

I C A N N | G A C

Governmental Advisory Committee

Panama City, Panama, 28 June 2018

GAC Communiqué – Panama City, Panama¹

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Panama City, Panama, from 25 to 28 June 2018.

Sixty-six (66) GAC Members and five (5) Observers attended the meeting.

The GAC meeting was conducted as part of ICANN62. All GAC plenary and working group sessions were conducted as open meetings.

II. Inter-Constituency Activities and Community Engagement

Meeting with the ICANN Board

The GAC met with the ICANN Board and discussed:

- An update from Brazil on the dot.amazon issue
- Appreciation for ICANN Board and ICANN Org support for the program of GAC Capacity Building Workshops
- Several aspects of work relating to the General Data Protection Regulation (GDPR) and access to WHOIS data, including the Unified Access Model, the proposed Expedited Policy Development Process (EPDP) and coordination arrangements
- Handling of issues relating to ICANN jurisdiction following the report of the CCWG-Accountability Work Stream 2
- 2-character codes at the second level

¹ To access previous GAC Advice, whether on the same or other topics, past GAC communiqués are available at: <https://gac.icann.org/contentMigrated/icann61-san-juan-communique>

Meeting with Generic Names Supporting Organization (GNSO)

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

- The GNSO initiative for incremental improvements of the efficiency and effectiveness of its policy developments processes.
- Possible next steps in developing a policy framework for WHOIS compliance with GDPR.

Meeting with Country Code Names Supporting Organization (ccNSO)

The GAC met with members of the ccNSO and discussed:

- Operations and structure of the ccNSO
- Diversity of ccTLDs
- Geographic names as TLDs

Meeting with At-Large Advisory Committee (ALAC)

The GAC met with ALAC and discussed:

- The role of the ALAC
- GDPR
- Geographic Names
- ICANN's Information Transparency Initiative and how it relates to the joint ALAC-GAC Abu Dhabi statement on lowering barriers
- At-Large Review

Cross Community Discussions

GAC Members participated in relevant cross-community sessions scheduled as part of ICANN62, including (a) sessions on GDPR and WHOIS, and (b) working sessions of Work Track 5 of the New gTLD Subsequent Procedures PDP.

GDPR and WHOIS

The GAC received briefings from:

- The GNSO Business and Intellectual Property Constituencies regarding their work on access and accreditation.
- GNSO contracted parties on the practicalities of the GDPR Temporary Specification
- ICANN org with regard to the Unified Access Model

The GAC also held extensive discussions on WHOIS.

The GAC welcomed the efforts by all parts of the community to address the issue of access to non-public WHOIS data as well as the initiative taken by ICANN in proposing a framework to guide discussions on a new access model. ICANN has an important role to play in ensuring that there is a clear and well-coordinated process in place.

In the discussion, the GAC noted the negative impact that the lack of timely access to non-public WHOIS data is having on different user groups and expressed a desire to achieve more consistent and timely access.

The GAC expressed its commitment to working together with ICANN and the Community in this process and – in a first step – intends to provide detailed comments on the Unified Access Model as soon as possible after ICANN62.

The GAC was of the opinion that solutions should be implemented as soon as they become available.

III. Internal Matters

1. GAC Membership

The GAC welcomed Ecuador as a new member. This brings the number of GAC members to 177.

2. GAC Working Groups

● GAC Public Safety Working Group (PSWG)

The PSWG supported the GAC's deliberations related to WHOIS Compliance with GDPR, in particular with respect to the three key developments: the Temporary Specification for gTLD Registration Data, the Unified Access Model and a possible Expedited Policy Development Process to be initiated. Views of the GAC were conveyed by the PSWG's Co-Chairs in the two cross-community sessions held on these matters.

In the meantime, PSWG Members engaged with GNSO stakeholders and the technical community to provide expert input into current discussions, and contribute to the design of practical solutions to ensure appropriate access to WHOIS data. The PSWG met with the Security and Stability Advisory of ICANN (SSAC) to explore areas of possible collaboration with the GAC and discuss the SAC101 Advisory Regarding Access to Domain Name Registration Data which the PSWG welcomes.

