

# ICANN | GAC

## Governmental Advisory Committee

Kobe, Japan, 14 March 2019

### GAC Communiqué – Kobe, Japan<sup>1</sup>

#### I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Kobe, Japan, from 9 to 14 March 2019.

Sixty-seven (67) GAC Members and six (6) Observers attended the meeting. One (1) Observer attended the meeting remotely.

The GAC meeting was conducted as part of ICANN64. All GAC plenary and working group sessions were conducted as open meetings.

The ICANN Governmental Advisory Committee extends its sincere condolences to the families, friends and colleagues of those whose lives were tragically lost in the crash of Ethiopian Airlines ET302 which included staff of fellow GAC observers, ITU, the World Bank and a number of U.N. organisations.

#### II. Inter-Constituency Activities and Community Engagement

##### Meeting with the ICANN Board

The GAC met with the ICANN Board and discussed:

- The applications for dot.Amazon.
- 2-character country and territory codes at the second level.
- The GNSO PDP on IGO-INGO Access to Curative Rights Protection Mechanisms.
- Data Protection Regulations - The GNSO EPDP and a Unified Access Model
- Potential Future New gTLD Rounds
- The Board-GAC Interaction Group meeting at ICANN64
- Preparations for successful implementation of ICANN strategic plans through fiscal year 2025

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<sup>1</sup> To access previous GAC Advice, whether on the same or other topics, past GAC communiqués are available at: <https://gac.icann.org/advice/communiques/>

## **Meeting with the At Large Advisory Committee (ALAC)**

The GAC met with members of the ALAC and discussed:

- Joint GAC/ALAC statement on EPDP
- Alignment of New gTLD Subsequent Procedures with the CCT Review Recommendations
- Cooperation in capacity building
- Reactions to President Macron's IGF speech
- Follow-up to the GAC/ALAC Statement on informed participation in ICANN

The GAC and ALAC members agreed to proceed with a joint statement on EPDP to be published separately. GAC and ALAC agreed to form a small focus group to progress an initiative on capacity building.

## **Meeting with the Country Code Names Supporting Organization (ccNSO)**

The GAC met with members of the ccNSO and discussed:

- Status report of the ccNSO Retirement Policy Development Process (PDP) Working Group
- Presentation of DNS over HTTPS
- Discussion on the future scheduling of the joint meetings between the ccNSO and the GAC

## **Meeting with Generic Names Supporting Organization (GNSO)**

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

- IGO Access to Curative Rights Protection Mechanisms
- Expedited Policy Development Process (EPDP) for the Temporary Specification for gTLD Registration Data
- New gTLD subsequent procedures.

## **Meeting with the gTLD Registry Stakeholder Group (RySG) of the GNSO**

The GAC met with members of the RySG and discussed:

- The role and structure of the RySG within ICANN's multistakeholder model
- Universal awareness on TLDs.

## **Meeting with the Registrar Stakeholder Group (RrSG) of the GNSO**

The GAC met with members of the RrSG and discussed:

- Expedited Policy Development Process (EPDP) for the Temporary Specification for gTLD Registration Data
- Third party access to non-public WHOIS Data
- Registrar efforts on DNS abuse

## Meeting with the Technical Study Group on Access to Non-Public gTLD Registration Data (TSG)

The TSG briefed the GAC on its purpose, work, and recently released Draft Technical Model for Access to Non-Public Registration Data. The TSG expects to finalize its Technical Model by end of April 2019.

### Cross Community Discussions

GAC Members participated in relevant cross-community sessions and high interest topics scheduled as part of ICANN 64, including ICANN Strategic Planning, Next Steps in ICANN's Response to the GDPR, and Universal Acceptance and IDNs.

## III. Internal Matters

### 1. GAC Membership

There are currently 178 GAC Members and 37 Observers.

### 2. GAC Leadership

The GAC thanked its outgoing Vice-Chairs, Ghislain de Salins from France and Guo Feng from China, for their valuable support and contribution to the GAC during two one-year terms.

