the ICANN meeting in Brussels, Belgium.

## Annex A

### **GAC Interim Principles on IDN ccTLDs**

1. **General Principles** The main provisions of the GAC ccTLDs principles: "[\*Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains\*](#)" apply also for IDN ccTLDs. The current principles are intended to supplement the aforementioned principles insofar as non-ASCII ccTLDs are concerned.
2. The introduction and operation of IDN ccTLDs should not undermine the security and stability of the DNS. To this end, all actors, including TLD operators, ICANN and the relevant government should work together to ensure that the highest standards of TLD operation are achieved, taking account of best practices and internationally accepted technical standards where they exist.
3. All countries and distinct economies, listed in the International Standard ISO 3166-1<sup>1</sup> have equal rights to creating IDN ccTLDs that reflect their languages and scripts.
4. Ultimate public policy authority over the IDN ccTLD(s) of a country or distinct economy rests with the government or relevant public authority. How this authority is exercised, is determined by applicable law.
5. On receipt of an IDN ccTLD application, ICANN should ensure that either the proposal has the support of the Government or relevant public authority or that the Government or relevant public authority raises no objections to the application. In the event that such confirmation is not obtainable, ICANN should desist from the introduction of the proposed IDN ccTLD until such confirmation is obtained.
6. The number of IDN strings per territory should reflect the cultural and linguistic characteristics of the community concerned. A limit on the number of IDN strings per territory may only be considered if there are reasons to believe that some form of limitation on the overall size of the root zone file is necessary to preserve the stability of the DNS. If a limit is to be introduced, this should be done in agreement with the government or relevant public authority of the territory concerned, and adequate justification for such a limit should be made clear beforehand in order for territories to establish their priorities properly.
7. It is anticipated in most cases that the Government or relevant public authority will decide that one IDN ccTLD per script will be sufficient, but it should also be borne in mind that within some countries and distinct economies different scripts are in use and, in some cases, the same script is used in a number of widely used languages. In these cases the Government or relevant public authority may determine that more than one IDN ccTLD is necessary.

### **IDN ccTLDs Strings**

8. It is anticipated that an IDN ccTLD string will normally:
  - be shortest meaningful representation of the name of the territory

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<sup>1</sup> Codes for the representation of names and countries and their subdivisions – Part 1: Country Codes. The exception to this requirement is the additional eligibility of the European Union, which has an exceptionally reserved code designated by the ISO 3166 Maintenance Agency  
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- not be restricted to a fixed length, its maximum length being set by the prevailing technical standards with stability, security, integrity and usability in mind
9. Given the different form that IDN ccTLDs will take and the absence of an equivalent of the ISO 3166-1 list used for ASCII ccTLDs, the experience of relevant international organizations<sup>2</sup> should be taken into account.
  10. Only the Government or the relevant public authority of the country or distinct economy concerned, representing all relevant stakeholders within its jurisdiction, can provide authoritative advice to ICANN on the legitimacy of any application for an IDN ccTLD.
  11. An IDN ccTLD string that refers to a specific country or distinct economy, even if unapplied for, should be reserved for it.

### **IDN ccTLDs Scripts**

12. Nobody has property rights over a script. Some scripts are commonly used to write more than one language and should be available to be used for IDN ccTLD purposes in each of those languages.
13. It is recommended that each language community develop one language table for its script. Language tables, after elaboration, should be deposited with IANA and posted for public use by any registry with no restriction in any sense.
14. The latest available version of Unicode in use should be complete, including all scripts, and constantly upgraded with newer versions to help include maximum character sets of any language and ensure a strong and dynamic variant table to handle security issues.

### **Stakeholders**

15. Relevant actors for international coordination include:
  - Concerned governments
  - Relevant international organizations within their respective mandates
  - Standardization bodies
  - Language experts
  - Language communities and local users
  - ICANN SOs/ACs
  - ISOC (chapters)
  - IETF
  - Unicode consortium
16. All relevant actors should participate in a public and inclusive consultation process, at the international level, and work towards evolving a consensus for IDN ccTLDs formulation from the point of view of technical and operational stability, security as well as addressing public-policy issues.

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<sup>2</sup> Example, UN Conference on the Standardization of Geographic Names, UNESCO and ITU GAC Communiqué—Nairobi

## **Introduction and Delegation of IDN ccTLDs**

17. Procedure for delegation of an IDN ccTLD should follow GAC ccTLDs principles: "[\*Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains\*](#)".
18. A mandated list / reference table of strings representing the IDN ccTLDs of countries and distinct economies, as listed in the ISO 3166-1<sup>3</sup>, would facilitate management and would ensure predictability of the IDN ccTLD system.
19. Competing or confusingly similar requests should be dealt with on a case by case basis and resolved in consultation with all concerned stakeholders.
20. Policies for dealing with multiple applications, objections to applications or disputes that are currently applied for ASCII ccTLDs should be equally applied to IDN ccTLDs.
21. The decision regarding whether an existing ASCII ccTLD manager should also be the operator of a corresponding IDN ccTLD is a matter to be decided by the national/local Internet community, including the government or relevant public authority, subject to applicable legislation. In cases of dispute, ICANN should seek authoritative advice from the government or relevant public authority.
22. There should be some form of transparent communication as appropriate between ICANN and any IDN ccTLD registry to define their respective roles and responsibilities.

