



Governmental Advisory Committee

Prague, 28 June 2012

GAC Communiqué – Prague, Czech Republic

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Prague, Czech Republic during the week of 23 – 28 June 2012. 50 GAC Members attended the meetings and 6 Observers. The GAC expresses warm thanks to the local host CZ .NIC for their support.

II. Internal Matters

1. The GAC welcomes Viet Nam as a member of the GAC.
2. The GAC welcomes the African Union Commission as a member of the GAC.
3. The GAC welcomes European Organisation for Nuclear Research (CERN), the International Labour Office, the International Criminal Court, the European Space Agency, and the European Broadcasting Union to the GAC as observers.

III. Issues discussed and inter-constituencies Activities

1. GAC/Generic Names Supporting Organisation (GNSO)

The GAC met with the GNSO and discussed the expected impacts on GNSO constituencies with the launch of the new gTLD program and the possibility of an influx of new participants into the multistakeholder processes or change in constituency. The GAC also received an update on the Consumer Trust, Choice and Competition Working Group's review of the new gTLD program, and the methodology behind identifying the forty-five (45) different categories of metrics relating to consumer trust, choice and competition.

The GAC and the GNSO also had a discussion regarding the recent ICANN Board rejection of the recommendations from the GNSO Council for protections for International Olympic Committee and Red Cross/Red Crescent names and agreed that further clarity regarding the status of work on this issue was required.

2. Board/GAC Recommendation Implementation Working Group (BGRI-WG)

The Board GAC Recommendation Implementation Working Group met to discuss further developments on the Accountability and Transparency Review Team's recommendations relating to the GAC (recommendations 9-14). The BGRI-WG has agreed to launch the [online register of GAC advice](#) and is ready to take the next steps in utilizing this important tool as a tracking mechanism for GAC advice delivered to the Board; as well as requests from the Board for advice from the GAC.

The BGRI-WG also discussed the differences between the GNSO and ccNSO PDPs in terms of whether or not they are requested to pro-actively seek GAC input on public policy issues and how such input is currently being handled or considered. The BGRI-WG agreed that further work, including outreach to other SOs, should be initiated to identify better ways to consider GAC input early within the PDP, noting the Board's responsibility to inform the GAC of matters that may affect public policy issues. During the Prague meeting the Board and the GAC made progress on recommendation 13, having increased the face to face interactions with the Board, allowing for more focused and additional exchanges during the two sessions with the ICANN Board.

3. GAC/Security Stability and Resiliency Review Team (SSR-RT)

The GAC received an update from the SSR-RT regarding the Review Team's final report on the review of ICANN's performance in preserving and enhancing the stability, security, and resiliency of the Domain Name System. The GAC fully supports all recommendations of the review team.

The GAC noted that in line with other ongoing discussions within the community the report mentioned contractual compliance as an important area of focus, as well as community outreach.

4. Domain Name Marketplace Briefing

The GAC received a briefing from ICANN, registrars, and registries regarding the ccTLD and gTLD registry environments; the life cycle for a gTLD domain name including how it's registered, how it operates, as well as the actions taken once a domain name expires.

The GAC also received a brief explanation of the gTLD marketplace from the registrars including various business models for the domain name industry. Staff also gave a presentation of what the market may look like in the future with the introduction of new gTLDs. The unequal geographic distribution of the ICANN accredited registrars, especially in Latin America and Africa, was also expressed as a concern.

The GAC expressed a particular interest in ICANN's role in the market.

5. Presentation from Intergovernmental Organisations (IGOs)

The OECD gave a presentation on behalf of 38 IGOs regarding protections in the new gTLD program. The GAC welcomed the presentation made by the Director of Legal Affairs of the OECD on behalf of 38 intergovernmental organisations (IGOs). The GAC was advised that IGOs are treaty-based organisations recognized under international law, the names and acronyms of which are protected as scheduled under Article 6ter of the Paris Convention as well as in multiple national jurisdictions.

Mindful of its previous GAC advice to the Board on protection of names and acronyms of international organisations enjoying protection at both the international level through international treaties and through national laws in multiple jurisdictions, such as Red Cross/Red Crescent and IOC, and recognizing the importance of assuring equal treatment of qualifying international organisations under the same criteria, the GAC is carefully considering the issue, with a view to providing further advice to the Board at a time suitable to the GNSO consideration of this issues expected in July.

6. GAC/At-Large Advisory Committee (ALAC)

The GAC met with the ALAC to discuss ALAC's plan for new gTLD objections and received a presentation on their processes; as well as a discussion on how the GAC and ALAC can work together to study the demand from and impact on Internet users from the gTLD program launch; as well as a briefing from ALAC on their proposal for an ALAC academy for capacity building within, and outside, of ICANN.