The end of the ICANN64 Kobe meeting marks the start of a new term for the incoming GAC Leadership Team:

- Manal Ismail (Egypt) (Chair)
- Chérif Diallo (Senegal)
- Pär Brumark (Niue)
- Thiago Jardim (Brazil)
- Olga Cavalli (Argentina)
- Luisa Paez (Canada)

### 3. GAC Working Groups

- **GAC Public Safety Working Group (PSWG)**

The PSWG discussed abuse mitigation measures and the ICANN Board decision on the CCT Review Team recommendations, focusing on the operational definition of abuse established in 2009 and mentioned in the 2013 Beijing GAC Advice on Safeguards for new gTLDs.

The PSWG also considered priorities for the second phase of the EPDP and highlighted the need for swift development of an access model, given the impact on investigations and other activities to preserve public safety and enforce the law.

The PSWG thanks its outgoing member of the leadership team, Iranga Kahangama, for his commitment and valuable contributions to the work of the PSWG on behalf of the GAC.

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

The HRIL WG discussed the role of the GAC in the implementation of ICANN's Human Rights Core Value, and as a result will work on an options paper drawing from GAC Members' input on the four potential options initially under consideration. The HRIL WG is working with the Cross Community Working Party on Human Rights on a potential cross community engagement during ICANN66 in Montreal, pending ICANN Board consideration of the CCWG Accountability Workstream 2 recommendations. In the meantime, the HRIL WG is looking forward to the conclusions of ICANN Org's Human Rights Impact Assessment expected after the ICANN64 meeting for GAC review and input. The HRIL WG co-chairs propose to ensure that all GAC materials, especially the GAC Communiqué, abide by accessibility standards.

- **GAC Working Group on GAC Participation in Nominating Committee**

The Working Group received an update from the NomCom Implementation Planning Team. Some of the recommendations in its implementation plan may have an impact on the GAC's participation in NomCom, and those were reviewed during the meeting. The WG expects to receive further updates from the NomCom Implementation Planning Team and plans to report to the GAC accordingly.

- **GAC Underserved Regions Working Group (USRWG)**

The GAC USRWG reviewed and discussed elements of a more sustainable strategy for capacity development efforts within the GAC.

The Working Group Members acknowledged the Capacity Development Evaluation Report on the successful capacity building initiatives carried out in 2017-2018, which will be sent to the GAC for endorsement inter-sessionally; and highlighted the efforts aimed at utilizing the ICANN Learn Platform as a strategic tool to assist members of the USRWG and GAC newcomers.

Additionally, the Working Group reported on the submission of the Additional Budget Request for the ICANN 2020 Financial Year to resource five (5) capacity development workshops.

The Working Group also discussed its updated Work Plan, which is structured under three (3) strategic goals aimed at enhancing knowledge and building capacity among Members; increasing participation in ICANN's policy development processes and identifying leads from among the USRWG; and building relationships with the wider ICANN Community and relevant stakeholders. GAC endorsement of the Working Plan will be sought inter-sessionally, before ICANN65 in Marrakech.

- **GAC Working Group to Examine the Protection of Geographic Names in Any Future Expansion of gTLDs**

The GAC Geographic Names Working Group provided the GAC with an update on progress of Work Track 5 (WT5) of the New gTLD Subsequent Procedures PDP, dedicated to the issue of Geographic Names at Top Level. The comments received on the WT5 Initial Report were discussed pending further consideration of these in WT5, on which the Working Group plans to report to the GAC.

- **Working Group on GAC Operating Principles Evolution**

The Working Group co-chairs presented and outlined the charter, framework, scope and work plan for the new GAC Operating Principles Evolution Working Group that was established in Barcelona. The Working Group charter and work plan were approved.

#### **4. Board-GAC Interaction Group (BGIG)**

The GAC met with the Board GAC Interaction Group and discussed:

- Follow-up on GAC Barcelona Scorecard
- Two-Character Tool and Briefing Materials
- Schedule for Addressing Advice in GAC Kobe Communique
- Board Follow-up on Deferred Advice

#### **5. GAC Operational Matters**

The GAC reviewed a number of matters designed to improve the effectiveness and efficiencies of GAC operations including:

- Confirming the Communiqué drafting process;
- Development of new tracking capabilities to support the GAC's consideration of public comment opportunities;
- Potential communications improvements, including new regular reporting mechanisms for policy developments and leveraging of GAC web site activity pages;
- Initiation of a project to create a mapping inventory for implementing CCWG-Accountability Workstream 2 recommendations impacting the GAC; and
- Progress toward updating the GAC Travel support rules for consistency with the new ICANN Travel Guidelines.

