

GAC ICANN79 San Juan Communiqué: Issues of Importance (11 March 2024) - ICANN Board Comments for Board-GAC Interactions Group (BGIG) Call
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Issues of Importance

The section below contains talking points related to the ICANN79 San Juan Communiqué, in support of the Board-GAC Interactions Group (BGIG) Meeting on 13 May 2024. **This scorecard will not be presented to the Board for resolution.**

Issue	Issue Text <i>(from the Communiqué)</i>	ICANN Board Comments
1. DNS Abuse	The GAC welcomes the addition of new DNS Abuse obligations for Contracted Parties, which will become effective in April 2024. The GAC appreciated hearing from ICANN org’s Compliance department about plans for auditing and enforcing the amendments, as well as from a GAC Member on consumer fraud trends, including fraud facilitated via email and phishing attempts. The GAC also welcomed a presentation from a third party on the topic of DNS Abuse measurement, during which several terms that are included in the new amendments – “actionable evidence,” “prompt action,” and a requirement to “stop and/or otherwise disrupt,” were discussed. The GAC acknowledged the recommendation that, to support effective enforcement, the community would need to establish minimum evidential thresholds and standards for “actionable evidence”. Such standards should be consistently applied. Regarding “prompt action,” reference was made to SSAC115, which outlines a 96-hour minimum standard. To develop a clear appreciation of what “stop and/or otherwise disrupt” means, it was recommended that the information Contracted Parties provide on enforcement actions taken include the action taken as well as the considerations that lead to it. The GAC also acknowledged the importance of quality of the abuse reports and that good reporting practices need to be further developed and widely shared. The GAC discussed what a reasonable timeframe for assessing the impact of the obligations might be. Some suggested six months. However, there remains a general expectation that significant progress occur in advance of the next round of new gTLD applications. The GAC will track reports from ICANN Compliance on DNS Abuse enforcement. The GAC also explored options for what prospective work on DNS Abuse might entail, recalling some topics previously identified (such as guidance on key terms or capacity building to disseminate best practices beyond the contracts baseline) as potential areas to address before the new round of gTLDs. Finally, the GAC expressed its interest to re-connect with other parts of the community on these matters.	• The DNS Abuse requirements further enable ICANN Contractual Compliance (Compliance) to take enforcement actions against contracted parties who fail to adequately mitigate or disrupt well-evidenced DNS Abuse. • On 5 April 2024, Compliance started enforcing the new DNS Abuse requirements consistent with the information in the accompanying Advisory. As explained in the Advisory, what is prompt or actionable will greatly depend on the specific circumstances of each case. When conducting an investigation, Compliance requests registrars and registry operators to demonstrate compliance with all applicable provisions of the agreements in consideration of the specific circumstances of the case. A case-by-case review is then performed each time. This review examines the actions taken by the contracted party and, in particular: ○ when those actions occurred, ○ how those actions were reasonably necessary to stop or disrupt the DNS Abuse, ○ how the contracted party evaluated damage that occurred or could occur and to whom, including the potential of collateral damage; and ○ where, applicable, why the contracted party determined that the evidence provided was determined to be unactionable. • The reasons for resolving each compliance case are logged and added to Compliance’s public reporting. • In June 2024, Compliance intends to launch a report dedicated to the enforcement of the new DNS Abuse requirements. This report will eventually comprise a 12-month rolling series, updated every month, to illustrate historical trends over time. The report will include data such as the number of: ○ Complaints received broken down by the type of DNS Abuse; ○ Compliance notifications sent to contracted parties under the DNS Abuse requirements; ○ Cases resolved with contracted parties and their outcomes, including whether the contracted party took action to stop or to disrupt the DNS Abuse or whether no action was taken because there was no actionable evidence; and ○ Cases resolved with contracted parties, and their outcomes, that resulted from complaints submitted by law enforcement agencies within the registrar’s jurisdiction. • By Q2 2025, Compliance intends to prepare a more detailed report related to the enforcement of the DNS Abuse requirements during the first 6 months in force. • The intent is that Compliance’s reports contribute to measuring the impact of the DNS Abuse Amendments. However, determining the specific metrics and data sets that will allow measurement of such an impact should be a community-led effort, facilitated and supported by ICANN. There is an ICANN org cross-functional team working on analyzing the information and determining how to approach these efforts. The team is considering all potential measurements and sources that could help with the task of supporting the community in obtaining that data. It is also important to allow sufficient time for the implementation of the new requirements to measure their impacts accurately. • A number of functions within the org are focused on coordinating the efforts of the organization related to mitigating DNS Abuse. There have been multiple efforts led by ICANN’s Global Domains and Strategy and Global Stakeholder Engagement teams to conduct webinars, facilitate the sharing of best practices and information, training, and outreach activities covering a wide range of contractual obligations, including DNS Abuse. For example, ICANN’s 2023 DNS Symposium in Vietnam that included a day dedicated to DNS Abuse. Similarly, the Contracted Parties