Consistent with its strategic goal to develop participation, the PSWG welcomed three participants from Germany, Norway and Sweden, thanks to the support of Europol's EMPACT programme.

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

The working group discussed internal matters, including the potential to add new members to the WG leadership, and a process for updating its current work plan. These issues will be addressed intersessionally. An update on the further ICANN process for adopting the Framework of Interpretation (FoI) and considerations relating to the Human Rights Core Value (HRCV) expressed in the ICANN Bylaws was shared. WG members will share and develop intersessionally ideas on potential implementation of the HRCV within the GAC for further discussion at ICANN63 as appropriate.

- **GAC Working Group on GAC Participation in NomCom**

The Working Group presented to the GAC the “GAC Criteria for NomCom”. Text was analysed in a plenary meeting in order to have agreement on a final version.

- **GAC Underserved Regions Working Group**

Since ICANN61, the Working Group (WG) completed a regional capacity development workshop in Senegal in May 2018 and its eighth and final capacity development workshop during ICANN62 in Panama. The workshops were well received by the participants. The WG is finalizing its evaluation of the initiative and will present its draft report during the High Level Governmental Meeting in Barcelona during ICANN63.

The Working Group is grateful for the continuous support of ICANN’s CEO and Board of Directors through the collaboration of ICANN’s Government Engagement Team. The Working Group would also like to thank all the other ICANN departments involved in this program. Finally, the Working Group would like to thank the Supporting Organizations and Advisory Committees of ICANN, as well as other stakeholders for committing resources and availing members to contribute during the workshops.

3. Board-GAC Review Implementation Working Group (BGRI)

The BGRI met in GAC plenary session and:

- Reviewed progress on the ICANN Action Request Register and provided feedback.
- Were briefed by ICANN org and provided feedback on a web platform for information on 2-character country codes at the second level.
- Noted the Board’s proposed timeline for responding to the GAC ICANN62 Communiqué.

4. Independent Secretariat

The GAC noted that independent secretariat services provided by the Australian Continuous Improvement Group will cease at the end of 2018. The GAC will work on possible alternative arrangements and review developments at its meeting during ICANN63.

5. GAC Elections

The ICANN62 Panama City meeting marks the beginning of the 2018 GAC Leadership Election cycle. This year's leadership elections are open for the position of GAC Chair, who serves a two-year term, and the five GAC Vice Chairs, who each serve one-year terms. Effective 27 June 2018, the nomination period will be open until 23:59 UTC on 5 September 2018.

IV. Other Issues

1. Enhancing ICANN Accountability

The GAC noted the conclusion of the work of the Cross-Community Working Group on Enhancing ICANN Accountability (Work Stream 2) and expresses its appreciation to all involved. The GAC reiterates its support for the open, multi-stakeholder process by which the recommendations were developed. The GAC will review the Final Report and Recommendations, and aim to finalize its position as a Chartering Organization no later than ICANN63.

Several GAC members reiterated major concerns regarding the report from the subgroup on jurisdiction. These members consider that it falls short of the objectives envisaged for Work Stream 2, and that its recommendations only partly mitigate the risks associated with ICANN's subjection to US jurisdiction.

Several GAC members welcomed the recommendations on jurisdiction and stressed in particular the importance of industry having options, including a menu, for choice of law and venue for contracts with ICANN.

In relation to the discussion on jurisdiction, GAC members took note of the acknowledgement by the Cross Community Working Group that "further discussions' to address unresolved concerns" are needed.

The GAC, in its face-to-face interaction with the ICANN Board, asked Board members whether they could "identify options for continuing discussions on aspects of ICANN jurisdiction that will not be resolved by the CCWG-Accountability WS2 work". The Board replied that it is not in a position to

answer this question prior to receiving the final recommendations from the CCWG after discussion and decision by the chartering organizations.

