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## GAC Meeting with ICANN Board (and Prep Session)

Session 3 - GAC Preparation For Meeting with the Board and Working Group Reports

Session 10 - GAC Meeting with ICANN Board

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### Session Objectives

An ICANN Public Meeting 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 address current issues of interest and facilitate future informational exchanges. The GAC Meeting with the ICANN Board of Directors is one of those important opportunities. This session will enable the GAC to share views and ask timely questions of Board Members on topics of importance to the committee.

### Recent Developments

Recent GAC-Board Meetings have covered a range of subjects and topics that have mostly centered 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 number of standard questions or session topics to community groups for them to respond to the Board.

For ICANN76, the ICANN Board Chair has proposed a single topical question for GAC consideration that would cover the first half of the joint meeting at ICANN76. That question is:

***“The ICANN Board would like to explore how to combine the efficiencies of an agile approach to problem solving, like the Council’s small teams, with the need for accountability and transparency, to make progress on policy conversations. When would such an approach be most appropriate and how can we ensure that it does not circumvent required steps in a policy development process?”***

The ICANN Board Chair has proposed that half of the meeting time be dedicated to discussing this topic and the other half of the time to discuss any topic(s) of the GAC's choice or to answer any questions the committee might have.

GAC Members were asked during the GAC ICANN76 Agenda Setting Calls on 12 January and 13 February to recommend any potential topics or questions to present to the Board at ICANN76. GAC Support staff collected suggestions and submissions shared on the GAC mailing list and submitted to a committee Google collaboration document (see - <https://docs.google.com/document/d/1tPv5qhTFk9ftCV84WMjfGz5s3IA7yWaYIzZCDJrgBko/edit#>).

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**The entire following section reflects new information for Version "2" of this briefing document**

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By 1 March, the GAC Leadership was scheduled to determine what primary topic areas to explore with the Board during the planned joint session on 14 March 2023. As of 7 March, suggested topics from GAC Members that were shared with the ICANN Board included:

#### I. GAC Topics/Questions for the Board at ICANN76

##### **Topic #1 – New gTLD Subsequent Rounds –**

###### Background:

The GAC has taken note with interest of the Board's planned approach to handle the outputs from the GNSO SubPro PDP Final Report as well as the perception that ICANN org is considering an IRT to be set up post-Cancun to work on specific issues.

The GAC especially takes note of the issues the Board is identifying as "pending" and subject to further dialogue with the GNSO Council.

In this regard, the GAC would like to draw the Board's attention to the GAC's collective comment to the Board consultation on the final recommendations of SubPro, filed on 1 June 2021. That GAC comment includes GAC consensus positions regarding many of the issues now identified as pending by the Board, interalia:

- Registry Voluntary Commitments (RVCs) and Public Interest Commitments (PICs);
- Applicant Support;
- GAC Consensus Advice and GAC Early Warnings;
- Community Applications; and
- Auctions.

###### GAC Questions:

The GAC would like to ask the Board:

(1) whether these GAC positions on above mentioned issues (beyond GAC Consensus Advice and Early Warnings) are being considered by the Board;

(2) whether the GAC is going to be given an opportunity to be involved in the forthcoming dialogue on these issues; and

(3) If the Board does not adopt all recommendations from the GNSO, how will such decisions impact the overall implementation time frame for SubPro going forward?

The GAC would welcome being included in such a forthcoming dialogue. The committee may also consider elevating all or some of the above-mentioned issues to GAC Consensus Advice in order to trigger a formalized dialogue on those matters with the Board.

## **Topic #2 – DNS Abuse Mitigation -**

### **A. CCT Review Recommendations**

#### **Background**

The GAC appreciates more regular reporting updates from the ICANN org regarding implementation of CCT Review Recommendations (see e.g., the [ICANN Specific Reviews Q4 2022 Quarterly Report](https://www.icann.org/en/system/files/files/specific-reviews-q4-2022-report-31dec22-en.pdf) (31 December 2022, hereafter 31 December Quarterly Report)(<https://www.icann.org/en/system/files/files/specific-reviews-q4-2022-report-31dec22-en.pdf>).

#### **Questions:**

(4) Pursuant to the GAC Montréal Advice not to proceed with a new round of gTLDs until after the complete implementation of the CCT Review recommendations identified as ‘prerequisites’ or as ‘high priority’, including recommendation pertaining to on DNS abuse, can the Board share its view of the role of ongoing ICANN org negotiations with contracted parties with respect to CCT review Recommendations 14 and 15? (see 31 December Quarterly Report at page 20); and whether the negotiations will satisfy these recommendations; and

(5) Also, when can implementation be expected to start on CCT Review Recommendation 22 which requires engagement with stakeholders to discuss best practices implemented to offer appropriate security measures when dealing with sensitive information such as health or financial matters (see 31 December Quarterly Report at page 27).

### **B. Contract Negotiations**

#### **Background**

ICANN and Contracted Parties have been negotiating improved DNS Abuse contractual provisions. The GAC understands that ICANN plans to publish proposed changes for community review and public comment before ICANN77.

In The Hague Communiqué, the GAC recalled that “ICANN org is particularly well placed to receive public policy input from the ICANN community and negotiate updates to the standard Registry and Registrar Agreements.”.

So ICANN org may avail of timely community input, and to promote transparency, the Board could hold a listening session on the contract negotiations prior to the publication of proposed changes for public comment. Such session would focus on matters within the scope of the negotiations as

agreed between ICANN and the contracted parties.