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		Summit taking place from 6-9 May 2024 in France includes a day dedicated to a combating DNS Abuse workshop. In February 2023, ICANN conducted a Registrar Training Day in Austria where industry experts, ICANN-accredited registrars based in the region, and ICANN staff got together to deliberate upon a range of topics, including the DNS Abuse requirements and the sharing of good practices when it comes to combatting and mitigating against DNS Abuse. • Capacity development is an area ICANN org continues to improve, both for users/victims of DNS abuse and for registries and registrars. This is going to be more of a focus going forward and ICANN org expects to partner with industry and community on these efforts.
2. Cost Benefit Analysis of the New gTLD Program	In the ICANN56 Helsinki Communiqué the GAC advised the Board that “<i>an objective and independent analysis of costs and benefits should be conducted beforehand, drawing on experience with and outcomes from the recent round</i>”, and the Board accepted said GAC advice. The GAC again raised this issue in its ICANN64 and ICANN70 Communiqués. In the ICANN78 Hamburg Communiqué Follow-up on Previous Advice the GAC recalled its ICANN56 Advice to the Board concerning an objective and independent analysis of costs noting that “<i>so far the GAC is not certain of the availability of such analysis called for by the GAC</i>” and that “<i>the GAC is looking forward to receiving such analysis at the earliest opportunity and ahead of ICANN79.</i>” In response, ICANN org compiled the document Overview of Analyses Related to Costs and Benefits of the Next Round of the New gTLD Program. The GAC understands that the Board may consider that this document has fulfilled the GAC's advice concerning the cost-benefit analysis. However, the GAC has assessed whether the document can be considered an implementation of the GAC Advice, and concludes that it cannot be considered to constitute a cost-benefit analysis, nor to be objective and independent. In this sense, the GAC notes that the document produced is a detached assessment of certain individual costs and benefits. To be considered a cost-benefit analysis, the analysis must be comprehensive, coherent, and complete, and must assess and quantify all significant advantages and disadvantages seen from a global perspective. Furthermore, the GAC is of the the view that the analysis should have been done objectively and carried out by an independent consultant. The GAC recognizes that the Community (with involvement of the GAC) is taking forward the next round of new gTLDs and has set a corresponding timeline. The GAC, therefore, believes that conducting further analysis at this stage would not serve the intended purpose. The GAC encourages the Board to ensure that GAC advice, which the Board has accepted, is effectively implemented and its implementation is communicated to the GAC.	• The Board appreciates the fruitful discussion with the GAC on this topic at ICANN79 and appreciates the GAC's thorough review of the overview report provided by ICANN org. • The Board understands that the overview report may have not met the expectations of some members of the GAC and that the GAC was seeking an assessment of “all significant advantages and disadvantages seen from a global perspective” and that this “should have been done objectively and carried out by an independent consultant.” • The Board also notes that the GAC has further stated that it “believes that conducting further analysis at this stage would not serve the intended purpose.” The Board is also of this view, as explained by the Board in the Board-GAC bi-lateral at ICANN79. • The Board agrees with the GAC that it is essential that the Board and GAC communicate effectively and openly regarding the GAC's advice and implementation of that advice and has put into place since the Helsinki Communiqué processes and structures, such as the Board-GAC Interactions Group (BGIG), to facilitate a consistent and open dialogue on the GAC's advice. • Finally, the Board would like to note that it agrees with the GAC regarding the importance of collecting data to understand the effects of the new gTLD Program on the DNS ecosystem and would like to reiterate that the CCT Review Team suggested many data points that should be collected to benefit future studies of the New gTLD Program and that address many of the concerns noted by the GAC. The Board notes that there will be one additional CCT Review within two years of the start of the next round (as per recommendations from ATRT3), and that ICANN org is currently implementing the recommendations from the last CCT Review.