7. IDN Variant Briefing

The GAC received a briefing from the IDN Variant team regarding their work, the GAC thanks the IDN Variant team for the information provided.

8. GAC/Security Stability Advisory Committee (SSAC)

The GAC met with the SSAC to discuss their work with law enforcement as well as the security and stability implications of batching in the new gTLD program.

9. GAC/country code Names Supporting Organisation (ccNSO)

The GAC met with the ccNSO and received an update on the Framework of Interpretation Working Group, the Country Names Study Group, and the ccNSO Strategic and Operational Planning Working group. The GAC shares the concerns expressed by the ccNSO that there will not be Expense Area Group reporting on the budget, which has serious implications for full and proper budgetary accountability and transparency.

10. GAC/Address Supporting Organisation (ASO)/Number Resource Organisation (NRO)

The GAC received a presentation on Resource Public Key Infrastructure (RPKI).

The GAC warmly thanks the ASO/NRO, GNSO, SSR-RT, the ICANN Board, Registries and Registrars, the ALAC, the IDN Variant Team, SSAC, the ccNSO, the OECD, as well as all those among the ICANN community who have contributed to the dialogue with the GAC in Prague.

IV. GAC Advice to the Board¹

1. IDN ccTLDs

In principle the GAC considers that the introduction of IDN ccTLDs on an expeditious basis is in the global public interest. The GAC notes that a conservative approach has been taken in respect of two character IDN applications. The GAC is of the view that decisions may have erred on the too-conservative side, in effect applying a more stringent test of confusability between Latin and non-Latin scripts than when undertaking a side by side comparison of Latin strings. A practical approach should be followed allowing confusability to be pragmatically considered on a case by case basis, following publicly documented criteria.

The GAC advises the Board:

- that when decisions are taken in this regard, that there be transparency of process, and that decisions against the release of a string should be accompanied by a detailed rationale.
- the GAC will write to the Board with further reflections on the methodology that should be followed when evaluating two character IDNs.

¹ To track the history and progress of GAC Advice to the Board, please visit the GAC Advice Online Register available at: <https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>

- recently refused IDNs, particularly those nominated by public or national authorities should be urgently re-considered in light of the above considerations.
- Without prejudice to the previous bullet and for transparency and accountability purposes, the GAC further advises the Board to create a mechanism of appeal that will allow challenging the decisions on confusability related to proposed IDN ccTLDs.

2. ICANN's role as an industry self-regulatory organisation

- a. The GAC understands that ICANN's role includes:
 - i. Overseeing the global DNS industry, and accrediting organisations to participate in that industry
 - ii. Use of contracts to establish relationships with specific industry participants.
 - iii. Overseeing and enforcing compliance with those contracts
- b. The GAC welcomes the briefing on ICANN's role in overseeing the global DNS industry, and looks forward to further targeted discussions on this issue

The GAC requests a written briefing from the Board that explains:

- The broad principles and particular mechanisms used by ICANN when overseeing the global DNS industry, including details of each of the self-regulatory mechanisms it has developed for this role (including contracts, code of conduct, and so on)
- Why ICANN has chosen to accredit and contract with some industry participants directly (for example, registries and registrars), and not others (for example, resellers)?
- How ICANN would resolve a situation where a reseller was identified as breaching an ICANN policy or contractual obligation? How would a breach involving a privacy/proxy provider be handled? It would be useful for these hypothetical circumstances to reflect any documented procedures, contractual obligations, and escalation measures.

3. ICANN's role in the development of contracts

- a. The GAC welcomes the publication by ICANN of the draft new Registrar Accreditation Agreement (RAA). It appears that this draft contains many changes from the current RAA, and has clearly been informed by a number of LEA/GAC recommendations.

- b. Several questions relating to privacy and data protection issues and the accountability of resellers remain outstanding. As discussed in the public meeting with the Board, the GAC stands ready to assist in these discussions. The GAC encourages the Board to provide written questions on any privacy and data retention matters to the GAC to facilitate an early response.
- c. The GAC emphasises the need for all ICANN contracts to be clear, unambiguous and enforceable, and welcomes ICANN's efforts to enhance its compliance and termination tools as a part of the RAA negotiation process. The timeliness of this work is increasingly important.

The GAC advises the Board

- that this work should be finalised as a matter of priority, and
- that all the necessary amendments and procedures should be in place in advance of the delegation of any new gTLDs.

The GAC reiterates its interest and availability to assist with the resolution of these issues.

