ICANN|GAC

Governmental Advisory Committee

ICANN
70
VIRTUAL
COMMUNITY FORUM

GAC Opening Plenary Session

Session # 1 - Opening Plenary

Content

Session Objectives

The Opening Plenary Session is the first opportunity for GAC participants to gather, introduce themselves and prepare for the public meeting week. During this session, the GAC Chair typically offers information and updates to the GAC about developments since the last public meeting and preparation for the meeting week ahead.

Background

The GAC opening plenary session gives the GAC Chair an opportunity to provide an overview report on what delegates can expect during the coming week of meetings.

During this opening session, the GAC Chair plans to report on the committee efforts made regarding action items and next steps identified during the ICANN69 Virtual Annual General Meeting. GAC participants will be invited to share comments on their meeting goals and expectations.

During traditional GAC face-to-face meetings, the Opening Plenary session gives delegates from all the attending GAC Members and Observer organizations the opportunity to introduce themselves. The revised "virtual" format of this ICANN70 meeting will not enable this capability. Instead, GAC Support staff will track remote attendance for purposes of meeting records by observing those present in sessions throughout the week in the Zoom rooms set up for that purpose. GAC

participants will be asked to indicate the country, territory or organization affiliation in conjunction with their virtual Zoom room name designations.

Recent Developments

The GAC Chair will likely report on pre-meeting interactions with the GNSO Council Leadership, recent discussions among ICANN Community leaders for other ICANN Supporting Organizations and Advisory Committees and recent discussions among the Board-GAC Interaction Group (BGIG). The Chair may also share lessons-learned regarding pre-meeting preparatory webinars conducted by ICANN org staff on various topics.

Since ICANN69, the GAC has been an active contributor to a number of ICANN community public forums and cross community efforts including comments regarding GAC Input Regarding the ICANN Public Meeting Strategy and the ICANN Community Consultation on ICANN Public Meetings. The GAC also produced comments regarding the Updated Operational Design Phase Proposal by ICANN org and submitted comments on the ICANN org Draft FY22-26 Operating and Financial Plan and Draft FY22 Operating Plan and Budget. Those documents are recorded and tracked on a special web page of the GAC web site and can be located here - https://gac.icann.org/activity/gac-public-comment-opportunities.

Since ICANN69, the GAC also sent and received written correspondence regarding various matters of importance to GAC members including the Final Report of Phase 2 of the GNSO EPDP on gTLD Registration Data, the GNSO EPDP on the Temporary Specification for gTLD Registration Data, Phase 2, Priority 2, ICANN Board action on IGO protections at the second level of the DNS, and the GNSO gTLDs Subsequent Procedures PDP WG Final Report. Documents related to those matters and others since ICANN69 are posted and tracked on a special web page of the GAC web site which can be located here - https://gac.icann.org/advice/correspondence/.

During the ICANN69 Virtual Policy Forum, the GAC Support Staff noted a number of follow-up matters and action items agreed to among GAC attendees. Those items are tracked via a google collaboration document that can be accessed here - https://docs.google.com/spreadsheets/d/1q2jygHjk1MQHoUYj2k1hjPDAw5TAebMRWqG98Go6eEY/edit#gid=1067667374.

Key Reference Documents

- GAC ICANN69 Action Points (Google Doc) - https://docs.google.com/spreadsheets/d/1q2jygHjk1MQHoUYj2k1hjPDAw5TAebMRWqG98Go6eEY/edit#gid=1067667374
- GAC Public Comment Opportunities Web Page - https://gac.icann.org/activity/gac-public-comment-opportunities
- GAC Correspondence Web Page - https://gac.icann.org/advice/correspondence/

Further Information

- ICANN Strategic Plan (2021 - 2025) -
  https://www.icann.org/en/system/files/files/strategic-plan-2021-2025-24jun19-en.pdf
- Information about ICANN org proposal for a new Operational Design Phase -
  https://www.icann.org/en/system/files/files/odp-form-concept-paper-18dec20-en.pdf
- ICANN org Community Consultation on ICANN Public Meetings -
  https://ccnso.icann.org/sites/default/files/field-attached/community-consultation-icann-public-meetings-strategic-changes-11dec20-en.pdf

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Governmental Advisory Committee

Subsequent Rounds of New gTLDs

Session # 2, 10 and 15 - GAC Discussions on Subsequent Rounds of New gTLDs

Contents

Session Objective

GAC Topic Leads on Subsequent Rounds of New gTLDs to review high priority issues identified in the GAC Scorecard, and following the 1 March 2021 GAC Discussion in preparation for ICANN70. For each priority topic, sessions will focus on:

- Providing GAC Members/Observers an overview of each priority topic;
- Reviewing final recommendations from PDP WG and GAC positions - identify areas of divergence
- Actively discussing with GAC Members/Observers to gather input for potential GAC Advice for the ICANN Board and/or a future public consultation.

Background

Since its incorporation, ICANN has delivered several expansions of the Top-Level Domain (TLD) names space. The latest and most significant expansion started in 2012, and has seen more than 1000 New gTLDs added to the DNS.

This latest expansion, known as the New gTLD Program or the 2012 round of New gTLDs, was the product of a multi-year process of policy development, in which the GAC participated, with contributions in the form of policy principles, safeguard advice and objections to applications that could cause public policy concerns.

Several processes[1] that have been supporting deliberations on these findings and wider policy issues related to further expansion of gTLDs have been of interest to the GAC, in particular:

- The Consumer Trust, Consumer Choice and Competition Review whose Final Recommendations (8 September 2018) are in the process of being implemented, amid intense debates, per the ICANN Board's decision (1 March 2018)
- The GNSO's Review of All Rights Protection Mechanisms in All gTLDs PDP tasked to assess the effectiveness of instruments such as the UDRP, URS and TMCH and suggest new policy recommendations in these areas
- The GNSO's New gTLD Subsequent Procedures PDP (Sub Pro PDP), and within it, the specific Work Track 5 on Geographic Names at the Top Level

Since 2016, the New gTLDs Subsequent Procedures (Sub Pro) PDP WG has been deliberating by reviewing and discussing the 2012 program, and soliciting community input on policy recommendations to improve the next round of new gTLDs. Ultimately, the outcome of this PDP WG will be the basis for the policy and rules governing the next gTLD expansion.

Issues

Current status of discussions

At the moment of this briefing, the Sub Pro PDP WG finalized draft recommendations and published the Subsequent Rounds for New gTLDs Draft Final Report, which triggered a public comment period which ended on September 30, 2020. The GAC submitted a collective comment on 29 September 2020. The Sub Pro PDP WG Final Report was submitted to the GNSO Council on 18 January 2021, and was adopted by the GNSO Council on 18 Feb. 2021. It is expected for the GNSO Council to submit recommendations relative to the Sub Pro PDP WG Final Report to the ICANN Board imminently.

ICANN70 is an opportunity for the GAC to review GAC materials on subsequent rounds of new gTLDs, and focus on areas of potential next steps for the GAC and engage in meaningful discussions on priority topics for the GAC.

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[1] See timeline at https://newgtlds.icann.org/en/reviews for an overview of relevant processes and some of their interactions

Several steps with varying time-lines will follow per the Policy Development Process after the GNSO Council consideration and adoption of the PDP Sub Pro final recommendations on February 18, 2021:

i. GNSO Council Recommendation to ICANN Board;
ii. ICANN Board may decide to trigger an Operational Design Phase (ODP);
iii. ICANN Board consideration of the PDP recommendations as adopted by GNSO Council - opportunity for GAC Consensus Advice to the ICANN Board;
iv. Public comment on SubPro PDP WG Final Report - opportunity for GAC Consensus Input
v. ICANN Board vote;
vi. ICANN org (as directed by the Board) to begin implementation of the policy recommendations (which will likely include a revised Applicant Guidebook).

Upon completion of these successive steps ICANN org would be expected to start a new round of new applications for gTLDs sometime tentatively around 2022, but still to be confirmed.

Leadership Proposal for GAC Action during ICANN70

1. GAC Topic Leads to briefly review each high priority topic identified by GAC leadership as noted in the GAC Scorecard, particularly to identify any areas of divergence between GAC positions and PDP WG final recommendations, and building on the discussions held at the dedicated GAC webinar on 1 March 2021;

2. GAC Members and Observers to review priority topics pertaining to the SubPro PDP WG Final Report, and actively engage in meaningful discussions to update GAC positions on such topics with the aim to potentially prepare GAC Consensus Advice and/or any other input for the ICANN Board (at ICANN70, 71 or Intersessionally as appropriate).

Current Positions

Please refer to the GAC Scorecard (annex B to this briefing) as a key document for this briefing which has only been reviewed by GAC Leadership, for a comprehensive reference of:

a. previous GAC input/advice provided to date;
b. updated status of PDP WG recommendations as per final report;
c. GAC potential next steps relative to Subsequent Rounds of new gTLDs for discussion at ICANN70

The GAC has advised that a new round of applications for gTLDs should be carried out in a "*logical, sequential and coordinated way*" that takes into account the results of "*all relevant reviews*", requirements of "*interoperability, security, stability and resiliency*", "*independent analysis of costs and benefits*", and while proposing "*an agreed policy and administrative framework that is supported by all stakeholders*" in the GAC Helsinki Communiqué (30 June 2016) as reiterated in the GAC Kobe Communique (14 March 2019).

More recently, in the GAC Montreal Communique (6 November 2019), the GAC advised the ICANN Board "*not to proceed with a new round of gTLDs until after the complete implementation of the recommendations in the Competition, Consumer Trust and Consumer Choice Review that were identified as 'prerequisites' or as 'high priority'.*"

Key Reference Documents

- GAC Scorecard: Status of Substantive Areas of Interest to the GAC for Subsequent New gTLD Rounds

- Final Report on the new gTLD Subsequent Procedures PDP WG

- GAC Consensus Input vs Final Recommendation Language

Further Information

- GAC Webinar on the Subsequent Procedures PDP WG Final Report - 1 March 2021
- GAC Consensus Collective Comment on Subsequent Rounds of New gTLDs Final Report - 29 Sep. 2020

- ICANN69 GAC Communique

- GAC Compilation of Individual Input - May 2020
- ICANN68 GAC Communique
- ICANN67 GAC Communique

- GAC Response to ICANN Board Clarification Questions on the GAC Montréal Communiqué Advice (20 Jan 2020)

- GAC Scorecard of Board Action on CCT Review Final Recommendations (6 June 2019) annexed to the Briefing on the CCT Review for Session 11.1 on ICANN Reviews Update

- ICANN Board resolution and scorecard of Board Action on the CCT Review Final Recommendations (1 March 2019)

- CCT Review Final Recommendations (8 September 2018)

- GAC Helsinki Communiqué Advice on Future gTLDs Policies and Procedures (30 June 2016)

Annex A: Main chronological milestones of SubPro work

The GNSO's New gTLD Subsequent Procedures PDP was initiated on 17 December 2015 to determine "*whether changes or adjustments to the existing policy recommendations [...] are needed*" in relation to original policies that the Working Group charter recognizes as "*designed to produce a systemized and ongoing mechanisms for applicants to propose new top-level domains*".

PDP Working Group Milestones so far have included:

- a first round of community consultations on overarching issues (Summer 2016)

- a second round of community consultations on a wide range of more specific topics (March-May 2017). It received 25 submissions.

- an Initial Report (3 July 2018) documenting the Working Group's deliberations, preliminary recommendations, potential options, as well as specific questions to the ICANN Community. It received 72 submissions in a period of 3 months.

- a Supplemental Initial Report (30 October 2018) addressed a more limited set of additional issues including Auctions, Application Comments, Changes to Applications and proposal to improve Registrar support of New gTLDs. It received 14 submissions.

- a Supplemental Initial Report of its Work Track 5 (5 December 2018) dedicated to address the use of Geographic Names at the Top Level[2].

- A Working Document - Subpro PDP WG Draft Final Recommendations (ongoing - expected to be submitted for public comment in early July 2020)

- The full Working Group has reviewed the public comments on its Initial Report and Supplemental Initial Report through to ICANN66.

- The Subsequent Rounds of New gTLDs Draft Final Report was published for public comment on 20 August 2020.

- The Subsequent Rounds of New gTLDs Final Report delivered to the GNSO Council on 18 January 2021.

The final report is expected to be submitted to the ICANN Board by the GNSO Council imminently.

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[2] Policy development in the area of geographic names is handled separately in the GAC, who formed an internal Working Group for this purpose. Please refer to appropriate resources on the GAC Website for the GAC's Geographic Names Working Group and its activities related to Work Track 5 of the GNSO Subsequent Procedures PDP.

Annex B: GAC Scorecard on New gTLD Subsequent Rounds

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GAC Scorecard on New gTLD Subsequent Rounds: Status of Substantive Areas of Interest to the GAC
Only reviewed by GAC Leadership
Last Updated: January 2021
As per [Final Report](#) Submitted to GNSO Council on 18 January 2021

Contents

Color-coding of General Status/Alignment for Each Policy Area of previous GAC input vis-à-vis the PDP Working Group Recommendations to Prioritize GAC Work:

Key to color-coding:	General Alignment / Low Priority	Less Alignment / Medium Priority	Possibility of No Alignment / High Priority

General Alignment / Low Priority	**Less Alignment / Medium Priority**	**Possibility of No Alignment / High Priority**
GAC views and positions are generally aligned or are adequately reflected in the Final Report recommendations on these issues. .	Final Report recommendations show less alignment of GAC views and positions and the PDP WG has not addressed some GAC concerns in PDP WG Final Recommendations and may diverge on some policy objectives. These issues would require additional engagement from GAC members with GNSO Council/ICANN Board in order to ensure GAC views are fully reflected going forward.	GAC Action is possibly needed on this item. Final Report recommendations show a degree of non alignment with GAC positions. GAC priority views and positions are not reflected in the Final Report recommendations. These issues require additional engagement from GAC members with the GNSO Council/ICANN Board to get GAC views and positions reflected going forward.

[SUBSEQUENT ROUNDS FOR NEW GTLDS PDP WG FINAL REPORT](#)

1. **GAC Priority Topics as per GAC Consensus Input to PDP WG Final Report Public Comment**

Clarity and Predictability of Application Process

Summary of Previous GAC Input	**Final PDP WG Deliberations and Recommendations**

Response to Sub Pro PDP CC1 (29 July 2016)
○ **"Continuous delegation"** could provide long-term certainty, reduce opportunities for gaming the system and enable more efficient allocation of resources by ICANN, the community and applicants.
○ Need for process flexibility to respond to emerging issues
○ Need mechanism to alert, allow application by and giving a say to parties interested in name applied for
○ GAC Appreciates **importance of predictability** at the pre-application, application and ongoing post-application stages, However, this should **not** be the **prime or only consideration**
○ The GAC needs a degree of **flexibility to respond to emerging issues** at the global level, as dealt with in ICANN processes, since national laws may not be sufficient to address them. The need for such flexibility continues after the conclusion of a GNSO PDP
 	
Response to Sub Pro PDP CC2 (22 May 2017)
○ The GAC supports any **reasonable measures that streamline application procedures** (thereby reducing compliance costs) but that also enable **due consideration of public policy issues** raised by GAC
○ Reiterates response to Sub Pro PDP CC1 regarding flexibility to respond to emerging issues, including after conclusion of PDP
 	
Comment on Sub Pro PDP Initial Report (8 October 2018)
○ Reiterates response to Sub Pro PDP CC1 on need for flexibility to respond to emerging issues
 	
ICANN68 GAC Communique (27 June 2020): some GAC members raised doubts on the added-value of a SPIRT, and expressed concerns that its creation, if adopted, could add complexity to the current procedure and potential inconsistency with existing roles and responsibilities according to the ICANN Bylaws [...].if established, the new mechanism be lean, inclusive and transparent
 	
GAC Comment on Subpro PDP WG Draft Final Report (29 Sep 2020): GAC appreciates effort of PDP WG to create a predictability framework, but notes that some GAC members are not persuaded of added value of creating the new SPIRT structure, reiterating
	Final Recommendations| Topic 2|
	
	● The Sub Pro PDP WG recommends that ICANN establish predictable, transparent, fair **processes and procedures for managing issues that arise in the New gTLD Program after the Applicant Guidebook is approved which may result in changes to the Program and its supporting processes (rec 2.1).**
	● To do so, the PDP WG advises ICANN to use a new **Predictability Framework** (Annex E to Subpro PDP WG Final Report): framework for analyzing the type/scope/context of an issue and if already known, the proposed or required Program change, to assist in determining the impact of the change and the process/mechanism that should be followed to address the issue. **The framework is a tool to help the community understand** how **an issue should be addressed as opposed to determining what the** solution **to the issue should be; the framework is not a mechanism to develop policy (2.1).**
	● **Following ICANN68, PDP WG modified draft recommendation on SPIRT** to address concerns received about the predictability framework, noting it is not intended to be used to develop policy.
	● Additionally, the PDP WG recommends creating a new **Standing Predictability Implementation Review Team ("SPIRT")** to serve as the body responsible for:
	  ○ reviewing potential issues related to the Program
	  ○ to conduct analysis utilizing the framework, and
	  ○ to recommend the process/mechanism that should be followed to address the issue (i.e., utilize the Predictability Framework).
	● **The GNSO Council shall be responsible for oversight of the SPIRT** and may review all recommendations of the SPIRT in accordance with the procedures outlined in the GNSO Operating Procedures and Annexes (Rec. 2.1).
	● The Predictability Framework will be used for issues or proposed program changes in various categories as outlined in the Predictability Framework (Annex E of the Final Report). Final recommendations include updated language clarifying **the role of the framework** (i.e. not to identify a solution but to identify proper mechanism to reach a solution in a consistent and procedurally sound manner) - **complementing the existing GNSO processes and procedures** (not a replacement or substitution of those)(Rec.2.1)
	● **The Standing Predictability Implementation Review Team ("SPIRT")** is a new GNSO structure to advise its Council, and with which ICANN org would be required to consult when it considers certain types of changes/modifications

comments raised in the ICANN68 Communique. Some GAC members asked PDP WG to consider what role the GAC could play in SPIRT, vis a visa idea of a GAC liaison. The GAC recommends that any changes made to the new gTLD program should be transparent and shared with community members and that the annual review of the IRT is very important to ensure revisions and adjustments, and will also contribute to increased transparency.

to the New gTLD program after its launch (that is after new applications have been received). The Sub Pro PDP WG recommends it be **advisory in nature (and overseen by the GNSO Council)** and would not impact the ability of the GNSO and other SO/ACs from performing their roles assigned under the ICANN Bylaws (Rec. 2.1).

- Additionally, **the PDP WG took into account feedback received and modified rationale on the SPIRT implementation guidance**:
  - the Working Group recognizes the challenges in determining the details of the framework and establishing the SPIRT and **therefore emphasizes that implementation of both elements should focus on simplicity and clarity** (Implementation Guidance 2.2).
- **Implementation guidance 2.5 agreed by PDP WG post ICANN68**: ICANN Org should maintain and publish a change log or similar record to track changes to the New gTLD Program, especially those that arise and are addressed via the Predictability Framework and the SPIRT.
- Composition of SPIRT: not necessarily a GAC Liaison envisaged or directly mentioned, but "*the SPIRT should be open to all interested parties, but may not necessarily be representative of the ICANN community, as actual participation may depend on interest and relevance of the new gTLD Process. Membership criteria should identify knowledge, experience, responsibilities to their respective organization, rules of engagement, a Statement of Participation, etc.*"

Possible Next Steps for the GAC to Consider

- For context, the proposed SPIRT will report directly to the GNSO Council, so these recommendations are expected to be closely evaluated by the GNSO Council. There is also the expectation that the SPIRT would need to be implemented within existing GNSO processes, in a way that is satisfactory to the GNSO Council, the ICANN Board, and the community, as there is shared a concern with the effect the SPIRT would have on ICANN policy development.

- Review the proposed Predictability Framework, its associated SPIRT and the guidelines for ICANN org, and assess the impact on the GAC's need for "flexibility to respond to emerging issues", the potential GAC interaction with SPIRT (i.e. a GAC liaison to SPIRT) and whether GAC Advice to the GNSO Council/ICANN Board is required to restate the concerns some GAC members have relative to the creation of the SPIRT.

Public Interest Commitments (PICs) & Global Public Interest

Summary of Previous GAC Input	Final PDP WG Deliberations and Recommendations
Comment on CCT Review Team Draft Report (19 May 2017): the GAC supports ○ Improvement of **definition, accessibility and evaluation** of applicant's Public Interest Commitments (Draft Rec. 37-39, Final Rec. 25) Response to Sub Pro PDP CC2 (22 May 2017) Regarding mechanisms to be employed to serve the public interest, in addition to Public Interest Commitments, the GAC referred **GAC Advice** it believed were **still current**: ○ Beijing Communiqué on Cat. 1 Safeguards Advice (**Closed Generics**) ○ Los Angeles Communiqué Advice on PICDRP to ensure that non compliance with Public Interest Commitments is effectively and promptly addressed, and for Cat. 2 TLDs (restricted registration) to provide registrants an avenue to seek redress for discriminatory policies ○ Singapore Communiqué (2015) Advice to reconsider the PICDRP and develop a 'fast track' process for regulatory authorities, government agencies and law enforcement to work with ICANN contract compliance to effectively respond to issues involving serious risks of harm to the public ○ Singapore Communiqué (2015) Advice to recognise voluntary adoption of GAC advice on verification and validation of credentials as best practice. Comment on Sub Pro PDP Initial Report (8 October 2018) ○ Actual adoption and implementation of the PICs **differed in many respects from GAC advice** (Toronto and Beijing Communiqués), most notably on the issue of safeguards applicable to highly regulated gTLDs (Cat. 1). ○ Before making any final recommendations, the PDP should consider the **GAC's prior safeguard advice** and any recommendations in the **CCT final report** on these issues should be fully considered in the next stage of the PDP's work ○ PICs should be effectively **monitored by ICANN for compliance**, with appropriate sanctions when breached ICANN66 Communique Advice (6 November 2019) ○ CCT-RT Recommendations to be implemented before a new round is launched per GAC Montreal Advice. ICANN67 Communique (16 March 2020) ○ concerns with intention to refer DNS Abuse to a separate PDP, in light of GAC Montreal Advice. GAC Compilation of Individual Input (9 May 2020)	Final Recommendations - Topic 9 | **On Mandatory Public Interest Commitments** (PICs)(also see safeguards section on Cat. 1 strings), the WG recommends that: ● That singular and plural versions of the same string should not be permitted (Rec. 24.3) ● However, if two applications are submitted during the same application window for strings that create the probability of a user assuming that they are single and plural versions of the same word, but the applicants intend to use the strings in connection with two different meanings, the WG recommends that the applicants should be permitted to move forward if they commit to the use stated in the application via a mandatory PIC (rec 24.5). ● *Existing practices confirmed as policy for the future, that is current mandatory PICs in RA Specification 11 3(a)-(d) to be maintained in future agreements (Rec. 9.1)* ● **Exempting single-registrant TLDs** from compliance with in RA Spec. 11 3(a) and (b) (Rec. 9.2) **On Voluntary PICs**, now Registry Voluntary Commitments (RVCs), the WG recommends: ● Allowing their use by applicants **in response to public comments, GAC Early Warnings, and/or GAC Consensus Advice**, **specifying whether such commitment is limited in time, duration and/or scope** to facilitate review by ICANN org, a possible objector and the GAC (rec. 9.9) ● **RVCs must continue to be Included in the applicant's Registry Agreement (rec. 9.10)** ● Transparency: RVCs must be readily accessible and presented in a manner that is usable, [in line with GAC positions] (rec. 9.13). ● The WG notes that commitments made within PICs/RVCs must be enforceable through contracts entered between registry operators and ICANN and urges the Implementation Review Team to work with ICANN org to implement the recommendations and implementation guidance set in final report consistently with ICANN's current Bylaws. **Consideration of relevant CCT Review recommendations** by the Working Group: ● ICANN org should evaluate, in the implementation phase, **CCT-RT recommendation 25** to develop an "organized, searchable online database" for Registry Voluntary Commitments (rec 9.13 and Implementation Guidance 9.14)) [in line with GAC positions].

- GAC members mostly converged on noting that DNS abuse mitigation should be included in the SubPro PDP WG recommendations,
- Several GAC members questioned whether ccTLDs should fall within the remit of the Subpro PDP WG (rationale 8).
- A few GAC members mentioned the approach/effort to address DNS abuse should be holistic.
- Some GAC members mentioned the importance of enforceability and enhancing dispute resolution mechanisms.

GAC Comment on Subpro PDP WG Draft Final Report (29 Sep 2020):
- The GAC continues to harbour serious concerns regarding the absence of policy recommendations on DNS Abuse Mitigation in the Subpro PDP WG Final Report, and notes that the WG deems that such future effort should be holistic and must apply to both existing and new gTLDs. GAC expects swift action from the GNSO Council in triggering such holistic effort, in order for the conditionality expressed in the GAC ICANN66 Communique to be met.
- The GAC strongly supports the need for safeguards to address concerns around public interest and expects public interest safeguards for any future rounds. Additional mandatory PICs should remain possible in case where unanticipated risks emerge.
- GAC believes that voluntary and mandatory PICs must be effectively enforceable with clearly expressed contractual obligations and consequences for failure to meet these obligations.
- The GAC recalls persistent GAC concerns regarding both the weak implementation of PICs applicable to gTLDs in highly-regulated sectors and the lack of clarity and effectiveness of the mechanism to enforce disputes (the Public Interest Commitments Dispute Resolution Process - PICDRP).
- The GAC recommends the incorporation of the GAC advised safeguards regarding highly-regulated gTLDs into the PICs so that applicants for new gTLDs are aware of these requirements in advance.

- **No policy recommendations proposed with respect to mitigating DNS Abuse:** As reported to the GNSO Council (21 May 2020) the WG deems that such future effort should be holistic and must apply to both existing and new gTLDs (and potentially ccTLDs)(rec 9.15)

Possible Next Steps for the GAC to Consider

- For context, GAC concerns about enforceability of any and all parts of the contracts are shared by different parts of the community represented in the Sub Pro WG, and the existence of such concerns have been reflected in the Final Report. However, enforceability mechanisms for PICS/RVCs remains an open question since the Final Report does not address them.

- As a matter of high priority, the GAC may wish to consider the absence of policy recommendations on DNS Abuse. (Refer to Safeguards section due to overlap in content). The GAC may wish to follow-up with GNSO Council on a "framework of possible community work and policy development", as previously discussed between GNSO Council and GAC Leadership prior to ICANN68, and as referred to in the ICANN Board decision to extend the CEO's contract (ICANN69 Commmuniqué, and potentially issuing GAC Advice to the GNSO to this effect).

- The GAC may also wish to consider potential GAC Advice to the ICANN Board and/or discussion with the ICANN Board relative to PDP WG recommendation that no additional mandatory PICs are needed (rec. 9.1) - other than the mandatory PICs currently captured in Spec. 11 3(a)-(d) of the Registry Agreement - , as this may impact the flexibility and ability of the GAC to advise on public policy concerns that may emerge in the future
- The GAC may wish to align with At-Large positions (as noted in the ALAC Minority Statement to the SubPro PDP WG) as follows: GAC might want to reaffirm that any and all Registry Commitments incorporated in the Registry Agreement must be clear and enforceable, whether such commitments are:
  - PICs (mandatory)
  - RVCs [voluntary commitments] that are negotiated due to GAC Advice or Early Warnings, or Application Comment/Objection
  - RVCs that are voluntarily proffered by the applicant

The GAC may wish to support ALAC views from the ALAC Minority Report to SubPro PDP WG, noting that:

- Where an RVC is determined or ruled to be unenforceable, "*the ICANN Board must take action to remedy such unenforceability in 2 ways: (1) where feasible, to preserve the original intention of a PIC or RVC which led to that provision in the first place, and (2) if that provision that has been rendered unenforceable matches or is similar to provisions in other contracts, to enter into negotiations with relevant contracted parties to preserve that the original intention of such a provision in an agreeable manner.*"

- "*The significance of PICs and RVCs, in particular, is that they are often added to the contract to address public interest concerns [...] such commitments should be expressed as explicitly and clearly as possible with ICANN Contract Compliance and ICANN Legal reviewing each of these provisions for enforceability, prior to any contract finalization for approval by the ICANN Board. If ICANN Contract Compliance or ICANN Legal finds any provision of a contract to be unenforceable, that provision needs to be rewritten for greater clarity and specificity to facilitate its enforceability.*"

Applicant Support and Participation of Underserved Regions

Summary of Previous GAC Input	Final PDP WG Deliberations and Recommendations
Comment on CCT Review Team Draft Report (19 May 2017): - Establish **clear measurable goals and indicators** for applications from the Global South, linked to ICANN strategic objectives. Increase in number of delegated strings from underserved regions should be critical (Draft Rec. 43, Final Rec. 29) **Expand and update work on outreach** to Global South, starting with response to challenges identified to date (Draft Rec. 44, Final Rec. 30) - ICANN to **coordinate pro bono assistance** (Draft R,. 45, Final Rec. 30) **Revisit Application Support Program**: reduction of fees, additional support, access to simple information in relevant language (Draft Rec. 46, Final Rec. 32) - Not only should the **application fee be reduced for all applicants** but members from **underserved regions should be offered additional support** due to external issues [...] which should not prevent entities in those regions from applying Comment on Sub Pro PDP Initial Report (8 October 2018) - PDP Should consider the CCT Review recommendations in this area Comment on CCT Review Team Final Report (11 Dec. 2018) - Reiterated comments on Draft Report - Establishment of "clear, measurable goals for the Global South, including whether or when applications and even number of delegated strings should be objectives" of any New gTLD Application Round (Final Rec. 29) GAC Response (20 Jan. 2020) to ICANN Board Clarification Questions on the GAC Montreal Communique: GAC agree[s] that expanding and improving outreach should be an ongoing effort, and expects the Board to make a judgment, in good faith, as to whether it considers outreach has been expanded and improved enough to justify proceeding with the new round of gTLDs GAC Compilation of Individual Input (9 May 2020): The individual input by GAC members mostly supported draft final recommendations aligned with previous GAC advice. Some added need for evaluation to assess success. GAC Comment on Subpro PDP WG Draft Final Report (29 Sep 2020): - GAC support recs expanding scope of financial support of ASP beyond only economies classified by the UN as least developed, but to consider and define"middle applicant". - The GAC urges consideration on how ASP can include reduction/elimination of ongoing ICANN	Final Recommendation - Topic 17| Working Group Recommendations: **Extend scope of the program** beyond only economies classified by the UN as least developed (revision of implementation guidelines) and also consider "*struggling regions that are further along in their development compared to underserved or underdeveloped regions*" (Rec. 17.1). **Expand the scope of financial support** to also cover costs such as application writing fees, attorney fees related to the application process (Rec. 17.2). **ICANN org to continue facilitating non-financial assistance** including the provision of pro-bono assistance where applicable(Rec. 17.1) **Outreach and awareness-raising activities** should be delivered well in advance of the application window opening, to help to promote more widespread knowledge about the program (Rationale Rec.16.1). **Applicants who are not awarded Applicant Support**, must have the option to transfer to the standard application process (Rec. 17.18). - The Final Report does **not** include a recommendation for the Applicant Support Program to support the **reduction or elimination of ongoing registry fees -** contrary to GAC positions - for eligible candidates.The Working Group's Initial Report included a preliminary recommendation that the Applicant Support Program should include coverage of such fees. The Working Group has removed this element in the final recommendations, noting that different perspectives were expressed on the topic in public comment on the Initial Report and in Working Group discussions. As a compromise, a proposal was put forward in the WG that ICANN should cover registry fees for a limited period of time. The Working Group did not come to any agreement on this proposal. Issues to to be addressed during Implementation (Implementation Review Team): **Draw on expertise including from the targeted regions**, **to develop** appropriate program **outreach, education, and application evaluation.**

registry fees, at least in part, to expand financial support available to eligible applicants (as was present in initial report then removed in final report).

- The GAC supports the intention of the recommendations to continue and to expand the applicant support program, and supports a meaningful evaluation of the program to assess its success.