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3. Registry Voluntary Commitments (RVCs)/Public Interest Commitments (PICs) in New gTLDs	GAC members discussed the Implementation Framework for Content-Related Registry Commitments in the New gTLD Program in preparation for potential Committee input to the open consultation process. The discussion, to an extent, was framed by GAC advice in ICANN77 Washington D.C. Communiqué on the fundamental need for PICs and RVCs to be enforceable. GAC members shared a range of views on this issue, including that: 1) the Committee needs adequate time to analyze and consider this complex issue; 2) concerns about whether a Fundamental Bylaw Amendment related to content would be needed, and 3) whether any outcome would jeopardize the existing RVCs which registries have entered into as a result of GAC advice. The GAC is of the view that a complete and careful legal analysis is required in this regard, the result of which is to be made available to the community. It was noted that Fundamental Bylaws Amendments should be considered carefully, and that an amendment should only occur if the ICANN community believes that it is required. The GAC intends to consider these issues further, including submission of a GAC comment to the community consultation process.	• The Board appreciates the GAC’s active engagement in the community consultation, focusing on ICANN’s approach to implementing Registry Voluntary Commitments (RVCs) in the New gTLD Program: Next Round, which have the potential to include proposed restrictions on the content and/or usage of gTLDs. • The Board appreciates GAC’s response to the consultation questions, as well as the contribution of GAC selected panelists -- Nigel Hickson (UK) and Thiago Dal Toe (Columbia) – to the ICANN79 plenary session on PICs/RVCs. • The Board agrees with the GAC that “the fundamental need for PICs and RVCs [is] to be enforceable”; this is consistent with the GNSO Council’s Second Clarifying Statement that “any new Public Interest Commitments (PICs) or Registry Voluntary Commitments (RVCs) must be enforceable under the ICANN Bylaws and as a practicable matter”. • The Board notes that community groups that submitted input for the community consultation do not support an ICANN Bylaws amendment at this stage to clarify the scope of ICANN’s contracting remit as it relates to Registry Agreement commitments that could restrict content in gTLDs. • The Board reviewed input received from the community consultation and analyzed applicable Bylaws provisions to discuss: 1) the risks of permitting content-restrictive commitments in Next Round Registry Agreements in light of updates that have been made since the 2012 round of the New gTLD Program to the ICANN Bylaws language concerning the scope of ICANN’s Mission; and 2) whether any mitigation measure, such as a “third-party monitor” approach proposed by the GNSO and explored in the Consultation, would eliminate the risk that content-restrictive commitments pose under the ICANN Bylaws. This discussion informed the Board’s deliberation on whether content-restrictive RVCs may be included in the Next Round Registry Agreement. • The Board plans to follow up with the GAC, as well as the broader ICANN community, regarding the proposed high-level implementation approach for RVCs. The Board will appreciate further feedback, if any, from the GAC on the proposed implementation approach. The Board also hopes to discuss this topic during the GAC-Board bilateral meeting in ICANN80 Kigali. • The Board aims to reach a resolution regarding the RVC implementation in a timely manner; this will determine the steps necessary to implement RVCs in the New gTLD Program: Next Round, including the development of the Applicant Guidebook.
