Governmental Advisory Committee

Cartagena, 9 December 2010

GAC Communiqué – Cartagena

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Cartagena, during 4- 8 December, 2010.

38 members and 4 observers participated in the meeting, and 3 members participated remotely.

The Governmental Advisory Committee expresses utmost gratitude to the Country Code TLD for Colombia, dotCO Internet S.A.S for hosting the meeting and thanks ICANN for supporting the GAC meeting.

II. Meeting with ccNSO

The GAC met with the ccNSO and received an update on the current status of the report of the Delegation, Redelegation and Retirement Working Group (DRDWG).

III. New gTLDs

The GAC met with the ICANN Board, the gNSO Council and in public session to discuss the current status of the new gTLD process and outstanding issues as outlined below.

The GAC also welcomed an update on the work of the Joint AC/SO Working Group on support for new gTLD applicants, and encourages the Working Group to continue their efforts, particularly with regard to further outreach with developing countries.

The GAC accepted an invitation from the Board to meet intersessionally before the San Francisco meeting in the interest of resolving outstanding issues with the new gTLD process.

Specific Points in Relation to New gTLD Application Processes

Whereas the GAC notes that it has provided substantial public policy advice on new gTLDs, with the primary written advice being the GAC principles on new gTLDs, dated the 28th March 2007 and delivered to the Board in advance of the decision by the Board to adopt the proposal of the GNSO related to the introduction of new gTLDs.

Whereas, since that time, the GAC has continued to engage regularly with the Board, the GNSO and the ICANN staff regarding the Policy Development Process (PDP) and the implementation proposals as set out in the consecutive versions of the Draft Applicant Guidebook (DAG).

Whereas, in addition, the GAC's continuing concerns regarding the proposed approach to the introduction of new gTLDs and each version of the DAG have been repeatedly communicated to the Board as additional advice in the form of GAC communiqués and letters from the GAC Chair to the Chair of the ICANN Board, as listed below:

Los Angeles communiqué, 31st October 2007

New Delhi communiqué, 13th February 2008

Paris communiqué, 26th June 2008

Letter of 8th August 2008 from GAC Chair to ICANN Chair

Cairo communiqué, 5th November 2008

Mexico City communiqué, 4th March 2009

Letter of 10th March 2009 from GAC Chair to ICANN Chair

Letter of 26th May 2009 from GAC Chair to ICANN Chair

Letter of 24th April 2009 from the GAC Chair to the ICANN Chair

Sydney communiqué, 24th June 2009

Letter of 18th August 2009 from GAC Chair to ICANN Chair

Seoul communiqué, 2nd December 2009

Letter of 26th January 2010 from GAC Chair to ICANN Chair

Nairobi communiqué, 10th March 2010

Letter of 10th March 2010 from GAC Chair to ICANN Chair

Letter of 24th April 2010 from GAC Chair to ICANN Chair

Letter of 4th August 2010 from GAC Chair to ICANN Chair

Letter of 23rd September 2010 from GAC Chair to ICANN Chair

Letter of 22nd November 2010 from GAC Chair to ICANN Chair

Whereas, the GAC appreciates the efforts made by many in the ICANN community to understand and accommodate the advice of the GAC during this period, but remains very concerned that many of the original public policy issues raised remain unresolved in the latest version of the DAG.

Whereas, the GAC considers that these result primarily from the fact that the Board adopted the GNSO recommendations on new gTLDs without taking due account of GAC advice at that time, thereby creating a flawed process.

Whereas the most recent letter of the 23rd November from the Chair of the ICANN Board to the Chair of the GAC confirms that many of the concerns of the GAC remain unresolved and, in addition, the GAC notes that the Board has decided to explicitly reject GAC advice in several specific cases.

Whereas, mindful that many gTLD applicants have made significant investments in their business models, the GAC recognises that gTLD applicants have had a legitimate expectation that the process for introducing new gTLDs should have been concluded by now.

Whereas, as a result of the GAC's exchange with the GNSO, the GAC is also mindful that major stakeholder groups within ICANN (such as the Business and Intellectual Property constituencies) do not believe the most recent version of the DAG reflects their advice and concerns.

The GAC would advise the Board that:

1. The GAC considers that there are still outstanding issues regarding the current procedure which include:

- The apparent intent of the Board to approve the current version of the DAG on the same day that the public comment period expires,

raising questions regarding ICANN's ability to take those comments into account;

- The posting on 3 December 2010 of the second phase of the economic study, again raising questions regarding ICANN's ability to take the public comments on this study into account; and

- The absence of a detailed explanation and rationale for the decisions taken to date on the new gTLD program, exemplified by the recent Board decision on vertical integration.

2. That the GAC will provide the Board at the earliest opportunity with a list or "scorecard" of the issues which the GAC feels are still outstanding and require additional discussion between the Board and the GAC. These include:

- The objection procedures including the requirements for governments to pay fees;

- Procedures for the review of sensitive strings;

- Root Zone Scaling;

- Market and Economic Impacts;

- Registry – Registrar Separation;

- Protection of Rights Owners and consumer protection issues;

- Post-delegation disputes with governments;

- Use and protection of geographical names;

- Legal recourse for applicants;

- Providing opportunities for all stakeholders including those from developing countries;

- Law enforcement due diligence recommendations to amend the Registrar Accreditation Agreement as noted in the Brussels Communiqué; and

- The need for an early warning to applicants whether a proposed string would be considered controversial or to raise sensitivities (including geographical names).