4. ICANN's contract oversight and compliance role

- a. At the San Jose meeting, the GAC had asked the Board for an update on the status of the LEA/GAC recommendations that relate to due diligence by ICANN, and would appreciate a response.
- b. The importance of an effective industry oversight and compliance function will become more important with the upcoming introduction of new gTLDs, and an increase in the number of contracts that ICANN will need to oversee. With the accompanying likelihood of new entrants to the industry, it will be important for ICANN to ensure that its compliance policies and processes are clear, publicly known and consistently enforced.
- c. The GAC has provided the Board with examples of organisations that have separated their regulatory and operational responsibilities (see Annex 1). As previously advised at the San Jose meeting, the GAC considers that a principles-based approach to structuring ICANN's compliance activities would support a robust and consistent oversight and compliance function.

The GAC advises the Board

- to finalise improvements to its compliance and industry oversight functions before any new gTLDs are launched.

5. WHOIS Review Team

- a. The GAC welcomes the final report of the WHOIS Review Team, and notes that there are a number of common themes identified by the WHOIS Review Team's recommendations, the LEA/GAC recommendations, and the GAC's advice relating to ICANN's industry oversight and compliance function.
- b. The GAC endorses the recommendations of the WHOIS Review Team, and will closely monitor the Board's response and subsequent implementation activities.

The GAC advises the Board

- to take account of the WHOIS Review Team's recommendations as part of the current RAA amendment process.

6. Root Zone Scaling

- a. The GAC welcomes the draft report on Impact on Root Server Operations and Provisioning Due to New gTLDs" and exchanged initial views on it with the board. The GAC expressed its concern that the processes and decision taking procedures to slow down, stop and adjust the pace of insertions of TLD strings in the root in case of detected anomalies in the root system, including its harmonized metrics, mechanisms and chain of command, are not yet defined.
- b. The GAC also looks forward to the publication of more comprehensive data for external review as planned.

The GAC advises the Board

- to take this up in advance of the delegation of any new gTLDs.

7. Financial and Budgetary Reporting

- a. The GAC believes that transparency and accountability with regard to financial budgeting and allocation of resources between and within the different constituencies of ICANN is a matter of fundamental importance.

The GAC advises the Board

- to provide tools urgently for reporting on the distribution of allocation of financial resources between and within ICANN in order to assure transparency and accountability in financial matters.

8. Ethics and Conflict of Interest

- a. The GAC welcomes the ongoing work concerning ethics and conflicts of interest.

The GAC advises the Board

- to proceed urgently with all the necessary steps to implement an effective and enforceable ethics and conflicts of interest policy, to strengthen ICANN governance framework both in the context of the new gTLD process and in all other areas of its activity.

9. New gTLDs

In addition to the advice previously communicated to the Board on June 17, 2012:

The GAC advises the Board

- to review and plan action for the next round to ensure there is no repetition of the low uptake in applications from developing countries.
- that there is still important work to be undertaken to finalise the operation of the Trademark Clearinghouse. The GAC therefore requests a status report for its consideration no later than two weeks before the Toronto meeting.
- that it requires further clarification as to the status of its pending request for enhanced protections for the IOC and Red Cross/Red Crescent names at the top and second levels, in light of the Board's rejection of the GNSO's recommendations intended to refine the means of enhanced protection at the top level in April, 2012.

V. Next Meeting

The GAC will meet during the period of the 45th ICANN meeting in Toronto, Canada.

During the 45th ICANN meeting in Toronto, there will be a high-level GAC meeting.

ANNEX I

ASX

One example of an Australian organisation that has separated its compliance from its operational functions is the ASX Group (which was created by the merger of the Australian Stock Exchange and the Sydney Futures Exchange).

Like ICANN, the ASX Group is responsible for regulating an industry that funds it. The ASX Group does this through its subsidiary, ASX Compliance PTY LTD, which is responsible for monitoring and enforcing the ASX operating rules. ASX Compliance is wholly owned by the ASX Group, but has a separate Board of Directors to other ASX Group entities. More information about ASX Compliance is available at www.asxgroup.com.au/asx-compliance.htm

Ofcom

Ofcom is the regulator and competition authority for the United Kingdom's communications industries. It is independent of Government and policy development. Ofcom has a number of roles and duties relating to identifying and responding to conduct which is unlawful, anti-competitive, or otherwise harms consumer interests.

Since it was set up in 2003, Ofcom's enforcement and compliance work has developed significantly and is now undertaken by two teams, the Competition Group Investigations Team and the Consumer Protection Team, which to breaches of regulatory rules or relevant law.

The powers available to Ofcom and the processes for conducting investigations into adherence with regulatory rules, consumer protection issues, competition issues and resolving regulatory disputes, are described on the Ofcom website at:

<http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/complaints-disputes/>