4. Registration Data - Registration Data Request Service (RDRS)	The GAC continues to support efforts to maximize participation in the Registration Data Request Service (RDRS) and reiterates that widespread use of the pilot by both registrars and requesters will help the RDRS meet its intended purpose of generating data to inform the ICANN Board’s consideration of the policy recommendations related to a future System for Standardized Access and Disclosure (SSAD). The GAC believes all contracted registrars should participate. The GAC welcomes ICANN org’s continued efforts to provide regular monthly reporting of usage metrics. While the pilot has only been recently launched, these metrics have already shed light on potential improvements that could help the pilot meet its intended purpose and create an improved user experience. The GAC looks forward to continuing to work with the GNSO Standing Committee on the RDRS to address challenges and, where appropriate, suggest improvements to the RDRS.	• The Registration Data Request Service (RDRS) is a pilot that will operate for up to two years (until Nov. 2025) to gather usage and demand data that can inform the ICANN Board’s consideration of the consensus policy recommendations related to a System for Standardized Access/Disclosure (SSAD) for nonpublic domain name registration data, and ongoing consultations with the GNSO Council. As of April 2024, 88 registrars are voluntarily participating in the system, covering approximately 57% of gTLD domains. • The Board is grateful to the GAC for supporting usage of the service. The more users we have and the more feedback we receive, the better ICANN can make the system. ICANN org is collecting the feedback from various users and considering various changes to the service, together with the GNSO Standing Committee. • The Board is also following the monthly RDRS Metrics Usage Reports and is interested to hear the experience of both registrars and requestors, who are also providing feedback via surveys collected by ICANN org and whose results will be published. • At the request of the GSNO Standing Committee, ICANN org has recently published a downloadable CSV for each monthly RDRS Metrics Usage Report that provides data from the Summary of Data Chart. • ICANN staff is working closely with the GNSO Standing Committee to hear feedback from users to ensure improvements can be considered and made in a timely fashion. This includes feedback pertaining to the current requestor interface, particularly with respect to requests from law enforcement and the applicability of various data protection frameworks. Proposed improvements will continue to be approached in a collaborative manner with the Standing Committee. Feasibility will be evaluated against effort and the remaining months in the proof of concept period.

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	Specific issues might include confidentiality of law enforcement requests and voluntary participation by ccTLDs. In light of the feedback received from various stakeholders, the GAC encourages further review to take place to eliminate unnecessary and confusing elements of the current requester interface, particularly with respect to requests from law enforcement and the applicability of various data protection frameworks. The GAC also strongly encourages to include information about the RDRS and a link to it within the WHOIS lookup/Registration Data Access Protocol (RDAP) with a view to increase its visibility. Finally, the GAC stresses the importance of continued outreach efforts throughout the lifespan of the RDRS to ensure both requesters and registrars are aware of the uses and limits of this pilot program as well as its intended purpose. To this end, the GAC encourages ICANN org to conduct a survey of registrars who are not currently participating in the RDRS to gain insights into the concerns of these parties and potential challenges that could be addressed.	• The Board notes that information on the RDRS has been linked on ICANN's Registration Data Loop Up Tool in the section on non-public registration data to increase visibility. • Information and links to the RDRS can be added in the RDAP output of registries and registrars via the GNSO policy development process. The Board encourages the GAC to discuss this option with the GNSO Council. • ICANN's engagement and communications teams are both conducting outreach to various communities to increase usage of the system. The ICANN Board encourages the community to engage with potential requestor communities to present materials ICANN org has available on RDRS or to participate in discussions where the benefits and importance of utilizing the system can be shared with broader audiences. • ICANN org has downloadable user guides, flyers and FAQs (available in the 6 UN languages and Portuguese) published on the RDRS website. The website also contains links to announcements, blogs, webinar recordings and the monthly RDRS metric reports. RDRS content is also regularly promoted via ICANN's social media channels. ICANN org also provides a generic information presentation deck to share with constituencies. • The Board strongly encourages both requestors and registrars using the RDRS to respond to survey requests for feedback, to help guide and understand the challenges and opportunities as we move forward together. ICANN org will publish the Quarterly Requestor and Registrar Report at the end of May. • ICANN org will provide a six-month update on the RDRS pilot in an ICANN80 Prep Week session scheduled for 29 May at 16:30 UTC.