Possible Next Steps for the GAC to Consider

- For context, in general terms the Sub Pro WG membership is supportive of efforts to improve the level of participation of underserved regions in subsequent TLD application rounds, albeit some parts of the community (e.g. ALAC) consider that further steps could be taken (see below).

- The GAC (and Underserved Regions Working Group in particular) may wish to review final recommendations to assess whether they meet GAC expectations and actual needs of prospective applicants in these regions. The GAC may wish to consider recommending/advising GNSO Council and/or ICANN Board to consider including the reduction or elimination of the ongoing registry fees, at least in part, to expand financial support available to eligible applicants (as this is not included in the final report, while it was present in the initial report).

- In this context, the GAC may wish to recommend/advise GNSO Council and/or ICANN Board to consider, the compromise proposal brought forward within the PDP WG (but not endorsed) that ICANN should cover registry fees for a limited period of time, perhaps suggesting a specific time frame for this purpose. Keeping in mind that ICANN Org has previously expressed that it is still exploring all possible funding opportunities within ICANN's current remit and bylaws.

Summary of Previous GAC Input	Final PDP WG Deliberations and Recommendations

[Response](#) to [Sub Pro PDP CC2](#) (22 May 2017)
○ Based on principles of promoting competition and consumer protection, **exclusive registry access should serve the public interest goal** (per Beijing GAC Communiqué Cat. 2 Safeguards Advice)
 	
[Comment](#) on [Sub Pro PDP Initial Report](#) (8 October 2018)
○ Re-affirms previous advice (Beijing Communiqué, Cat. 2 Safeguards): for strings representing generic terms, exclusive registry access should serve a public interest goal
 	
[ICANN67 Communique](#) (16 March 2020)
○ The GAC should conduct further work to identify criteria, examples and use-cases that may serve for assessing the public interest in the context of closed generics.
 	
[GAC Compilation of Individual Input](#) (9 May 2020):
○ Majority of GAC members contributing support previously articulated GAC Advice (GAC Beijing Advice): "*exclusive registry access should serve a public interest goal*".
○ Individual members noted that public interest should be defined.
 	
[ICANN68 GAC Communique](#) (27 June 2020):
○ Some GAC members expressed the view that the lack of a formal PDP WG recommendation on the delegation of closed generics would imply that the relevant Board Resolution from the 2012 round would still apply.
 	
[GAC Comment on Subpro PDP WG Draft Final Report](#) (29 Sep 2020):
○ the GAC continues to support the advice contained in the GAC Beijing Communique whereby "*exclusive registry access should serve the public interest goal*" and that adequate means and processes are defined to ensure that public interest goals are met.
○ GAC encourages further discussions to identify criteria as to how to assess "public interest" within closed generic TLDs.
○ The GAC reviewed three proposals submitted by individual/small groups of PDP WG members: Regarding these proposals, the GAC does not support "The Case for Delegating Closed Generics", allowing all closed generics being delegated. The GAC notes that the "Proposal for Public Interest Closed Generic gTLDs", which includes a new category of new gTLDs - Public Interest Closed
	No Agreement | Final Recommendations - Topic 23
	
	● **The WG has not been able to agree on how to treat closed generic TLD applications in future rounds**. The Final Report reflects this status (No Agreement 23.1).
	● In the 2012 round of the New gTLD Program, a [decision](#) was made by the ICANN Board to to either (a) "submit a change request to no longer be an exclusive generic TLD", (b) "withdraw their application" or (c) "maintain their plan to operate an exclusive generic TLD," which would operate to defer their application to the next round of the New gTLD Program, subject to rules developed for the next round, to allow time for the GNSO to develop policy advice concerning exclusive generic TLDs."(No Agreement 23.1)
	● The PDP WG has had numerous discussions and received extensive comments from the community, **but was not able to agree.**
	● **Key challenges in this discussion have included:**
	  ○ defining closed generics
	  ○ defining the public interest or public interest goals, and
	  ○ evaluating whether the public interest may be served or harmed by an application.
	  ○ diverging opinions on perceived benefits and harms of closed generics
	● PDP WG members recognize [ICANN Board's resolution](#) after the 2012 round noting that the PDP WG attempted to draft recommendations but no agreement was reached (Rationale for No Agreement 23.1).
	● **Individual PDP WG Member Proposals on Closed Generics** (Topic 23, section C. New issues raised in deliberations since publication of the Initial Report)**:**
	Three proposals were submitted by individual PDP WG members on potential paths forward on closed generics. All proposals are included in the public comment but are NOT part of the final recommendations (since PDP WG could not reach an agreement).
	Proposal 1 (A Proposal for Public Interest Closed Generic gTLDs):
	■ Includes creation of a new category of gTLDs: **Public Interest Closed Generic Strings (PICGS)** similar to the "community status" of applications in the first round.
	■ Purpose for these TLDs **to operate within a public interest framework** - i.e. not just the interests of an individual organization.
	■ A **Public Interest Closed Generic Review Panel** - a group or committee will be established **to evaluate whether each application meets the unique aspects and requirements of a PICG TLD**.
	Proposal 2 (The Case for Delegating Closed Generics):
	■ Focuses on why **closed generics should be allowed**, recommending **to "permit the delegation of single registrant TLDs for any string** (including closed generics TLDs) so long as the application meets all other AGB criteria"

Generic Strings (PICGS) - is aimed to operate within a public interest framework directly in response to the GAC Beijing Advice, and notes that the suggestion of a public interest closed generic review panel and creation of public interest closed generic would require further community work, in order to minimize added complexity and avoid undue overlap with community status applications. The GAC encourages the continued consideration of this proposal together with the "Closed Generics Proposal", both proposals having found explicit support in the GAC.

○ Regarding the "Closed Generics Proposal" the GAC finds value in the notion of creating a Framework for Evaluating Closed Generic applications to determine whether those applications serve a legitimate public interest goal.

Proposal 3 (Closed Generics Proposal):

■ The Implementation Review Team must **create a Framework for Evaluating Closed Generic applications to determine whether those applications "serve a legitimate public interest goal**."

■ To serve the public interest:

● A Public Interest Panel shall be **appointed by the ICANN Board** to evaluate whether the application and the proposed use of the Closed Generic TLD serves a legitimate public interest goal.

● The **TLD must serve a broad base of end users** above and beyond the interests of the individual registry operator.

● The **TLD must serve a demonstrated and legitimate need** of that broad base of end users.

Final recommendations note this disagreement and lack of policy recommendations on the delegation or non delegation of closed generics.

Possible Next Steps for the GAC to Consider

- For context, GAC advice that any closed-generic domain should serve the global public interest is supported by different members of the Sub Pro WG as the 'starting point' for this issue, while other members of the WG question such assumptions.

- GAC may wish to consider submitting advice to the ICANN Board recalling/reiterating GAC advice that closed generics should serve a public interest goal, and noting areas of agreement within the three proposals submitted by individual PDP WG members to seek potential alignment with previous GAC advice, notably in proposals 1 and 3.

- GAC may consider that due to No Agreement in rec 23.1 in absence of a SubPro PDP WG recommendation, as per At-Large statement:

  ○ advocate that in the present absence of consensus policy recommendations on how to address Closed Generics, there be a suspension of any processing or acceptance of any applications for Closed Generics until such a time recommendations on how to address applications for Closed Generics which serve a global public interest are developed by the GNSO/ICANN Board, in keeping with the GAC Advice in the ICANN46 Communique, and GAC consensus input provided to the PDP WG during the public comment process.

- The GAC may advise the GNSO/ICANN Board to provide continued consideration of "A Proposal for Public Interest Closed Generic gTLDs" together with the "Closed Generics Proposal", both proposals having found explicit support in the GAC.

GAC Early Warnings and GAC Advice	

Summary of Previous GAC Input	Final PDP WG Deliberations and Recommendations
Response to Sub Pro PDP CC2 (22 May 2017) ○ GAC Early Warning provided **earliest possible notice of potential public policy concern** and served the interests of both applicants and the GAC ○ GAC Advised for **commitments** in response to Early Warning to be made **contractually binding** (Toronto) ○ The GAC is interested in participating in any **discussions to improve** the Early Warning arrangements so that the legitimate concerns of governments, applicants and the wider community are met. Comment on Sub Pro PDP Initial Report (8 October 2018) ○ GAC Early Warning and GAC Advice were **useful instruments** to identify applications that raise public policy concerns and should be an integral part of any future rounds. ○ GAC is Open to **increasing transparency and fairness** of these, including giving applicants an opportunity for direct dialogue with the GAC. ○ However, the **GAC does not consider that the PDP should make recommendations on GAC activities** which are carried out in accordance with the ICANN Bylaws and the GAC's internal procedures ICANN67 Communique (16 March 2020) ○ Further GAC discussion needed on draft recommendations regarding the **scope of the rationale of GAC Advice**; and the **limitation of GAC Advice issued after the application period to individual strings only** "based on the merits and details of the applications for that string, not on groups or classes of applications." GAC Compilation of Individual Input on Subpro PDP WG recommendations (May 2020): ○ Most supported previous GAC positions supporting retention of the "will create a strong presumption for the ICANN Board that the application should not be approved". ○ Converged on not limiting scope of GAC advice. ○ A few agreed on the need for alignment with ICANN Bylaws. ○ **GAC Consultation took place prior to updated PDP WG recommendation language**, so may be to some extent outdated since substantive changes were made to the draft recommendations (see Status of PDP WG deliberations column). GAC Comment on Subpro PDP WG Draft Final Report (29 Sep 2020): ○ GAC Early Warnings and GAC Advice are useful instruments to identify applications that raise public policy concerns and should be an integral part of any future rounds. GAC remains open to increasing transparency and fairness of these, including giving	Final Recommendations - Topic 30 | ● WG Recommendations and Implementation Guidance on issuance of **GAC Advice** in future rounds notes GAC Advice is recommended to **be limited to the scope set out in the applicable Bylaws provisions** (see Section 12.2.a.i) and elaborate on **any interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues (Rec.30.3)**. **Following public comment and GAC consensus input:** ● **Rec 30.3:** WG recommendation language noting that well-founded merits-based public policy reasons must be articulated was **removed by PDP WG** aligned with GAC consensus input. ● Rec 30.2: PDP diverges from GAC consensus input and notes that **GAC Advice on categories of TLDs, groups or classes of applications, or string types, or to a particular string,** should be issued by the GAC **before the Applicant Guidebook is published,** If GAC Advice on categories is issued **after** the finalization and publication of the AGB, and whether the GAC Advice applies to **categories, groups or classes of applications or string types**, or to a particular string, **the ICANN Board should take into account the circumstances resulting in such timing and the possible detrimental effect** in determining whether to accept or override such GAC Consensus Advice as provided in the Bylaws. ● Rec 30.6: PDP WG notes that **GAC members issuing Early Warnings must include a written explanation describing why the Early Warning** was submitted and how the applicant may address the concern, against GAC positions. ● Regarding 30.6, GAC consensus comment included proposed compromise language to note that applications may not always be able to be remedied in the opinion of the Government(s) issuing a GAC Early Warning. Therefore, the GAC proposed updated language to Recommendation 30.6 as follows: "[...] how the applicant may potentially address the GAC member's concerns to the extent feasible". The recommendation language remains however unchanged, and no explanation was presented for not taking into account GAC suggested edits. ● Rec. 30.4: WG recommendations diverge with the opinion of a number of GAC members since PDP WG rec 30.4 notes that future versions of the AGB should omit this language: GAC Advice "*will create a strong presumption for the ICANN Board that the*

applicants an opportunity for direct dialogue with the GAC.

- ○ GAC does not consider that the PDP should make recommendations on GAC activities which are carried out in accordance with the ICANN Bylaws and the GAC's internal procedures.

GAC does not support:
- ○ PDP WG recommendations limiting the scope of GAC advice (30.3).
- ○ Implementation Guidance 30.2) regarding the timing of GAC Consensus Advice on future categories of TLDs and particular applications, oriented to discentivizing any such Advice being submitted after the finalization and publication of the next Applicant Guidebook.

The GAC agrees with the PDP WG notion that a GAC Early Warning should be explained; However, the GAC proposes updated language to Recommendation 30.6 as follows: "[...] how the applicant may potentially address the GAC member's concerns to the extent feasible".

- ○ Recommendation 30.4, some GAC Members continue to consider that the Bylaws changes from 2016 did not introduce any modification to the section on GAC Advice which would require a change of the language included in Section 3.1 of the 2012 Applicant Guidebook which states that GAC Consensus Advice *"will create a strong presumption for the ICANN Board that the application should not be approved"*.

application should not be approved". **The SubPro WG** motivates this deletion with the objective of increasing the Board's flexibility to facilitate a solution that both accepts GAC Advice and allows for delegation of a string if GAC concerns are addressed. This remains a sensitive issue for many GAC members.

Possible Next Steps for the GAC to Consider

- For context, different members of the Sub Pro WG (which might be prospective applicants) have expressed their views that the Applicant Guidebook needs to provide a clear and predictable framework regarding the role and use of GAC early warnings and GAC advice.

- The GAC may wish to provide GAC Advice to the GNSO and/or ICANN Board as the updated final recommendations - albeit taking into account some GAC positions - would still establish new requirements on GAC Early Warnings and GAC Consensus Advice in future rounds which diverge from GAC positions.

In particular the GAC may wish to consider to:

- Re-affirm that some GAC members strongly support the retention of the "Strong presumption" language which is recommended for removal by the PDP WG in the future AGB (Rec. 30.4)
- Re-affirm GAC opposition to Rec. 30.2 which notes the limited timing of GAC Consensus Advice on future categories of TLDs and particular applications, oriented to discentivizing any such Advice being submitted after the finalization and publication of the next Applicant Guidebook. PDP WG rationale noted that this is in keeping with issues of predictability for applicants
- Re-affirm GAC proposed compromise language relative to Rec. 30.6 where GAC consensus comment included proposed compromise language to note that applications may not always be able to be remedied in the opinion of the Government(s) issuing a GAC Early Warning. Therefore, the GAC proposed updated language to Recommendation 30.6 as follows: "[...] how the applicant may potentially address the GAC member's concerns to the extent feasible". The recommendation language remains unchanged, and no explanation was presented for not taking into account GAC suggested edits.
- The GAC can also consider working with the GAC Board Interaction Group (BGIG) for on-going exchanges on the implications of the Sub Pro Final recommendations, and how the Board-GAC relationship can be best understood and communicated in Applicant Guidebooks.

Community Based Applications	

Summary of Previous GAC Input	**Final PDP WG Deliberations and Recommendations**
Comment on CCT Review Team Draft Report (19 May 2017): ○ Conduct a **thorough review of procedures and objectives** for Community-based applications (Draft Rec. 48, Final Rec. 34) Response to Sub Pro PDP CC2 (22 May 2017) ○ Where a **community which is impacted** by a new gTLD application has expressed a collective and clear opinion, that **opinion should be duly taken into account** as part of the application. (Beijing Communiqué) ○ **Take better account of community views,** regardless of whether those communities have utilised the ICANN formal community process or not (Durban Communique 2013) ○ The GAC proposes the establishment of an **appeal mechanism for community applications** ○ The GAC has recently referred to the PDP Working Group for consideration the recommendations of a report on community applications commissioned by the Council of Europe. Comment on Sub Pro PDP Initial Report (8 October 2018) ○ Supports proposal in the Initial Report ○ The study by the Council of Europe should be considered Comment on CCT Review Team Final Report (11 Dec. 2018) ○ a **thorough review** of procedures and objectives related Community-Based Applications **be conducted prior to the launch of any future round of New gTLD Application** (Final Rec. 34) ICANN67 Communique (16 March 2020) ○ **evaluators** should have necessary **expertise and additional resources** at their disposal to gather information about a CPE application and any opposition to it ○ improved **transparency and predictability,** for greater **consistency** in the CPE process, ○ establishment of an **appeals mechanism** ○ consideration to be given to providing **support for non-profit** community-based applications. GAC Consultation on Subpro PDP WG recommendations (May 2020): ○ Some GAC members agreed in principle with the draft recommendations, while expressing concerns about the Community Priority Evaluation Process (CPE) specifically due to lack of clear definition of "community". ○ GAC members converged on the need for further clarification of the CPE Process per ICANN67 Communique and recalled the GAC consensus positions from the ICANN67 Communique on CPEs. GAC Comment on Subpro PDP WG Draft Final Report (29 Sep 2020): ○ PDP WG final recommendations include measures for improved transparency and predictability, aligned with concerns expressed by the GAC regarding the need for greater consistency in the CPE process, and the	Final Recommendations - Topic 34 | ● The PDP WG supports the overall approach used in the 2012 round for community-based applications, including the **continued prioritization of applications in contention sets that have passed Community Priority Evaluation (Affirmation 34.1)**. ● The WG believes its work is in line with the CCT-RT recommendation 34. ● With a view to making the Community Priority Evaluation (CPE) processes efficient, transparent and predictable as possible, the WG recommends (Rec. 34.13-31.15): ○ **Amended CPE Guidelines should be considered a part of the policy adopted by the PDP WG.** ○ **ICANN org to consider efficiency improvements, costs and timing.** ○ **All CPE procedures and dispute provider rules must be published before the application submission** ● Regarding the improvement of information gathering by CPE evaluators: ○ in addition to clarifying questions to CPE applicants, written dialogue should be enabled (Rec. 34.17) ○ clarifying questions or similar methods should also be available to engage those who submit letters of opposition to community-based applications (Rec. 34.18) ● **Regarding the definition of "Community", the WG does not appear to be seeking to establish a broader definition instead relying on the existing criteria for the CPE review.** ● Implementation Guidelines 34.2 - 34.9 added which address various GAC comments regarding recognition of communities beyond economic communities with a formal membership structure, such as marginalized groups, such as linguistic, cultural, ethnic minority groupings, "traditional knowledge" and "Indigenous Communities", and to civil-society advocacy groups, defined as CHR (Community Human Rights based). ● Further delineations included in such implementation guidelines for the AGB, namely for "Organized", "community" - i.e. there should be some understanding of the community's existence prior to the beginning of the current application submission period

establishment of an appeals mechanism for the New gTLD Program. ○ The GAC supports the recommendations to improve the community priority evaluation process, particularly with regard to predictability and transparency. ○ As CPE Guidelines are still being considered by the PDP WG, the GAC encourages the GNSO to improve the CPE process in order to address important shortcoming/uncertainties such as effectiveness, predictability, transparency and independent appeal mechanism. ○ The definition of "community" would deserve clarification as well as the criteria to be qualified as such. The GAC encourages the consideration of measures to ensure more grassroot participation and expertise, in evaluation panels, in order to improve their understanding about how different "communities" are recognized, organized, administered or developed.	(Rec. 34.5).

Possible Next Steps for the GAC to Consider

The GAC may wish to assess whether its expectations are met by the final recommendations regarding community based applications. It may also consider supporting ALAC minority statement to SubPro PDP WG noting dissent on omissions from the PDP WG Final Report:

- *"Implementation Guidance 34.4 – to address impediment to proving both 'awareness and recognition of the community members' for CPE Criterion 1-A; while allowance has been made in respect of 'recognition' to compel consideration the views of the relevant community-related experts, especially in cases where recognition of the community is not measurable, no similar allowance has been made in respect of measuring 'awareness' where such measurement could also be prevented or impaired."*

- Recommendation 34.12: *"falls short by not also stipulating that the shortlisting and selection of CPE provider(s) by ICANN Org be subject to community input as a proactive measure for the community to help ICANN Org select the most suitable CPE Provider for subsequent procedures."*

Summary of Previous GAC Input	Final PDP WG Deliberations and Recommendations
[Comment](#) on [Sub Pro PDP Initial Report](#) (8 October 2018) ○ **Auctions of last resort** should not be used in contentions between commercial and non-commercial applications ○ **Private auctions** should be strongly disincentivised [Comment](#) on [Sub Pro PDP Supplemental Initial Report](#) (19 Dec. 2018) ○ Reiterates comments made on the Initial Report [ICANN68 GAC Communique](#) (27 June 2020) ● GAC Members expressed concerns on why other options are not being further considered by the WG. [GAC Comment on Subpro PDP WG Draft Final Report](#) (29 Sep 2020): GAC acknowledges that in an attempt to reduce potential gaming, rec. 35.3 includes the need for applications to be submitted with a "bona fide" intention to operate a TLD. GAC recommends further discussion on how this intention will be ensured and implemented, noting that punitive measures for non compliance or non submission of a "bona fide" intention are not sufficiently defined. Regarding Auctions of Last resort, the GAC reaffirms its view that they should not be used in contentions between commercial and non-commercial applications, and reiterates that private auctions should be strongly disincentivized.	**Final Recommendations** Topic 35 | ● **Affirmation 35.1: PDP WG recommends that if there is contention for strings, applicants may**: ○ resolve contention between them within a **pre-established timeframe *in accordance with the AGB and supporting documents (rec…)*** ○ If there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. ○ If there is no such claim, and no mutual agreement, *contention will be resolved through an ICANN Auction of Last Resort* and; ○ the ICANN Board *may use expert panels to make Community Priority Evaluation determinations* ● Rec. 35.2: ○ The AGB must reflect that applicants will be permitted to creatively resolve contention sets in a multitude of manners, including but not limited to business combinations or other forms of joint ventures and private resolutions (including private auctions) - see topic 20 Application Change Requests. ○ All contention sets resolved through private resolution shall adhere to the **transparency requirements set forth in the Contention Resolution Transparency Requirements** in the relevant recommendation. ● **Rec. 35.3:** ○ **Applications must be submitted with a bona fide (good faith) intention to operate the gTLD**, i.e. applicants shall <u>not</u> submit applications for the purpose of financially benefiting from the resolution of contention sets ○ The WG has included a non-exhaustive list of potential "Factors" intended to help identify when an application may have been submitted without a bona fide intent to operate the gTLD. Those potential "Factors" are assumed to serve as the basis for enforcement of the bona fide use clause. ○ Consideration of whether an application was submitted with a bona fide intention to operate the gTLD must be determined by considering all of the facts and circumstances surrounding the impacted Applicants and Applications. ● **Rec. 35.4:** ○ **The PDP WG recommends that auctions of last resort must take place using the second-price auction method**, in which bidders submit a sealed-bid auction rather than the ascending clock auction used in 2012. ○ **ICANN Auctions of Last Resort shall only take place after all other evaluation procedures, objections**, etc., similar to the 2012 round. ○ ICANN Auctions of Last Resort cannot occur if one or more of the applications in the contention set is involved in an active appeal or ICANN Accountability mechanism

	or is in a new public comment period or reevaluation due to private resolution. ○ Once application submission period closes, applicants in contention sets will be informed of # of other applications in contentions set but no other information will be revealed. ○ Any applicants who wish to compete for their applied for string must submit a sealed bid for each relevant application. ○ **All applications are evaluated and subject to other application procedures, including Initial/Extended evaluation, Objections, GAC Early Warnings/Advice, CPE)**

Possible Next Steps for the GAC to Consider

- For context, auction and private resolutions procedures are both technically complex and have opposing/different viewpoints across members of the Sub Pro WG. The GAC and some members of the Sub Pro WG share the ICANN Board's high level concerns with gaming and abuse of auctions in future rounds. However, to date there is no consensus in the WG on the proportionate safeguards to address government, civil society, and private sector interests on this complex issue.

- GAC may consider refining expectations and making proposals in terms of incentives for the avoidance of private auctions and submit this as GAC Advice to the GNSO Council and or ICANN Board, inter alia, reiterating the importance of punitive measures for bona fide intention clauses, and seek further language disincentivizing auctions of last resort, and supporting the ALAC Minority Statement language on this item:
    - *"Recommendation 35.3 implies that use of a bona fide intent affirmation is limited to applicants who participate in auctions or private resolution mechanisms. If at all, this affirmation should apply to all applications, not just those that fall into contention sets. In any case, the factors for establishing a lack of bona fide intent are too subjective, and without deterrence through penalty, are ultimately just a mere attempt at 'window dressing' "*

2. Subsequent Rounds of New gTLDs: Reviews, Policy Development and Prerequisites

Policy Development Process

Summary of Previous GAC Input	Final PDP WG Deliberations and Recommendations
Response to Sub Pro PDP CC1 (29 July 2016) ○ GAC Notes range of **ongoing interconnected reviews and policy development processes** relevant to new gTLDs ○ Take a **comprehensive and measured approach** to new gTLD policy in a **sequential and coordinated** way rather than through too many parallel and overlapping efforts ○ **Cross-community working environment essential** to the development of workable policies that maximise benefits to all relevant stakeholders ○ GNSO process to be complemented by the input from other SOs/ACs, and ICANN Board when not appropriately reflected in the outcome ○ Experience suggests conclusion of a **PDP on such a wide-ranging set of issues unlikely to be end-point** agreed by all stakeholders. GAC will make every effort to participate in agreed post-PDP policy processes. ○ Consider **metrics** to support both policy development and ongoing implementation as a specific stream of work Comment on CCT Review Team Final Report (11 December 2018) ○ **Increased data collection** on **consumer trust**, **DNS abuse**, domain **wholesale and retail pricing**, **reseller information**, **WHOIS accuracy** [...] will allow for more informed decision and policy [...] particularly with regard to future standard registry and registrar contract provisions and any subsequent rounds of gTLDs (Final Rec. 1, 8, 11, 13, 17, 18)	Final Recommendation Topic 1, 3 & 7 | ● According to the GNSO Review of the GAC Kobe Communiqué (18 April 2019), all CCT Review recommendations directed at the PDP either by the Review Team (in the course of its work) or by the ICANN Board resolution (1 March 2019) were considered in the course of the PDP WG's deliberations (Annex C) ● The PDP WG flagged a review of GAC Advice contained in the Montréal Communiqué and understands that **it is required to consider all CCT-RT recommendations directed to it** via the 01 March 2019 ICANN Board resolution at it, **but is not required to agree with all outcomes and suggested solutions**. ● Annex C: Specific CCT-RT recs were not addressed in this context, but as an overarching response to the Montreal Communique Advice, which is inconsistent with GAC expectations. **The WG describes its consideration of the CCT-RT recommendations in its Final Report in each relevant section** (a summary of where each CCT-RT rec is discussed is included in Annex C) ● PDP WG discussed whether the program should only utilize "rounds", and recommends a "**systematized manner of applying for gTLDs be developed in the long term**" (Affirmation 1.1) ● The PDP WG took note of GAC Advice contained in the Montréal Communiqué, **that future rounds should not begin until the prerequisite and high priority recommendations of the CCT-RT are implemented**. ● The PDP WG recommends meaningful metrics must be identified to understand the impact of the New gTLD Program. To review metrics, data must be collected at a logical time to create a basis against which future data can be compared. **Metrics collected to understand the impact of New gTLD Program should focus on areas of trust, competition and choice (Rec. 7.1).** ● ICANN org must establish metrics and service level requirements for each phase of the application process (review, evaluation, contracting and transition to delegation stages). ICANN must report on a monthly basis on its performance with respect to these key performance indicators (Rec. 7.3). ● Of the recommendations flagged by the GAC in the CCT-RT recommendations regarding increased data collection, **only Rec. 17 of the CCT-RT was directly assigned to the Subpro PDP WG by the ICANN Board and is not addressed in final report**, "ICANN should collect data about and publicize the chain of parties responsible for gTLD domain name registrations.'

Possible Next Steps for the GAC to Consider

● GAC may wish to provide input on the CCT-RT Recs not addressed, notably on DNS Abuse (CCT-RT 14, 15 and 16) since the WG believes that the scope of the PDP WG focuses solely on new TLDs introduced in subsequent rounds, it believes that the topic is more appropriately addressed by a group able to develop policy for existing TLDs as well as new gTLDs, and the subsequent GNSO Council Discussion noting a more holistic approach should be triggered on DNS Abuse Mitigation.

Future Releases of New gTLDs (Timing and Prerequisites)

Summary of Previous GAC Input	**Final PDP WG Deliberations and Recommendations**
Response to Sub Pro PDP CC1 (29 July 2016) ○ Reiterated GAC Helsinki Communiqué Advice on this matter ○ Lack of clarity on realization of the **expected benefits of new gTLDs** (per pre-2012 economic analysis) ○ **Development and collection of metrics** far from complete ○ ICANN, registries and registrars should commit to **gathering appropriate data on security and consumer safety** issues in a transparent manner ○ Preventing or restricting further release of new gTLDs could be seen as a windfall gain for existing gTLD owners. However, competition is only one factor in terms of **assessment of costs and benefits**. Comment on CCT Review Team Draft Report (19 May 2017) ○ CCT-RT's contribution is critical in **evaluating the overall impact of the new gTLD Program** and identifying corrective measures and enhancements Comment on Sub Pro PDP Initial Report (8 October 2018) ○ Reiterates GAC Helsinki & Hyderabad Communiqué and previous input that **costs and benefits of new gTLDs should be reviewed before any further rounds**, noting it does not seem addressed directly by PDP ○ Further expansion should take into account the **CCT Review recommendations identified as prerequisites** Comment on CCT Review Team Final Report (11 December 2018) ○ the GAC endorses recommendations in the final report that encourage the **collection of data** to better inform policy making **before increasing the number of new gTLDs** (Need for data) GAC Advice Montreal Communique (6 November 2019) ○ Advised not to proceed with a new round of gTLDs until after the complete implementation of the recommendations in the CCT Review that were identified as "prerequisites" or as "high priority". GAC Response (20 Jan. 2020) to ICANN Board Clarification Questions on GAC Montreal Communique which clarified its positions on "pre-requisites" and "high priority" CCT RT Recs, clarifying that the Board should remain respectful of the advice received from its advisory committees and on topics which encompass high priority/pre-requisite CCT RT recs which were not adopted by the Board the GAC asked	Final Recommendations - Topic 1, 3 & 7 | ● The PDP WG final recommendations note that an "**orderly, timely and predictable New gTLD Program is universally supported" (Affirmation 1,1).** ● The PDP WG recommends that prior to the commencement of the next Application Submission Period, **ICANN shall publish either (a) the date in which the next subsequent round of new gTLDs will take place or (b) the specific set of criteria and/or events that must occur prior to the opening** up of the next subsequent round (Rec. 3.2). ● The Sub Pro PDP WG has not conducted cost/benefit analysis of further releases of new gTLDs. This is based in part on the fact that "***It is the policy of ICANN that there be subsequent application rounds, and that a systemized manner of applying for gTLDs be developed in the long term***" (New gTLD Applicant Guidebook, section 1.1.6). ● The PDP WG recommends that a **"systematized manner of applying for gTLDs be developed in the long term"** be maintained as per the 2012 Applicant Guidebook (Affirmation 1.1). ● In terms of data collection, the Sub Pro PDP WG created a section on metrics (topic 7) referred to above in Policy Development section draft final recommendations note that "*metrics collected to understand the impact of New gTLD Program should [...] focus on the areas of trust, competition, and choice. Work related to the development of metrics should be in accordance with CCT-RT recommendations currently adopted by the Board, as well as those adopted in the future*"(Implementation Guidance 7.2) ● More specifically the PDP WG recommends that "*to review metrics, data must be collected at a logical time to create a basis against which future data can be compared.*"(Rec. 7.1) ● **No objections within PDP WG to the New gTLD Program continuing, nor to the collection of data and metrics for assessing the impact of the program**. ● The PDP sought to try and identify metrics for success but ultimately determined that this exercise is more appropriately completed during the implementation phase, in accordance with Board-approved recommendations of the CCT-RT. ● The Working Group believes that an Implementation Review Team should determine the appropriate metrics, and the data required, to measure such metrics on a regular basis to help evaluate the New gTLD Program (see Policy Development section above and topic 7 of the final report)

for clarification from the Board on how it intends to proceed and when it will make its decision.

ICANN68 GAC Communique (27 June 2020):

- ○ While supporting a new round of new gTLDs in principle, some GAC members recalled the importance of a cost/benefit analysis being conducted prior to the next round.