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<sup>3</sup> Codes for the representation of names and countries and their subdivisions – Part 1: Country Codes. The exception to this requirement is the additional eligibility of the European Union, which has an exceptionally reserved code designated by the ISO 3166 Maintenance Agency  
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## Annex B

### GAC COMMENTS ON NEW gTLDs AND DAG v3

The GAC acknowledges the positive effects that a carefully-built program for the introduction of new gTLDs can produce in terms of:

- a) stimulating competition and innovation in the Internet domain space;
- b) facilitating the online presence of communities;
- c) creating new opportunities for businesses – both large and small – to enhance their online identities, develop domestic and global marketing strategies, and introduce new services.

While noting the widespread concern that the introduction of new gTLDs is not happening as early as originally envisaged, the GAC nonetheless expects ICANN to ensure that the opening up of the gTLD space is undertaken in a way that does not compromise the resilience and integrity of the DNS and serves the global public interest. All significant outstanding community issues of concern must therefore be resolved or mitigated before the first steps are taken to implement the new gTLD application framework, consistent with Article 9.3 of the Affirmation of Commitments.

The GAC reiterates the importance of addressing comprehensively the following four overarching issues:

1. The root scaling implications arising from the scale and rate of change of any introduction of new gTLDs at the same time as other changes - notably deployment of DNSSEC in the root, the introduction of IDNs and IPv6 transition - and the rate of these changes, must have no negative impact on the resilience, security and stability of the DNS. Each round of applications should encompass an appropriate number of strings that will not raise any concern in that regard.
2. More action must be taken to ensure that the introduction of new gTLDs does not lead to a concomitant increase in malicious conduct and abuse of the DNS. Improvements in ICANN's post-delegation monitoring and enforcement of the commitments made by delegated operator registries and registrars are warranted.
3. It is important to ensure that intellectual property rights are properly respected in the new gTLD space consistent with national and international law and standards. The GAC expects that the proposed Trademark Clearing House should be made available to all trademark owners, irrespective of the legal regime they operate under, and that an effective and sustainable Uniform Rapid Suspension (URS), with appropriate remedies, and a Post Delegation Dispute Resolution Policy are established to ensure appropriate trade mark protection. While these initiatives are broadly welcomed therefore in serving to help address the concerns of brand owners, the GAC believes that they require further refining. In particular, "substantive examination" should be re-defined so that registrations examined on "absolute grounds" are included in order to ensure broader availability of the URS.

4. The urgent need for economic studies to be concluded which assess whether the benefits of new gTLDs are likely to outweigh any costs to users and to assess whether any registry operator can or will be able to exercise market power with respect to any existing or new gTLD, before any changes are made to the current policy requiring vertical separation between registries and registrars. Economic studies should also distinguish demand for new name registrations versus defensive registrations by current brand holders.

The GAC awaits the publication of the documents currently being prepared by ICANN relating to the above overarching issues and will provide additional comments on these.

The GAC will also wish to comment on the detailed communication strategies for the new gTLD program for all regions, including developing country markets

The GAC also wishes to state its position and views on the following specific issues:

1. The GAC restates the advice contained in the Chair's letter of 18 August 2009 which states: "*Strings that are a meaningful representation or abbreviation of a country name or territory name should not be allowed in the gTLD space*". The GAC interprets para 2.2 of the GAC gTLD principles that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccTLD PDP , and other geographical strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.
2. The GAC believes the proposed objection mechanisms should be improved, including to ensure that objection fees are cost-based rather than set at a high deterrence level; and that objections to individual applications submitted by individual governments are not subject to payment of a fee. It is also important that GAC members can provide advice directly to the ICANN Board as foreseen in the by-laws, and not be required to subject objections to an independent third party service provider.
3. The GAC urges that mechanisms be established for the resolution of post-delegation deviation from conditions for government approval of or non-objection to the use of a geographical name. The GAC is of the view that this could be achieved with the inclusion of a clause in the registry agreement requiring that in the case of a dispute between a relevant Government and the registry operator, ICANN must comply with a legally binding decision in the relevant jurisdiction. However, in case of the need for approval or non-objection from multiple governments, proper mechanisms for resolving post delegation disputes must be detailed.
4. The GAC supports the proposal to allow two character strings for most scripts used for IDN TLDs and advises that further analysis be undertaken of the one character issue.
5. The GAC draws attention to the need to explore further the regime applicable to single registrant TLDs should they be authorised.