5. Registration Data - Privacy and Proxy Accreditation Implementation	The GAC supports a Privacy and Proxy (P/P) accreditation process at ICANN. The GAC hopes the ICANN community will thoroughly explore options that allow implementation of approved recommendations that are still relevant from the previous PDP on P/P issues and appreciates ICANN Org's recently shared work facilitating this process. The GAC continues to encourage registrars and requesters to participate in the RDRS; doing so will ensure the community is able to produce evidence-based registration data policy, including on the use of P/P services and their potential impact on usage of the RDRS, or subsequent domain name registration request systems. Some requesters have noted confusion around the provision of P/P information in place of the registrant information because they expect to receive data related to the underlying registrant. The mismatch between expectations and results may lead to user frustration and discourage use of the RDRS, which was noted in the WHOIS Disclosure System Design Paper. Accordingly, the GAC looks forward to further work on these issues.	• The Board appreciates the GAC's interest in this topic and acknowledgement of the org's most recent work to inform the way forward. • The Board understands that the org is in the process of convening an Implementation Review Team (IRT) to help define the best path to implementation of the existing policy recommendations on proxy and privacy services. • Regarding the RDRS, as noted above, the team continues to work with the GNSO Standing Committee to gather and incorporate stakeholder feedback, including how to help address situations with the type of confusion described by the GAC.
6. Registration Data - Accuracy	The GAC reiterates that registration data accuracy is an important element in law enforcement, cybersecurity, investigations to enforce Intellectual Property Rights, domain name registration management, and other legitimate third-party interests. At the same time, any changes to accuracy policy at ICANN should strive to balance the various interests involved, including those of registrants with enhanced privacy needs.	• The Board recognizes that accuracy of registration data is an important matter for ensuring a stable and secure Domain Name System, and that it has been a longstanding topic of discussion within the community, including within the GAC. • The Board notes the assessment ICANN org provided to the GNSO Council in October 2023, which outlined possible approaches for examining historical audit data on accuracy-related provisions in the Registrar Accreditation Agreement. • ICANN org provided this information to support the work of the GNSO's Registration Data Accuracy – Scoping Team (AST), whose aim was to understand current efforts at accuracy enforcement and reporting, as well as to define and

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	The GAC supports ICANN org’s efforts to identify scenarios for assessing accuracy under ICANN’s contracts that provide useful information to advance the Accuracy Scoping Team’s work, and welcomes ICANN’s Office of the Chief Technology Officer’s (OCTO) forthcoming Inferential Analysis of Maliciously Registered Domains (INFERMAL), which could shed further light on accuracy. The GAC welcomes the timely completion of the Data Processing Agreements between ICANN and the Contracted Parties so the community can resume its work expeditiously on the topic of accuracy.	measure levels of accuracy. The AST identified a lack of data it deemed necessary for its work. • The Board looks forward to continued community discussion on this important topic, particularly as the GNSO Council determines how to advance possible policy discussions and the work of the currently paused AST. • The Board also looks forward to completion of the Data Protection Specification (DPS). While this will be a welcome milestone, the Board recognizes that the DPS will not grant ICANN access to nonpublic registration data outside of that permitted under the governing contracts and applicable law, such that it will enable wide-scale accuracy studies previously proposed within the AST. • The Board would like to clarify that the OCTO INFERMAL (Inferential Analysis of Maliciously Registered Domains) will <u>not</u> be analyzing domain name registration accuracy. • INFERMAL is a research project being carried out by KOR Labs and funded by ICANN. The goal of this project is to conduct an in-depth analysis of maliciously registered domain names, aiming to uncover cyber attackers' preferences and possible measures to mitigate abusive activities within the domain name space.