Possible Next Steps for the GAC to Consider

- Determine whether PDP WG final recommendations meet GAC's expectations, in particular in the GAC Montreal Communique, where GAC's advice was not to proceed with a new round of gTLDs until the complete implementation of recommendations in the CCT-RT that were identified as "prerequisites" or as "high priority" is achievable.

- The GAC may wish to address advice to the ICANN Board in keeping with the GAC Montreal Communique, reiterating the importance of completing implementation of recommendations in the CCT-RT identified as "prerequisites" or as "high priority".

3. New gTLD Applications Process

Application Procedures	

Summary of Previous GAC Input	Final PDP WG Deliberations and Recommendations
Response to Sub Pro PDP CC2 (22 May 2017) ○ **Critical assessment should be made** on whether **Applicant Guidebook** or single place on ICANN's website should be preferred in future ○ If Applicant Guidebook is retained, partitioning in different **audience-driven** sections **or by type of application** has merit Comment on Sub Pro PDP Supplemental Initial Report (19 Dec. 2018) ○ Concurs that better guidance provided by ICANN would be helpful regarding **possible changes in applications once submitted** and their consequences in terms of publication and evaluation. ○ Care is required so as not to allow changes that could undermine the role of Application comments ○ A change to the likely operator of the new gTLD would constitute a **material change** and require notification (AGB 1.2.7) and possibly re-evaluation as well as public comments for competition and other concerns.	Final Recommendations - Topic 1, 3, 12 | ● **The Applicant Guidebook is expected to be retained and made available in the 6 UN Languages (Affirmation 12.1).** ● The English version of the Applicant Guidebook must be issued at least four (4) months prior to the commencement of the applicant submission period (Rec. 12.8) ● All other translated versions of the Applicant Guidebook, including in the 6 UN languages, must be available no later than two (2) months prior to the commencement of the application submission period (Rec. 12.9) ● The PDP WG recommends that ICANN org provide better guidance to the Applicant (Rec. 12.4). ● The Working Group recommends focusing on the user when drafting future versions of the Applicant Guidebook and prioritizing **usability, clarity**, and **practicality** in developing the AGB for subsequent procedures. The AGB should effectively address the needs of new applicants as well as those already familiar with the application process. It should also effectively serve those who do not speak English as a first language in addition to native English speakers (Rec. 12.4). ● Application fees for each application must be published in that round's Applicant Guidebook (Rec. 12.11).
Possible Next Steps for the GAC (potential GAC inputs to GNSO Council and/or ICANN Board)	
GAC to consider whether 2 months is sufficient for the translated versions of the AGB to be received prior to the commencement of the applicant submission period.	

Freedom of Expression

Summary of Previous GAC Input	Final PDP WG Deliberations and Recommendations
[Comment](#) on [Sub Pro PDP Initial Report](#) (8 October 2018) ○ **No clear evidence of infringement** of an applicant's freedom of expression rights in the recent gTLD round ○ Freedom of expression, especially from commercial players, is **important but not absolute**. ○ As in any fundamental rights **analysis all affected rights have to be considered**, including, inter alia, intellectual property rights, applicable national laws on protection of certain terms etc. ○ Procedures have to be inclusive of all parties whose interests and rights are affected by a specific string application, and all need to be given a fair say in the process	**Final Recommendation** - Topic 10 | ● **The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law (Affirmation 10.1)** ● WG notes that as ICANN incorporates **human rights** into ICANN's processes in line with the recommendations of Work Stream 2, it may want to consider elements of the New gTLD Program as they relate to applicant freedom of expression (Implementation Guidance 10.2). ● The Working Group understands the challenges of ensuring that freedom of expression is incorporated into the implementation and operation of the new gTLD program, and recommends a proactive approach to ensuring that these rights are taken into account in the development of program rules, processes, and materials (Rationale Rec. 10.1 and Implementation Guidance 10.2). ● While the Working Group did not agree to specific recommendations in this regard, **it encourages ICANN org to give additional consideration to this issue in the implementation phase** (Rationale Rec. 10.1 and Implementation Guidance 10.2). PDP WG updated language to cross reference the [Framework of Interpretation (FOI)](#) for the human rights core value as part of the CCWG Accountability [WS2 recommendations adopted by the ICANN Board in Nov. 2019](#)
Possible Next Steps for the GAC to Consider	
● The GAC HRIL WG may wish to review final recommendations (10.2) to ensure alignment with GAC HRIL WG positions, due to mention of human rights and WS2 implementation.	

TLD Categories (or Types)

Summary of Previous GAC Input	Final PDP WG Deliberations and Recommendations

Response to Sub Pro PDP CC1 (29 July 2016)
○ Reiterates GAC Nairobi Communiqué Advice calling for **further exploration of categories**
○ **Limited geographic and category diversity** of 2012 application should inform discussions
○ GAC 2007 Principles and Durban Communiqué suggest **certain types of TLDs which may deserve a differential treatment**, including sensitive strings and highly regulated sectors
○ Differential treatment may require **different tracks for application** and **different procedures, rules and criteria**. To be confirmed with data gathering.
 	
Response to Sub Pro PDP CC2 (22 May 2017)
○ Reiterates GAC Nairobi Communiqué Advice in relation to possible **variable fee structure per type of application**
 	
Comment on the Statistical Analysis of DNS Abuse in New gTLDs
(19 September 2017)
○ There is still significant scope for the **development and enhancement of current mitigation measures and safeguards**, taking into account the specific risk levels associated with different categories of New gTLD (Standard or generic gTLD,Community gTLD, Geographic gTLD and Brand gTLD)
○ Fisk levels also varies **depending on the strictness of the registration policy** (bad actors prefer to register domains in standard new gTLDs, which are generally open for public registration, rather than in community new gTLDs, where registries may impose restrictions on who can register domain names)
 	
Comment on Sub Pro PDP Initial Report (8 October 2018)
○ Reiterates GAC Nairobi Communiqué Advice calling for further exploration of categories and addressing fees
	Final Recommendation, Topic 4
	
	● WG recommends differential treatment for certain applications based on either the application type, the string type, or the applicant type (Rec.4.1).
	● Such differential treatment may apply in one or more of the following elements of the new gTLD Program: Applicant eligibility; Application evaluation process/requirements; Order of processing; String contention; Objections; Contractual provisions (Rec. 4.1).
	● PDP WG considered GAC Advice in Nairobi Communique, relative to exploring the benefits of further categories.
	● Working Group concluded that it is challenging to implement additional categories in a simple, effective, and predictable manner.
	● PDP WG notes that the **establishment of additional types should be done under exceptional circumstances only and should be done via community processes (Rec. 4.1)**.
	● PDP WG **includes new "Strings subject to Category 1Safeguards" in string types**. See Safeguards section (Rec. 4.1).
	● PDP WG recommends **maintaining existing categories and to not create additional categories**, with the exception of formally adopting the .Brand category (Rec. 4.1).
	● Rec. 15.1: The PDP WG recommends maintaining the **single base fee** charged in the 2012 application round, **with the exception of:**
	  ○ Applicant Support
	  ○ Applicants electing to use a pre-approved registry service provider

Possible Next Steps for the GAC to Consider	
● The GAC may wish to consider whether its expectations are met on this topic by the Final Recommendations.	

Community Engagement

Summary of Previous GAC Input	Final PDP WG Deliberations and Recommendations
Response to Sub Pro PDP CC1 (29 July 2016) ● **Ensure/empower participation** from all relevant stakeholders from **affected communities** (as applicants or to have a fair say when legitimate interests affected by TLD applications)	Final Recommendations - Topic 13 | ● The PDP WG agreed that **the New gTLD Program's communications plan should serve the goals of raising awareness about the New gTLD Program to as many potential applicants as possible around the world** and making sure that potential applicants know about the program in time to apply. ● To serve this objective, the WG determined that the focus should be on **timeliness, broad outreach, and accessibility (Rec 13.2)**. ● The WG believes that an effective **communications strategy and plan is needed** to support the goals of the program ● WG recommends that the New gTLD communications plan must be developed with timeliness, broad outreach and accessibility as key priorities. ● The communications plan must be targeted to achieve the goals of the New gTLD Program as articulated and must include a Communications Period commensurate in length to achieve those goals. ● For timeliness, WG believes that for the subsequent round, the Communications Period should begin at least six (6) months prior to the beginning of the application submission period (Implementation Guidance 13.3). ● For accessibility, the Working Group stresses the need for a single, well-designed website dedicated to the New gTLD Program to support the sharing and accessibility of program information (rec. 13.6)
Possible Next Steps for the GAC to Consider	
● The GAC may wish to consider monitoring how the New gTLD Communication Strategy is implemented by the IRT.	

4. New gTLD Applications Requirements

Applicant Evaluation and Accreditation Programs	
Summary of Previous GAC Input	**Final PDP WG Deliberations and Recommendations**
[Comment](#) on [Sub Pro PDP Initial Report](#) (8 October 2018) ○ Applicant evaluation and **Registry Service Provider pre-approval process** should include consideration of potential **security threats** ○ Such consideration should include **using tools such as ICANN's DAAR** to identify any potential security risks (and affiliated data) associated with an application	Final Recommendations - Topic 6 | ● Accreditation Programs renamed RSP Pre-Evaluation by PDP WG (Rec. 6.2). ● PDP WG recommends establishing a program in which Registry Service Providers ("RSPs") may receive pre-evaluation by ICANN if they pass the required technical evaluation by ICANN or their selected third party provider (Rec. 6.2). ● The only difference between a pre-evaluated RSP and one that is evaluated during the application evaluation process is the timing of when the evaluation and testing takes place ● PDP WG recommends that all criteria for evaluation and testing must be the same. ● The WG did not integrate data such as DAAR- which provides data for an already delegated TLD - into the evaluation process within recommendations, i.e. the pre-approval program would not be backwards looking, but look at an RSP's current state and capability.
Possible Next Steps for the GAC (potential GAC inputs to GNSO Council and/or ICANN Board)	
● The GAC and PSWG particularly may wish to consider GAC advice/comment in this area as to ensure outcomes compatible with GAC expectations and threat landscape, consistent with previous GAC Advice. In particular, it may consider recommending that applicant evaluation and RSP pre-approval process should include considerations of potential security threats.[1] ● The GAC may want to consider providing specific guidance within the implementation phase on how tools like DAAR can benefit the evaluation process.	

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[1] In particular Annex 1 of [GAC Hyderabad Communiqué,](#) and follow-up exchange with ICANN Board and ICANN Org. For more information: https://gac.icann.org/activity/dns-abuse-mitigation (section Ongoing Work > Effectiveness of DNS Abuse Safeguards in Registries and Registrars Contracts)

Reserved Names

Summary of Previous GAC Input	Final PDP WG Deliberations and Recommendations
[Comment](#) on [Sub Pro PDP Initial Report](#) (8 October 2018) ○ Existing reservations of names at the top level substantially reflect the **GAC Principles Regarding New gTLDs**. ○ The GAC would expect that **any changes should be consistent** with these Principles ○ The GAC wishes to draw the attention of the PDP to its most recent **advice on certain 2-character codes** at the second level ([GAC Panama Communiqué](#))	Final Recommendations - Topic 21 | ● Reserved Names ["Unavailable Names," referred to in 2012 AGB as "Reserved Names"] at the Top Level : the PDP WG affirms Recommendation 2 from the 2007 policy, which states "Strings must not be confusingly similar to an existing top-level domain or a Reserved Name" (Rec. 21.1) ● PDP WG supports continuing to reserve as unavailable for delegation those strings at the top level that were considered Reserved Names and were unavailable for delegation in the 2012 round (Rec. 21.2) ● The Working Group supports continuing to reserve as unavailable for registration those strings that are on the then-current schedule of Reserved Names at the second level. The schedule may only change through the then-current process for making such changes (Affirmation 21.5) ● PDP WG recommends updating Specification 5 of the Registry Agreement (Schedule of Reserved Names) to include the measures for second-level Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes adopted by the ICANN Board on 8 November 2016 (Rec. 21.6)
Possible Next Steps for the GAC to Consider	

5. New gTLD Applications Requirements - Safeguards

Safeguards (Highly regulated sectors, Registration Restrictions, DNS Abuse)

Summary of Previous GAC Input	Final PDP WG Deliberations and Recommendations
Comment on CCT Review Team Draft Report (19 May 2017): the GAC supports: ○ **Incentives for registries to meet user expectations** regarding content, registrants in TLD, safety of personal data (Draft Rec. 14, Final Rec. 12) ○ Further **gathering of data related to WHOIS Accuracy** and related complaints (Draft Rec. 17-18, Final Rec. 18) ○ Regular gathering, analysis by ICANN of **data pertaining to abuse rates** in new gTLDs (Draft Rec. 19, Final Rec. 16) ○ Review of Registry **Security Framework** (Draft Rec. 20, Final Rec. 19) ○ Assessing whether mechanisms to report and handle **complaints** have led to more focused efforts to combat abuse and improving awareness of **Registries points of contact** to report abuse (Draft Rec. 21-22, Final Rec. 20) ○ Collection of **additional information in complaints** to assess effectiveness of highly regulated strings Cat. 1 safeguards (Draft Rec. 23-24, Final Rec. 21) ○ More data and information required for an **objective assessment of the effectiveness of safeguards** for highly regulated strings (Draft Rec. 25-30, Final Rec. 23) ○ Survey registrant and ICANN compliance on enforcement of Safeguards related to **New gTLDs with Inherent Governmental** Functions and **Cyberbullying** (Draft. Rec 31-32, Final Rec. 24) ○ Additional collection of data to assess **effects of restricted registration policies on TLD trustworthiness, DNS Abuse, competition, and costs** of compliance(Draft Rec. 33-36, Final Rec. 13) Comment on the Statistical Analysis of DNS Abuse in New gTLDs (19 September 2017) ○ There is still significant scope for the **development and enhancement of current mitigation measures and safeguards**, taking into account the specific risk levels associated with different categories of New gTLD (Standard or generic gTLD,Community gTLD, Geographic gTLD and Brand gTLD) ○ Risk levels also varies **depending on the strictness of the registration policy** (bad actors prefer to register domains in standard new gTLDs, which are generally open for public registration, rather than in community new gTLDs, where registries may impose restrictions on who can register domain names) Comment on Sub Pro PDP Initial Report (8 October 2018) ○ **Verified [TLD]** Consortium and the National Association of Boards of Pharmacy recommendations on applications for strings linked to highly regulated sectors should be supported. Comment on CCT Review Team Final Report (11 December 2018) ○ Considering the conclusion that "The new gTLD safeguards alone do not prevent DNS Security abuse in the DNS", consider more **proactive measures to identify and combat**	Final Recommendations - Topic 26 | ● As indicated in the Policy Development Process section of this scorecard, the **PDP WG believes that all CCT Review recommendations directed at the PDP are being considered** in the course of the PDP WG's deliberations ● Per the PDP WG's working document, **4 of the CCT Review recommendations identified as important by the GAC** in the area of safeguards (see Left) are being considered by the PDP (Rec. 12, 14, 16, 23). All of these are **identified as requiring more consideration** in PDP WG deliberations ● It should be noted that CCT Review Final Recommendations have been considered by the ICANN Board (1 March 2019). The Board's actions are currently subject to further community discussion, as tracked by the GAC in another dedicated scorecard. ● The WG affirms the framework established by the **New gTLD Program Committee (NGPC) to apply additional Safeguards to certain new gTLD strings that were deemed applicable to highly sensitive or regulated industries, as established in response to the GAC Beijing Communique** ● This framework created 10 safeguards of various levels to be implemented among a set of 4 groups. ● The WG recommends establishing a process to determine if an applied-for string falls into one of four groups. **This process must be included in the Applicant Guidebook** along with information about the ramifications of a string being found to fall into one of the four groups (rec 9.3) ● **PDP WG recommends that a panel should make the ultimate determination of whether it is one of the 4 categories** due to the operational nature of this role, and that a panel might be most effective - to be evaluated in implementation phase (rec 9.4).

DNS abuse, including incentives (contractually and/or financially) by ICANN to encourage contracted parties to adopt proactive anti-abuse measures (Final Rec. 14)

○ Incentivize registries to meet **expectations about who can register domains in sensitive or regulated industries** and gathering data about complaints and rates of abuse in these gTLDs that often convey an implied level of trust (Final Rec. 12, 23)

○ Endorses recommendation for an **audit of highly regulated gTLDs** to assess whether restrictions regarding possessing necessary credentials are being enforced (Final Rec. 23)

○ ICANN Contractual Compliance to publish **more details as to the nature of the complaints** they are receiving and what safeguards they are aligned with, to enhance future policy making and contractual safeguards (Final Rec. 20, 21)

Possible Next Steps for the GAC to Consider

- For context, 'Safeguards' are supported by many members of the Sub Pro WG, especially to mitigate consumer harm from abuse of trust in the DNS, and the SubProWG accepted the Boards implementation of GAC's safeguard advice.

- (Refer to PICs section since content overlaps). Given the importance of this policy area for the GAC, and given the reduced scope of consideration of CCT Review Recommendations in the PDP WG (compared to GAC expectations), the GAC may wish to:

    ○ track developments in relation to the Board consideration of the CCT Review recommendations, and possibly engage via other channels in complement to the PDP WG where appropriate.
    ○ The GAC may wish to consider advice to the GNSO/ICANN Board relative to final recommendations on topics not yet addressed, of interest to the GAC:
        ➢ Consideration of existing safeguards and related CCT recommendations
    ○ GAC may wish to provide input to GNSO/ICANN Board on Regulated and Highly-Regulated Strings Framework by PDP WG.

6. New gTLD Applications Evaluation, Objections and String Contention

String Similarity/String Confusion	
Summary of Previous GAC Input	**Final PDP WG Deliberations and Recommendations**
[Response](#) to [Sub Pro PDP CC2](#) (22 May 2017) ○ Reference to the GAC Hyderabad Communiqué **Advice regarding** the proposed guidelines on the second **IDN ccTLD string similarity review** process ○ Reference to GAC Prague Communiqué advice "to create a **mechanism of appeal** that will allow challenging the decisions on confusability"in relations to applied-for IDN ccTLDs [Comment](#) on [Sub Pro PDP Initial Report](#) (8 October 2018) ○ Reaffirms previous advice (GAC Beijing and Singapore Communiqué) that **singular and plural** versions of the same string as a TLD could lead to consumer harm	Confirmed w/ GNSO Support | Final Recommendation - Topic 24 ● Draft final recommendations include detailed guidance on the standard of confusing similarity as it applies to singular and plural versions of the same word, noting that this was an area where there was insufficient clarity in the 2012 round ● PDP WG recommends the standard used in the String Similarity Review from the 2012 round to determine an applied-for string is "similar" to any existing TLD, any other applied-for strings, reserved names, and in the case of 2-character IDNs, any single character or any 2-character ASCII string. ● PDP Recommends prohibiting plurals/singulars of the same word within the same language/script to reduce consumer confusion. ● The Working Group notes that recommendation 2.3.b from the Program Implementation Review Report states: "Consider any additional policy guidance provided to ICANN on the topic of string similarity." The Working Group anticipates that ICANN org will leverage the above recommendations in the development of String Similarity review processes for subsequent procedures.
Possible Next Steps for the GAC to Consider	

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Governmental Advisory Committee

ICANN
70
VIRTUAL
COMMUNITY FORUM

HRILWG Discussion on Work Stream 2 Recommendations Implementation

Session #3 - HRILWG on WS2 Implementation

Contents

Session Objectives

With the adoption of the Work Stream 2 Accountability (WS2) recommendations by the ICANN Board in November 2019, the ICANN organization (org) and individual community groups have the obligation to undertake the implementation of those recommendations.

At ICANN69, GAC members reviewed the progress on the implementation planning effort and explored potential implementation next-steps. Among those efforts, the Human Rights and International Law Working Group (HRILWG) agreed upon leading the implementation of recommendations 1 (diversity) and 3 (Human Rights Core Value).

At ICANN70, The Working Group will present the work undertaken since the last meeting on the preliminary efforts of defining diversity from a GAC perspective.

Background

In March 2014, the IANA Stewardship Transition was initiated and an ICANN Work Stream 1 (WS1) effort was created to develop mechanisms to enhance ICANN's accountability. WS1 concluded its work in February 2016 and the report of that group was approved by the ICANN Chartering Organizations (including the GAC) and adopted by the ICANN Board in March 2016.

WS2 was tasked with addressing a broad range of accountability topics for which a timeline for developing solutions and full implementation was expected to extend beyond the initial IANA Stewardship Transition. The WS2 effort concluded its work in June 2018 with the CCWG – Accountability WS2 Final Report and the Chartering Organizations (including the GAC) approved the WS2 Final Report in November 2018.

The WS2 Final Report

The WS2 Final Report included a comprehensive list of nearly 100 individual recommendations that were arranged into eight topic areas:

1. Diversity of the community work on policy*
2. Guidelines for Good Faith removal of Board members*
3. Human Rights*
4. Jurisdiction*
5. Improving the ICANN Office of the Ombuds
6. Increase SO/AC Accountability*
7. Staff Accountability
8. Transparency*

Each of the eight (8) topical areas contained several subtopic recommendations. Six of those topic areas (those identified with an "*" above) appear to contain implications for GAC operational implementation or further work including diversity, good faith removal of Board members, human rights, jurisdiction, increased SO-AC accountability and transparency. In total, forty-two (42) separate recommendations appear to merit GAC attention and consideration.

ICANN org Assessment Report

Prior to finalization of the WS2 recommendations, the Board had directed the ICANN organization (org) to prepare an implementation assessment report, including resource estimates, in preparation for the Board's final consideration of the WS2 Final Report and its recommendations. The WS2 Implementation Assessment Report was developed by ICANN org to address this need, it was completed on 5 November 2019 and was not subject to a public comment period.

Board Approval of the WS2 Final Report Recommendations and Potential ICANN Org Support

On 7 November 2019, the ICANN Board considered the 2018 WS2 Final Report recommendations and the 2019 Assessment Report from ICANN org and gave its final approval to the complete package of the WS2 Final Report recommendations.

According to the Assessment Report, the ICANN Board has determined that "prioritization and staging of the WS2 recommendations for implementation will be facilitated through the budgeting and planning processes". This means that for ICANN org's WS2 implementation planning, the organization can first identify and move forward with those recommendations that do not need a budget cycle to implement. Secondly, the organization may then have the ability to provide support as available to the ICANN community for those parts of the WS2 recommendations that are intended for community-driven implementation. And, finally, the ICANN org can identify the future budget cycle and estimated timelines for any remaining individual recommendations to be implemented.

ICANN org Reporting on Implementation Progress

Implementation requires appropriate planning in order to leverage resources and preserve community bandwidth ; this includes making sure dependencies are addressed in an efficient fashion. In June 2020, Göran Marby, ICANN President & CEO, announced the formation of the "Implementation Operations team", to tackle the fundamental need in the ICANN ecosystem to systematically address the many recommendations and related implementation work.

This new function collaborates closely with the newly created Planning department, set up to streamline the planning process, improve collaboration at the planning stage within the org and across the community, and help prioritize activities in the mid and long term.
 The 'Implementation Operations's team will focus on leading the implementation planning and subsequent implementation of Board-approved WS2 recommendations.

To better define the scope of work, these dedicated resources are looking into work underway within the ICANN ecosystem that may address elements of recommendations, and determining additional implementation steps needed. The documentation of this work is on-going and the Implementation Operations team will ensure periodic information on status and progress is communicated and published to support visibility, clarity and alignment across the ICANN community.

In relation to periodic information, the most recent ICANN blog announcement (04 March 2021) on Work Stream 2 Implementation reports on the progress made on recommendations related to diversity, the Office of the Ombudsman and Transparency. Additionally, the blog notes that since many of the recommendations are for community consideration or will require community input, before ICANN org can begin implementation, the Project team will be engaging with the community on how to best provide support.

GAC Implementation Areas

The Work Stream 2 (WS2) Implementation Assessment Report is being used by the organization to help develop a plan for the implementation of the nearly 100 recommendations. The Assessment Report acknowledged that implementation of the recommendations will be a "significant organizational undertaking that will require a detailed implementation plan and will take a number of years to complete."

Interestingly, the Assessment Report is careful to note that, "the report does not address the feasibility of Supporting and Advisory Committees (SO/ACs) to implement those recommendations. This is for community consideration." (see Assessment Report at pages 4 and 5). The Assessment Report further acknowledges that, "several recommendations require community work. SO/AC implementation plans will need to consider prioritization and timing as resources must be allocated" (see Assessment report at page 5).

GAC Support closely reviewed the WS2 Final Report and identified the forty-two (42) individual recommendations that impact the GAC in some way or form. Every one of those individual recommendations across the eight (8) topic areas of the WS Final Report have been set forth in a separate document with the purpose of identifying GAC applicable recommendations . This document has been designed to inventory the scope of the recommendations calling for GAC implementations.

The implementation, plans and priorities for addressing these recommendations ultimately need to be discussed and developed by GAC members.
At ICANN69, the GAC explored options for implementation of the Work Stream 2 - Accountability recommendations applicable to the committee. Co-Chairs of the Human Rights and International Law Working Group (HRIL WG) and GAC Support shared information on the progress toward completing an inventory tool that will enable GAC members to confirm and assess over 40 specific recommendations, assign accountability for establishing plans to develop recommendations for GAC review, and track the status of the implementation efforts.

Agenda

At ICANN70, the HRILWG co-chairs will present the work conducted since the ICANN69 Meeting, with the preliminary focus on GAC's implementation of WS2 recommendations implementation in relation to the diversity recommendation, lead by the WG and conducted jointly with the Underserved Regions Working Group (USRWG).

- GAC HRILWG WG and USRWG collaboration on diversity recommendations
    - Definition of diversity from a GAC perspective
    - Next Steps

- [GAC Tracking Tool](#) update on recommendations implementation and GAC Leadership oversight discussion ([see ICANN69 Minutes action points](#)).

Key Reference Documents

- CCWG Work Stream 2 Final Report (June 2018) - https://www.icann.org/en/system/files/files/ccwg-acct-ws2-final-24jun18-en.pdf
- CCWG Work Stream 2 Implementation Assessment Report (November 2019) - https://community.icann.org/display/WEIA/Public+Documents?preview=/120819602/120819621/WS2%20Implementation%20Assessment%20Report_5Nov2019.pdf
- ICANN Board Resolutions approving WS-2 Recommendations (7 November 2019) - https://www.icann.org/resources/board-material/resolutions-2019-11-07-en#2.c
- Specific WS-2 Accountability Recommendations For SO-ACs from CCWG – Accountability WS 2 Final Report - https://gac.icann.org/working-group/gac-operating-principles-evolution-working-group-gope-wg#wg-doc-head
- GAC Work Stream 2 Implementation tracking tool - https://docs.google.com/spreadsheets/d/1NOTa6ULaUihKlVAKzpBaRBknScBDMZcuy95D10TcDF0/edit#gid=1015079592

Further Information

- Work Stream 2 - Enhancing ICANN Accountability Homepage - https://community.icann.org/display/WEIA
- ICANN org's announcement – [An update on Work Stream 2 Implementation](#) (4 March 2021)
- ICANN org's announcement - [Status of ICANN org's Human Rights Impact Assessment Recommendations Implementation](#) (2 July 2020)
- ICANN Blog post [Strengthening Our Structure and Enhancing Collaboration](#) (17 August 2020)

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ICANN | GAC

Governmental Advisory Committee

ICANN
70
VIRTUAL
COMMUNITY FORUM

RDS/WHOIS and Data Protection Policy

Session #4

Contents

Session Objective

Review the latest developments regarding efforts to bring Whois into compliance with applicable Data Protection Law, in particular challenges in the implementation of EPDP Phase 1 Policy Recommendations, expected next steps following the adoption by the GNSO of the EPDP Phase 2 Policy Recommendations and the launch of EPDP Phase 2A deliberations on the distinction of legal vs. natural person in the publication of gTLD Registration Data as well as the feasibility of using unique and anonymized emails for contacts.

Background

Over the past decades, information pertaining to the individuals or entities holding a domain name (domain registration data) made available publicly through the WHOIS protocol and related WHOIS services[1], grew to become an indispensable tool for attributing content, services and crime on the Internet.

Consequently, WHOIS has been the subject of long-standing attention for the ICANN Community, including the GAC, particularly in relation to challenging issues such as concerns about the lack of protection of personal data, and the inaccuracy of registration data.

While various new data protection legal frameworks have emerged or will emerge across the world, the entry into force of the EU General Data Protection Regulation (GDPR) on 25 May 2018 spurred the ICANN Organization, Contracted Parties and the ICANN Community to bring WHOIS into compliance with applicable law.

Issues

Defining the right policies for WHOIS - or as alternatively known, Registration Directory Services (RDS) - requires taking into account the important issues of data protection and the legitimate and lawful practices associated with protecting the public, including to combat illegal conduct such as cybercrime, fraud and infringement of intellectual property, to ensure cybersecurity, promote user confidence and consumer trust in the Internet, and protect consumers and businesses. Prior GAC Advice[2] and the ICANN Bylaws recognize these vital interests.

The Article 29 Data Protection Working Party and the European Data Protection Board have recognized that "*enforcement authorities entitled by law should have access to personal data in the Whois directories*" and stated their expectation that ICANN should "*develop a WHOIS model that will enable legitimate uses by relevant stakeholders, such as law enforcement [...]*".

However, as highlighted in GAC Advice and various GAC contributions since the ICANN60 meeting in Abu Dhabi (Nov. 2017), efforts to date by ICANN org and the ICANN Community have failed to adequately accommodate both the necessity of data protection and protection of the public interest. Currently, much of the once public WHOIS information is redacted with no real process or mechanism for accessing the information for legitimate use. Namely, law enforcement, data protection authorities, cybersecurity experts, and intellectual property rights holders no longer can rely upon access to information that is critical to protecting the public interest[3].

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[1] See ICANN's WHOIS High-Level Technical Brief (20 April 2018)
[2] See in particular the GAC Whois Principles Regarding gTLD WHOIS Services (28 March 2007)
[3] For further discussion, see "Importance of a Unified Access to Non-Public gTLD Registration Data" in the GAC Webinar Discussion Paper (23 September 2019)

Leadership Proposal for GAC Action

1. **Determine potential public policy concerns** to be relayed to the ICANN Board[4] prior to its consideration of the GNSO Policy Recommendations **regarding the Standardized System for Access/Disclosure of Registration Data (SSAD)**, including through GAC Advice (as needed), consistent with the GAC Minority Statement (24 August 2020).

2. Follow and **consider GAC input to the expected Operational Design Phase (ODP)** to be launched by the ICANN Board prior to its consideration of the GNSO Recommendations[5]**, taking into account the GNSO's requested consultation[6] with the ICANN Board** to discuss "*questions surrounding the financial sustainability of SSAD and some of the concerns expressed within the different minority statements [...] including whether a further cost-benefit analysis should be conducted before the ICANN Board considers all SSAD-related recommendations for adoption*".

3. **Assess the public interest impacts** of the conflicts between the EPDP Policy Recommendations and the **suspended implementations** of the **Thick WHOIS Transition Policy[7]**, as recently determined by the GNSO (29 January 2021), and of the **Privacy/Proxy Accreditation Policy** Recommendations, as reported by ICANN org (12 January 2021).

4. **Consider GAC Positions, policy proposals and engagement of relevant parties** (Data Protection Authorities, the ICANN Board, ICANN org and GNSO Council) as appropriate, **to resolve pending policy and implementation issues** of public interest concern, including:

    a. Distinguishing the treatment and level of data protection required for **legal (versus natural) entities** (as currently discussed in EPDP Phase 2A)

    b. Exploring the feasibility of **unique contacts** and **uniform anonymized email addresses** (as currently discussed in EPDP Phase 2A)

    c. Ensuring **accuracy of registration data** in view of the purposes for which such data is processed (While the GNSO Council is due to initiate a scoping effort on this matter, it will not formally be addressed until the launch of a new specific Policy Development Process, either by a vote of the GNSO Council or a resolution of the ICANN Board)

    d. Clarify personal data **disclosure responsibilities between ICANN and Contracted Parties,** as well as the issue of **controllership**

    e. Address **international data transfers**, when registration data disclosure crosses different jurisdictions

    f. Implement the GNSO **policy related to domain registration using Privacy and Proxy services** which have demonstrated to host a significant amount of abuse registrations, which may leverage a double privacy shield under the SSAD policy.