## 6. Liaison Reports

The GAC received reports on the efforts of its points of contact and liaisons to a number of other groups and initiatives including; ALAC, ccNSO, GNSO, SSAC, the third Accountability and Transparency Review Team, the Registration Directory Service (RDS-WHOIS2) Review Team and the Customer Standing Committee.

## 7. Cross Community Engagement Group on Internet Governance (CCEG-IG)

Members of the CCEG-IG briefed the GAC on developments regarding this initiative and encouraged GAC involvement in the effort.

## 8. CCWG-Accountability Work Stream 2

The GAC was briefed on recent developments regarding the CCWG-Accountability Work Stream 2 recommendations for the GAC to consider options for inventory development and tracking of recommendations impacting the committee. One intervention raised an issue on possible future steps that need to be taken in order to address the concerns regarding ICANN jurisdiction stated in the Jurisdiction Sub-Group Final Report and Recommendations, and expressed that this issue remains open and requires further consideration by GAC and ICANN Board. There are different views on this matter in the GAC.

# IV. Issues of Importance to the GAC

## 1. Dot Amazon applications

The GAC discussed the request by governments from the Amazon region, in particular Brazil, Peru, Colombia, and Ecuador, on behalf of ACTO member States, sent to the GAC through the mailing list, that they be given the opportunity to develop, together with the company Amazon Inc., the mutually acceptable solution for the dot Amazon applications called for in the GAC Abu Dhabi Communiqué. The governments of Brazil and Colombia made statements reiterating the terms of that request, and they emphasized their commitment to working towards a final agreement that should ensure the Amazon countries' meaningful participation in the governance and use of the dot Amazon strings.

## 2. Two-Character Country Codes at the Second Level

The GAC acknowledges the ICANN Board's response to GAC advice in the recent scorecard document. A number of GAC members have raised questions about how the Board decision of 8 November 2016 withdrawing the "Authorization Process" for the release of 2-character country

codes under new gTLDs was in line with GAC advice on this issue. GAC members will look at the response and get back to the Board for further discussion.

The GAC appreciates the development of the two-character tool, which may address the concerns of some GAC members related to the risk of confusion created by the use of country-codes at the second level under new gTLDs. GAC members will try using the tool over the coming period and have agreed to have the Montreal meeting as a checkpoint.

### **3. IGO Protections**

The GAC appreciates the Board's response to GAC advice in the recent scorecard document and would like to note that during the Kobe Meeting the GAC has had fruitful exchanges with the GNSO Council regarding the possibility of restarting the PDP on curative protections, under conditions amenable to all interested parties, including IGOs and interested GAC members, with a view to achieving mutually acceptable results. At that meeting, the GAC indicated that there should be a timeline with a targeted date associated with such a course of action.

## V. Consensus Advice to ICANN Board

The following items of advice from the GAC to the Board have been reached on the basis of consensus as defined in the ICANN Bylaws<sup>2</sup>:

### 1. WHOIS and Data Protection Legislation

#### a. The GAC advises the Board to:

- i. Take necessary steps to ensure that the GNSO EPDP on the Temporary Specification for gTLD Registration Data institutes concrete milestones, progress reports and an expeditious timeline, similar to Phase 1, for concluding Phase 2 activities;
- ii. Take necessary steps to ensure that the scope of phase 2 activities is clearly defined with a view to expeditious conclusion and implementation;
- iii. Make available the necessary resources for Phase 2 to expeditiously advance on the complex legal issues deferred from Phase 1;
- iv. Consider instituting additional parallel work efforts on technical implementations, such as that carried out by the Technical Study Group, for purposes of informing and complementing the EPDP's Phase 2 activities;
- v. Facilitate 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;
- vi. Consider re-starting implementation processes for relevant existing policies, such as the Privacy Proxy Services Accreditation Issues Policy.