2. New gTLDs Subsequent Procedures PDP: Work Tracks 1-4

The GAC was briefed by the Co-Chairs of the New gTLD Subsequent Procedures PDP. It was noted that GAC consideration of the initial report for Work Tracks 1-4 will commence when it is published in the near future. The GAC indicated that it is difficult to cover the meeting and outputs of four work tracks in addition to that of the plenary working group, with the GAC's limited resources.

3. New gTLDs Subsequent Procedures PDP: Work Track 5 (Geographic Names)

GAC members participated in the Work Track 5 working sessions held at ICANN62. Several GAC members expressed concern that the timeline for this work should allow for the complexity and sensitivity of many of the issues.

4. NomCom

The GAC agreed to criteria to be provided to the ICANN Nominating Committee (NomCom) for use when making selections for leadership positions. These criteria relate to public policy experience and expertise.

5. Auction Proceeds

The GAC was briefed on the current status of the CCWG on New gTLD Auction proceeds and will continue to monitor and participate in its further work.

6. High Level Government Meeting Barcelona

The GAC was briefed by the Government of Spain on the latest developments with regard to preparations for the High-Level Government Meeting to be held in Barcelona as part of ICANN63.

V. 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 Bylaws²:

1. GDPR and WHOIS

The GAC considers that a unified access model is central to providing access to non-public WHOIS data for users with a legitimate purpose and this should continue to be addressed as a matter of urgency. Therefore,

a. the GAC advises the ICANN Board to:

- i. Take all steps necessary to ensure the development and implementation of a unified access model that addresses accreditation, authentication, access and accountability, and applies to all contracted parties, as quickly as possible; and
- ii. Publish a status report, four weeks prior to ICANN 63.

RATIONALE

The GAC notes that access to WHOIS information is critical for the furtherance of legitimate purposes associated with protecting the public interest including law enforcement; cybersecurity; consumer protection and the protection of intellectual property. To this effect, the development of stable, predictable, and workable access mechanisms for non-public WHOIS information is necessary. The GAC finds the existing requirements in the Temporary Specification for contracted parties to provide reasonable access to non-public information as insufficient to protect the public interest.

In order to protect the public interest, as well as the secure, stable, and resilient operation of the DNS, the development and implementation of a unified access model is of utmost importance. The GAC considers that direct involvement and action is required by ICANN Org to facilitate and support this.

² 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

2. Protection of IGO Identifiers

a. The GAC advises the ICANN Board to:

- i. Maintain current temporary protections of IGO acronyms until a permanent means of protecting these identifiers is put into place;
- ii. Work with the GNSO and the GAC following the completion of the ongoing PDP on IGO-INGO access to curative rights protection mechanisms to ensure that GAC advice on protection of IGO acronyms, which includes the available “small group” proposal, is adequately taken into account also in any related Board decision; and
- iii. Continue working with the GAC in order to ensure accuracy and completeness of IGO contacts on the current list of IGO identifiers.

RATIONALE

The GAC continues to await the long-delayed completion of the PDP on IGO-INGO access to curative rights protection mechanisms.

As to (i), this PDP will have a direct impact on a permanent means of protecting IGO identifiers, which has been the subject of longstanding and consistent GAC advice.

As to (ii), the GAC provided input to the PDP’s draft report in 2017, notably on the issue of IGO immunities, as did individual members and observers. The final report should reflect that substantial input; noting that current indications are that the PDP recommendations will not adequately reflect the GAC’s advice on this topic, the GAC remains open to discussions with the GNSO and the Board to ensure that this is the case. The GAC notes that the work on this PDP began by at least mid-2014 and has yet to satisfactorily reach a positive resolution. The GAC moreover notes that a 2007 GNSO Issue Report provided a blueprint for a means for handling domain name disputes concerning IGO identifiers which substantially matches the “small group” proposal. The temporary protections currently in place for IGO acronyms must remain in place until such time as the Board makes a decision regarding the most appropriate means to provide a permanent means for protecting these identifiers, given the irreparable harm that could result if these acronyms are released from the temporary reserve list before a permanent mechanism is established.