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[4] Per ICANN Bylaws Article 3, Section 6.a-iii
[5] See p.22 of ICANN's presentation during the Operational Design Phase webinar (13 January 2021)
[6] See Resolved clause 1.b of the GNSO Council resolution adopting the EPDP Phase 2 Final Report (24 September 2020)
[7] See https://www.icann.org/resources/pages/thick-whois-transition-policy-2017-02-01-en

5. **Discuss GAC expectations regarding the timely deployment and operation** of a Standardized System for Access and Disclosure to gTLD Registration Data (SSAD) in light of the expected launch by the ICANN Board of a first-ever Operational Design Phase to inform its consideration of the GNSO Recommendations

    a. GAC Members may wish to consider **how the GAC Accreditation Principles together with the EPDP-proposed Standardized System for Access and Disclosure** (SSAD), of which they are an integral part, **would translate at the country/territory level** into organization of accreditation and access for its users from identified public authorities

    b. GAC Members may also wish to report on initiatives in their governments to gather the list of public authorities requiring access to non-public gTLD registration data (See Action Points in section 2.1 of the ICANN65 and ICANN66 Minutes, and section 2.3 of the ICANN67 Minutes)

6. Continue **to assess the effectiveness of interim arrangements for access to non-public data** consistent with Advice in the GAC Montréal Communiqué (6 November 2019) and the ICANN Board's acceptance of this advice (26 January 2020), including:

    a. **Development of a voluntary standard request form** between ICANN org and both Registry and Registrar Stakeholder Groups

    b. **Documentation of contracted parties obligations and points of contacts** regarding their providing reasonable access to non-public registration data

    c. **Clear Instructions on how to submit complaints and reporting on such complaints** as part of the evolution of ICANN's Compliance systems expected by Q3 2020

    d. **The ability of ICANN to enforce the requirement for Contracted Parties to provide reasonable access** when such access is denied to public authorities and other legitimate third parties

Relevant Developments

Overview of Current Status

- **The current interim policy regime** applicable to gTLD Registration Data **is expected to remain in place for the foreseeable future, but may not guarantee access** to non-public data for public authorities and other legitimate third parties

  - Following GAC input to the ICANN Board (24 April 2019), on 15 May 2019, **the ICANN Board** took action (detailed in a scorecard) on the EPDP Phase 1 Recommendations which laid the foundation for the future policy regime regarding gTLD Registration Data. On 20 May 2019, the Temporary Specification on gTLD Registration Data expired and was replaced by the Interim Registration Data Policy for gTLDs, which requires **Contracted Parties to continue to implement measures that are consistent with the Temporary Specification**, while implementation of the EPDP Phase 1 policy recommendations is ongoing.

  - In the Montréal Communiqué (6 November 2019), the GAC advised the ICANN Board to "*ensure that the current system that requires 'reasonable access' to non-public domain name registration is operating effectively*". In its Scorecard of GAC Advice (26 January 2020), the ICANN Board accepted this Advice and instructed ICANN org to take several actions documented further in this briefing, including "*to collaborate with the Registry and Registrar Stakeholder Groups to develop a voluntary standard request form that can be used by stakeholders to request access*"

  - As part of implementation of the Montréal GAC Advice, ICANN Contractual Compliance has deployed new complaint forms and is now reporting data[8] for alleged violations of the Temporary Specification on gTLD Registration Data.

- In the meantime, **implementation of the EPDP Phase 1 Policy Recommendations** (adopted by the ICANN Board on 15 May 2019) has revealed significant impacts, with possible public policy implications, on two existing ICANN Policies for which implementation had effectively been suspended concurrently with the entry into force of the GDPR:

  - **Thick WHOIS Policy** - The GNSO Council informed the ICANN Board (29 January 2021), after substantial debates among affected stakeholders, that "*notwithstanding the absence of a clear statement*" the intent of EPDP Phase 1 Recommendation 7 "*is to modify the Thick Whois Transition Policy*", therefore potentially affecting its expected outcomes[9].

  - **Privacy/Proxy Accreditation Policy** - ICANN org estimates that the Privacy/Proxy Service Accreditation Issues (PPSAI) Policy and Implementation is "*substantively impacted by the*

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[8] See ICANN's monthly Contractual Compliance Dashboard Reports which now include a granular report on "*Registrar Complaints Processed [...] Related to Requirements Under the Temporary Specification for gTLD Registration Data*"

[9] The ICANN Board adopted the Thick WHOIS Policy on 7 February 2014 given community consensus on its benefits and despite concerns including in terms of data protection. Implementation of the Thick WHOIS policy eventually ran into legal issues, as described in a correspondence by Verisign to ICANN (20 June 2017). Following the entry into force of the GDPR, the ICANN Board resolved (7 November 2019) to defer compliance enforcement until PDP Phase 1 Implementation is complete and the GNSO determines whether to take action regarding potential impact on its original recommendations

new Registration Data Policy requirements, indicating a need for significant changes in the proposed implementation of PPSAI", and noted that *'The GNSO may also wish to undertake policy work"* in relation to these impacts.

- **Policy Development in Phase 2 of the EPDP** which aimed to propose a Standardized System for Access/Disclosure (SSAD) to gTLD Registration Data **concluded** with the publication of the [Final Report](#) (31 July 2020). A significant level of divergence expressed by various stakeholders are documented in the Consensus Designations (Annex D) and Minority Statements (Annex E), including the [GAC Minority Statement](#) (24 August 2020). Despite these significant levels of reservation and opposition, **the GNSO Council adopted the EPDP Phase 2 recommendations** for consideration by the **ICANN Board, which is expected to launch an Operational Design Phase (ODP)** prior to its formal consideration of the recommendations.

  - **Consensus was achieved on** aspects of the SSAD relating to **accreditation of requestors and centralization of requests** (recommendations 1-4, 11, 13 and 15-17). Once implemented these recommendations should improve the current fragmented systems by providing a central entry point to request access to registration data, according to clearly defined standards, and providing guarantees of appropriate processing (including safeguards for data subjects and requestor).

  - **Stakeholders could not agree on** the policy recommendations necessary to provide for **a standardized system of disclosure** that meets the needs of all stakeholders involved, including public authorities (recommendations 5-10 and 12).

  - While an **evolution mechanism** was to ensure that the SSAD could evolve towards more centralization and more automation of disclosure decisions (recommendation 18) as part of an EPDP Team compromise, **stakeholders were not able to agree** on the scope of evolution recommendations that would not require an entirely new GNSO Policy Development Process, in particular when it comes to automation and centralization of disclosure decisions.

  - The GNSO [resolution](#) (24 September 2020) **adopted the 18 EPDP Phase 2 recommendation that seek to establish an SSAD**, despite the Business and Intellectual Property Constituencies voting against this motion[10]. The resolution also includes a **request to the ICANN Board for a consultation** prior to its consideration of the policy recommendations **to discuss "*questions surrounding the financial sustainability of SSAD and some of the concerns expressed within the different minority statements [...] including whether a further cost-benefit analysis should be conducted before the ICANN Board considers all SSAD-related recommendations for adoption*"**[11].

  - Prior to considering the GNSO's SSAD Policy Recommendations, **the ICANN Board is expected to launch the first** instance of the newly proposed **Operational Design Phase**

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[10] See rationale of these votes against the adoption of the EPDP Phase 2 recommendations in the [BC Statement](#) and the [IPC Statement](#). The [RySG](#) and [RrSG](#) also released a statement supporting their votes in favor of the recommendations.
[11] During a recent GAC/GNSO Leadership call (29 September 2020) and during the pre-ICANN69 [Joint GAC/GNSO Call](#) (1 October 2020), The GNSO leadership clarified that it intends to focus this consultation on the issue of financial sustainability and that it was not expectws to change its policy recommendations to the ICANN Board.

(ODP), initially discussed during ICANN69, to "*allow the Board to obtain relevant information about any operational and resourcing issues associated with certain policy implementation efforts [...] prior to Board action on GNSO-approved policy recommendations*" noting that *this* would "*likely only be needed for complex, costly or other large-scale implementation efforts.*" following [Community input](#) received on an [updated proposal](#) (18 December 2020), which was discussed during an [ICANN org webinar](#) (13 January 2021), following which the [GAC submitted input](#) (22 January 2021).

- ○ On 9 March 2021, in a [letter to the ICANN Board](#), **the GNSO's Intellectual Property Constituency (IPC) requested** "*that the ICANN Board direct ICANN Org to pause the development and deployment of the new Operational Design Phase ("ODP") and any further work on the Standardized System of Access and Disclosure ("SSAD")*" in connection with the lack of consensus on policy recommendations, their not reflecting the global public interest, and new legal developments since their adoption by the GNSO Council.

- **The latest GAC discussions regarding Access to gTLD Registration Data with the ICANN CEO** covered various concerns and implementation matters. During the [GAC Discussion with ICANN CEO: WHOIS/GDPR Policy and Implementation Matters](#) (28 May 2020):

  - ○ The GAC Chair and GAC topic leads highlighted **ongoing challenges for public authorities to access registration data** and concerns with the **ability for ICANN Compliance to challenge wrongful denials of access** by Contracted Parties following ICANN's recent [letter to the EDPB](#) (22 May 2020).

  - ○ The ICANN CEO discussed the [differences](#) between the proposed SSAD and ICANN's UAM, the **SSAD making it easier for requests to be processed by Contracted Parties in a decentralized manner, but not affording more responsibility to ICANN for data disclosure decisions**, despite the organization's willingness (and that of the ICANN Board) to take on such responsibility as laid out in the UAM.

  - ○ The ICANN CEO emphasized that **ICANN org continues to work toward finding a way** to take on more responsibility **to facilitate disclosure of registration data to third parties where appropriate in the public interest.**

During the [GAC Dialogue with the ICANN CEO](#) (14 September 2020), following the [ICANN CEO letter to the GAC Chair](#) (10 September 2020) in response to the [GAC Minority Statement](#) (24 August 2020):

  - ○ The ICANN CEO called on relevant legislators to provide their assistance in **facilitating interpretation of applicable data protection law**

  - ○ GAC representatives reiterated the GAC's view that there is a risk of non-compliance with the GDPR if the reasonable **steps to be taken by data controllers to achieve data accuracy** are not clarified

  - ○ On the topic of **controllership**, European Commission representatives suggested that the System for Standardized Access and Disclosure of gTLD Registration Data (SSAD) should provide clarity on the roles and responsibilities of various parties, and called on ICANN to

establish controllership agreements as part of the elaboration of the SSAD to avoid creating uncertainty.

○ Regarding **disclosure decisions**, the ICANN CEO shared ICANN's view that Contracted Parties have the legal responsibility to make these decisions and reiterated the request for the GAC to clarify the basis for its statement that granting contracted parties full discretion in reviewing disclosure requests "*may undermine the obligation to ensure the continued viability of domain name registration data as a tool to vindicate the rights and interests of the public, agencies tasked with protecting the public, and commercial and intellectual property constituencies*".

On 2 October 2020, the ICANN CEO sent a [letter](#) to the European Commission seeking its assistance in obtaining greater legal clarity on the issues of controllership, accuracy of Registration Data and international data transfers. With respect to the issue of accuracy, the ICANN CEO sought clarity on whether non-compliance with the data accuracy obligation will result in liability only vis-à-vis data subjects, or even toward third parties relying on the accuracy of the data disclosed (such as requestors for non-public registration data), in light of the GAC's view that there is a risk of non-compliance with the GDPR if the reasonable steps to be taken by data controllers to achieve data accuracy are not clarified.

The European Commission [responded](#) (18 December 2020) stressing the relevance of ICANN's policy and implementation process to address these complex issues and the need to proceed toward delivering an SSAD as a matter of priority.

● **The so-called "Priority 2" policy issues not addressed during phase 2 of the EPDP** are currently the subject of further discussions as part of:

○ A new **Phase 2A of the EPDP** addressing the issues of **legal vs. natural persons** and the **feasibility of unique contacts** to have a **uniform anonymized email address**, which convened in December 2020 and is due to report to the GNSO Council on its prospect of reaching consensus recommendations before ICANN71.

○ A **GNSO Scoping Team** consisting of volunteers from GNSO Stakeholder Groups and Constituencies, as well as interested Advisory Committees, is due to consider an introductory [ICANN org briefing](#) (26 February 2021) and aim to facilitate understanding of the issue of **Accuracy of Registration Data and** issues associated with **the WHOIS Accuracy Reporting System,** before potential further policy work is considered.

Focus: Interim gTLD Registration Data Policy and EPDP Phase 1 Implementation

- Following the ICANN Board [action](#) on the EPDP Phase 1 Recommendations (15 May 2019), the [Temporary Specification on gTLD Registration Data](#) expired on 20 May 2019, and is now replaced by the [Interim Registration Data Policy for gTLDs](#) wich requires **Contracted Parties to continue to implement measures that are consistent with the Temporary Specification**, pending the [implementation](#) of the final Registration Data Policy per EPDP Phase 1 recommendations.

- ICANN org and Community representatives in the [Implementation Review Team](#) (IRT), who are drafting language to eventually become contractually-enforceable ICANN [Consensus Policy](#), delivered a [3-stage plan](#) for **the implementation of the final Registration Data Policy**, consistent with the principles set out in EPDP Phase 1 Recommendation 28.

- However, as [reported](#) to the GNSO Council (2 October 2019), **the IRT deemed the deadline for implementation of 29 February 2020 to be "not feasible "**, due to the large scope of work and complexity, **and is not providing any timeline for completion** at this point.

- As a consequence, the **impact of the Temporary Specification on law enforcement investigations**, as noted in section IV.2 of the [GAC Barcelona Communiqué](#) (25 October 2018) and referenced in GAC [input](#) to the ICANN Board (24 April 2019), **will not be addressed in the short term**. Concerns include:
  - The Temporary Specification has fragmented access to registration data, now ruled by thousands of distinct policies depending upon the registrar involved
  - Existing requirements in the Temporary Specification are failing to meet the needs of the law enforcement and cyber-security investigators (with similar concerns existing for those involved in protecting intellectual property) due to:
    - investigations being delayed or discontinued;
    - users not knowing how to request access for non-public information;
    - and many of those seeking access have been denied access.

- In its [Advice](#) in the ICANN64 [GAC Kobe Communiqué](#) (14 March 2019), the GAC stressed the need for "*swift implementation of the new Registration Directory Services policies as they are developed and agreed, including by sending distinct parts to implementation as and when they are agreed, such as the questions deferred from Phase 1*". In its [response](#) (15 May 2019), the ICANN Board accepted this advice and stated it "*will do what it can, within its authority and remit, and in light of other relevant considerations*"

- In its [Advice](#) in the ICANN66 [GAC Montréal Communiqué](#) (6 November 2019), the GAC advised the ICANN Board to: "*take all possible steps to ensure that the ICANN org and the EPDP Phase 1 Implementation Review team generate a detailed work plan identifying an updated realistic schedule to complete its work and provide and inform the GAC on the status of its progress by January 3, 2020;*" In response, in a [letter to the GAC Chair](#) (6 January 2020), the ICANN CEO described the current status and challenges of the effort.

- Further GAC Advice in the [GAC Montréal Communiqué](#) (6 November 2019) to "*ensure that the current system that requires 'reasonable access' to non-public domain name registration is operating effectively*" was [accepted](#) by the ICANN Board (26 January 2020). Accordingly, the Board instructed ICANN to:
  - educate stakeholders on contracted parties obligation to address requests for non-public data and make available links to registrar and registry information and points of contact on this topic
  - collaborate with the Registry and Registrar Stakeholder Groups to develop and make available a voluntary standard request form to request access based upon the current Consensus Policy
  - publish clear instructions on the ICANN Compliance web page describing how to submit a complaint concerning a third-party access request.
  - compile and publish monthly metrics data related to third-party access complaints once such forms are available in the new Compliance ticketing system

- Following initial interim steps in implementation of the Board resolution, as [reported](#) to the GAC by its PSWG during ICANN67, as of ICANN69, ICANN org reported on the availability of a **new** [complaint forms](#) **along with ICANN Compliance reporting data**[12] for alleged violations of the Temporary Specification on gTLD Registration Data. In the meantime, Contracted parties presented their [Practical Insights on Data Disclosure for Contracted Parties](#) (22 September 2020).

- Following complaints by a Data Protection Authority to ICANN regarding registrars denial of its requests for "*access to non-public registration data in furtherance of its investigation into alleged violations of the GDPR, reported to the authority by a data subject(s) within its jurisdiction*", [the ICANN CEO requested guidance from the European Data Protection Board](#) (22 May 2020) on "*how to balance legitimate interests in access to data with the interests of the data subject concerned*" in order to help ICANN org "*evaluate whether the registrar (as the data controller) has appropriately balanced the legitimate interests pursued by the requesting third party against the interests or fundamental rights and freedoms of the data subject*". The letter further stated that "*[a]bsent such guidance, which could inform ICANN's enforcement of agreements with registrars and registries, ICANN org and the other relevant stakeholders of the ICANN community will continue to face difficulties in ensuring that data protection authorities and others with legitimate interests in this data can obtain consistent access to the data needed to protect their legitimate interests and the public interest.*"

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[12] See [ICANN Contractual Compliance Dashboard for August 2020](#) under headers "[Registry/Registrar] Complaints with Evidence of Alleged Violation of the Temporary Specification - 1 February 2020 to Date" and "[Registry/Registrar] Inquiries/Notices Related to Temporary Specification Sent and Closed in August 2020"

Focus: EPDP Phase 2

- As highlighted during the [GAC Webinar on EPDP](#) (25 September 2019) and its associated [Discussion Paper](#): GAC representatives in the EPDP shared the expectation that "*the EPDP policy **recommendations are likely to consist of high level assumptions, principles and guidelines which will require substantial implementation work** before any centralized or standardized system may be put in place*".

- **The scope of work[13] in Phase 2 of the EPDP** was to focus on the development of policy recommendations for sharing non-public registration data with third parties, also known as the **System for Standardized Access/Disclosure of Non-Public Registration Data (SSAD)**, and also include addressing so-called ["Priority 2" Items](#) or **issues not fully addressed in Phase 1** including: the distinction between legal and natural persons; registration data accuracy; and the feasibility of unique contacts to have a uniform anonymized email address. However, it became clear that this would not be the case, as evidenced in the [Addendum](#) to the Phase 2 Initial Report (26 March 2020), in light of legal advice received by the EPDP Team and timeline pressures which have supported contracted parties' and non-commercial stakeholders **objections' to further consider these issues as part of the critical path for completing Phase 2**.

- The **System for Standardized Access/Disclosure of Non-Public Registration Data (SSAD)** as proposed in the EPDP Phase 2 [Initial Report](#) (7 February 2020), described in the [GAC Summary](#) (17 February 2020) and discussed during the related [ICANN67 GAC plenary session](#) (10 March 2020), initially envisioned :
  - Centralization of requests and decentralization of responses, with continuous evolution of the model, towards increasing automation and standardization
  - Establishing a mechanism to advise ICANN Org and Contracted parties on evolution and continuous improvement of the SSAD
  - Automation of disclosure in response to some public authorities' requests
  - Meeting applicable Data Protection Laws worldwide, not just GDPR

- However, following deliberations of the EPDP Team since the release of the Phase 2 Initial Report, including the consideration of public comments, **the final SSAD policy recommendation**, as reflected in the EPDP Phase 2 Final Report (31 July 2020) and its Consensus Designations (Annex D), **did not prove entirely satisfactory to the GAC and other stakeholders** who submitted Minority Statements (Annex E).

- In particular, **the GAC submitted**, along with those of the ALAC, SSAC, BC and IPC, and with the support of most of them, a [Minority Statement](#) (24 August 2020) which noted that the EPDP Phase 2 Final Recommendations:
  - Concluded with a fragmented rather than centralized disclosure system;
  - Do not contain enforceable standards to review disclosure decisions;
  - Do not sufficiently address consumer protection and consumer trust concerns;

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[13] which the GAC [advised](#) should be clearly defined (14 March 2019)

- ○ Do not contain reliable mechanisms for the System for Standardized Access/Disclosure (SSAD) to evolve in response to increased legal clarity; and

- ○ May impose financial conditions that risk an SSAD that calls for disproportionate costs for its users including those that detect and act on cyber security threats;

- ○ Do not address key issues, most notably data accuracy, the masking of data from legal entities not protected under the GDPR, and the use of anonymised emails.

- ○ Would benefit from further clarifying the status and role of each of the data controllers and processors.

- ○ The GAC requested the GNSO Council to ensure that these key data issues are promptly addressed in the next and final Phase of the EPDP.

- ● Despite this level of reservation and opposition, **the GNSO Council adopted the EPDP Phase 2 recommendations for consideration by the ICANN Board** in a [resolution](#) (24 September 2020) against which the Business and Intellectual Property Constituencies voted. They offered a rationale for their opposition in respective statements: see [BC Statement](#) and the [IPC Statement](#)[14].

- ● The GAC requested that the GNSO ensures that the **"Priority 2" policy issues be promptly addressed in the EPDP final Phase**.

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[14] See rationale of these votes against the adoption of the EPDP Phase 2 recommendations in the [BC Statement](#) and the [IPC Statement](#). The [RySG](#) and [RrSG](#) also released a statement supporting their votes in favor of the recommendations.

Focus: Priority 2 Policy Issues Discussed in EPDP Phase 2A and Scoping Team on Accuracy

- Following the deprioritization of the so called "Priority 2 Issues" at the conclusion of EPDP Phase 2, **the GNSO considered** proposals to further discuss:
    - Distinguishing between data from legal vs. natural persons
    - Feasibility of unique contacts to have a uniform anonymized email address.
    - Accuracy of gTLD Registration Data

- During ICANN69, the GNSO decided to:
    - Reconvene the EPDP for an initial duration of 3 months (later extended to 6 months) in a new Phase 2A to address the issue of **legal vs. natural persons** and the **feasibility of unique contacts** to have a uniform anonymized email address.
    - Form a Scoping Team consisting of volunteers from GNSO Stakeholder Groups and Constituencies as well as interested Advisory Committees to facilitate understanding of the issue of **Accuracy of gTLD Registration** before further policy work can be considered.

- Representatives from the European Commission, the United Kingdom and the United States regularly participate in meetings of the **EPDP Team Phase 2A**, as well in the meetings of its Legal Sub-Committee. Various policy proposals and feasibility issues are currently being discussed, in particular:
    - A process to provide registrants the opportunity to identify as a natural or legal person, and the necessary mechanism to confirm, verify and possibly correct designations, for new as well as existing domain name registrations
    - The legal and technical feasibility of generating an email registered by a unique registrant, which is intended to be anonymous data when processed by non-contracted parties.

- The GAC is expected to be represented by the European Commission, Iran and the United States when the **GNSO Scoping Team to address the topic of accuracy of gTLD Registration Data** is convened. One of their first task is expected to be a review of the ICANN Org briefing (26 February 2021) which reviews existing accuracy requirements and programs, and the impact that GDPR has had on their implementation and enforcement.

Focus: ICANN Org Engagement with European Data Protection Authorities

- **Between September and November 2018, ICANN reported on its work[15]** with European DPAs seeking legal clarity on a possible unified access model, and its exploration of legal and technical avenues in order to consolidate responsibility for providing access to non-public registration data while establishing a globally scalable unified solution for access to data.

- In relation to these efforts, ICANN had submitted for community comments two iterations of its framing documentation regarding a Unified Access Model: the [Framework Elements for a Unified Access Model](18 June 2018) and subsequent [Draft Framework for a Possible Unified Access Model](20 August 2018). The GAC submitted [Initial Comments](16 October 2018).

- Between November 2018 and May 2019, work was undertaken in the [Technical Study Group (TSGS) on Access to Non-Public Registration Data](to explore a technical solution that would have the ICANN organization serve as the sole entity receiving authorized queries for non-public registration data. On 2 May 2019, the TSG [announced] having submitted its [Final Technical Model](30 April 2019) to the ICANN CEO, and indicated it would be used in discussions with the European Commission and the European Data Protection Board.

- On 25 October 2019, the ICANN org CEO [announced] that it was now [officially seeking] clarity from the European Data Protection Board as to whether a UAM based on the TSG Technical Model would comply with the GDPR, on the basis of a new paper [Exploring a Unified Access Model for gTLD Registration Data](. The 21-pages paper includes a set of 5 questions (section 8 p. 19) which the GAC [discussed] in plenary during ICANN66 (3 November 2019).

- On 4 December 2019, in its [response] to the ICANN CEO, **the Belgian DPA encouraged ICANN to continue its efforts to design a comprehensive system for access** control that takes into account the requirements of security, data minimization, and accountability. The response did not provide any definitive opinions regarding the questions that ICANN org included in the paper. The letter states that the policy and relevant safeguards that the community will develop to be applied in a UAM will be extremely important to assess whether a centralized model increases or decreases the level of protection enjoyed by natural persons. With respect to the roles and responsibilities, the letter states that parties to a processing activity cannot simply designate which party should be deemed to act as a controller or joint controller; a factual case-by-case is needed to that end. A previous [communication] by the Article 29 Working Party is further referenced, which contained the statement that, "*At first glance it would seem that…ICANN and the registries are joint controllers*".

- **In a follow-up meeting with the Belgian DPA** (14 February 2020), representatives from the ICANN org, the European Commission and the , EPDP Team Chair Janis Karklins discussed the UAM paper, the EPDP Phase 2 Initial Report and the ICANN Board's consideration of the EPDP Phase 1 recommendations:

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[15] This was done through an [ICANN GDPR and Data Protection/Privacy Update blog](24 September 2018), a [presentation] by ICANN's CEO during the EPDP Team Fac-to-Face meeting (25 September 2018), a [Data Protection/Privacy Update Webinar](8 October 2018), a [Status Report] to the GAC (8 October 2018) in response to [GAC Advice] and a [Data protection/privacy issues: ICANN63 wrap-up and next step blog](8 Nov. 2018).

- ○ **With respect to the possibility of developing a centralized model that is GDPR-compliant**, the DPA representatives indicated their letter was intended as encouragement to continue efforts to develop a comprehensive system for access, and not meant to deter the development of a centralized model. Rather, it was noted that a centralized model is worth exploring and seems to be a better, "common sense" option in terms of security and for data subjects. They cautioned, however, that the Belgian DPA was not in the position to give a definitive opinion on the question of controllership in such a model.

  - ○ **With respect to automation of disclosure in response to third-party requests**, the DPA representatives noted that the GDPR would not prohibit the automation of various functions in an access model, provided it could demonstrate that any algorithm automating decision-making considers the relevant criteria required by the GDPR for such decisions.

- In a [letter](#) on 22 May 2020, the ICANN CEO sought to bring to the attention of the EDPB that even authorities charged with enforcing the GDPR are facing challenges in obtaining access to non-public registration data due to uncertainties surrounding the assessment of legitimate interests per Art. 6.1(f) of the GDPR. **The ICANN CEO welcomed a more explicit recognition of the importance of certain legitimate interests, including the relevant public interests**, combined with clearer guidelines on balancing legitimate interests in access to data with the interest of the data subjects, **in the context of anticipated guidelines from the EDPB on the topic of legitimate interest of the data controller** according to the [the EDPB 2019/2020 Work Program](#).

- Following the [GAC/ICANN CEO Dialogue](#) (14 September 2020), and referring the [GAC Minority Statement on the EPDP Phase 2 Final Report](#) (24 August 2020), the ICANN CEO [sought the support of the European Commission](#) (2 October 2020) **to "*obtain greater legal clarity and certainty with respect to the application of the GDPR*" in particular regarding the issues of Controllership, Accuracy of Registration Data and international data transfers**. The letter highlighted that "*ICANN and the ICANN community have embarked on an effort to ensure the rights of data subjects are protected without sacrificing the critical efforts of other stakeholders, including public authorities worldwide*", in keeping with Public authorities' (including the EU Member States) persistent ask for "*a stable, predictable, and workable method for accessing non-public WHOIS data for users with a legitimate interest or other legal basis as provided for in the GDPR.*" He pointed out that "*[t]he ICANN community develops policies for gTLDs within the boundaries of the law. The community policy development process cannot, nor should it be able to, define, interpret, or change applicable law. The recommendations developed by the ICANN community with respect to the SSAD are therefore greatly impacted by the legal uncertainty and lack of clarity that exists under the GDPR with respect to a number of issues*". The letter stated that "*further dialogue with the Data Protection Authorities is necessary [...] to ensure that ICANN can implement a mechanism for access to non-public gTLD registration data that is predictable, transparent, accountable, protects the rights of data subjects, and also meets the needs of parties who*

have a legitimate interest in accessing gTLD registration data as advised by ICANN's Governmental Advisory Committee [...]". With respect to the issue of accuracy of registration data the ICANN CEO sought clarity on whether non-compliance with the data accuracy obligation will result in liability only vis-à-vis data subjects, or even toward third parties relying on the accuracy of the data disclosed (such as requestors for non-public registration data), in light of the GAC's view that there is a risk of non-compliance with the GDPR if the reasonable steps to be taken by data controllers to achieve data accuracy are not clarified.

- **The European Commission,** in its [response](#) to the ICANN CEO (18 December 2020) **stressed the relevance of ICANN's policy and implementation process to address the complex issues** Controllership, Accuracy of Registration Data and international data transfers, starting in particular:

  - *[...] We think these questions are primarily a matter of ICANN policy and should be addressed within the EPDP according to the established procedures. [...]*

  - Regarding Data Controllership, *"[...] we consider that the details of the processing activity involved in the SSAD and in particular the disclosure of registration data have to be determined in the policy. The role of data controller requires implementing the necessary technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with the requirements of the data protection legal framework. When a group of controllers decide jointly on the purposes and means of the processing (joint controllers), they have to determine their respective responsibilities in a transparent way, normally by means of an arrangement between them as well as by making available information on such agreements to the data subject. To this end, we believe that controllership agreements are essential to clarifying further their respective roles and responsibilities, also in the context of a future centralized decision-making system."*

  - *"On the issue of data accuracy, the Commission has repeatedly underlined that the accuracy of domain name registration data is of prime importance for the purpose of maintaining a secure and resilient DNS – a purpose that is also stated in ICANN's bylaws. This is now also explicitly recognised in our recent proposal for a revised [Directive on Security of Network and Information Systems](#) (NIS2 Directive). The Commission proposal introduces new obligations for TLD registries and registrars providing services in the European Union, namely to: i) collect and maintain accurate and complete domain name registration data; ii) publish non-personal domain name registration data (i.e. concerning legal entities), iii) provide access to specific personal domain name registration data upon lawful and duly justified requests of legitimate access seekers, and iv) reply without undue delay to all requests for access. The proposal leaves open the possibility to use an interface, portal or other technical tool to provide an efficient system for requesting and accessing registration data."[16]*

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[16] The obligation to publish non-personal data under the NIS2 Directive Proposal (as described under (ii)) relates to registration data which concern legal entities and are not personal data.

○ *"On the issue of international transfers, we can confirm that the Commission, as indicated in its Communication of June 2020, is actively working on the development of standard contractual clauses both for international transfers and the controller/processor relationship. In that regard, the public consultation on the draft published on 12 November 2020 has been recently completed."*

○ *"[...] While it is not within our remit to effectuate a data protection assessment, we remain committed to facilitate the interactions on the matter with the European DPAs [...]"*

Current Positions

- GAC ICANN69 Communiqué (23 October 2020) reiterating its previous advice in the San Juan Communiqué (legal vs. natural, public access to registration data) as well as previous statements on accuracy of registration data (GAC Minority Statement on EPDP Phase 2 Final Report) and the imperative for WHOIS to meet the needs of safeguarding interests of the public (GAC Abu Dhabi Communiqué).