The GAC urges that ICANN ensure that the resolution of competing string applications does not give rise to auction-derived surpluses, but is decided on the respective value of the applications for end users.

6. The GAC is of the view that the definition of geographical strings continues to be insufficient and is not in line with GAC gTLD principles paras 2.2 and 2.7. For example, commonly used abbreviations or regions not listed in ISO 3166-2 should also be considered as geographical names.

Finally, the GAC reiterates the importance of fully exploring the potential benefits of further categories (or track differentiation) that could simplify rather than add complexity to the management of the new TLD program and in that way help to accelerate the new gTLD program. In particular, the GAC believes that:

i) this could create greater flexibility in the application procedures to address the needs of a diversity of categories or types of string - including common nouns (e.g., “music”), cultural/linguistic communities, brand names and geographical strings<sup>4</sup> - would likely make application processes more predictable and create greater efficiencies for ICANN, both in ASCII and IDN spaces;

ii.) Taking into account that applicants and users of new TLDs of a high public interest for a specific community, such as city TLDs or country-region and other geographical TLDs<sup>5</sup>, may expect the legal framework of the territory in which the community is located to be applicable to the TLD, ICANN should allow for ways to respect the specific legal framework under which the respective community is operating in the TLD regime. This will also help ICANN, the applicants and national or local public authorities to avoid the risk of large scale legal challenges.

iii) instead of the currently proposed single-fee requirement, a cost-based structure of fees appropriate to each category of TLD would a) prevent cross subsidisation and b) better reflect the project scale, logistical requirements and financial position of local community and developing country stakeholders who should not be disenfranchised from the new TLD round.

The GAC trusts that the above considerations will be fully taken into account by the ICANN Board and the community and is looking forward to further dialogue.

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<sup>4</sup> Subject to the provisions of article 2.2 of the GAC principles regarding new gTLDs, March 2007

<sup>5</sup> Subject to the provisions of article 2.2 of the GAC principles regarding new gTLDs, March 2007

## **ARTICLE IX – ELECTION OF CHAIR AND VICE CHAIRS**

### **Principle 31**

Elections for the GAC Chair shall take place during the final meeting of every second year (even years) unless the Chair can no longer perform the functions of the office. If Chair can no longer perform the functions during the first year in the office, the elections shall be organized for the remaining term in the office during the next GAC meeting. If Chair can no longer perform the functions during the second year in the office, the GAC shall decide which of the Vice Chairs should replace the Chair until the regular elections are held.

Elections for the three Vice Chairs shall normally take place during the final meeting of the year. If Vice Chair can no longer perform the functions before the full term has finished, new elections shall be organized for the remaining term in the office during the next GAC meeting.

The results of each election shall formally be announced at the end of any meeting in which an election has taken place, and shall take effect at the end of the next GAC meeting.

### **Principle 32**

In the event of a single candidate he or she shall be elected by acclamation. If there is more than one candidate for the position of Chair, or more than 3 candidates for the positions of Vice Chairs, an election will be held. For elections, the candidate or candidates with the most votes shall be elected to the position(s) that he or she has stood for.

In case of a tie ballot for two leading candidates, an additional ballot shall be held restricted to these candidates after an interval of at least one hour.

Elections shall be valid if more than 1/3 of the GAC members participate in the voting in person and by electronic mail. In case of the second round of voting, only present at the meeting GAC members participate.

### **Principle 33**

Nominations for candidates to the official position of Chair and/or Vice Chair of the GAC shall normally start during the GAC meeting which precedes the meeting in which the confirmation is due to take place. In any event, the nomination procedure will close 45 days before the start of the meeting at which the confirmation of appointment is due to take place and a list of candidates should be posted on the GAC website within 14 days. In the event that there are more candidates than positions available, the GAC Chair will notify members that an election will be organized in accordance with principles 34 to 36 of this document.

### **Principle 34**

For elections, votes shall be taken by secret ballot. It will be a matter for each voting Member to decide if they wish to make his or her choice public. This includes the taking of votes in person, or ballots transmitted by electronic mail. The GAC Secretariat will organize the voting procedure and count the votes under the supervision of the Chair or Vice Chairs who do not stand for re-election.

### **Principle 35**

For votes to be taken in person, the GAC Secretariat will distribute ballot papers to Members' accredited representatives at that meeting, and arrange for a ballot box to be placed in the conference room.

### **Principle 36**

Members unable to attend in person, should notify the Secretariat no less than 7 days before the beginning of the meeting in which the election is due to take place. They will then be provided with the opportunity to cast their votes by electronic mail addressed to the Secretariat, which shall then be added to the votes cast by other members during the meeting. Any Member from whom a vote has not been received within such a time-limit shall be regarded as not voting.

### **Principle 37<sup>6</sup>**

### **Principle 38<sup>7</sup>**

### **Principle 39<sup>8</sup>**

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<sup>6</sup> The provision was deleted

<sup>7</sup> The provision was deleted

<sup>8</sup> The provision was deleted