As to (iii), the GAC has previously advised the ICANN Board to allocate sufficient resources to ensure the accuracy and completeness of IGO contacts on the reserve list and awaits progress on this issue.

3. Two-character Country Codes at the Second Level

a. The GAC advises the ICANN Board to:

- i. Work, as soon as possible, with those GAC members who have expressed serious concerns with respect to the release of their 2-character country/territory codes at the second level in order to establish an effective mechanism to resolve their concerns in a satisfactory manner, bearing in mind that previous GAC advice on the matter stands.
- ii. Immediately take necessary steps to prevent further negative consequences for the concerned GAC members arising from the November 2016 Board Resolution.

RATIONALE

The GAC notes the range of actions taken by the Board in response to concerns previously expressed with regard to release of 2-character codes at the second level. However, these actions have not been sufficient from the perspective of the concerned countries.

On 15 March 2017, through the Copenhagen Communiqué, the GAC communicated its understanding to the ICANN community, and in particular to the ICANN Board, that there were “changes created by the 8 November 2016 Resolution” relating to the release procedure of 2-Character Country/Territory Codes at the Second Level.

As stated in the 15 March 2017 Copenhagen Communiqué, the changes introduced by the 8 November 2016 Resolution meant that, contrary to the then prevailing practice, “it is no longer mandatory for the registries to notify governments of the plans for their use of 2-letter codes, nor are registries required to seek agreement of governments when releasing two-letter country codes at the second level”.

Accordingly, in the 15 March 2017 Copenhagen Communiqué, the GAC provided full consensus advice to the ICANN Board, which included requests that the Board “[t]ake into account the serious concerns expressed by some GAC Members as contained in previous GAC Advice”; “[i]mmediately explore measures to find a satisfactory solution of the matter to meet the concerns of these countries before being further aggravated”; and “[p]rovide clarification of the decision-making process and of the rationale for the November 2016 resolution, particularly in regard to consideration of the GAC advice, timing and level of support for this resolution.”

Under the 8 November 2016 Resolution, ICANN’s “President and CEO, or his designee(s), is authorized to take such actions as appropriate to authorize registry operators to release at the second level the reserved letter/letter two-character ASCII labels, not otherwise reserved pursuant to Specification 5, Section 6 of the Registry Agreement, subject to these measures.”

Previously to the “changes created by the 8 November 2016 Resolution”, in its 30 June 2016 Helsinki Communiqué, it was stated that “[t]he GAC considers that, in the event that no preference has been stated [as to the requirement that an applicant obtains explicit agreement of the country/territory whose 2-letter code is to be used at the second level], a lack of response should not be considered consent.”

Also, previously to the “changes created by the 8 November 2016 Resolution”, there was an established process for requests to release two-letter codes. As advised by the GAC in its 11 February 2015 Singapore Communiqué, this process involved “an effective notification mechanism, so that relevant governments can be alerted as requests are initiated”, and it relied on “[a] list of GAC Members who intend to agree to all requests and do not require notification”.

On 20 June 2018, the GAC was informed that, on 12 June 2018, ICANN had authorized the Registry Operator for .XXX “to release for registration to third parties and activation in the DNS at the second level all two-character letter/letter ASCII labels not previously authorized by ICANN for release and not otherwise required to be reserved pursuant to the Registry Agreement”. The announcement of the release of not previously authorized 2-character codes at the second level has caused some GAC members to reiterate serious concerns about ICANN’s ability to engage with the relevant GAC members to find a satisfactory solution to the matter. These unresolved concerns include doubts about ICANN Board’s ability to provide a satisfactory explanation for the “changes created by the 8 November 2016 Resolution”, as well as to adopt measures – pending a satisfactory settlement of the matter – to prevent further consequences from the “changes created by the 8 November 2016” for the concerned GAC members.

VI. Follow-up on Previous Advice

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

1. GDPR and WHOIS

The GAC recognizes that the Board deferred four items of GAC advice. The GAC urges the Board to take steps to address these issues.

VII. Next Face to Face Meeting

The GAC will next meet during ICANN63 in Barcelona, scheduled for 20-25 October 2018.