- GAC Minority Statement on the Final Report of Phase 2 of the EPDP on gTLD Registration Data (24 August 2020)

- GAC ICANN68 Communiqué (27 June 2020) stressing the Need for Evolution of any Proposed SSAD, Legal vs. Natural, Data Accuracy, Data Controllership, Anonymized Emails

- GAC Comment on the Addendum to the EPDP Phase 2 Initial Report (5 May 2020)

- GAC Input on EPDP Phase 2 Initial Report (24 March 2020)

- GAC ICANN67 Communiqué (14 March 2020) following up on the implementation of GAC Advice in the GAC Montréal Communiqué.

- GAC Accreditation Principles (21 January 2020) now incorporated into the EPDP Phase 2 Initial Report

- GAC Comments (23 December 2019) on the RDS-WHOIS2 Review Recommendations

- GAC Advice in the ICANN66 Montréal Communiqué (6 November 2019) regarding the EPDP Phase 1 Implementation timeline and the interim requirement for "reasonable access" to non-public gTLD Registration Data. Follow on previous GAC Advice was also provided regarding implementation of the Privacy Proxy Services Accreditation policy.

- GAC Early Input into Phase 2 of the EPDP (19 July 2019) focused on the GAC's understanding of key working definitions of the EPDP

- GAC Marrakech Communiqué (27 June 2019) recalling the GAC Kobé Communiqué Advice

- GAC response (24 April 2019) to the ICANN Board's notification (8 March 2019) of the GNSO's approval of the EPDP Phase 1 Policy Recommendations in which the GAC deemed the EPDP Phase 1 policy recommendations to be a sufficient basis for the ICANN Community and organization to proceed, and highlighted public policy concerns, including "*existing requirements in the Temporary Specification governing gTLD Registration Data [...] failing to meet the needs of the law enforcement and cyber-security*"

- GAC Advice in the ICANN64 GAC Kobe Communiqué (14 March 2019) focused on ensuring appropriate continuation of work in EPDP Phase 2 and implementation of Phase 1 policy.

- GAC/ALAC Statement on EPDP (13 March 2019)

- GAC Input on EPDP Phase 1 Final Report (20 February 2019)

- GAC Input on EPDP Phase 1 Initial Report (21 December 2018)

- GAC Notes on WHOIS and Data Protection Legislation (Section IV.2) and Follow up on Previous Advice (Section VI.2) in the ICANN63 Barcelona Communiqué (25 October 2018) and ICANN Board response in its scorecard (27 January 2019)

- GAC Initial Comments (16 October 2018) on the Draft Framework for a Possible Unified Access Model that was published by ICANN on 20 August 2019.

- GAC Advice in the ICANN62 GAC Panama Communiqué (28 June 2018)

- GAC Advice in the ICANN61 GAC San Juan Communiqué (15 March 2018) was the subject of an informal consultation between the GAC and the ICANN Board (8 May 2018) which led to the release of the Board's scorecard (11 May 2018). In response, the GAC requested that the Board defer taking action on advice it could have rejected (17 May 2018). The ICANN Board released its updated scorecard (30 May 2018) as part of a formal resolution.

- GAC Feedback (8 March 2018) on the Proposed Interim Model for GDPR Compliance

- GAC Comments (29 January 2018) on the interim models for compliance with GDPR

- GAC Advice in the ICANN60 Abu Dhabi Communiqué (1 November 2017) accepted per the ICANN Board's scorecard (4 February 2018)

- GAC Principles regarding gTLD WHOIS Services (28 March 2007)

Key Reference Documents

- GAC Documentation
  - ICANN69 GAC Session [material](#) (20 October 2020) including [slides](#) providing an overview of the the EPDP Phase 2 Recommendations, GAC and other stakeholders concerns related to them and an over timeline of next steps
  - Summary Notes of [GAC/CEO Dialogue](#) (14 September 2020) following the [ICANN CEO Letter to the GAC Chair](#) (10 September 2020) in response to the GAC Minority Statement on the EPDP Phase 2 Final Report
  - [GAC Summary of EPDP Phase 2 Initial Report](#) (7 February 2020)
  - [GAC Webinar Discussion Paper on EPDP on gTLD Registration Data](#) (23 Sept. 2019)

- Government Positions
  - European Commission [letter](#) to the ICANN CEO (18 December 2020) in response to the ICANN CEO follow-up [letter](#) (2 October 2020) regarding the [GAC Minority Statement](#) on the Final Report of Phase 2 of the EPDP on gTLD Registration Data (24 August 2020)
  - European Commission [public comment](#) (17 April 2019), and subsequent [clarification](#) (3 May 2019) regarding EPDP Phase 1 Recommendations
  - US Department of Commerce Assistant Secretary for Communication and Information [letter](#) (4 April 2019) and [response](#) by the ICANN CEO (22 April 2019)
  - European Commission [Technical Input on proposed WHOIS Models on behalf of the European Union](#) and [Cover Letter](#) (7 February 2018)

- Data Protection Authorities Correspondence
  - [Letter from the Belgian DPA](#) (4 December 2019)
  - [Letter from the European Data Protection Board](#) (5 July 2018)
  - [Statement of the European Data Protection Board on ICANN/WHOIS](#) (27 May 2018)
  - [Letter from the Article 29 Working Party](#) (11 April 2018)
  - [Letter from the Article 29 Working Party](#) to ICANN (6 December 2017)

- Current Policy and Output of Ongoing Policy Development
  - EPDP Phase 2 [Final Report](#) (31 July 2020)
  - [Addendum](#) to the EPDP Phase 2 Initial Report (26 March 2020)
  - EPDP Phase 2 [Initial Report](#) (7 February 2020)
  - [Interim Registration Data Policy for gTLDs](#) (20 May 2019) replacing the [Temporary Specification on gTLD Registration Data](#) (17 May 2018)
  - EPDP Phase 1 [Final Report](#) (20 February 2019)

- ICANN Board Resolutions

- ○ ICANN Board [resolutions](#) (25 February 2020) regarding [Board Action](#) on the RDS-WHOIS2 Review Team recommendations
- ○ ICANN Board [resolution](#) (7 November 2019) on Deferral of Compliance Enforcement of the Thick WHOIS Consensus Policy
- ○ ICANN Board [Scorecard on EPDP Phase 1 Recommendations](#) (15 May 2019)
- ○ ICANN Board [resolution](#) (17 May 2018) adopting the [Temporary Specification](#)

- ● ICANN Org and Technical Study Group Input
  - ○ ICANN org Analysis of Registration Data Policy Impact on existing ICANN Policies per EPDP Phase 1 Recommendation 27:
    - – [Wave 1 Report](#) regarding impacts on ICANN policies in effect, including the Thick WHOIS Transition Policy (14 February 2020)
    - – [Wave 1.5 Report](#) regarding impacts on ICANN policies under implementation, addressing Privacy/Proxy Accreditation (11 January 2021)
  - ○ ICANN Study on the [Differentiation between Legal and Natural Persons in Domain Name Registration Data Directory Services](#) (8 July 2020) prepared per recommendation 17.2 of the Final Report of EPDP Phase 1 and [presented to the EPDP Team](#) at the initiation of Phase 2A (26 January 2021)
  - ○ [Exploring a Unified Access Model for gTLD Registration Data](#) (25 October 2019), a paper which served as a basis for ICANN org's seeking clarity from the EDPB as to the compliance of a UAM with the GDPR
  - ○ [Technical Model for Access to Non-Public Registration Data](#) (30 April 2019)

- ● Legal Advice provided by Bird & Bird to the EPDP Team during [Phase 1](#) and [Phase 2](#)
  - ○ [Use cases for automation of disclosure](#) (23 April 2020)
  - ○ [Follow-up on Accuracy Principle and Legal vs. Natural](#) (9 April 2020)
  - ○ [Consent options for the purpose of making personal data public](#) (13 March 2020)
  - ○ [Questions regarding a System for Standardized Access/Disclosure ("SSAD"), Privacy/Proxy and Pseudonymized Emails](#) (4 February 2020)
  - ○ [Legitimate interests and automated submissions and/or disclosures](#) (10 September 2019)
  - ○ [Lawful basis for disclosure to law enforcement authorities outside the controller's jurisdiction](#) (9 September 2019)
  - ○ [Liability, Safeguards, Controller & Processor](#) (9 September 2019)
  - ○ [Legal Basis for transferring Thick WHOIS](#) (8 March 2019)
  - ○ [Inclusion of "city" in publicly available Whois data](#) (13 February 2019)
  - ○ [Meaning of the accuracy principle pursuant to the GDPR](#) (8 February 2019)
  - ○ [Application of the GDPR to ICANN](#) (7 February 2019)

- - Liability in connection with a registrant's self-identification as a natural or non-natural person (25 January 2019)
  - Interpretation of GDPR Article 6(1)(b) (23 January 2019)
  - Notice to technical contacts (22 January 2019)

Further Information

ICANN Org Reference Page on Data Protection/Privacy Issues
https://www.icann.org/dataprotectionprivacy

GNSO Expedited Policy Development Process on Temporary Specification for gTLD Registration Data
https://gnso.icann.org/en/group-activities/active/gtld-registration-data-epdp (Phase 1)
https://gnso.icann.org/en/group-activities/active/gtld-registration-data-epdp-phase-2

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Governmental Advisory Committee

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GAC Meeting with the ICANN Board

Session #5 - Pre-Meeting Session - Preparation for Meeting with ICANN Board (Monday 22 March); Session # 12 - Meeting with ICANN Board (Tuesday 23 March)

Contents

Purpose and Background

One of the key operational features of an ICANN Public Meeting is that it creates the opportunity for the GAC to meet and interact with other ICANN groups, organizations and structures - enabling the committee to coordinate and resolve specific policy work and operational matters and to build channels of communication with other groups to facilitate future exchanges.

Within the ICANN multistakeholder community, the GAC has a fundamental relationship with the ICANN Board of Directors that is detailed in the ICANN Bylaws (see ICANN Bylaws Section 12.2(a)) and the Board-GAC meeting is a regular feature of every ICANN Public Meeting.

The GAC typically sets aside two plenary sessions at every ICANN public meeting that are devoted to both preparing for and then conducting the meeting with the full ICANN Board. From time-to-time, the GAC also hosts a meeting of the Board-GAC Interaction Group which is covered by a separate briefing document - for this meeting cycle, that meeting will not take place as part of this ICANN70 Virtual Community Forum, but a couple weeks before the core meeting week.

Relevant Developments and Previous Meeting Experiences

To provide enough preparation time for the GAC meeting with the ICANN Board, a GAC work session has been scheduled for Monday 22 March (Session #3) to allow GAC Members to finalize their preparations for the Board-GAC Meeting on 23 March 2021.

Recent GAC-Board Meetings have covered a range of subjects and topics and mostly center around formal questions the GAC submits to the Board about two to three weeks before the start of the ICANN Public Meeting. For some meetings, the Board presents a standard question to community

groups for them to respond to the Board. For ICANN70, no questions or topics have been proposed by the Board.

GAC members were asked during the GAC ICANN70 Agenda Setting Call on 10 February and then via email on 19 February and 1 March to suggest potential topics or questions to present to the Board at ICANN70. As of this briefing preparation date, the ICANN Board was informed of the following GAC topics. A number of topic statements and questions (13) on these topics were submitted to the Board on 5 March. The list of GAC topics submitted include:

- New gTLD Subsequent Procedures
- Registration Data/WHOIS
- DNS Abuse Mitigation
- Implementation of Work Stream 2 Accountability Recommendations; and
- GAC Onboarding and Engagement

Session Agendas

Session # 3- Monday 22 March - Preparation for Meeting with ICANN Board

The Monday 22 March meeting preparation session will enable GAC Members to review and confirm the proposed topics and questions that have previously been shared with the ICANN Board and to identify any new issues that may have arisen shortly before the public meeting that merit identification or discussion with the Board.

Session # 11 - Tuesday 23 March - Meeting with ICANN Board

A preliminary meeting agenda for the meeting (as of 5 March) is:

A. Introductions
B. Discussion of Specific GAC Priority Areas (including specific GAC topics/questions – shared in advance of meeting)
C. Closing

GAC Positions

As of 5 March 2021, based on input from GAC members, the GAC Leadership had developed the following topics to present to the Board:

- New gTLD Subsequent Procedures
- Registration Data/WHOIS
- DNS Abuse Mitigation
- Implementation of Work Stream 2 Accountability Recommendations; and
- GAC Onboarding and Engagement

Further Information

- Article 12 of the ICANN Bylaws - https://www.icann.org/resources/pages/governance/bylaws-en/#article12
- ICANN Strategic Plan for Fiscal Years 2021-2025 - https://www.icann.org/en/system/files/files/strategic-plan-2021-2025-24jun19-en.pdf;
- Specific WS-2 Accountability Recommendations For SO-ACs from CCWG – Accountability WS 2 Final Report - https://gac.icann.org/working-group/gac-operating-principles-evolution-working-group-gope-wg#wg-doc-head

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GAC Finance and Planning Update - Session with ICANN org Staff
Session # 6 - ICANN Finance and Planning Update to the GAC

Contents

Background

ICANN's planning process has three components: A Five-Year Strategic Plan, a Five-Year Operating and Financial Plan, and an annual Operating Plan and Budget. Input from ICANN constituency groups, stakeholders, Board of Directors and ICANN org is key to the development of these plans, in keeping with ICANN's multistakeholder model.

- The Strategic Plan includes ICANN's mission, vision, and a set of strategic objectives and goals for the next five years.
- The five-year Operating & Financial Plan (O&FP) articulates the feasibility and timing of services, activities, and milestones identified to achieve the Strategic Plan's objectives and goals.
- The annual Plan & Budget (OP&B) further clarifies specific activities and resources for the upcoming year.

In June 2020, ICANN created a new Planning department which regroups the coordination of all the existing planning activities and resources already existing in the organization. This includes strategic planning, operating planning, budget and progress reporting. Xavier Calvez, Senior Vice President Planning & Chief Financial Officer, assumes leadership of the new department.

ICANN is currently planning for fiscal years 2022 to 2026:

- On 17 December 2020, after considering the 2020 strategic trends assessment, the ICANN Board resolved to keep the Strategic Plan for fiscal years 2021-2025 in force and unchanged for FY22.

- From December 2020 to February 2021, ICANN held a public comment period seeking community input on ICANN's Draft FY22-26 Operating and Financial Plan and Draft FY22 Operating Plan and Budget. ICANN org received submissions from ten community groups and one individual. From those submissions, ICANN org identified 218 specific comments covering nine different themes.

- On 15 February 2021, the GAC submitted its comments on these draft plans.

- The public comment staff report will be published on 18 March 2021.

- FY22 Plans will be presented to the ICANN Board for adoption early May 2021.

ICANN is also already preparing for the next fiscal cycle, FY23:

- In April 2021, the GAC will conduct a Strategic Outlook trend session, to identify new trends and how existing trends evolve and their potential impacts on ICANN. Elements collected in this session will inform the FY23 planning process.

Session overview

At ICANN70, the Planning and Finance teams will present the GAC with an update on Finance and Planning.

The session will include:

- Overview of ICANN Financials
  o Introduction of reporting the Finance team publishes on icann.org throughout the year as well as ICANN's financial reporting structure
  o Overview of ICANN's financial terms and results from the last completed fiscal year (FY20)
- Introduction of ICANN Planning process
- Update on FY22 planning and next steps toward adoption of the plans

Key Reference Documents

ICANN Plans:

- ICANN FY21-25 Strategic Plan and 2020 Strategic Outlook trend report can be found on the Strategic Planning web page on iccan.org.
- PTI Strategic Plan for July 2020 to June 2024 can be found here.

- Draft FY22-26 Operating & Financial Plan and Draft FY22 Operating Plan & Budget can be found on the corresponding Public Comments page.

ICANN Financial Information:

- https://www.icann.org/resources/pages/governance/current-en

Further Information

On 09 March 2021, as part of ICANN70 prep week, the Planning team held a Planning and Finance community webinar including a review of financial results for FY20 and FY21 , FY22 plans and funding projections, FY22 draft plans public comments overview and planning next steps.

For more information, consult the Planning and Financials sections of icann.org, or contact the planning team at planning@icann.org .

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Rights Protection Mechanisms

Session # 7 - Rights Protection Mechanisms

Contents

Session Objective

The GAC will discuss the Final Report on Phase 1 of the Review of All RPMs in all gTLDs PDP, with a separate specific focus on issues related to DNS Abuse. Furthermore, GAC membership will focus on upcoming next steps in preparation for Phase 2 of the RPM PDP which is set to review the UDRP.

Background

The question of who legally has rights to, or is the legitimate holder of, a domain name can be a matter of dispute. Finding effective and enforceable processes to resolve such disputes across jurisdictions has been one key Internet policy challenge.

Since the creation of ICANN, the ICANN Community has developed several policies and procedures to address various types of second level domain name disputes. The longest standing such procedure, for disputes related to Trademarks, is known as the Uniform Dispute Resolution Policy (UDRP) and following the recommendations of WIPO was adopted in 1999 as an ICANN Consensus Policy binding on all gTLD registry operators and ICANN-accredited registrars.

More recently, as part of the 2012 New gTLD Program, several new rights protection mechanisms (RPMs) were developed to mitigate potential risks and costs to trademark rights holders that could arise in the expansion of the gTLD namespace, and to help create efficiencies for registration service providers among gTLD launches:

1. The Uniform Rapid Suspension (URS) System,

2. The Trademark Clearinghouse (TMCH) and its associated Sunrise Registration Periods and the Trademark Claims Service, and

3. The Trademark Post-Delegation Dispute Resolution Procedures (TM-PDDRP).

The GNSO Council initiated a Policy Development Process for the Review of All Rights Protection Mechanisms in all gTLDs (RPM PDP) on 18 February 2016. The PDP Working Group was chartered to conduct the work in two phases:

1. Phase 1 (now complete) focused on reviewing all RPMs applicable to gTLDs launched under the 2012 New gTLD Program (i.e., Nos. 1-3 listed above), and
2. Phase 2 (that has yet to start) will focus on reviewing the UDRP which applies to all gTLDs and many country code Top Level Domains (ccTLDs), some with tailored variations.

These RPMs will apply also to future rounds of new gTLDs. The review was therefore expected to determine whether those Phase 1 RPMs should continue for future rounds of new gTLDs, and if so, whether any changes, improvements, and/or enhancements need to be made to fulfill the intended objectives of these RPMs, namely "to provide trademark holders with either preventive or curative protections against cybersquatting and other abusive uses of their legally-recognized trademarks?" The review was also tasked with determining whether any of the Phase 1 RPMs should become Consensus Policies applicable to all gTLDs (and if so how such transition would be managed).

Issues

As e.g., highlighted by the GAC in contributions to the development of the Rights Protection Mechanisms (RPMs) of the New gTLD Program, and in particular the GAC Comments on the Applicant Guidebook (26 May 2011), **overarching concerns** included:

- "*Mitigating the negative impact on the business community arising from the potential substantial and rapid escalation in the incidence of cybersquatting due to the scaling up of the number of gTLDs*"
- The need to "*maximize the level of rights protection afforded to businesses big and small*" and ensure "*the burden for business stakeholders [...] is minimized*" when using these mechanisms.

In order to advise ICANN on these matters, the GAC formulated proposals with the assistance of national policy experts and drawing on national consultations with relevant stakeholders. Key proposals and advice **with respect to the Trademark Clearinghouse (TMCH) were that:**

- "*There should be no requirement to provide evidence of use for eligibility to be included in the Clearinghouse which would conflict with many national IP legal frameworks.*"
  - Practically, to provide a level playing field for all trademarks in all jurisdictions, proof of use was required for all TMCH entries in order for brand owners to participate in Sunrise programs, but not for Claims Notices to registrants.
- In order to monitor the effectiveness of these RPMs, the GAC advised the ICANN Board to conduct a comprehensive post-launch independent review of the TMCH, one year after the launch of the 75th new gTLD in the round, to examine whether changes would be needed as well as whether any unforeseen questions and issues may have arisen from the launch of New gTLDs. This review was undertaken in 2016, in early stages of the Phase 1 RPM PDP WG work and served as input to subsequent deliberations.

Regarding the upcoming review of the UDRP as part of Phase 2 of the RPM PDP WG:

- In the ICANN51 Los Angeles GAC Communique the GAC stated "*in implementing any such curative [IGO RPM] mechanism, that the UDRP should not be amended*"
- In a Letter to GNSO Council Regarding UDRP PDP Issues Report (14 September 2011) the GAC stated that it "*considers that any review of the UDRP should be conducted in light of community experience with the new gTLD RPMs, and should take full account of ccTLDs' use of the UDRP. While the GAC is not opposed in principle to a review of the UDRP at an appropriate time, the GAC considers that a review at this time would not be appropriate.*"

In the context of this upcoming UDRP-related work, it should be noted that ICANN's Bylaws provide:

- 1.2 (a)(iv) "*promote well-informed decisions based on expert advice*"
- 1.2 (b)(i) "*To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of, other responsible entities that reflect the interests of affected parties and the roles of bodies internal to ICANN and relevant external expert bodies*"
- 13.1 (a) "T*he purpose of seeking external expert advice is to allow the policy-development process within ICANN to take advantage of existing expertise that resides in the public or*

private sector but outside of ICANN. In those cases where there are relevant public bodies with expertise, or where access to private expertise could be helpful, the Board and constituent bodies should be encouraged to seek advice from such expert bodies or individuals."

- 13.1 (b)(ii) *"In addition, in accordance with Section 13.1(c), the Board may refer issues of public policy pertinent to matters within ICANN's Mission to a multinational governmental or treaty organization."*

In the face of the risk of *"the loudest voice to influence changes in UDRP policy or procedure which could have far-reaching consequences for ICANN, its contracted parties, and indeed for rights owners and the consumers who depend upon the enforcement of these rights"*, a [contribution](#) by MARQUES (1 February 2019), the European Association of Trade Mark Owners suggested that ICANN:

- *"convenes a small group of experts to gather evidence and information from interested parties including ICANN's Contracted Parties and organizations representing both trademark interests and registrant interests"* to *"identify any priority issues and possible solutions for the current RPM Working Group to take forward"*
- *"Request the World Intellectual Property Organization as the global leader, which was commissioned in 1998 to develop a solution which became the UDRP, to select and chair this independent expert group"* and to *"provide the data-based expertise called for under ICANN's Bylaws"*

Leadership Proposal for GAC Action during ICANN70

1. Review and discuss the Phase 1 Final Report on the Review of All Rights Protection Mechanisms in All gTLDs PDP, published on 24 November 2020, including the connections with DNS Abuse discussions.
   a. Japan's proposal on DNS Abuse - March 2021

2. Prepare for providing early input, as necessary, and is expected to be requested from Community Group, to inform the initiation of the upcoming Phase 2 of the [Review of All Rights Protection Mechanisms in all gTLDs](#) PDP, which is set to review the UDRP.
   a. See e.g., as background, a related Briefing Note distributed at ICANN 60 in Abu Dhabi and corresponding WIPO presentation made at that same meeting (annexed to this briefing).

Relevant Developments

The RPM PDP WG delivered its Phase 1 [Final Report](#) on 24 November 2020 to the GNSO Council; it was approved by the GNSO Council on 21 January 2021. Specifically, the GNSO Council approves and recommends that the ICANN board adopt all final PDP recommendations as documented in the Phase 1 Final Report. The PRM PDP WG Phase 1 Final Report includes 35 Final Recommendations addressing the Uniform Rapid Suspension, the Trademark Clearinghouse, Sunrise Periods, Trademark Claims Notices, the Trademark Post Delegation Dispute Resolution Procedure (PDDRP), and Overarching Data Collection Recommendations. For more information please refer to the [GNSO Council Webinar on the RPM PDP WG Final Report](#), which took place on 11 January 2021.

Recommendations to maintain the status quo:

- Trademark+50 rule: under TMCH rules brand owners are allowed to submit into the TMCH up to 50 previously abused domain name variations to be used for Claims Notices *only*.
- "Exact Match" rule: the words claimed to be owned need to exactly match the trademark which is being presented.
- Scope of Applicability of Sunrise and Claims Notices to specific gTLDs for trademarks containing dictionary term(s): the WG discussed the scope of applicability of Sunrises and Claims Notices, to see whether trademarks consisting of dictionary terms should have a different treatment. The WG ultimately decided that restrictions for trademarks that are also a dictionary term (but can be "arbitrary" and even famous in a trademark sense, e.g., APPLE for computers) were not appropriate.
- Trademark Claims Notice timing: the AGB provides a minimum 90-day claims notice period, and the WG decided to maintain this.
- Sunrises: the WG agreed to maintain a mandatory Sunrise period, to maintain existing requirements for Sunrise periods, and against the requirement that new gTLD registries publish their Reserved Names lists.

Recommendations to modify existing *operational practices*:

- URS:
  - Providers to send notices to Respondent after Registry/Registrar has forwarded registration data.
  - ICANN org, Registries, Registrars, and Providers to take steps to ensure contact details are up to date.
  - Providers to require that Examiners document their rationale in sufficient detail.
  - IRT to review implementation issues with respect to Registry Requirement 10 in the "URS High Level Technical Requirements for Registries and Registrars".
  - Suggestion to remove "Technical" in title of "URS High Level Technical Requirements for Registries and Registrars".
- TMCH:
  - The WG clarified that the Validation Provider (currently Deloitte) is primarily responsible for educating rights-holders, domain name registrants, and potential

registrants about its services; the IRT is suggested to work with the Validation Provider and consider enhancing existing educational materials, with additional attention to registrants.
  - The Database Provider (currently IBM) is to must maintain industry-standard levels of redundancy and uptime.
- Sunrises:
  - The SDRP (Sunrise Dispute Resolution Procedure) is not intended to allow changes to Sunrise registrations on grounds of an invalid Trademark Record; a Registry Operator is to immediately suspend domain name registration to allow registrant to file challenge under the TMCH's dispute resolution procedure.
- Trademark Claims Notices:
  - Suggestion to maintain current requirement to send the Claims Notice before a registration is completed; ICANN org can work with Registrars to address implementation issues.
  - Suggestion to revise language of Trademark Claims Notice to make it more "plain English" to improve the understanding of recipients; reflect more specific information about the trademark(s) for which it is being issued, and communicate its meaning and implications.

Recommendations to create new *policies and procedures*:
- GDPR-related:
  - Complainant must only be required to insert publicly-available WHOIS/RDDS data in Initial Complaint; allow update to Complaint within 2-3 calendar days.
  - URS Panelists have discretion to decide whether to publish/redact registration data in the Determination; URS party has the right to request redaction.
  - Clearly define what "Default Period" means; registrant must not change public and non-public registration data elements during the Default Period.
- Complaint Mechanism(s):
  - ICANN Org to establish a compliance mechanism(s) including an avenue for any party in the URS process to file complaints and seek resolution.
- Education:
  - Uniform set of educational materials on what is needed to meet the "clear and convincing" burden of proof.
  - Informational materials to assist Complainants and Respondents, including FAQs, forms, reference materials to explain Providers' services & practices.
- Language:
  - Provider must translate Notice of Complaint into the language of the Registration Agreement.
- Examiner:
  - Provider maintains and publishes a list of Examiners and their qualifications (CVs); identify how often each one has been appointed and link to their decisions.

- - Provider publishes and reasonably enforces an effective Examiner Conflict of Interest Policy.
- Sunrise:
  - Registry Agreement for future new gTLDs to include a provision stating that a Registry Operator shall not operate its TLD in such a way as to have the effect of intentionally circumventing the mandatory RPMs or restricting brand owners' reasonable use of the Sunrise process.
- Trademark Claims Notices:
  - Current mandatory Claims Notice period to remain uniform for all gTLDs in subsequent rounds, with exception for those exempted pursuant to Spec 13 (.Brand TLDs) & Section 6 of Spec 9 Registry Operator Code of Conduct.
  - Trademark Claims Notice to be delivered both in English and the language of the registration agreement.
- Trademark-PDDRP:
  - Suggestion to codify / affirm existing practice that multiple disputes filed by unrelated entities against the same Registry Operator may be initially submitted as a joint Complaint, or may, at the discretion of the Panel, be consolidated upon request.
- TMCH (this recommendation achieved "consensus" rather than "full consensus"):
  - Only "word marks" that meet one of the following requirements are eligible for the mandatory Sunrise and Trademark Claims RPMs:
    - Nationally or regionally registered word marks from all jurisdictions
    - Word marks validated by a court of law
    - Word marks protected by a statute or treaty
  - Geographical indications, protected designations of origin, and other signs protected by quality schemes for distinguishing or indicating the geographic source or quality of goods or services are not eligible for the mandatory Sunrise and Trademark Claims RPMs (unless they are also trademarks as defined in (a) or (b)).
  - TMCH Validation Provider(s), registry operators and other third parties may provide ancillary services to intellectual property rights-holders; these other forms of intellectual property must be held in a separate ancillary database.

Recommendations for overarching data collection:

- For future new gTLD rounds, ICANN Org to collect the following data on at least an annual basis and make the data available to future RPM review teams:
  - Number of marks submitted for validation in each category of marks accepted by the TMCH;
  - Number of successfully validated marks in each category of marks accepted by the TMCH;
  - Number of labels generated for all successfully validated marks;
  - Number of abused labels;
  - Number of marks deactivated in and removed from the TMCH;
  - Breakdown of the scripts/languages represented in a validated and active trademark in the TMCH; and
  - Number of cases decided under the TMCH dispute resolution procedure.

- For future new gTLD rounds, ICANN-accredited registrars must provide ICANN Org with periodic reports of the number of Claims Notices that were sent out to prospective registrants, not less than every 12 months.
- ICANN Org explore developing a mechanism, in consultation with the URS Providers, to enable publication and search of all URS Determinations in a uniform format.
- ICANN org to also collect data concerning trademark owners' and registrants' experience with the RPMs that can be provided to future RPM review teams.

On 10 February 2021 the GNSO Council Approved its [Recommendations Report] to the ICANN Board regarding the adoption of the Phase 1 Final Recommendations from the RPM in all gTLDs PDP.

At this time, the GNSO Council is expected to deliver the report to the ICANN Board imminently for Board review and ultimately Board vote.

This provides an opportunity for the GAC to flag any potential public policy concerns to the Board via GAC consensus advice.

Subject to discussions (and if appropriate consultations) based on prior GAC Advice and Interventions (especially e.g., with respect to the TMCH) it is not foreseen that there is a need for the GAC to flag any specific policy concerns to the Board prior to its vote on the GNSO Council's recommendations.

Current Positions

- ICANN51 Los Angeles GAC Communique
- September 14, 2011 Letter to GNSO Council Regarding UDRP PDP Issues Report
- GAC Comments on the Applicant Guidebook - 26 May 2011

Key Reference Documents

- Phase 1 Final Report on the Review of All Rights Protection Mechanisms in All gTLDs Policy Development Process - 24 November 2020
- GNSO Council Recommendations Report to the ICANN Board – Regarding Adoption of the Phase 1 Final recommendations from the Review of All Rights Protection Mechanisms in All gTLDs Policy Development Process - 10 February 2021

Further Information

- GNSO Council webinar: RPM PDP WG Final Report - 11 January 2021
- RPM in all gTLDs PDP WG Wiki Space
- Phase 1 Initial Report on the Review of All Rights Protection Mechanisms in All gTLDs Policy Development Process
- Final Issue Report - PDP to Review All RPMs in all gTLDs - 11 January 2016

Document Administration

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■ Rights Protection Mechanisms:
Why should the GAC care?