Question:

(6) Will the Board consider organizing a listening session on the DNS Abuse negotiations within one month of the conclusion of ICANN76?

**Topic #3 - WHOIS Disclosure System -**

A. Ensuring Proper Data Collection

Background

In the ICANN75 Kuala Lumpur Communiqué, the GAC noted the proposed WHOIS Disclosure System is a useful first step which would facilitate the collection of useful data, to possibly shed light on usage rates, timelines for response, and percentages of requests granted or denied.

Question:

(7) Given the importance of gathering robust data to inform building a more comprehensive system, if the GNSO does not pursue a PDP narrowly tied to the mandatory use of the WDS to ensure proper data collection to inform the project, would the board consider initiating a PDP per its prerogatives in the ICANN Bylaws ?

B. Law Enforcement Requests

Background:

The Board's recent resolution from 27 February on the WHOIS Disclosure System Implementation included a reference to law enforcement requests that raises questions:

"Whereas, the ICANN Board encourages the GNSO Council to consider how best to promote and secure comprehensive use of this System by ICANN-accredited Registrars for all data access requests other than those submitted by law enforcement or as otherwise required by applicable law, including through consensus policy development undertaken in parallel with System development."

Question:

(8) This could be read to suggest that law enforcement requests are excluded from the WHOIS Disclosure System. Was that the Board's intent? If it was not, we suggest that the Board issue a written clarification so that there is no unintended confusion about law enforcement's ability to use the WHOIS Disclosure System.

C. Features To Be Built Into WDS

Questions:

(9) The GAC also deemed important to: properly log Information about approvals or denials of requests, timing of the response, and reasons for denial; and to include a mechanism to allow for confidential law enforcement requests. Will these features be built into the system?

(10) The rationale of the ICANN Board resolution on the WHOIS Disclosure System (27 Feb. 2023) states that “ICANN org is prepared to incorporate the following requests from the community into the System: [...] Additional System logging functionality, to log data associated with requests attempted for non-participating registrars that have been identified as “low risk” to data subjects and system security”. Does this mean this additional logging functionality will be incorporated in WDS once it becomes operational in 11 months?

#### **Topic #4 - ICANN’s Emergency Assistance Program (EAP) Framework for Continued Internet Access –**

##### Questions:

(11) The GAC would appreciate further information regarding expected dates and EAP design developments with the goal of better GAC understanding of the EAP initiative, its scope and implications.

(12) Who or what entities will be eligible to apply for the EAP?

(13) What particular assistance does ICANN org anticipate could be provided to re-establish connection for those disconnected during emergency circumstances?

(14) Does ICANN have any carrier and/or infrastructure to provide such assistance?

(15) During ICANN75 in Malaysia, the possibility of ICANN developing a more structured assistance/cooperation program was suggested. Does the anticipated EAP include this concept?

#### **Topic #5 - Curative Rights Protections for Intergovernmental Organizations -**

##### Questions:

(16) The Board recently received a Staff summary of public comments on the EPDP on Specific Curative Rights Protections for International Governmental Organizations (IGOs) which stated that “[w]hile some commentators expressed support...a few commentators [notably the BC/ICA] noted specific concerns, including with the potential consequence for registrants should IGOs [not be required to] submit to a [court] jurisdiction.” In reviewing the Staff summary of public comments on the Final Report, is the Board aware that:

(a) that the Recommendations specifically state that a complaint “must also include a notice informing the respondent...of its right to challenge a UDRP [or URS] decision...by filing a claim in court”?

(b) the BC/ICA participated in the EPDP and the Recommendations received a Full Consensus designation?

(c) The GNSO Council’s vote to approve the EPDP recommendations was unanimous?

(17) Noting that there was Full Consensus for each of the 5 Recommendations of the EPDP on Specific Curative Rights Protections for International Governmental Organizations (IGOs), how can the GAC support timely implementation of these Recommendations?

The full GAC will finalize these topics and questions on-site in Cancún during the ICANN76 planning

session for GAC joint meetings scheduled on 12 March 2023.

## Session Agendas

### Session #3 - Sunday, 12 March - Joint Meeting Discussions; Preparation for Meetings with GNSO, ALAC and Board

This public session will enable GAC Members to review, discuss and confirm proposed topics and any questions that the GAC plans to explore with Board members during ICANN76.

Time permitting, this session will also feature committee discussions regarding preparations for the GAC's bilateral meetings with the ALAC and GNSO during ICANN76. See the written briefings for those meeting sessions for more details about the topics to be covered during those bilateral meetings.

### Session #10 - Tuesday, 14 March - GAC Meeting with ICANN Board

A preliminary meeting agenda for the joint meeting (as of 27 February) is:

- A. Introductions
- B. Discussion of ICANN Board Chair Topic
- C. GAC Topic/Questions (shared in advance of meeting)
- C. AOB
- D. Closing

## Further Information

### *Board-GAC Interactions -*

- 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 - <https://www.icann.org/resources/pages/governance/bylaws-en/#article12>
- From time-to-time, the GAC also hosts a meeting of the Board-GAC Interaction Group (BGIG) which is covered by a separate briefing document. For this meeting cycle, that meeting took place on 28 February. The GAC Chair will likely report to the GAC during ICANN75 on what was discussed during that recent meeting.

## Document Administration

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