7. Transparency and GNSO Statements of Interest	The GAC discussed the matter of transparency and Statements of Interest, recalled concerns expressed in its ICANN76 and ICANN78 Communiqués, and stressed the central relevance of transparency in this regard as a crucial precondition for accountability and legitimacy in ICANN policy development processes. It is noted that on 28 February 2024 the GAC Chair issued a letter on the matter to the Chair of the ICANN Board. The GAC looks forward to continued engagement with the GNSO, Board and community on this issue.	Background: • The GNSO Council Committee for Overseeing and Implementing Continuous Improvement (CCOICI) was tasked with reviewing the GNSO Statement of Interest (SOI), where there was a perceived lack of transparency in instances where an individual is participating in the GNSO policy process as a representative of another individual or entity, but is not required to fully describe the relationship. • The GNSO SOI currently has an allowance for individuals to enter “Private” if professional ethical obligations prevent them from disclosing the individual or entity that they are representing. This allowance is rarely used; the CCOICI report to Council indicates that at most, 0.03% members are making use of the exemption. • The CCOICI therefore concluded that the perceived problem does not seem to be a current problem but rather, it is conceivable that it may be a problem in the future. • The CCOICI sought to refine the exemption process but was ultimately unable to come to agreement. The Contracted Parties were adamant that full transparency was the only solution, which they believe to be in line with the ICANN Bylaws, while those that may have professional ethical obligations are of the view that removing the exemption could exclude them from participation if a client would not agree to disclosure. • The Council attempted to approve a number of other improvements, which enjoyed consensus from the CCOICI, but these were ultimately not adopted because of Contracted Party concerns that approval of the incremental improvements could be perceived as endorsement of the status quo (i.e., an exception process being available when professional ethical obligations require it). • As noted above, there is already an exemption available when completing one’s SOI, which based on data available, is rarely used. However for many (e.g., GAC, CPH), it’s a matter of principle, no matter how widespread or not the issue may be. They believe that even if there are only a small handful of instances, they still undermine the tenets of the multistakeholder model itself. Talking Points: 1. The Board too considers this item as very important, and can be considered as a broader issue of evaluating what actions that may be taken to ensure that all of ICANN’s constituent bodies, including the GNSO, are expected to require such disclosures in policy development and operational activities. 2. In light of the GAC’s and others’ requests, the Board has commenced a discussion on the need for a broader ethics policy that covers Statements of Interest and disclosure requirements. The Board upholds the idea that all those who participate within the ICANN multistakeholder model should – for the benefit of all who are participating –

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		maintain up-to-date statements of interest identifying which persons or entities they are representing within ICANN processes. - The Board discussed encouraging informed participation across ICANN's processes. Understanding the interests participating within processes is important at all levels of ICANN's work, from the working group level where people are expected to bring their interests to the table to support broad and informed policy development, through to Board consideration of those recommendations, which includes understanding what ideas and concerns were brought into the recommendation development processes. - As the GNSO has been discussing this issue, the Board has repeatedly called on all involved to consider the need for the community to consider how to evolve processes designed to ensure ethical and accountable participation. The community has an important role in facilitating reasonable, objective and informed participation in ICANN policy making. - The Board appreciates the GAC's interest in this issue and is interested in any further outcomes from the GAC's continued engagement on this issue.
8. Regional Internet Registries	The GAC appreciates the information received from the ASO concerning AFRINIC, and welcomes the fact that AFRINIC continues to serve the African region despite the current circumstances. However, GAC members expressed concern about the situation and the impact it may have on the distribution of number resources in Africa. The GAC understands that there are legal constraints to providing full transparency on the ongoing legal procedures, and welcomes receiving further updates regarding AFRINIC governance. The GAC took note of the announcement that the ASO is considering to initiate a review of the Criteria for Establishment of New Regional Internet Registries (ICP-2) and is looking forward to receiving future updates on this important process, including how interested GAC members can take part.	- The Board appreciates and shares the GAC's concern in their area. - ICANN org continues to monitor the progression of issues regarding AFRINIC's governance challenges and stands ready to provide appropriate and proper support. The multistakeholder model relies upon entities like AFRINIC functioning well in their designated capacity. - The Board appreciates the initiative of the community in recognizing the need to evolve policies in light of these recent experiences, and supports work by the ASO to evolve the policies documented in ICP-2.
9. IPv6	The GAC recognizes the need for accelerated deployment of the IPv6 protocol and looks forward to continuing discussing with relevant ICANN constituencies any policy options to incentivize and to expedite the adoption of IPv6.	- The Board appreciates the GAC's recognition for the need to accelerate the deployment of the IPv6. - The Board continues to support efforts by the Regional Internet Registries (RIRs) in their respective communities in promoting the adoption of IPv6. - Though ICANN org is directly involved in IP address policy development processes, the Board encourages the GAC to continue to engage with their local ISPs to work and support Regional Internet Registries (RIRs) in their IPv6 initiatives, including where appropriate, initiating any necessary policies. - The Board would like to note that IPv6 adoption has been trending in a positive direction. Data provided here shows that IPv6 continued to grow since 2008.