Abu Dhabi
October 31, 2017

Brian Beckham, World Intellectual Property Organization

The Internet and DNS significantly contribute to the global economy

- With over 3.2 billion (and growing) estimated Internet users globally, the digital economy increasingly contributes to GDP, and promotes innovation and job creation

- In 2016 brands spent nearly USD 500 billion on advertising globally

- By 2016 the Internet economy of the G-20 was expected to reach USD 4.2 trillion (5.3% of GDP)

- High- and medium-Web SMEs experience significant revenue growth, and generate more jobs

Sources:
- http://time.com/money/3896219/internet-users-worldwide/
- MAGNA Global Advertising Forecast, www.magnaglobal.com/wp-content/uploads/2016/12/MAGNA-December-Global-Forecast-Update-Press-Release.pdf
- BCG Report: The Internet Economy in the G-20 https://www.bcg.com/documents/file100409.pdf.
- Id. For example, over a 3-year period in Brazil, 98% of High-Web SMEs added jobs vs 77% for Low-Web SMEs

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E-commerce contributes to jobs/GDP

■ The Internet economy contributes to 10% of UK GDP

■ In 2014: the Internet economy contributed to 6% of US GDP ($966b, and 3m jobs)

■ The Internet accounted for 21% of GDP growth from 2005 to 2010 among studied developed countries

Sources:
■ https://www.bcg.com/d/press/1may2015-internet-contributes-10-percent-gdp-uk-economy-12111
■ https://finance.yahoo.com/news/internet-economy-six-percent-us-gdp-study-205601270.html (citing Internet Association study)
■ https://www.mckinsey.com/industries/high-tech/our-insights/internet-matters

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IP/trademarks support jobs/GDP

■ US: trademark-intensive industries contributed 23.7m jobs in 2014, and in 2016 contributed over $6 trillion dollars (38%) to GDP

■ EU: from 2011 to 2013, IP-intensive industries generated over 42% of total economic activity; trademark-intensive industries were 36% (€4.8t) of that activity generating nearly 46m jobs (21%)

■ Latin America: trademark-intensive industries in Chile, Colombia, Panama, Peru, and Mexico, from 2010 to 2014, contributed from 10% to 21% of GDP, and comprised from 8% to 26% of total jobs

■ ASEAN countries Indonesia, Malaysia, the Philippines, Singapore, Thailand: trademark-intensive industries contributed from 22% to 50% of GDP, an comprised from 13% to 29% of total jobs

Sources:
■ https://www.uspto.gov/learning-and-resources/ip-motion/intellectual-property-and-us-economy
■ http://www.prweb.com/releases/2017/09/prweb14668168.htm (INTA press release)
■ Id.
■ https://www.inta.org/Communications/Documents/ASEAN_Impact_Study-Five_Country_Summary_090817.pdf

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Trademarks protect consumers

■ "Trademarks promote freedom of choice and enable consumers to make quick, confident, and safe purchasing decisions."

- 2015: nearly 8.5m trademark applications filed worldwide

Sources:
■ https://www.inta.org/Communications/Documents/ASEAN_Impact_Study-Five_Country_Summary_090817.pdf
■ www.wipo.int/ipstats/en/charts/ipfactsandfigures2016.html

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Protecting consumers in the DNS

■ Protecting brands online helps mitigate consumer confusion and related harms, curb abusive practices, and provide a stable platform for global economic growth

■ In the DNS, the UDRP (the Uniform Domain Name Dispute Resolution Policy) is a vital contribution to these collective benefits

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Addressing trademark abuse in the DNS

■ Bad actors in the DNS target brands and defraud unsuspecting consumers

■ The global nature of the Internet requires global solutions to combat such practices

■ At the request of the US with WIPO Member States' approval, to address bad actors engaged in "cybersquatting" in 1999 WIPO designed the UDRP

■ As a global dispute resolution mechanism, the UDRP resolves domain name disputes without a need for expensive court litigation

■ Through 2017, WIPO has managed almost 40,000 UDRP cases with parties from 175 countries

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Further UDRP benefits

■ Trademark-abusive domain names are also used to perpetuate phishing, fraud, counterfeiting, and employment scams, to distribute malware, or for illegal prescription drugs

■ Beyond assisting brand owners in addressing such abuses of their trademarks online, the UDRP:

- Minimizes burdens on national courts
- Promotes trust, and protects consumers
- Provides predictability for the domain investment aftermarket
- Provides a safe harbor for ICANN Contracted Parties: keeping them out of cybersquatting disputes and courts

■ A globally-recognized best practice, and part of WIPO's capacity-building, the UDRP is the basis for over 75 ccTLD dispute resolution policies in all regions

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WIPO as the UDRP's recognized steward

- Operating on a not-for-profit basis, WIPO invests in training for experts and filing parties, and produces a globally-used Jurisprudential Overview

- Without such WIPO stewardship, UDRP predictability and DNS stability would be severely undermined

- WIPO's institutional investment includes tools such as real-time case statistics and an online searchable Legal Index – both promoting UDRP transparency

- WIPO has initiated e-filing (approved by ICANN's Board), case language practices, and settlement facilities

  - In support of case language capacity, WIPO as the only truly global provider has managed cases in over 20 languages

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Risks to the UDRP in ICANN's structure

- ICANN – for institutional reasons – has decided to initiate a PDP to review the UDRP (and the related new gTLD mechanism, the URS)

- This ICANN process carries a serious risk of undermining the UDRP's effectiveness

- Both institutionally and in practice, ICANN process is weighted towards registration interests

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Safeguarding the UDRP's current positive functioning

■ As relevant today as ever: with its flexible design, the UDRP model is a globally-valued rights protection tool

■ Achieving a UDRP net-positive means ICANN (a technical body) **giving appropriate weight to WIPO input, experience, and expertise**

■ WIPO, from creating the UDRP, to administering nearly 40,000 cases, uniquely understands the procedural and substantive implications of even well-intended UDRP (and URS) "improvements"

■ The current UDRP design should be preferred to an unwieldy "revised" mechanism that fails to **respect the balance and consensus reflected in WIPO's Jurisprudential Overview**

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Cautionary WG tale: UDRP lock reforms

■ Should not have been necessary

   • ICANN Issues Report: "Paragraph 7 does require a registrar to maintain "Status Quo", *but...*"

■ Occasioned by bad registration actors

■ 2+ years in the making

■ Settlement process spelled out in considerable detail, but...many complications in practice

■ And...a reduced settlement rate!

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Risks in ICANN's Policy Processes

- The ICANN-produced URS is a case study in unwieldy design-by-committee

- Serious concerns regarding its efficacy and operational sustainability remain, which are reflected in its underutilization

- Without a fully informed process, there is a real risk that the UDRP will go the way of the URS

  - WIPO would need to carefully re-examine its continued UDRP investment

- To produce the UDRP in the first place, *WIPO provided the UDRP blueprint to ICANN*

- To consider the future of this unique globally-successful dispute resolution mechanism, WIPO is prepared to provide its expert leadership

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Why is UDRP stability important?

- With expected digital economy growth, and future ICANN new gTLD rounds, the potential for cybersquatting and consumer harm remains constant – if not at risk of increasing

  - These factors make continued UDRP stability all the more important

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How can the GAC help?

■ So that brand owners and consumers in tomorrow's digital economy can to continue to rely on the UDRP:

- Demand that ICANN's processes respect WIPO's unique substantive UDRP expertise and operational experience

    ■ ICANN Bylaws: "promote well-informed decisions based on expert advice"

- GAC Advice; input to RPM Working Group

- IP Office colleagues: WIPO UDRP Briefing Note

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Protecting brands online helps to mitigate consumer confusion and related harm, curb abusive practices, and provide a stable platform for global economic growth. In the DNS, the UDRP (the Uniform Domain Name Dispute Resolution Policy) is a vital contribution to these collective benefits.

The Internet and DNS significantly contribute to the global economy

With 3.2 billion (and growing) estimated Internet users globally, the digital economy increasingly contributes to GDP and promotes innovation and job creation.

- In 2016 brands spent nearly USD 500 billion on advertising globally[1]

- By 2016 the Internet economy of the G-20 was expected to reach USD 4.2 trillion (5.3% of GDP)[2]

- High- and medium-Web SMEs experience significant revenue growth, and generate more jobs[3]

Addressing trademark-abusive conduct in the DNS

Even for all of its positive attributes, as with much public technology, the Internet and DNS also bring their share of bad actors. Many of these bad actors target brands and defraud unsuspecting consumers. To combat such practices, the global nature of the Internet requires global solutions.

At the request of the United States Government with WIPO Member States' approval, to address bad actors engaged in "cybersquatting" in 1999 WIPO designed the UDRP. As a global dispute resolution mechanism, the UDRP resolves domain name disputes without a need for expensive court litigation. Through 2017, WIPO has managed almost 40,000 cases with parties from 175 countries.

In many cases, trademark-abusive domain names are also used to perpetuate phishing, fraud, counterfeiting, and employment scams, to distribute malware, or for illegal prescription drugs.

Further UDRP benefits

Beyond assisting brand owners in addressing abuse of their trademarks online, the UDRP

- Minimizes burdens on national courts

- Promotes trust, and protects consumers

- Provides predictability for the domain investment aftermarket

- Provides a safe harbor for ICANN Contracted Parties: keeping them out of cybersquatting disputes and courts

As a globally-recognized best practice, and part of WIPO's capacity-building, the UDRP is also the basis for over 75 ccTLD dispute resolution policies in all regions.

WIPO as the UDRP's recognized steward

Operating on a not-for-profit institutional basis, WIPO invests in training for Panelists and Parties and produces a globally-used Jurisprudential Overview covering thousands of cases over time.

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[1] MAGNA Global Advertising Forecast,
www.magnaglobal.com/wp-content/uploads/2016/12/MAGNA-December-Global-Forecast-Update-Press-Release.pdf.
[2] BCG Report: The Internet Economy in the G-20 https://www.bcg.com/documents/file100409.pdf.
[3] Id. For example, over a 3-year period in Brazil, 98% of High-Web SMEs added jobs vs 77% for Low-Web SMEs.

Without such WIPO stewardship, UDRP predictability and DNS stability would be severely undermined.

- WIPO's institutional investment includes a range of further tools, including real-time case statistics and an online searchable Legal Index – both promoting UDRP transparency
- WIPO has initiated e-filing, case language practices, and settlement facilities
    - In support of case language capacity, WIPO as a global provider has managed cases in over 20 languages

Risks to the UDRP inherent in ICANN's structure

ICANN, for institutional reasons, has decided to initiate a PDP to review the UDRP and the related new gTLD mechanism, the URS.

This ICANN process carries a serious risk of undermining the UDRP's effectiveness.

Both institutionally and in practice, ICANN process is weighted towards registration interests.

An expert-driven UDRP review avoids undermining the UDRP's functioning

Achieving a UDRP net-positive would mean ICANN, as a technical body, giving appropriate weight to WIPO input, experience, and expertise.

Having created the UDRP, WIPO through tens of thousands of cases uniquely understands the policy and practical implications of even well-intended UDRP (and URS) "improvements", in substance and in process terms.

With its flexible and forward-looking design, the UDRP remains globally-valued as an up-to-date rights protection tool. Its current design should be preferred to an unwieldy "revised" mechanism that fails in practice.

The ICANN-produced URS is a case study in unwieldy design-by-committee. Serious concerns regarding its efficacy and operational sustainability remain, which are reflected in its underutilization. Without a fully informed process, there is a real risk that the UDRP will go the way of the URS (in which case, regrettably, WIPO would need to carefully examine its continued UDRP investment).

To produce the UDRP in the first place, WIPO provided its UDRP blueprint to ICANN for review and implementation. To consider the future of this unique global dispute resolution mechanism, WIPO would be prepared to provide its expert leadership.

The GAC

As the digital economy grows, and ICANN considers future new gTLD rounds, the potential for cybersquatting and consumer harm only increases – making continued UDRP stability all the more important. Any responsible ICANN process should use WIPO's unique substantive UDRP expertise and operational experience.

To preserve the UDRP's vital role in tomorrow's digital economy, GAC support for continued UDRP stability is instrumental. Conveying this support to ICANN would enable brand owners and consumers to continue to rely on the UDRP.

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Governmental Advisory Committee

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VIRTUAL
COMMUNITY FORUM

DNS Abuse Mitigation

Sessions# 8 & 16

Contents

Session Objectives

The GAC will consider recent ICANN Community developments, including the conclusion of the SSR2 Review and that of the Subsequent Procedures PDP to determine next steps in ensuring appropriate measures are taken to prevent and mitigate DNS Abuse in gTLD, including through consideration of concrete proposals for the improvement of contractual provisions and their enforcement.

Background

Malicious activity on the Internet threatens and affects domain name registrants and end-users by leveraging vulnerabilities in all aspects of the Internet and DNS ecosystems (protocols, computer systems, personal and commercial transactions, domain registration processes, etc). These activities can threaten the security, stability and resiliency of DNS infrastructures, and that of the DNS as a whole.

These threats and malicious activities are generally referred to as "DNS Abuse" within the ICANN Community. DNS Abuse is generally understood as including all or part of activities such as Phishing, Malware, Botnets, Distributed Denial of Service Attacks (DDoS), Spam, and the distribution of illegal materials. However, it should be noted that even the exact definition of "DNS Abuse" is a subject of active debate.

While stakeholders in the ICANN Community generally appear to agree that DNS abuse is an issue and should be addressed, there are differences of opinion as to the extent of responsibilities of relevant parties. For instance, Registries and Registrars are concerned with taking on more contractual obligations (which may affect their business models), and argue that their tools to mitigate abuse are limited and may not be appropriate (some abuse may need to be addressed by hosting providers and some registry/registrar action may result in collateral damage and liability exposure).

Notable ICANN Community efforts to address DNS Abuse to date have had varying degree of success:

- ICANN's **Generic Names Supporting Organization (GNSO)** set up the [Registration Abuse Policies Working Group](#) in 2008. It identified a [set of specific issues](#) but did not deliver policy outcomes, nor did a subsequent discussion of [non-binding best practices](#) for Registries and Registrars (including workshops during [ICANN41](#) and [ICANN42](#)).

- **As part of the New gTLD Program,** ICANN Org adopted of a series of new requirements[1] per its memorandum on [Mitigating Malicious Conduct](#) (3 October 2009). [ICANN's Report on New gTLD Program Safeguards](#) (18 July 2016) assessed their effectiveness in preparation for the bylaws-mandated [Competition, Consumer Choice and Consumer Trust (CCT) Review](#) which delivered its recommendations on 8 September 2018.

- Prior to the creation of the GAC's Public Safety Working Group (PSWG), **representatives of Law Enforcement Agencies (LEA)** played a leading role in the **negotiation of the 2013 Registrar Accreditation Agreement**[2], as well as in the development of GAC Advice related to Security Threats which led to new provisions in the Base New gTLD Agreement that outlined responsibilities of registries[3].

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[1] Vetting registry operators, requiring demonstrated plan for DNSSEC deployment, prohibiting wildcarding, removing orphan glue records when a name server entry is removed from the zone, requiring the maintenance of thick WHOIS records, centralization of zone-file access, requiring documented registry level abuse contacts and procedures

[2] See [Law Enforcement Due Diligence Recommendations](#) (Oct. 2019) and the [12 Law Enforcement recommendations](#) (1 March 2012)

[3] These provisions were later complemented by a non-binding [Framework for Registry Operators to Respond to Security Threats](#) (20 October 2017) agreed upon between ICANN Org, Registries and the GAC PSWG.

- **More recently, the ICANN Organization,** through its **Office of the CTO** has developed ICANN's [Domain Abuse Activity Reporting](#) (DAAR) which supports monthly Abuse Reports and monitoring of trends as [reported](#) most recently to the GAC (24 February 2021). The monitoring and reporting of DNS Abuse has actively been supported both by the GAC and Review Teams, which have recommended improvements. It is expected that such tools create transparency and help identify sources of problems, which could then be addressed through compliance or - where needed - informed new policy.

Issues

Past initiatives have not yet resulted in an effective reduction of DNS abuse; rather, it is clear that much remains to be done. Despite ICANN Community attention and existing industry best practices to mitigate DNS Abuse, GAC-led community engagements as well as the Review Teams have highlighted persistent trends of abuse, commercial practices conducive to abuse and evidence that there is "*scope for the development and enhancement of current mitigation measures and safeguards*" as well as potential for future policy development[4].

Additionally, concerns with the ability to effectively mitigate DNS Abuse have been heightened in law enforcement, cybersecurity, consumer protection and intellectual protection circles[5] as a consequence of the entry into force of the European Union General Data Protection Regulation (GDPR) and ensuing efforts to change the WHOIS system - a key crime and abuse investigation tool - to comply with the GDPR. More recently, the COVID-19 global health emergency proved an illustration of existing challenges as pandemic-related domains registrations spiked.

ICANN's Advisory Committees, in particular the GAC, SSAC and ALAC, and various affected third parties have been calling upon ICANN org and the ICANN Community, to take further action[6].

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[4] See [GAC comment](#) (19 September 2017) on the Final Report of the [Statistical Analysis of DNS Abuse in gTLDs](#).

[5] See Section III.2 and IV.2 in the [GAC Barcelona Communiqué](#) (25 October 2018) pointing to surveys of impact on law enforcement in section 5.3.1 of the [Draft Report](#) of the RDS Review Team (31 August 2018) and in a [publication](#) from the Anti-Phishing and Messaging Malware and Mobile Anti-Abuse Working Groups (18 October 2018)

[6] See [DNS Abuse and Consumer Safeguards discussion](#) during the [GDD Summit](#) (7-8 May 2019)

Such further action would require that the ICANN community come to some form of consensus around a number of open questions.

Discussions of abuse mitigation and potential policy work in the ICANN Community generally revolve around:

- **The definition of DNS Abuse**: What constitutes abuse considering the purview of ICANN and its contracts with Registries and Registrars ?
- **The detection and reporting of DNS Abuse:** How to ensure that DNS Abuse is detected and known to relevant stakeholders, including consumers and Internet users ?
- **The prevention and mitigation of DNS Abuse**: What tools and procedures can ICANN org, industry actors and interested stakeholders use to reduce the occurence of abuse and respond appropriately when it does occur ? Who is responsible for which parts of the puzzle, and how can different actors best cooperate?

The GAC, in its efforts to improve security and stability for the benefit of Internet users overall, might wish to be actively involved in advancing the discussion on these issues so that progress can be made towards more effective abuse prevention and mitigation.

Leadership Proposal for GAC Action

1. **Consider the Recommendations of the Security Stability and Resiliency Review (SSR2)** in their [FInal Report](#) (25 January 2021), with a **view to providing GAC Comments prior to** ICANN Board's formal consideration due before 25 July 2021.

2. **Consider new contributions to the Definition of DNS Abuse** to reflect the threats landscape as experienced by law enforcement agencies, consistent with the [GAC Statement on DNS Abuse](#) (18 September 2019), in complement to the [definition adopted by Contracted parties](#) (October 2020) after the emergence of an industry-led [Framework to Address Abuse](#) (17 October 2019).

3. **Deliberate on possible next steps,** including through **concrete proposals to improve policies and/or improve contract provisions and their enforcement**[7] for addressing public policy issues related to DNS Abuse as identified through various Community efforts and GAC contributions:

    a. **The CCT Review Recommendations** per its [Final Report](#) (8 Sept. 2018), considering:

      – The [ICANN Board action](#) (1 March 2019) on all 35 recommendations, its subsequent [adoption](#) (26 January 2020) of an [implementation plan](#) proposed for the 6 recommendations it had accepted (6 September 2019), and its the most recent ICANN Board [resolution](#) (22 October 2020) including [action](#) on 11 of the 17 recommendation initially placed in pending status, as informed by a [detailed assesment](#) from the ICANN org;

      – GAC input in [Comments on the Draft Report](#) (19 May 2017), [Comments](#) on the [Statistical Analysis of DNS Abuse in gTLDs](#) (19 September 2017), [Comments on additional Draft Recommendations](#) (15 January 2018), [Comments on the CCT Review Final Report](#) (11 December 2018), [Comments on the implementation plan](#) (21 October 2019);

      – GAC Advice in the [Montréal Communiqué](#) (6 November 2019) *not to proceed with a new round of gTLDs until after the complete implementation of the recommendations in the Competition, Consumer Trust and Consumer Choice Review that were identified as "prerequisites" or as "high priority"*

      – [Board Clarifying Questions](#) (16 December 2019) regarding the GAC Montreal Advice – including topic of CCT Review and Subsequent Rounds of new gTLDs and the definition of "complete implementation"

      – [GAC Response to Board Clarifying Questions](#) (22 January 2020)

      – [Board Reply to GAC Response to Clarifying Questions](#) (11 February 2020) referring to its [decision](#) (26 January 2020) neither to accept nor reject the advice.

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[7] Per [GAC ICANN69 Communiqué](#) Section IV.2: "*the GAC believes there is now a solid expression of broad support for concrete steps to be taken to address the core components of effective DNS abuse mitigation*"; and [ICANN69 GAC Minutes](#): Section 2.2 "*Action Points: GAC PSWG to consider developing a concrete proposal regarding DNS Abuse Mitigation steps to prepare GAC for further discussions at ICANN70 (per GAC Wrap up Session discussion).*"

b. **The GNSO Policy Development Process Working Group on New gTLD Subsequent Procedures** which determined in its [Final Report](#) (1 February 2021) that "*this PDP Working Group is not making any recommendations with respect to mitigating domain name abuse other than stating that any such future effort must apply to both existing and new gTLDs (and potentially ccTLDs)*" despite relevant recommendations on DNS Abuse addressed to it by the CCT Review Team[8]. The GAC expressed its serious concerns with this decision in the [GAC Comments](#) (29 September 2020) on the Draft Final Report of this PDG WG, and its expectation of the GNSO Council to take swift action on this matter.

c. **Implementation and enforcement of key contractual obligations** in the Registry and Registrar Agreements, in particular:

– **Specification 11 of the New gTLD Registry Agreement** and the related GAC Safeguard Advice in the [Beijing Communiqué](#) (11 April 2013), considering the conclusions of the [Registry Operator Audit for Addressing DNS Security Threats](#) (17 September 2019) and discussion in the [GAC/ICANN Questions & Answers](#) (30 May 2017), in the [GAC Comments](#) on the CCT Draft Report (19 May 2017) and in the [GAC Comments](#) on the SSR2 Draft Report (3 April 2020)

– **The WHOIS Accuracy Program Specification** of the [2013 Registrar Accreditation Agreement](#) which includes provisions for the verification, validation and accuracy of domain registration data, as discussed in the [GAC Comment](#) on the RDS-WHOIS2 Review Final Report (23 December 2019), and the **Registrar's Abuse Contact and Duty to Investigate Reports of Abuse** (Section 3.18) which is currently subject of a [Contractual Compliance Audit launched](#) for 153 selected registrars (15 January 2021). Both of these topics were also discussed in the [GAC/ICANN Questions & Answers](#) (30 May 2017) following GAC Advice in the [Hyderabad Communiqué](#) (8 November 2016)

d. **Community discussions of DNS Abuse and the effectiveness of related contract provisions**, both in terms of enforcement and enforceability:

– **ICANN meeting sessions**: [pre-ICANN66 webinar](#) (15 October 2019), [ICANN66 At-Large Session on End User Concerns](#) (3 November 2019), [ICANN66 Cross Community Session on DNS Abuse](#) (6 November 2019), the [ICANN67 At-Large Session on Contract Compliance](#) (9 March 2020, the [ICANN68 ALAC Session on Public Interest Commitments and the associated Dispute Resolution Procedure](#) (22 June 2020), the [ICANN68 Board GNSO Council Meeting](#) which discussed possible Next Steps regarding DNS Abuse (14 June 2020) and the [ICANN69 Plenary Session on DNS Abuse Issues](#) (20 October 2020)

– **Correspondence between the ICANN Board and the Business and Intellectual Property Constituencies** of the GNSO, including: the BC [Statement Regarding Community Discussion on DNS Abuse](#) (28 October 2019), a [BC letter to the ICANN](#)

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[8] See [Sub Pro PDP WG Final Report](#) Recommendation 9.15 (p. 42) and related [ICANN Board action](#) on the CCT recommendations.

[Board](link) (9 December 2019), and subsequent [response](link) (12 February 2020); followed by a [letter from the IPC to the ICANN Board](link) (24 April 2020)

    e. Implementation of proactive anti-abuse measures by ccTLD Operators that could inform gTLD registry practices such as those presented by the .EU and .DK ccTLDs[9]

    f. The RDS-WHOIS2 Review Recommendations as detailed in its [Final Report](link) (8 October 2019) that are relevant to the legitimate use of WHOIS as a key crime and abuse investigation tool, considering [GAC Comments](link) (23 December 2019) and the [ICANN Board Action](link) to date (25 Feb. 2020)

4. **Consider and continue monitoring progress of key DNS Abuse Mitigation Efforts** in the ICANN Community to inform and promote elevated standards in practices and contracts:

    a. Expected SSAC Proposals for standardization of strategies and processes to address DNS Abuse identification and mitigation in the Report of its DNS Abuse Work Party to be release prior to ICANN70

    b. Implementation of voluntary measures by gTLD Registrars and Registries per the industry-led [Framework to Address Abuse](link) and ongoing discussion in the Internet & Jurisdiction Policy Network[10]

    c. Improvements of ICANN's Domain Abuse Activity Reporting (DAAR) as previously discussed by Registries, the GAC and SSAC, ad ICANN's Office of the CTO[11]

    d. On 27 March 2020, ICANN org [executed](link) the [proposed amendment of the .COM Registry Agreement](link) which **extends contractual provisions to facilitate the detection and reporting of DNS Abuse** (including [Specification 11 3b](link)) **to two-third of the gTLD namespace** (they had only been applicable to New gTLDs so far). Additionally, a binding [Letter of Intent](link) between ICANN org and Verisign lays out a cooperation framework to develop best practices and potential new contractual obligations, as well as measures to help measure and mitigate DNS security threats.

5. **Consider public policy aspects of DNS over HTTPS (DoH)** in light of recent developments in the implementation of Encrypted DNS technologies, consistent with requests from GAC Members during ICANN69 and ongoing work by the GAC's Public Safety Working Group (PSWG) according to its [Work Plan 2020-2021](link).

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[9] See in particular a [EURid presentation](link) (28 January 2016) and [.DK presentation](link) during ICANN64 (12 March 2018)

[10] The Internet and Jurisdiction Policy Network recently [announced](link) (22 February 2021) the launch of a toolkit on DNS Level Action to Address Abuses, which it is planning to present during a conference on Thursday 18 March.

[11] See most recently the [RySG DAAR Working Group Report](link) (9 September 2020), a [response](link) by ICANN's CTO (30 September 2020) and the [OCTO update to the GAC](link) (24 February 2021)

Relevant Developments

Overview of recent developments

- **During recent ICANN meetings**, GAC PSWG leaders provided detailed briefings to the GAC on the issue of DNS Abuse (see material of the GAC [ICANN66 Session](), [ICANN68 Sessions]() and [ICANN68 GAC Briefing on DNS Abuse](), as well the [ICANN69 PSWG Update]() to the GAC).
  - The GAC reviewed measures available to registries and registrars to prevent DNS Abuse, in particular the role of registration policies (including identity verification) and pricing strategies as a key determinants of levels of abuse in any given TLD.
  - The GAC also examined ongoing or possible initiatives to address DNS Abuse more effectively at the ICANN Board and ICANN org level (see [ICANN66 Minutes](), [ICANN68 GAC Communiqué]() and [Minutes]() as well [ICANN69 Communiqué]() and [Minutes]()).
  - The [PSWG Work Plan 2020-2021]() includes all these areas as part of its Strategic Goal #1 to Develop DNS Abuse and Cybercrime Mitigation Capabilities.

- **SSR2 Review Recommendations**
  - The SSR2 Review Team delivered a [Draft Report]() (24 January 2020) with a significant focus on measures to prevent and mitigate DNS Abuse. The [GAC Comment]() (3 April 2020) endorsed many of the recommendations and in particular those pertaining to improving Domain Abuse Activity Reporting (DAAR) and the strengthening of compliance mechanisms.
  - The [Final Report]() (25 January 2021) is now open for [Public Comments]() (Closing 8 April 2021). The structure of the report was changed significantly. GAC Topics leads are currently reviewing the report and will be proposing a Draft Comment for GAC consideration.

- **The Working Party on DNS Abuse of the Security and Stability Advisory Committee (SSAC)** is expected to Report on its activities and findings prior to ICANN70
  - During the ICANN66 meeting, the SSAC reported to the PSWG its initiation of a Working Party on DNS Abuse, in which **a representative of the PSWG has taken part**.
  - Since then, the SSAC has signaled its intention not to declare a definition of DNS Abuse. Instead, the Work Party is expected to focus on roles of appropriate parties, building on Community perspectives and existing Frameworks. The Work Party's goal is to produce a report that outlines potential efforts to standardize community strategies and processes surrounding abuse identification and mitigation.

- **Measures and initiatives to mitigate DNS Abuse by Registries and Registrars**
  - On 27 March 2020, ICANN org [executed]() the [proposed amendment of the .COM Registry Agreement]() which **extends contractual provisions to facilitate the detection and reporting of DNS Abuse** (including [Specification 11 3b]()) **to two-third of the gTLD namespace** (they had only been applicable to New gTLDs so far). Additionally, a binding [Letter of Intent]() between ICANN org and Verisign lays out a cooperation framework to

develop best practices and potential new contractual obligations, as well as measures to help measure and mitigate DNS security threats.

- ○ **In the context of the COVID-19 crisis Contracted Parties presented their actions and lessons learned** [prior](#) and [during the ICANN68 meeting](#) while PSWG stakeholders reported ongoing efforts in collaboration with EU Members-States, Europol, ccTLD and registrars to facilitate reports, their review and their referral to relevant jurisdiction through the adoption of a standardized form to report domain/content related to COVID-19 and the establishment of single point of contacts for relevant authorities. These efforts build on working relations established between law enforcement and registrars and well as the publication by the **Registrar Stakeholder Group** of a [Guide to Registrar Abuse Reporting](#) reported during ICANN67.

- ○ **Public Interest Registry (PIR)**, Registry Operator of .ORG and several New gTLDs [launched](#) (17 February 2021) the **DNS Abuse Institute** which stated objective is "*to bring together leaders in the anti-abuse space to: fund research, publish recommended practices, share data, and provide tools to identify and report DNS Abuse*". This initiative was [presented to the GAC PSWG](#) (3 March 2021) in advance of a [webinar](#) to be held by the Institute on the State of DNS Abuse on 16 March 2021.

- ● **ICANN Org's Multifaceted Response and Contractual Enforcement**
  - ○ The ICANN CEO published a blog on 20 April 2020 detailing ICANN Org's [Multifaceted Response to DNS Abuse](#)
  - ○ **ICANN's Office of the CTO (OCTO) and its Security Stability and Resiliency Team** (SSR) conduct research and maintains ICANN's expertise in DNS security for the benefit of the Community. It is engaged in a variety of cyber threats intelligence and incident response fora including the [Forum of Incident Response and Security Teams](#) (FIRST), the [Messaging, Malware and Mobile Anti-Abuse Working Group](#) (M3AAWG), the [Anti-Phishing Working Group](#) (APWG), the US [National Cyber-Forensics and Training Alliance](#) (NCFTA) and the recent COVID-19 Cyber Threat Coalition (CTC) and Intelligence League (CTI).
    It is also developing systems and tools to assist in identification, analysis and reporting DNS Abuse:
    - – In response to the COVID-19 crisis, OCTO developed the **Domain Name Security Threat Information Collection and Reporting (DNSTICR)** tool to help identify domain names used for COVID-19-related abuse and share data with appropriate parties. The GAC was [briefed](#) on this matter prior to ICANN68 (12 June 2020), as was the ICANN Community [during the ICANN68 meeting](#).
    - – Through its **Domain Abuse Activity Reporting (DAAR) platform**, ICANN has [reported monthly](#) since January 2018 on domain name registration and security threats behavior observed in the DNS. It also monitor trends through its [Identifier Technologies Health Indicators](#) (ITHI). Several stakeholders and ICANN initiatives have commented on the limitations of DAAR, in particular a [letter](#) from the M3AAWG to ICANN org (5 April 2019) and the [Draft Report](#) of tSSR2 Review Team (24 January 2020) which the GAC supported (see below). The Registry

Stakeholder Group who had also expressed their concerns with DAAR and was know to be working with ICANN in its evolution, recently made recommendations in a [correspondence](#) to ICANN's CTO (9 September 2020)

○ ICANN OCTO also supports the recently [launched](#) (6 May 2020) **DNS Security Facilitation Initiative Technical Study Group**, as part of the implementation of the [FY21-25 Strategic Plan](#), to *"explore ideas around what ICANN can and should be doing to increase the level of collaboration and engagement with DNS ecosystem stakeholders to improve the security profile for the DNS"*. Recommendations are expected by May 2021.