In addition, the GAC would like to discuss the need for an appropriate IDN policy in connection with the new gTLD program to take cultural diversity into consideration, consistent with the gTLD Principles (for example, the need for paired delegation for strings in some scripts).

3.   That, in view of the Board's determination, reflected in its 23 November 2010 response to the GAC's comments on DAGv4 that it cannot accept certain elements contained in the GAC advice, the GAC assumes the Board is invoking the provisions in the ICANN Bylaws to seek a mutually acceptable resolution of these differences. The GAC looks forward to engaging in the discussions foreseen in the Bylaws to attempt to resolve situations where the Board has decided to reject GAC advice, pending the development of an agreed formal approach.

IV.   Exchange with members of the ICANN Board on the ICM Registry application

The GAC participated in an exchange with the ICANN Board Chair at his request on the staff overview of three issues included in the ICANN Board Resolution from its 28 October 2010 Special meeting. The GAC informed the ICANN Board Chair that it has significant concerns with the process by which the Board is presently seeking feedback with regard to the ICM Registry application/contract.

As a threshold matter, it has been the understanding of the GAC's membership that the Board has never rejected the advice provided in the Wellington Communiqué and re-stated in the Lisbon Communiqué. The GAC reiterated its previously stated position that the Wellington Communiqué represents consensus GAC advice and still applies.

It is also the GAC's understanding that if the Board determines to take an action that is not consistent with GAC advice, that determination would invoke the provisions in the Bylaws (Article XI, Section 2.1.J). The absence of a documented rationale for selecting the three specific points for further consultation appears inconsistent with those specific provisions, and made it impossible for GAC members to effectively consult in national capitals to determine whether the three issues identified by ICANN are in fact the only areas of contention (e.g. whether the sponsorship criteria have been met). As such, the GAC does not consider its exchange with the Board Chair to constitute the consultation process called for in the Bylaws.

The GAC notes that these particular provisions in the Bylaws have not been invoked to date, and that it is of critical importance that an agreed, formal process be developed to meet the requirements of the Bylaws.

The current lack of clarity regarding the Board's position on the ICM application and its understanding of the status of the GAC advice previously provided highlights, in the GAC's view, the problems identified in the draft recommendations of the ATRT regarding the need to have a clearer understanding on the status of GAC advice.

V. Controversial and/or sensitive new gTLDs

The GAC commends the initiative of the Recommendation 6 Cross Constituency Working Group (Rec6CCWG).

The GAC will take into account the Board's responses to the recommendations of the Rec6CCWG in its further consideration of gTLD issues.

Consistent with the GAC's letter of 22 November 2010, the GAC anticipates working with the Board and other members of the ICANN constituencies, in particular the ALAC, in further consideration of the integration of prior reviews to serve as an early warning to applicants whether a proposed string would be considered controversial or to raise sensitivities.

VI. Meeting with technical community - perspective on universal resolvability of the DNS

The GAC and members of the technical community held a constructive and informative exchange regarding universal resolvability of the DNS in the context of controversial gTLDs. The GAC appreciates and welcomes future exchanges on these important issues. The discussion covered the fact that blocking access to resources and information already could occur at many other different layers in the Internet architecture. Based on the exchange, the GAC understands that DNSSEC is not designed to accommodate blocking and that collateral damage and unintended results are likely to be caused if TLDs are not universally resolvable.

VII. Accountability and Transparency Review Team

The GAC examined the draft recommendations from the Accountability and Transparency Review Team (ATRT) and its

implications for the ongoing discussions within the Joint GAC-Board Working Group. In addition, the GAC met with the ATRT and exchanged views on the draft report and the draft recommendations. The GAC congratulated the ATRT for the work done and generally welcomed the draft report and recommendations.

The GAC welcomed the undertaking of the ICANN CEO to ensure the expeditious implementation of the final recommendations.

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

The JWG met in Cartagena and the discussion was based on the Draft of the Joint Working Group Report. The main topics of discussion were GAC advice to the Board and the Policy Development Process. The JWG aims to finalize the report in San Francisco and will take into consideration the final report of the Accountability and Transparency Review Team as well as the ongoing discussion of the review of the GAC operating principles.

IX. Elections of chair and vice chairs

Heather Dryden from Canada was elected to the position of GAC chair. Maria Hall from Sweden and Alice Munyua from Kenya were elected to the positions of Vice Chairs. The decision is effective from the end of the first meeting 2011.

The GAC thanks Maimouna Diop Diagne from Senegal and Jayantha Fernando from Sri Lanka for their service in their capacity as Vice Chairs and their outstanding contribution to the work of the GAC

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

The next GAC meeting will take place during the period of the 40th ICANN meeting in San Francisco