#### RATIONALE

The GAC has consistently advised on the necessity of finding a swift solution to ensuring timely access to non-public registration data for legitimate third party purposes that complies with the requirements of the GDPR and other data protection and privacy laws, in view of the significant

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<sup>2</sup> Bylaws Section 12.2.(a)(x) The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee advice, it shall so inform the Governmental Advisory Committee and state the reasons why it decided not to follow that advice. Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection ("GAC Consensus Advice"), may only be rejected by a vote of no less than 60% of the Board, and the Governmental Advisory Committee and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee will state whether any advice it gives to the Board is GAC Consensus Advice.

negative impact of the changes in WHOIS accessibility on users with legitimate purposes. The GAC has previously noted that such legitimate purposes include civil, administrative and criminal law enforcement, cybersecurity, consumer protection and IP rights protection.

The GAC also notes that the European Data Protection Board, in its guidance, has expressly encouraged ICANN and the community to develop a comprehensive model covering the entirety of the data processing cycle, from collection to access. As already highlighted in the GAC's Puerto Rico Communiqué, the GDPR provides for mechanisms to balance the various legitimate public and private interests at stake, including privacy and accountability. We note that the legitimate interests reflected in ICANN's Bylaws are consistent with the recitals to the GDPR, which provide examples such as "preventing fraud"; "ensuring network and information security," including the ability to resist "unlawful or malicious actions" and reporting possible "criminal acts or threats to public security" to authorities (see GDPR Recitals 47, 49 and 50).

The GAC will closely monitor and assess the progress reports prepared by the GNSO EPDP, and reserves the possibility of providing further guidance if the pace of progress so requires.

The GAC notes that the time and resources necessary to complete Phase 2 are considerable and require focused scoping of the activity to ensure the expeditious conclusion of the activity. The GAC would therefore encourage a judicious definition of the scope of the Phase 2 efforts, giving consideration to elements that could be provided by Community efforts in parallel and may not need to be included in the scope, such as accreditation models.

The GAC received a briefing on the work of the Technical Study Group. The GAC considers that the development of options for technical implementation demonstrates how a future system for RDS access could be implemented, also with a view to data security and privacy considerations. The Phase 2 considerations could benefit from further exploration of technical implementation options. In addition, engaging in such considerations in parallel can help ensure that policies - once agreed - are swiftly put into practice.

The GAC is of the opinion that the Privacy Proxy Services Accreditation Issues Policy (PPSAI) remains highly relevant and implementation efforts should continue as appropriate, in parallel with the ongoing policy development work. The implementation of the PPSAI need not be deferred until the completion of the EPDP.

## 2. ICANN Board Consideration of the CCT Review Recommendations

The GAC notes with concern the recent Board resolution in response to the Final Recommendations of the Competition, Consumer Trust and Consumer Choice Review Team, which approved only 6 of 35 consensus recommendations.

### **a. The GAC advises the Board to:**

- i. Promptly meet with the CCT Review Team leadership to discuss the Board's resolution and
- ii. Possibly reconsider certain decisions on recommendations if appropriate.

## RATIONALE

The GAC is concerned that the recent Board resolution response to the Final Recommendations of the Competition, Consumer Trust and Consumer Choice Review Team approved only 6 of 35 consensus recommendations related to important competition and consumer protection issues. The CCT review is the first completed Bylaw-mandated review after the IANA Stewardship Transition and serves as a vital accountability mechanism. We urge the Board to promptly meet with the CCT Review Team leadership to discuss the Board's resolution and consider the possibility of revisiting certain decisions if agreed appropriate.

### **VI. Follow-up on Previous Advice**

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

#### **1. Subsequent Rounds of New gTLDs**

The GAC recalls its advice in the ICANN56 Helsinki Communiqué, which states that the development of policy on further releases of new gTLDs needs to fully consider all the results of the relevant reviews and analyses to determine which aspects and elements need adjustment. The GAC advised the Board to address and consider these results and concerns before proceeding with new rounds.

### **VII. Next Face to Face Meeting**

The GAC will next meet during ICANN65 in Marrakech, Morocco, scheduled for 24-27 June 2019.