○ During a [GAC call on DNS Abuse Matters](#) (24 February 2021), **ICANN org provided updates on OCTO's DNS Abuse-related Activities**, which included a discussion the definition of DNS Security Threats and DNS Abuse, Contracted Parties obligations, Domain Abuse Activity Reporting (DAAR), Domain Name Security Threat Information, Collection, & Reporting (DNSTICR), the status of the Domain Security Facilitation Initiative (DSFI), the new Knowledge-sharing and Instantiating Norms for Domain Name Security (KINDNS) initiative, and a review of OCTO's efforts in the area of training and capacity building throughout the world.

○ **Contractual Compliance enforcement**: in its [blog](#) (20 April 2020), the ICANN CEO recalled: *"ICANN Compliance enforces the contractual obligations set forth in ICANN's policies and agreements, including the Registry Agreement (RA) and the Registrar Accreditation Agreement (RAA). ICANN Compliance also works closely with OCTO to identify DNS security threats [...] and associate those threats with the sponsoring contracted parties. ICANN Compliance uses data collected in audits [...] to assess whether registries and registrars are adhering to their DNS security threat obligations. Outside of audits, ICANN Compliance will leverage data collected by OCTO and others to proactively engage with registries and registrars responsible for a disproportionate amount of DNS security threats. Where constructive engagement fails, ICANN Compliance will not hesitate to take enforcement action against those who refuse to comply with DNS security threat-related obligations."* The blog also provided a sense of volumes of complaints, resources allocated to their processing and statistics on resolution of these complaints.

Focus: Definition of DNS Abuse

As highlighted most recently during the GDD Summit (7-9 May 2019), there is **no Community-wide agreement on what constitutes 'DNS Abuse'**, in part due to concerns of some stakeholders with ICANN overstepping its mandate, impacts on the rights of users, and impact on the bottom line of contracted parties.[12]

There is, however, according the CCT Review Team, a **consensus on what constitutes 'DNS Security Abuse' or 'DNS Security Abuse of DNS infrastructure'** understood as including "*more technical forms of malicious activity*", such as malware, phishing, and botnets, as well a spam "*when used as a delivery method for other forms of abuse.*" [13]

The ICANN Contractual Compliance Department has referred to 'Abuse of DNS Infrastructure' and 'Security Threats' in its communications about audits of Registries and Registrars regarding their implementation of contractual provisions in the New gTLD Registry Agreement (Specification 11 3b) regarding "*security threats such as pharming, phishing, malware, and botnets*"[14] - and in the Registrar Accreditation Agreement (Section 3.18) - which refers to "*abuse contacts*" and "*abuse reports*" without providing a definition of the term 'abuse' specifically, but including 'Illegal Activity" within its scope.

From a GAC perspective, the definition of 'Security Threats' in the New gTLD Registry Agreement is in fact the transcription of the **definition given in the 'Security Checks' GAC Safeguards Advice** applicable to all New gTLDs in the Beijing Communiqué (11 April 2013).

Following the Board resolution (1 March 2019) directing ICANN org to "*facilitat[e] community efforts to develop a definition of 'abuse' to inform further action on this recommendation.*"[15].

During a pre-ICANN66 webinar on 15 October 2019 **PSWG and Contracted Parties discussed current issues and industry practices**. In preparation for this webinar, the Registry Stakeholder Group had issued an Open Letter (19 August 2019) discussing the registries views on the definition of DNS Abuse, the limited options registries have to take action on security threats and theirs concerns with ICANN's Domain Abuse Activity Reporting.

In response, the GAC issued a Statement on DNS Abuse (18 September), followed by the Business Constituency (28 October). In its Statement, the GAC recognised the CCT Review Team's definition of DNS Abuse as the "*intentionally deceptive, conniving, or unsolicited activities that actively make use of the DNS and/or the procedures used to register domain names*", which in technical terms

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[12] Indeed, the definition of Abuse Mitigation may carry consequences in terms of the scope of activity overseen by ICANN policies and contracts. While governments and other stakeholders are concerned with the impact of DNS abuse on the public interest, including the safety of the public and the infringement of intellectual property rights, registries and registrars are concerned with restrictions on their commercial activities, ability to compete, increased operating costs and liability for consequences registrants may incur when action is taken on abusive domains. Non-commercial stakeholders on their part are concerned with the infringement of freedom of speech and privacy rights of registrants and Internet users, and share with contracted parties concerns about ICANN overstepping its mission.

[13] See p.88 of the CCT Review Final Report (8 September 2018) as highlighted more recently in the GAC Statement on DNS Abuse (18 September 2019)

[14] The Advisory, New gTLD Registry Agreement Specification 11 (3)(b) (8 June 2017) provides a definition of 'Security Threats' as including "*pharming, phishing, malware, botnets, and other types of security threats.*"

[15] See p.5 of scorecard of Board Action on the Final CCT Recommendations

may take the form of Security Threats such as "*malware, phishing, and botnets, as well as spam when used as a delivery method for these forms of abuse*". The GAC recognised that the New gTLD Registry Agreement reflects this understanding in its Specification 11, in particular section 3a[16] and 3b[17].

Following the publication of the GAC Statement on DNS Abuse (18 September 2019) a set of **leading gTLD registries and registrars proposed a voluntary** Framework to Address Abuse (17 October 2019). Notably, this Framework includes in the scope of possible action by its adopters certain forms of "Website Content Abuse", which it considers "so egregious that the contracted party should act when provided with specific and credible notice". Since its publication and discussion during ICANN66, the list of signatories of this Framework has expanded to include other leading registrars and registries services providers, as well as a number of smaller industry players.

On 18 June 2020, the chairs of the **Registry and Registrar Stakeholder Groups** (collectively known as the Contracted Parties House of the GNSO, or CPH) shared with Community leaders that they **adopted a** definition of DNS Abuse mirroring exactly that of the industry-led Framework to Address Abuse:

> *DNS Abuse is composed of five broad categories of harmful activity insofar as they intersect with the DNS: malware, botnets, phishing, pharming, and spam when it serves as a delivery mechanism for the other forms of DNS Abuse* [referencing the Internet and Jurisdiction Policy Network's Operational Approaches, Norms, Criteria, Mechanisms for definitions for each of these activities].

This definition **appears to confirm what the CCT Review Team called an existing consensus on "DNS Security Abuse** or DNS Security Abuse of DNS infrastructure" (CCT Final Report p. 8.) and **comports with the GAC's illustrative definition of "Security Threats"** in the 'Security Checks' GAC Safeguard Advice applicable to all New gTLDs of the Beijing Communiqué (11 April 2013) incorporated in the gTLD Registry Agreement under Specification 11 3.b.

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[16] Specification 11 3a provides that "*Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.*"

[17] Specification 11 3b provides that "R*egistry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.*"

Focus: DNS Abuse Safeguards in Registries and Registrars Contracts

Building on the [Law Enforcement Due Diligence Recommendations](#) (October 2009), the GAC sought the **inclusion of DNS Abuse Mitigation Safeguards in ICANN's contracts** with Registries and Registrars:

- The 2013 [Registrar Accreditation Agreement](#) (17 September 2013) was approved by the ICANN Board (27 June 2013) after the inclusion of provisions [addressing](#) the [12 Law Enforcement recommendations](#) (1 March 2012)
- The [New gTLD Registry Agreement](#) was [approved by the ICANN Board](#) (2 July 2013) after the inclusion of provisions in line with the GAC Safeguards Advice in the [Beijing Communiqué](#) (11 April 2013), consistent with the ICANN Board [Proposal for Implementation of GAC Safeguards Applicable to All New gTLDs](#) (19 June 2013)

After the first few years of operations of New gTLDs, during the ICANN57 meeting, **the GAC identified a number of provisions and related safeguards for which it could not assess effectiveness**. As a consequence, in its [Hyderabad Communiqué](#) (8 November 2016) the GAC sought clarifications on their implementation from the ICANN Board. This led to a dialogue between the GAC and the ICANN org, follow-up questions in the [GAC Copenhagen Communiqué](#) (15 March 2017) and a set of [draft responses](#) (30 May 2017) which were discussed in a conference call between the GAC and the ICANN CEO (15 June 2017). A number of questions remained open and new questions were identified as reflected in a subsequent [working document](#) (17 July 2017).

Among the outstanding topics of interest to the GAC, an [Advisory, New gTLD Registry Agreement Specification 11 (3)(b)](#) was published on 8 June 2017 in response to questions from some registry operators seeking guidance on how to ensure compliance with Section 3b of [Specification 11 of the New gTLD Registry Agreement](#). **The Advisory offers one voluntary approach registry operators may adopt** to perform technical analyses to assess security threats and produce statistical reports as required by Specification 11 3(b).

As part of regular **audits conducted by the ICANN Contractual Department**, a [targeted audit](#) of 20 gTLDs on their "*process, procedures, and handling of DNS infrastructure*", between March and September 2018, revealed that "*there were incomplete analyses and security reports for 13 top-level domains (TLDs), as well as a lack of standardized or documented abuse handling procedures and no action being taken on identified threats.*"[18] Shortly thereafter, in November 2018, a [DNS Infrastructure Abuse Audit](#) of nearly all gTLDs was launched to "*ensure that the contracted parties uphold their contractual obligations with respect to DNS infrastructure abuse and security threats*". In its [report](#) of the latest audit (17 September 2019), ICANN concluded that:

- the vast majority of registry operators are committed to addressing DNS security threats.
- The prevalence of DNS security threats is concentrated in a relatively small number of registry operators.

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[18] As reported in the blog post of 8 November 2018, Contractual Compliance: Addressing DNS Infrastructure Abuse: https://www.icann.org/news/blog/contractual-compliance-addressing-domain-name-system-dns-infrastructure-abuse

- Some Registry Operators interpret the contractual language of Specification 11 3(b) in a way that makes it difficult to form a judgment as to whether their efforts to mitigate DNS security threats are compliant and effective.

Contacted parties have taken issue with these audits as exceeding the scope of their contractual obligations.[19] ICANN org indicated that it will initiate an audit of registrars focusing on DNS security threats.

Focus: Non-Binding Framework for Registries to Respond to Security Threats

As part of the New gTLD Program, the ICANN Board resolved (25 June 2013) to include the so-called "security checks" (Beijing Communiqué GAC Safeguards Advice) into Specification 11 of the New gTLD Registry Agreement. However, because it determined that these provisions lacked implementation details, it decided to solicit community participation to develop a framework for *"Registry Operators to respond to identified security risks that pose an actual risk of harm (…)"*. In July 2015, ICANN formed a Drafting Team composed of volunteers from Registries, Registrars and the GAC (including members of the PSWG) who developed the Framework for Registry Operator to Respond to Security Threats published on 20 October 2017, after undergoing public comment.

This framework is a voluntary and non-binding instrument designed to articulate guidance as to the ways registries may respond to identified security threats, including reports from Law Enforcement. It introduces a 24h maximum window for responding to High Priority requests (imminent threat to human life, critical infrastructure or child exploitation) from *"legitimate and credible origin"* such as a *"national law enforcement authority or public safety agency of suitable jurisdiction"*.

Per its recommendation 19, the CCT Review Team deferred the task of conducting an assessment of the effectiveness of the Framework to a subsequent review[20] as the Framework had not been in existence for a long enough period of time to assess its effectiveness.

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[19] See correspondence from the RySG (2 November 2019) to which ICANN org responded (8 November), and in comments posted on the announcement page (15 November): registries have taken issues with the audit questions as threatening enforcement action exceeding the scope of their contractual obligations [in particular under Specification 11 3b] and indicated their reluctance to *"share with ICANN org and the community relevant information regarding our ongoing efforts to combat DNS Abuse […] as part of an ICANN Compliance effort that goes beyond what is allowed under the Registry Agreement"*

[20] CCT Review recommendation 19: *The next CCT should review the "Framework for Registry Operator to Respond to Security Threats" and assess whether the framework is a sufficiently clear and effective mechanism to mitigate abuse by providing for systemic and specified actions in response to security threats*

Focus: Consideration of the CCT Review Recommendations on DNS Abuse

Based on its analysis of the DNS Abuse landscape,[21] including consideration of ICANN's Report on New gTLD Program Safeguards (15 March 2016) and the independent Statistical Analysis of DNS Abuse (9 August 2017), the CCT Review Team recommended, in relation to DNS Abuse:

- The inclusion of **provisions in Registry Agreements to incentivize the adoption of proactive anti-abuse measures** (Recommendation 14)

- The inclusion of contractual provisions aimed at **preventing systemic use of specific registrars or registries** for DNS Security Abuse, including thresholds of abuse at which compliance inquiries are automatically triggered and consider a possible DNS Abuse Dispute Resolution Policy (DADRP) if the community determines that ICANN org itself is ill-suited or unable to enforce such provisions (Recommendation 15)

The ICANN Board resolved (1 March 2019) to place these recommendations in "Pending" Status, as it directed ICANN org to *"facilitat[e] community efforts to develop a definition of 'abuse' to inform further action on this recommendation."*[22]

In light of Advice in the GAC Montréal Communiqué (6 November 2019) for the ICANN Board *"not to proceed with a new round of gTLDs until after the complete implementation of the recommendations [...] identified as "prerequisites" or as "high priority"*", and the Board response to this advice (26 January 2020), the PSWG continues to monitor the consideration of key CCT-RT recommendations (6 September 2018) aimed at: the adoption of contractual provisions to incentivize proactive anti-abuse measures (Rec. 14) and to prevent systemic use of registrars or registries for DNS Abuse (Rec. 15); the improvement of research on DNS Abuse (Rec. 16); the improvement of WHOIS Accuracy (Rec. 18); and effectiveness of contractual compliance complaints handling (Rec. 20).

The GAC PSWG is also considering the Board resolution to proceed with ICANN's implementation plan (23 August 2019) for CCT Recommendations that were accepted in the Scorecard of ICANN Board Action (1 March 2019). The GAC had commented (21 October 2019) on this plan and highlighted some shortcomings regarding important recommendations to combat DNS Abuse, including the publication of the chain of parties responsible for gTLD domain name registrations (Rec. 17), more detailed information on contractual compliance complaints (Rec. 21), security measures commensurate with the offering of services that involve the gathering of sensitive health and financial information (Rec. 22).

Following the adoption by the Contracted Parties of a definition of the DNS Abuse the **GAC sought clarification from the ICANN Board during ICANN68** (see material of GAC/Board meeting on 24 June 2020), in connection with implementation of CCT-RT Rec. 14 (*ICANN to negotiate contractual provisions providing financial incentives for contracted parties to adopt proactive anti-abuse measures*), as to the status and plan regarding the facilitation of community efforts to develop a definition of 'abuse' and to inform further Board action on this recommendation. The GAC recorded in its ICANN68 Minutes that "*the Board will continue to support community dialogue as it*

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[21] See Section 9 on Safeguards (p.88) in the CCT REview Final Report (8 September 2018)
[22] See p.5 of scorecard of Board Action on the Final CCT Recommendations

has been doing by facilitating regional and cross-community discussions, by conducting research and developing tools to help inform community discussions, and by providing speakers when requested".

During the ICANN68 meeting, the PSWG noted with ALAC stakeholders that progress on both implementation of accepted CCT-RT recommendation and consideration of pending recommendation is unclear. Unsatisfaction was also expressed at a [communication](#) (29 April 2020) of the **GNSO Policy Development Process Working Group on New gTLD Subsequent Procedures** that it is "*not planning to make any recommendations with respect to mitigating domain name abuse other than stating that any such future effort must apply to both existing and new gTLDs (and potentially ccTLDs)".* This is despite relevant recommendations addressed to it by the CCT Review Team, further supported by ICANN Board Action on these recommendations, as well as [GAC Montréal Communiqué](#) [Advice](#) (6 November 2019) and further GAC input as recorded in the [GAC ICANN67 Communiqué](#) (16 March 2020).

In its [Final Report](#) (1 February 2021), the GNSO Policy Development Process Working Group on New gTLD Subsequent Procedures confirmed its decision[23]. The GAC expressed its serious concerns on this matter in the [GAC Comments](#) (29 September 2020) on the Draft Final Report of this PDP WG, and its expectation of the GNSO Council to take swift action on this matter.

Focus: Discussion GNSO policy development on DNS Abuse Mitigation

Following the initial decision by the New gTLD Subsequent Procedures PDP WG not to make any recommendation in the area of DNS Abuse for future New gTLD contracts, the **GNSO Council discussed** in its [meeting](#) on 21 March 2020 **the possibility of initiating a Cross Community Working Group (CCWG)** on matters of DNS Abuse and possibly a subsequent GNSO PDP should new contractual requirements be needed.

It did not discuss an informal proposal by the [GAC Leadership](#) (12 May 2020) to consider a Birds of a feather discussion among relevant experts, including ccTLD operators, to scope any future policy effort.

As of 18 February 2021, this matter is still identified as "Unplanned" in the [GNSO Council Action/Decision Radar](#), with the GNSO Council "*to determine next steps, if any, on DNS Abuse*". The GAC Leadership and relevant Topic leads are due to discuss this matter during a [pre-ICANN70 GAC/GNSO Leadership call](#) (8 March 2021), in preparation for the [ICANN70 GAC meeting with the GNSO](#) (24 March 2021).

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[23] See [Sub Pro PDP WG Final Report](#) Recommendation 9.15 (p. 42)

Focus: Domain Abuse Activity Reporting (DAAR)

ICANN org's Domain Abuse Activity Reporting Project emerged as a research project concurrently to the GAC and PSWG engagement of the ICANN Board and Community on the effectiveness of DNS Abuse mitigation, between the ICANN57 (Nov. 2016) and ICANN60 meetings (Nov. 2017).[24]

The stated purpose of DAAR is to "*report security threat activity to the ICANN community, which can then use the data to facilitate informed policy decisions*". This is achieved since January 2018 by the publication of monthly reports, based on the compilation of TLD registration data with information from a large set of high-confidence reputation and security threat data feeds.[25]

As such, DAAR is contributing to the requirement identified by the GAC for publication of "*reliable and detailed data on DNS Abuse*" in the GAC Abu Dhabi Communiqué (1 November 2017). However, as highlighted in a letter from the M3AAWG[26] to ICANN org (5 April 2019), by not including security threat information on a per registrar per TLD basis, DAAR is still falling short of expectation from the GAC PSWG Members and their cybersecurity partners that it provides actionable information.

Recently, registries reported in an Open Letter (19 August 2019) interacting with ICANN's Office of the CTO "*to analyze DAAR with a view to recommending enhancements to OCTO to ensure DAAR better serves its intended purpose and provides the ICANN community with a valuable resource*". While registries recognized that "*some members of the community may rely on data provided in ICANN's Domain Abuse Activity Reporting - or DAAR - to support claims of systemic or widespread DNS Abuse*" they believe that "*the tool has significant limitations, cannot be relied upon to accurately and reliably report evidence of security threats, and does not yet achieve its objectives*".

The Registry stakeholder group reported on its work in its DAAR Working Group Report (9 September 2020), in response to which the ICANN CTO (30 September 2020): "*the majority of recommendations in the letter emphasize improving communication around the data that are exported from the DAAR system, as that communication is seen by the Working Group as potentially unclear, both in terms of the DAAR's current methodology documentation as well as in the DAAR monthly reports. While most of the recommendations focus on specific changes in the report, some (such as recommendation 3 which asks for measuring of the "persistence" of reported abusive activity) may require longer-term investigation and analysis.*"

During the OCTO update to the GAC (24 February 2021), the ICANN CTO discussed future plans in the development of DAAR: adding more ccTLDs to the scope of DAAR, continuing to work with the RySG DAAR Working Group, and exploring solutions to overcome challenges with accessing WHOIS data to build Registrar level metrics including: daily WHOIS queries only for blocklisted domains, random sampling of domains or getting approval to use data from Bulk Registration Data Access (BRDA).

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[24] See cross-community sessions led by the GAC PSWG during ICANN57 (Nov. 2016), ICANN58 (March 2017) and ICANN60 (October 2017), as well as questions to the ICANN Board regarding the effectiveness of DNS Abuse Safeguards in Hyderabad Communiqué (8 November 2016), follow-up questions in the GAC Copenhagen Communiqué (15 March 2017) and a set of draft responses (30 May 2017) by ICANN org.

[25] For more information, see https://www.icann.org/octo-ssr/daar-faqs

[26] Messaging, Malware and Mobile Anti-Abuse Working Group

Current Positions

The current positions of the GAC are listed below in reverse chronological order:

- GAC ICANN69 Communiqué (23 October 2020) noting the GAC's belief that *"there is now a solid expression of broad support for concrete steps to be taken to address the core components of effective DNS abuse mitigation"* in light of increasing momentum and constructive dialogue in the ICANN Community (see Section IV.2 p.6).

- GAC ICANN68 Communiqué (27 June 2020) noting *"that new efforts to tackle DNS abuse should not replace, but rather complement, existing initiatives to improve accuracy of registration data, such as the Accuracy Reporting System, and to implement policy on privacy and proxy services, which are currently on hold"* (see Section IV.3 p.7)

- GAC Comment (3 April 2020) on the SSR2 Review Team Draft Report

- GAC Comment on the RDS-WHOIS2 Review Final Recommendations (23 December 2019)

- GAC Statement on DNS Abuse (18 September 2019)

- GAC Comments on the CCT Review Final Report (11 December 2018)

- GAC Comment (16 January 2018) on New Sections of the CCT Review Team Draft Report (27 November 2017)

- GAC Comment on the Statistical Analysis of DNS Abuse in gTLDs (19 September 2017)

- GAC Comment on New gTLD Program Safeguards Against DNS Abuse Report (21 May 2016)

- GAC Barcelona Communiqué (25 October 2018) in particular sections III.2 GAC Public Safety Working Group (p.3) and IV.2 WHOIS and Data Protection Legislation (p.5)

- GAC Copenhagen Communiqué (15 March 2017) including Abuse Mitigation Advice requesting responses to the GAC Follow-up Scorecard to Annex 1 of GAC Hyderabad Communiqué (pp. 11-32)

- GAC Hyderabad Communiqué (8 November 2016) including Abuse Mitigation Advice requesting responses to Annex 1 - Questions to the ICANN Board on DNS Abuse Mitigation by ICANN and Contracted Parties (pp.14-17)

- GAC Beijing Communiqué (11 April 2013), in particular the 'Security Checks' Safeguards Applicable to all NewgTLDs (p.7)

- GAC Dakar Communiqué (27 Octobre 2011) section III. Law Enforcement (LEA) Recommendations

- GAC Nairobi Communiqué (10 March 2010) section VI. Law Enforcement Due Diligence Recommendations

- LEA Recommendations Regarding Amendments to the Registrar Agreement (1 March 2012)

- Law Enforcement Due Diligence Recommendations (Oct. 2009)

Key Reference Documents

- GAC Documentation on DNS Abuse
  - [GAC ICANN68 Briefing on DNS Abuse](#) (18 June 2020)
  - [GAC Questions on Abuse Mitigation and ICANN Draft Answers](#) (30 May 2017) per Advice in the [GAC Hyderabad Communiqué](#) (8 November 2016) and Follow-up in [GAC Copenhagen Communiqué](#) (15 March 2017)

- Definition of DNS Abuse (including Industry Stakeholders Perspective)
  - [Contracted parties definition of DNS Abuse](#) (October 2020)
  - [Framework to Address Abuse](#) (17 October 2019)
  - [GAC Statement on DNS Abuse](#) (18 September 2019)

- SSR2 Review [FInal Report](#) (25 January 2021

- RDS-WHOIS2 Review
  - [Scorecard of ICANN Board Action](#) (25 February 2020) on the Final RDS-WHOIS2 Review Recommendations
  - [Final RDS-WHOIS2 Review Recommendations](#) (3 September 2019)

- Competition, Consumer Choice and Consumer Trust Review
  - [Scorecard of ICANN Board Action](#) (22 October 2020) on 11 of the 17 pending CCT Recommendations and the related [detailed assessment](#) provided by ICANN org
  - [Scorecard of ICANN Board Action](#) on the Final CCT Recommendations (1 March 2019)
  - [CCT Review Final Report and Recommendations](#) (8 September 2018), in particular Section 9 on Safeguards (p.88)
  - [Statistical Analysis of DNS Abuse in gTLDs](#) (9 August 2017)

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ICANN 70

VIRTUAL
COMMUNITY FORUM

Public Safety Working Group (PSWG) Update

Session 9

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Session Objective

The GAC Public Safety Working Group (PSWG) will provide an update on its work consistent with its strategic goals to mitigate DNS Abuse and cybercrime, preserve and improve access to domain registration data (and its accuracy) and ensure effective PSWG operations and stakeholders relations.

Background

Representatives from law enforcement and consumer protection agencies around the world have been involved in Internet policy deliberations at ICANN and through the Regional Internet Registries (AfriNIC, APNIC, ARIN, LACNIC and RIPE NCC).

While public safety agencies at ICANN initially focused on the need for open and accurate WHOIS information for international law enforcement investigations, the work quickly grew to include the prevention and response to the exploitation of domain registrations for malicious or criminal purposes (also known as "DNS Abuse").

Through their early work with the GAC and the ICANN Community, public safety agencies have made important contributions that continue to shape ICANN policy deliberations and contracted parties obligations to this day. Such contribution include:

- **Recognition of the legitimate uses of WHOIS**, as reflected in the GAC Principles Regarding gTLD WHOIS Services within the GAC Lisbon Communiqué (28 March 2007). These principles are regularly referenced by the GAC when providing input (as in the recent GAC Comments on the RDS-WHOIS2 Review Recommendations, 23 December 2019) or Advice to the ICANN Board (see rationale of Advice in the GAC San Juan Communiqué, 15 March 2018);

- **Due Diligence Recommendations for ICANN[1]** which were endorsed in the GAC Brussels Communiqué (25 June 2010) and eventually led to contractual amendments in the 2013 Registrar Accreditation Agreement (RAA) adopted by the ICANN Board on 27 June 2013; and

- **Introduction of New gTLD GAC Safeguards** in the GAC Beijing Communiqué {11 April 2013) which led to specific Public Interest Commitment provisions in Specification 11 of the New gTLD Registry Agreement

In the GAC Singapore Communiqué (11 February 2015), the GAC agreed to establish a Working Group on Public Safety and Law Enforcement. During the ICANN53 meeting in Buenos Aires, the GAC endorsed the Terms of Reference of the Public Safety Working Group (PSWG) whose focus was to be "*those aspects of ICANN's policies and procedures that implicate the safety of the public*"

Issues

As reflected in its current Work Plan 2020-2021 endorsed by the GAC on 16 March 2020, the PSWG is seeking to:

- **Develop DNS Abuse and Cybercrime Mitigation Capabilities** (Strategic goal #1), that is developing capabilities of the ICANN and Law Enforcement communities to prevent and mitigate abuse involving the DNS as a key resource
- **Preserve and Improve Domain Name Registration Data Effectiveness** (Strategic goal #2), that is ensuring continued accessibility and improved accuracy of domain registration information that is consistent with applicable privacy regulatory frameworks

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[1] See Law Enforcement Due Diligence Recommendations (Oct. 2009)

Leadership Proposal for GAC Action during ICANN70

1. **Review status and progress of the PSWG Work Plan** endorsed by the GAC on 16 March 2020, as described in Annex to this briefing

2. **GAC Members to consider encouraging their relevant public safety agencies** (criminal and civil law enforcement, and consumer protection agencies), to share their experience, challenges and successes in the DNS space, and join the work of the PSWG where their operational experience, expertise and policy concerns are needed. The Working Group relies on the continued engagement of its stakeholders and continues to seek volunteers to contribute to and to take on a leading role in shepherding PSWG work.

Key Reference Documents

- [PSWG Work Plan 2020-2021](#) (16 March 2020)

Further Information

- [ICANN70 GAC Briefing on DNS Abuse](#)
- [ICANN70 GAC Briefing on WHOIS and Data Protection](#)

Document Administration

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Annex 1 - PSWG Work Plan 2020-2021

Annex 2 - Progress Report on PSWG Work Plan 2020-2021

STRATEGIC GOAL 1 - DEVELOP DNS ABUSE AND CYBERCRIME MITIGATION CAPABILITIES

Develop capabilities of the ICANN and Law Enforcement communities to prevent and mitigate abuse involving the DNS as a key resource

	Work Item	Description	Topic Lead
1.1	**Implementation of CCT Review Recommendations for Subsequent Rounds of New gTLDs**	Monitor and contribute to the consideration and implementation of recommendations issued by the Competition, Consumer Trust and Consumer Choice Review Team as they relate to public safety and consumer protection.	Laureen Kapin (US FTC)
1.2	**Seek and Support Improved Registries Prevention and Response to Security Threats**	Improve proactive steps registries may take against Security Threats and supporting registration practices such as Domain Generated by Algorithms (DGA). Assess effectiveness of Specification 11 3b, its related Advisory and the Security Framework for Registries to Respond to Security Threats in implementing the GAC Beijing Communique Safeguards Advice.	Gabriel Andrews (US FBI)
1.3	**Seek and Support Registrars Adoption of Proactive Anti-Abuse Measures**	Seek elevation of contractual standards and practices including: registrant validation (for the entire resale chain), certification and consideration of bulk registrants as legal entities, and removal of DGA service offerings. Encourage and monitor adoption of voluntary frameworks aimed at addressing DNS Abuse.	Gabriel Andrews (US FBI)
1.4	**Survey and Review ccTLD Best Practices for adoption in the gTLD space**	Survey and review ccTLD best practices in mitigating security threats such as abuse prediction, registrant validation and verification policies, with a view to promote their adoption and to elevate contractual standards in the gTLD space.	Tjabbe Bos (European Commission)
1.5	**Ensure Enforceability and Effective Enforcement of Safeguards Provisions in ICANN Contracts**	Monitor and contribute to implementation of relevant policies and review recommendations to ensure that related requirements in Registries and Registrars contracts are enforceable. Monitor compliance audit and complaint reporting and assess effectiveness of enforcement and remediation procedures, including in addressing patterns of recurrent non-compliance.	Laureen Kapin (US FTC)

Prepared by the GAC Public Safety Working Group (PSWG)
Endorsed by the GAC on 16 March 2020 (per ICANN67 GAC Communiqué)

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	Work Item	Description	Topic Lead
1.6	**Improve DNS Abuse Data Collection, Quantification, Reporting and Use by Relevant Stakeholders**	Seek the evolution of ICANN's Domain Abuse Activity Reporting (DAAR) to ensure effective registration and abuse data collection, accurate quantification of Security Threats, and enable appropriate use of granular data and reporting by all relevant stakeholders, including law enforcement, registries and registrars.	Gabriel Andrews (US FBI)
1.7	**Improve Domain Seizure And Forfeiture Process, in Coordination With Contracted Parties**	Work with Contracted Parties and ICANN org to establish standard procedures for the management of domain names seized as part of law enforcement investigations, and for which Contracted Parties may continue to bear a financial responsibility.	Gabriel Andrews (US FBI)
1.8	**Follow-up on Previous GAC Advice Regarding the Mitigation of DNS Abuse**	Follow-up as appropriate on the Hyderabad and Copenhagen Communiqués aimed at assessing the effectiveness of previous GAC Advice in relation to the 2013 Registrar Accreditation Agreement and the New gTLD Registry Agreement. The GAC also sought to assess the contribution of the SSR and Contractual Compliance departments of ICANN org to the prevention and mitigation of domain name abuse.	Gabriel Andrews (US FBI)
1.9	**Assess Impact and Risks of DNS Encryption (DNS over HTTPS/TLS) on DNS Abuse Mitigation**	Engage in ICANN Community efforts to evaluate the impact of the adoption of DNS encryption technologies such as HTTPS (DoH) and DNS over TLS (DoT), in particular as it relates to current capabilities to mitigate DNS Abuse.	Katie Noyes (US FBI) Janos Drienyovszki (European Commission)

Prepared by the GAC Public Safety Working Group (PSWG)
Endorsed by the GAC on 16 March 2020 (per ICANN67 GAC Communiqué)

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STRATEGIC GOAL 2 - PRESERVE AND IMPROVE DOMAIN REGISTRATION DATA EFFECTIVENESS

Ensure continued accessibility and improved accuracy of domain registration information that is consistent with applicable privacy regulatory frameworks

	Work Item	Description	Topic Lead
2.1	**Swift Implementation of New gTLD Registration Data Policy** (EPDP Phase 1)	Monitor and contribute to the implementation of the EPDP Phase 1 policy recommendations, including via participation in the Implementation Review Team.	Laureen Kapin (US FTC)
2.2	**Effective Interim Mechanisms for Reasonable Access to Non-Public WHOIS Data** (EPDP Phase 1 Rec. 18)	Ensure that the interim requirements for Registries and Registrars to provide reasonable access to non-public registration data is implemented in a consistent and efficient way, that meets the investigative needs of law enforcement agencies, other public authorities, cybersecurity practitioners and other legitimate third parties. Where needs are not met, ensure there are adequate mechanisms in place to report complaints and enforce compliance.	Laureen Kapin (US FTC)
2.3	**Swift Implementation of a Standardized System for Access and Disclosure to Non-Public gTLD Registration Data** (EPDP Phase 2)	Monitor and contribute to policy development and subsequent implementation efforts towards the timely delivery of the future Standardized System for Access and Disclosure (SSAD) to non-public gTLD Registration Data that is compliant with relevant data protection law.	Chris Lewis-Evans (UK NCA)
2.4	**Accreditation of Public Authorities into Future Systems for Access to gTLD Domain Registration Data**	Support implementation by ICANN and relevant authorities at national/territory level, of the GAC-approved Accreditation Principles for Public Authorities to access any future Standardized System for Access and Disclosure of Non-Public Data.	Chris Lewis-Evans (UK NCA)
2.5	**Long Term Access to Non-Public Domain Registration Data for Law Enforcement and Cybersecurity Practitioners**	Ensure that the evolving needs of law enforcement and their cybersecurity partners are met through all relevant policies, systems and mechanisms available or envisioned, including through evolutions and improvements where necessary.	Chris Lewis-Evans (UK NCA)
2.6	**Improve gTLD Registration Data Accuracy**	Pursue and monitor efforts aimed at improving the overall accuracy of WHOIS data based on regular assessments and reporting of inaccuracy, appropriate compliance enforcement and implementation of industry best practices.	Tjabbe Bos (European Commission)

Prepared by the GAC Public Safety Working Group (PSWG)
Endorsed by the GAC on 16 March 2020 (per ICANN67 GAC Communiqué)

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	Work Item	Description	Topic Lead
2.7	**Public Access to Legal Persons Registration Data** (Legal vs. Natural)	Monitor and contribute to efforts, including implementation of EPDP Phase 1 Recommendation 17, to assess the feasibility of public availability of non-personal information of legal entities involved in gTLD domain registrations. Follow-up on relevant GAC Advice to revisit the interim redaction of such data, which is not required under applicable data protection law.	Laureen Kapin (US FTC)
2.8	**Seek Reverse Lookup Capabilities for Law Enforcement Investigations**	Pursue the development and implementation of appropriate policies, processes and technologies, in the DNS ecosystem, to enable law enforcement to identify all assets controlled by nefarious individuals and entities under investigation.	Gabriel Andrews (US FBI)
2.9	**Implementation of the Privacy/Proxy Services Accreditation Policy**	Seek to resume and contribute to the implementation of an accreditation framework for Privacy/Proxy services providers, with appropriate disclosure requirements ensuring effective access by law enforcement to shielded registrant information.	TBD
2.10	**Collection and Publication of The Chain of Parties Responsible For gTLD Domain Name Registrations**	Monitor and pursue the implementation of CCT Review recommendation 17, including the collection and publication of registrars' reseller information, through relevant policy development processes and contractual negotiations between ICANN and contracted parties, as appropriate.	TBD
2.11	**Performance of ICANN's Mission in Relation to Domain Registration Data Services**	Monitor ICANN's performance in relation to its key bylaw responsibilities regarding accuracy, access and protection of gTLD registration data. Pursue implementation of relevant recommendations of the bylaws-mandated WHOIS-RDS Reviews.	Cathrin Bauer-Bulst (European Commission)

Prepared by the GAC Public Safety Working Group (PSWG)
Endorsed by the GAC on 16 March 2020 (per ICANN67 GAC Communiqué)

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STRATEGIC GOAL 3 - EFFECTIVE PSWG OPERATIONS AND STAKEHOLDER RELATIONS

Ensure PSWG operations remain effective and consistent in meeting the needs of the GAC and public safety agencies.

	Work Item	Description	Topic Lead
3.1	**Maintain PSWG Work Plan**	Follow execution and adjustment of the work plan, consistent with PSWG Terms of Reference, GAC priorities, and ICANN Bylaws, taking into account current challenges and opportunities in ICANN Community processes.	Fabien Betremieux (GAC Support Team)
3.2	**Reporting and Coordination with the GAC**	Ensure alignment of PSWG activities with GAC guidance and priorities. Maintain GAC/PSWG leadership coordination. Coordinate GAC endorsement of key PSWG work products.	Laureen Kapin (US FTC) Cathrin Bauer-Bulst (European Commission)
3.2	**Develop and Maintain Talking Points**	Identify current and future policy issues and opportunities in support of the operational needs of public safety agencies. Seek expert input to inform contributions to the GAC and the ICANN Community.	Gregory Mounier (Europol)
3.3	**Develop PSWG Documentation for Effective ICANN Meetings**	Ensure continuous improvement of PSWG schedule and briefing documentation to facilitate PSWG Members' interactions with relevant ICANN stakeholders and processes during ICANN meetings.	Fabien Betremieux (GAC Support Team)
3.4	**Develop PSWG Collaboration Resources**	Develop PSWG usage of the GAC Website and other relevant resources to ensure ease of access to relevant public and private documentation	Fabien Betremieux (GAC Support Team)
3.5	**Contribute PSWG Experience into Guidelines for GAC Working Groups**	Follow and contribute to the work of the GAC Operational Principle Evolution Working Group, in particular regarding the development of Guidelines for GAC Working Group	Laureen Kapin (US FTC)
3.6	**Develop Participation and Leadership in PSWG Activities**	Provide regular and predictable structure of meetings to address the needs of interested GAC and PSWG stakeholders. Provide opportunities for participation at varying levels of expertise into PSWG work and initiatives.	Laureen Kapin (US FTC)

Prepared by the GAC Public Safety Working Group (PSWG)
Endorsed by the GAC on 16 March 2020 (per ICANN67 GAC Communiqué)

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Strategic Goal 1: Develop DNS Abuse and Cybercrime Mitigation Capabilities

Work Item	Lead	Status	Next Step/Deadline
1.1. Implementation of CCT Review Recommendations for Subsequent Rounds of New gTLDs	Laureen Kapin (US FTC)	**Challenged**: Implementation of CCT Review Recommendations is still contested	While leadership of the CCT Review Team assesses the state of consideration and implementation of its recommendations, the PSWG is shifting its attention to concrete proposals in terms of contract provisions and their enforcement (Work Item 1.5).
1.2. Seek and Support Improved Registries Prevention and Response to Security Threats	Gabriel Andrews (US FBI)	**Ongoing** collaboration on a Framework to Address Malware and Botnet Domains at Scale	PSWG Talks with the RySG have a working goal in CY2021 to establish a "Framework to Address Malware and Botnet Domains at Scale"
1.3. Seek and Support Registrars Adoption of Proactive Anti-Abuse Measures	Gabriel Andrews (US FBI)	**Ongoing** discussions during and in between ICANN meetings	Continue discussion towards improving timeliness and success of requests for registration data. Continue exploration of possible incentives for registrar action vs their most abusive customer.
1.4. Survey and Review ccTLD Best Practices for adoption in the gTLD space	Tjabbe Bos (EC)	**Pending** further study and engagement with ccTLDs	Consideration of ongoing European Commission study of DNS Abuse (which is expected to inform many more areas of the PSWG's work). Consideration of possible collaboration with DNS Abuse Institute, which also considers collaboration with ccTLD registries.
1.5. Ensure Enforceability and Effective Enforcement of Safeguards Provisions in ICANN Contracts	Laureen Kapin (US FTC)	**Ongoing** work on Definition of DNS Abuse and per GAC ICANN69 Action Point for the PSWG to consider developing concrete proposals	Finalize PSWG contribution on ongoing debate about the definition of DNS Abuse, following adoption of a definition by Contracted Paries (Oct. 2020) and recent discussion in SSR2 Review Team. Follow-up on progress and conclusions of the Compliance Audit of registrars recently launched. Report progress on the ICANN69 GAC Action Point for the PSWG to consider developing a concrete proposal regarding DNS Abuse Mitigation.
1.6. Improve DNS Abuse Data Collection, Quantification, Reporting and Use by Relevant Stakeholders	Gabriel Andrews (US FBI)	**Ongoing** consideration of recent briefing by ICANN OCTO to the GAC and possibilities for DAAR to use BRDA data	Per OCTO briefing to the GAC (24 February), and in light of the recent SSR2 Review Final Recommendation, seek GAC support for advice that contracts require Bulk Registration Data Access (BRDA) be made available to OCTO and/or for research purposes.

Work Item	Lead	Status	Next Steps (as of 25 Feb. 2021)
1.7. Improve Domain Seizure And Forfeiture Process in Coordination With Contracted Parties	Gabriel Andrews (US FBI)	**Pending:** Implementation may follow Framework to Address Malware & Botnet Domains at Scale per Work Item 1.2	A 'test-run' of US forfeiture order was to occur with Verisign in 2020. Next steps to be informed by lessons learned.
1.8. Follow-up on Previous GAC Advice Regarding the Mitigation of DNS Abuse	Gabriel Andrews (US FBI)	**Pending** decision on specific areas to follow-up on	Consider historical GAC/PSWG communications that may need follow-up in light of developments and prospects in various tracks of work as identified in the PSWG Work Plan
1.9 Assess Impact and Risks of DNS Encryption (DNS over HTTPS/TLS) on DNS Abuse Mitigation	Katie Noyes (US FBI) Janos Drienyovszki (EC)	**Ongoing** discussions with key players of the web browser software industry in preparation for a panel discussion during ICANN70	PSWG is preparing a panel discussion during ICANN70 to inform GAC Members on recent developments and expected impacts of this technology on DNS Abuse Mitigation capabilities.

Strategic Goal 2: Preserve and Improve Domain Registration Data Effectiveness

Work Item	Lead	Status	Next Steps (as of 25 Feb. 2021)
2.1. Swift Implementation of New gTLD Registration Data Policy (EPDP Phase 1)	Laureen Kapin (US FTC)	**Ongoing** EPDP Phase 1 Implementation. Timeline of completion remains unclear	Continue to follow and contribute to EPDP Phase 1 implementation (meetings twice monthly) and assess impact on the Thick WHOIS and Privacy/Proxy Implementations.
2.2. Effective Interim Mechanisms for Reasonable Access to Non-Public WHOIS Data (Ph. 1 Rec. 18)	Laureen Kapin (US FTC)	**Ongoing** although status of Implementation of GAC Montreal Advice by ICANN org is unclear	Follow-up on ICANN's Implementation of the Board's direction following the Montreal GAC Advice
2.3 Swift Implementation of Standardized System for Access and Disclosure to Non Public gTLD Registration Data (EPDP Phase 2)	Chris Lewis-Evans (UK NCA)	**Challenged: Pending** launch and conclusion of an expected Operational Design Phase to inform Board consideration	Follow and contribute to the Operational Design Phase (ODP) that is expected to be launched by the ICANN Board and to inform feasibility and financial sustainability of the GNSO policy recommendations.
2.4. Accreditation of Public Authorities into Future Systems for Access to gTLD Domain Registration Data	Chris Lewis-Evans (UK NCA)	**Pending** clarity on SSAD implementation of public authorities accreditation requirements and implementation timeline	Keep relevant public authorities informed on possible requirements to apply for accreditation, as well as on dependencies and timeline considerations for planning purposes.
2.5. Long Term Access to Non-Public Domain Registration Data for Law Enforcement and Cybersecurity Practitioners	Chris Lewis-Evans (UK NCA)	**Challenged: Pending** clarity on the outcome of ICANN Board consideration of the GNSO policy recommendations	Follow and contribute to the Operational Design Phase (ODP) that is expected to be launched by the ICANN Board and to inform feasibility and financial sustainability of the GNSO policy recommendations.
2.6. Improve gTLD Registration Data Accuracy	Tjabbe Bos (EC)	**Ongoing:** expected launch of a GNSO Scoping Team to consider the need for policy work. Unclear whether this overcome the consequences of the stalled ARS	GAC representatives are expected to join a soon to be launched GNSO Scoping Team to consider the need for specific policy work, while in the meantime the ICANN Community considers the implication of recent legislative developments in the EU (NIS2 Directive)
2.7. Public Access to Legal vs. Natural Persons Data	Laureen Kapin (US FTC)	**Ongoing** deliberations on GAC proposals in the EPDP Team as part of Phase 2A of its work	GAC Representatives on the EPDP continue arguing for their policy proposals. EPDP Team is due to report to the GNSO Council, prior or during the ICANN70 meeting on its chances to reach consensus.

Work Item	Lead	Status	Next Steps (as of 25 Feb. 2021)
2.8 Seek Reverse Lookup Capabilities for Law Enforcement Investigations	Gabriel Andrews (US FBI) Chris Lewis-Evans (UK NCA)	**Ongoing** mostly as part of deliberations in EPDP Phase 2A, where this may be challenging to achieve	Follow deliberations of EPDP Phase 2A on GAC proposal to publish unique pseudonymized email addresses for each registrant across TLDs. Monitor development and implementation of RDAP capabilities for pivot search.
2.9. Implementation of the Privacy/Proxy Services Accreditation Policy	TBD	**Pending** ongoing GNSO Council consideration of policy impact of EPDP Phase 1 and 2	Follow GNSO deliberations on ICANN org's analysis of the impact of the EPDP Phase 1 and 2 recommendations on the Privacy/Proxy Policy and its implementation
2.10. Collection and Publication of The Chain of Parties Responsible For gTLD Domain Name Registrations	TBD	**Challenged**: Implementation of relevant CCT Review Recommendations not conclusive	Progress on this matter would likely need a challenge of the way in which the relevant CCT Review recommendation was implemented.
2.11. Performance of ICANN's Mission in Relation to Domain Registration Data Services	Cathrin Bauer-Bulst (EC)	**Pending** further action by PSWG in relation to implementation of relevant ICANN Review Recommendations.	Further work on this matter would include following up on the implementation of the RDS2 Review Recommendations, and the expected Board consideration of relevant SSR2 Review recommendations.

Strategic Goal 3: Effective PSWG Operations and Stakeholder Relations

Work Item	Lead	Status	Next Step/Deadline
3.1. Maintain PSWG Work Plan	GAC Support Team	**Ongoing** - Work tracking sheet updated as of 25 Feb. 2021 in advance of ICANN70 Progress Report to the GAC	PSWG to report to the GAC during the ICANN70 PSWG Update Session, as consider any updates to the Work Plan as needed.
3.2. Reporting and Coordination with the GAC	Laureen Kapin (US FTC) Cathrin Bauer-Bulst (EC)	**Ongoing -** Co-chairs regularly join GAC Leadership calls and PSWG provides regular updates to the GAC during ICANN meetings	Next update to the GAC is planned for ICANN70 with a presentation of progress on the Work Plan as well as substantive contributions including a proposed GAC Comment on the SSR2 Review Final Report and concrete proposals to improve the effectiveness of ICANN contracts in combatting DNS Abuse.
3.3. Develop and Maintain Talking Points	TBD	**Challenged** - This work item needs a new shepherd to be initiated	Consider current needs and develop initial talking points ahead of regular Community engagement during and in between ICANN meetings.
3.4. Develop PSWG Documentation for Effective ICANN Meetings	GAC Support Team	**Ongoing** - Developed PSWG Briefing and Notes in addition of the specific Schedule for PSWG Members	Considering future summaries of virtual bilaterals meetings. Welcoming input on effectiveness of current documentation.
3.5. Develop PSWG Collaboration Resources	GAC Support Team	**Pending** identification of needs and prioritization	Ability for PSWG members to leverage private resources on the GAC website remains a challenge due to the need for PSWG Members to be part of the GAC representation to receive website credentials.
3.6. Contribute PSWG Experience into Guidelines for GAC Working Groups	Laureen Kapin (US FTC)	**Pending** resuming of the GAC's GOPE WG activities	Review Draft Guidelines considered by the GAC's Operating Principles Working Group.
3.7. Develop Participation and Leadership in PSWG Activities	Laureen Kapin (US FTC)	**Ongoing**	Implement regular meeting schedule and consult PSWG on needs and interest in ongoing work items

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GAC Meeting with the At-Large Advisory Committee

Session #13 - GAC Meeting with the ALAC

Contents

Session Objective

The GAC and the At-Large Advisory Committee (ALAC) meet at ICANN Meetings to discuss public policy matters of government and Internet end-user interest.

At ICANN70, the ALAC and GAC will discuss the main issues of common interest pertaining to the Expedited Policy Development Process (EPDP) Phase 2, and the New gTLDs Subsequent Procedures (SubPro).

Background

The At Large Advisory Committee (ALAC) is the primary ICANN-designated organizational home for the voice and concerns of individual Internet end users. Representing the At-Large Community, the 15-member ALAC consists of two members selected by each of the five Regional At-Large Organizations (RALOs) and five members appointed by ICANN's Nominating Committee. Advocating for the interests of end-users, the ALAC advises on the activities of ICANN, including Internet policies developed by ICANN's Supporting Organizations.

The GAC and ALAC have been meeting at ICANN Public Meetings in order to coordinate and discuss ICANN policy issues of common interest.

Main Agenda Topics

1. EPDP

GAC and ALAC representatives will discuss matters related to WHOIS and Data Protection in particular:

- Next steps following the GNSO Council's adoption of policy recommendations of Phase 2 of the Expedited Policy Development Process (EPDP) on the Temporary Specification for generic top-level domain (gTLD) Registration Data per its Final Report (30 July 2020) and in light of the Minority Statements by the GAC, ALAC and other stakeholders (See Annex E of Final Report).
- Consideration of further policy work regarding the so called "Priority 2" issues not addressed during EPDP Phase 2 (Legal vs. Natural, Unique pseudonymized contacts and data accuracy)

2. Subsequent Procedures

The GAC and ALAC will focus on potential opportunities for coordination and convergence on topics of interest related to Subsequent Rounds of New gTLDs following the publication of the New gTLDs Subsequent Procedures PDP WG Final Report, submitted to the GNSO Council, in preparation for potential advice to the ICANN Board on the Final Report.

Key Reference Documents

GAC Minority Statement on the Final Report of the Phase 2 of the EPDP on gTLD Registration Data

ICANN CEO letter to GAC on Minority Statement on EPDP Phase 2 Final Report

Addendum to the ALAC Statement on EPDP

GAC Scorecard: Status of Substantive Areas of Interest to the GAC for Subsequent New gTLD Rounds

Further Information

[GAC and ALAC activity page](#)

Document Administration

Meeting	ICANN70 Virtual Community Forum, 22-25 March 2021
Title	GAC Meeting with the ALAC
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GAC Meeting with the Generic Names Supporting Organization

Session #14 - GAC Meeting with the GNSO

Contents

Session Objectives

The GAC and Generic Names Supporting Organization (GNSO) meet at ICANN Meetings to discuss policy matters of interest to both parties. This session will focus on:

1. EPDP Phase 2 and Phase 2A/ SSAD
2. How to Tackle DNS Abuse Mitigation
   - Process to "address" DNS Abuse in accordance with GAC Advice from the Montreal Communique.

Discussion may also include (to be confirmed):
   - Next steps on collaborating on Subsequent Procedures of New gTLDs
   - Accuracy Scoping Team

Background

With the pace of GAC participation in ICANN policy development activities changing in recent years, it has been observed that information sharing with various parts of the ICANN community is more valuable than ever to help GAC members understand the context of various DNS issues. Regular dialogue with members of other ICANN communities can enhance communications and information sharing and create connections that can be relied on as new policy and operational topics are introduced and discussed throughout the community.

At recent public meetings, the GAC has interacted with various community groups from the gTLD space including business, intellectual property and non commercial interests. This meeting with the GNSO Council will continue that strategic communications approach.

The Generic Names Supporting Organization (GNSO) is a body within the ICANN community responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains. The GNSO is the largest Supporting Organization within the ICANN framework.

The GAC normally meets with the Chair and other members of the GNSO Council at each ICANN public meeting to discuss issues of common concern and identify methods for better cooperation. The current Chair of the GNSO Council is Philippe Fouquart. Vice Chairs are Pam Little and Tatiana Tropina. The GNSO Liaison to the GAC is Jeff Neuman. The GAC's point-of-contact to the GNSO is Jorge Cancio (Switzerland).

The GNSO is a "federation" of different stakeholder groups. It is made up of two "Houses" - one "house" for parties contracted to ICANN (Registries and Registrars) and a second "house" for other non-contracted parties – commercial and non-commercial interests.

The GNSO Council and the GNSO stakeholder groups have different roles within the GNSO. The Council undertakes the role of manager of the policy development process. The Council is populated by representative members of the various GNSO stakeholder groups and constituencies. Comparatively, the stakeholder groups themselves (including the Registry Stakeholder Group (RySG) and the Registrar Stakeholder Group (RrSG)) are focused on operational considerations, sharing information and helping their members understand the overall GNSO activities and responsibilities. Various stakeholder groups participate directly in policy development working groups.

Prior to ICANN Public Meetings, the leadership teams of both the GNSO Council and the GAC meet via teleconference to identify the most pressing issues that merit further face to face discussions at the upcoming meeting.

Agenda

The GAC and Generic Names Supporting Organization (GNSO) meet at ICANN Meetings to discuss policy matters of interest to both parties. This session will focus on:

1. EPDP Phase 2 and Phase 2A/ SSAD
2. How to Tackle DNS Abuse Mitigation
   ● Process to "address" DNS Abuse in accordance with GAC Advice from the Montreal Communique.

Other possible topics considered include (to be confirmed):
   ● Next steps on collaborating on Subsequent Procedures of New gTLDs
   ● Accuracy Scoping Team

Key Reference Documents

For additional insights on topics that may be discussed during this session, please review the pre-meeting GAC topic briefings on:

- New gTLD Subsequent Procedures;
- RDS/WHOIS and Data Protection Policy; and
- DNS Abuse Mitigation.

Further Information

Further information about the GNSO and its policy development process are available at http://gnso.icann.org/en/about.

GNSO web site – https://gnso.icann.org/en

Document Administration

Meeting	ICANN70 Virtual Community Forum, 22-25 March 2021
Title	GAC Meeting with the GNSO
Distribution	GAC Members (before meeting) and Public (after meeting)
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GAC ICANN70 Wrap-Up Session
Session # 18 - GAC Wrap-Up Session

Contents

Session Objectives

Based on the GAC's productive experiences during virtual meetings in 2020, a final GAC "wrap-up" session has been scheduled at ICANN70 to enable the GAC to conduct follow-up discussions regarding any timely topics or issues that arise during the ICANN70 meeting week. This additional flexible time can be used by GAC Members to discuss specific follow-up or next-step activities that may be triggered during the meeting week.

Evaluation of Communique Drafting Effort

During this session, GAC Members will have the opportunity to share their views about the ICANN70 Communique drafting process. Recent developments regarding several GAC priority matters may prompt drafting discussions at ICANN70 and an assessment of that work will inform improvements to the Communique development process for future meetings.

GAC Operational Matters

The GAC was informed in early February 2021 that two internal committee working groups were being considered for retirement: 1) the _GAC Working Group to Examine the Protection of Geographic Names in Any Future Expansion of gTLDs_ and 2) the _GAC Working Group to Examine the GAC's Participation in NomCom_. It was noted at the time that the focus of these two working groups seem to have been subsumed by other GAC initiatives (i.e., the Geo Names WG) or currently do not

require ongoing active work that could not otherwise be handled from time to time by the GAC as an entire committee (e.g., the NomCom WG). While these are primarily administrative considerations, they do impact overhead and operational attention that could be devoted to other priority areas.

Feedback provided to the GAC staff in February 2021, evinced support for the proposed retirement of the two identified working groups, but it was agreed that no decision would be made until at least the ICANN70 public meeting.

Review of New GAC Information Tools

GAC Action/Decision Radar Review

As part of its efforts to better inform GAC Members and Observers about existing and upcoming priorities and work efforts, the GAC Leadership has approved GAC Support staff efforts to create an Action/Decision "radar" document that is intended to track existing and anticipated actions requiring GAC decisions on policy and operational matters. A draft action/decision radar document has recently been reviewed and beta tested by the GAC Leadership and a few GAC members. The draft tool will be shared with the full GAC for feedback and comments.

GAC Web Site Plans

GAC Support staff has recently been working with ICANN org support staff to ensure that the GAC web site continues to offer committee participants a productive user experience. In reaction to participant feedback about user experiences on the current site, work is under way to modernize the look of the site consistent with developments on the ICANN.org website. Although fundamental changes cannot be made to the site's technical infrastructure, it is hoped that upcoming changes will improve navigation of the site and allow participants to more effectively use this resource. In the meantime, the GAC Support staff is developing content that will be used to familiarize new committee participants with the capabilities of the web site.

Transition to New (2021-22) GAC Leadership Team

The new GAC Leadership begins its term at the conclusion of the ICANN70 Meeting. The new team for the 2021-22 term will be:

- Manal Ismail (Egypt) - GAC Chair
- Jorge Cancio (Switzerland) - Vice Chair
- Guiguemde Ragnimpinda Jacques Rodrigue (Burkina Faso) - Vice Chair
- Pua Hunter (Cook Islands) - Vice Chair
- Pär Brumark (Niue) - Vice Chair

Further Information

Active GAC working groups continue to make progress between ICANN public meetings in their various areas of focus and expertise. As developments warrant, these working groups update their individual working group web pages. GAC Members and Observers are invited to review those pages for additional progress updates.

GAC Working Group Web Page links:

- GAC Working Group on Human Rights and International Law - https://gac.icann.org/working-group/gac-working-groups-on-human-rights-and-international-law-hril-wg
- GAC Focal Group on Subsequent Rounds of New gTLDs - https://gac.icann.org/working-group/gac-focal-group-on-subsequent-rounds-of-new-gtlds
- GAC Operating Principles Evolution Working Group - https://gac.icann.org/working-group/gac-operating-principles-evolution-working-group-gope-wg
- GAC Working Group on Under-Served Regions - https://gac.icann.org/working-group/gac-working-groups-on-under-served-regions-usr-wg
- GAC Public Safety Working Group - https://gac.icann.org/working-group/gac-public-safety-working-group-pswg
- GAC Universal Acceptance and Internationalized Domain Names Working Group - https://gac.icann.org/working-group/gac-universal-acceptance-and-internationalized-domain-names-working-group-ua-idn-wg

Document Administration

Meeting	ICANN70 Virtual Annual General Meeting, 22-25 March 2021
Title	GAC Wrap-Up Session
Distribution	GAC Members (before meeting) and Public (after meeting)
Distribution Date	Version 1: 9 March 2021

1. ICANN70 Schedule (March)

UTC+8	UTC	UTC-5	Monday 22 March (1)	Tuesday 23 March (2)	Wednesday 24 March (3)	Thursday 25 March (4)
21:00	13:00	08:00		GAC Internal - Session Update **12:45-13:15 UTC / 07:45-08:15 Cancun (30 mins)**	GAC Internal - Session Update **12:45-13:15 UTC / 07:45-08:15 Cancun (30 mins)**	GAC Internal - Session Update **12:45-13:15 UTC / 07:45-08:15 Cancun (30 mins)**
21:15	13:15	08:15				
21:30	13:30	08:30		*GAC Leadership only meetings (08:15-08:45 Cancun)*		
21:45	13:45	08:45				
22:00	14:00	09:00	**1. Opening Plenary (60 mins)**	**8. DNS Abuse Mitigation Discussions (1/2) (60 mins)**	**14. Meeting with the GNSO (60 mins)**	**17 (d). GAC ICANN70 Communique Drafting (60 mins)**
22:15	14:15	09:15				
22:30	14:30	09:30				
22:45	14:45	09:45				
23:00	15:00	10:00	**Networking (30 mins) [TBD]**	Break (30 mins)	Break (30 mins)	Break (30 mins)
23:15	15:15	10:15				
23:30	15:30	10:30				
23:45	15:45	10:45	**2. Subsequent Rounds of new gTLDs (1/3) (45 mins)**	**9. PSWG Update (30 mins)**	**15. Subsequent Rounds of new gTLDs (3/3) (45 mins)**	**Plenary #2: Registry Voluntary Commitments: Getting it Right (90 mins)**
0:00	16:00	11:00				
0:15	16:15	11:15		**10. Subsequent Rounds of new gTLDs (2/3) (60 mins)**		
0:30	16:30	11:30	**3. HRILWG session on Workstream 2 Implementation (45 mins)**		**16. DNS Abuse Mitigation Discussions (2/2) (45 mins)**	
0:45	16:45	11:45				
1:00	17:00	12:00	Break (30 mins)	Break (30 mins)	Break (30 mins)	**Networking (30 mins) [TBD]**
1:15	17:15	12:15				
1:30	17:30	12:30				
1:45	17:45	12:45	**4. RDS/WHOIS and Data Protection (45 mins)**	**11. GAC Communique pre drafting review (30 mins)**	**17 (a). GAC ICANN70 Communique Drafting (90 mins)**	**18. GAC Wrap Up (90 mins)**
2:00	18:00	13:00				
2:15	18:15	13:15		**12. Meeting with the ICANN Board (60 mins)**		
2:30	18:30	13:30	**5. Preparation for meeting with the ICANN Board (45 mins)**			
2:45	18:45	13:45				
3:00	19:00	14:00	Break (30 mins)	Break (30 mins)	**Networking (30 mins) [TBD]**	Break (30 mins)
3:15	19:15	14:15				
3:30	19:30	14:30				
3:45	19:45	14:45	**6. Planning and Finance Updates (45 mins)**	*GAC Open Time (90 mins)*	**17 (b). GAC ICANN70 Communique Drafting (90 mins)**	**Public Forum (90 mins)**
4:00	20:00	15:00				
4:15	20:15	15:15				
4:30	20:30	15:30	**GAC social (45 mins)**			
4:45	20:45	15:45				
5:00	21:00	16:00	Break (30 mins)	**Networking (30 mins) [TBD]**	Break (30 mins)	Break (30 mins)
5:15	21:15	16:15				
5:30	21:30	16:30				
5:45	21:45	16:45	**7. Rights Protection Mechanisms (60 mins)**	**13. Meeting with the ALAC (60 mins)**	**17 (c). GAC ICANN70 Communique Drafting (60 mins)**	**17 (e). GAC ICANN70 Communique Drafting (60 mins) -** *If required*
6:00	22:00	17:00				
6:15	22:15	17:15				
6:30	22:30	17:30				
6:45	22:45	17:45				
7:00	23:00	18:00				
7:15	23:15	18:15				
7:30	23:30	18:30				
7:45	23:45	18:45				
8:00	0:00	19:00				

GAC Plenary Sessions	
GAC Joint Sessions	**Official times for ICANN70**
Community Sessions	**09:00-17:30 (UTC-5)**
GAC Communique	**14:00-22:30 (UTC)**
Non official ICANN67 Sessions	

1. ICANN70 Schedule (March)

UTC-5	UTC	UTC+8
08:00	13:00	21:00
08:15	13:15	21:15
08:30	13:30	21:30
08:45	13:45	21:45
09:00	14:00	22:00
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09:30	14:30	22:30
09:45	14:45	22:45
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17:30	22:30	6:30
17:45	22:45	6:45
18:00	23:00	7:00
18:15	23:15	7:15
18:30	23:30	7:30
18:45	23:45	7:45
19:00	0:00	8:00