
Agenda Item 6: Concerns regarding the release of 2-Character Country Codes at the Second Level under gTLDs

Note: GAC Vice-Chair Thiago Jardim prepared the present briefing in consultation with GAC members¹ to serve as a basis for discussion between the GAC and the ICANN Board on how to address the concerns of countries relating to the release of their country codes at the second level

Background

On 28 June 2018, the GAC adopted consensus advice in the [ICANN62 Panama Communiqué](#) asking the Board to:

*"Work, as soon as possible, with those GAC members who have expressed serious concerns with respect to the release of their 2-character country/territory codes at the second level in order to establish an effective mechanism to resolve their concerns in a satisfactory manner, bearing in mind that previous GAC advice on the matter stands."*²

On 16 September 2018, the ICANN Board [resolved](#) to "defer a formal response to the GAC on this advice pending further discussions with the GAC."

An [informal meeting](#) between Board members and the GAC has been scheduled for 21 October 2018 to contribute to the Board understanding of countries' concerns relating to the release of their country codes under gTLDs.

Key Points

- 1) Consistent with the rationale of the Panama GAC Advice, as reiterated uninterruptedly since ICANN 57 in Hyderabad,³ countries' concerns regarding the release of their country-codes at the second level include:

¹ Four GAC conference calls were held in advance of ICANN63 ([13 Sept.](#), [25 Sept.](#), [4 Oct.](#), [11 Oct.](#)).

² [GAC Panama Communiqué](#) (ICANN62, June 2018)

3. Two-character Country Codes at the Second Level

a. The GAC advises the ICANN Board to:

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

³ In the [Hyderabad Communiqué](#) adopted at ICANN 57, the GAC asked the Board to "clearly indicate" whether the November resolution was "fully consistent" with GAC advice. In the [Copenhagen Communiqué](#) adopted at ICANN 58, the GAC asked the Board to explain the rationale of the November resolution, "particularly in regard to consideration of the GAC advice" and to engage with countries to resolve their concerns. In the [Johannesburg Communiqué](#) adopted at ICANN 59, the GAC noted, as a follow-up on its previous advice, that it was still expecting Board's actions "for a satisfactory solution of the concerns raised in that [Copenhagen] Advice". In the [Abu Dhabi Communiqué](#) adopted at ICANN 60, the GAC noted, as a follow-up on its previous advice, that the Board's responses "have not addressed the specific matters raised in Section 5 of the Johannesburg Communiqué". In the [San Juan Communiqué](#) adopted at ICANN 61, the GAC noted, as a follow-up on its previous advice, that the concerns remained, bearing in mind that all previous GAC advice on the matter stands. Finally, in the [Panama Communiqué](#) adopted at ICANN 62, the GAC noted that the concerns remain, and asked for Board engagement with the concerned countries in order to establish a mechanism to resolve these concerns.

- a. Their losing the ability to play a role in a procedure for the release of their 2-character country codes (hereafter “the Authorization Process”) caused by the 8 November 2016 Board [resolution](#);
 - b. The inability of the ICANN Board to provide a satisfactory explanation for the “changes created by the 8 November 2016 Resolution”,
 - c. The inability of the ICANN Board to adopt measures to prevent further consequences from the “changes created by the 8 November 2016 Resolution” for the concerned GAC members.
- 2) With respect to Board [resolution](#) of 8 November 2016, the GAC considers that there have been serious procedural flaws in the decision-making process, including:
- a. The Board should not have adopted a decision significantly affecting a process that was the subject of a pending GAC Advice before it had considered and responded to that Advice.
 - b. The Board should not have adopted a decision significantly affecting a process recommended under GAC Advice⁴, particularly where there were subsequent uncertainties regarding the interpretation of new GAC Advice⁵, without further consultation with the GAC.
- 3) The removal of the “Authorization Process” was inconsistent with GAC Advice.

The removal of the “Authorization Process” was inconsistent with GAC Advice

- 1) The “[Authorization process](#)” for the release of 2-character country codes ensured that:
- Governments, unless they indicated otherwise, were notified and could provide comments on requests for the release of their country codes. “For labels that receive objections from relevant governments, the labels will remain reserved.”⁶

⁴ See [ICANN's blog on the launch of the process for two-character ASCII Label Authorizations](#) (12 November 2014): “The GAC stated “that the public comment period is an important transparency mechanism” and that relevant governments should be alerted when such requests arise. Accordingly ICANN has developed a Request for Authorization to Release process for registries who want to release letter/letter labels from reservation. The process consists of the following:

1. Registry operator submits a request to ICANN to release one or more letter/letter two-character labels.
2. ICANN reviews the request, and posts it for comment for 30 days.
3. ICANN notifies the GAC of the request and the comment period.
4. If there are no relevant and reasoned objections to the request, ICANN will authorize the requested letter/letter two-character labels to be released.”

See also [ICANN's announcement of the process to request the release of two-character letter/letter ASCII Labels](#) (1 December 2014): “Registries seeking to release letter/letter two-character ASCII labels at the second-level will continue to follow a transparent process as recommended by the Government Advisory Committee (GAC).”

⁵ The [GAC/Board call regarding the Helsinki Communiqué](#) (20 July 2016) ended with a request from the GAC Chair for the ICANN Board to send its clarifying questions in writing on specific aspects regarding GAC Advice. Also, in the [public comments period](#) relating to measures to avoid confusion (hence before the November resolution, and before the Board’s reaction to the previous advice on the matter), Spain, Italy, Egypt expressly stated that there would be conflict between GAC Helsinki Advice and the proposal developed by ICANN that was subject to public comments.

⁶ See [Letter from Akram Atallah to the Registry Stakeholder Group \(RySG\)](#) [Published 27 March 2015]: “For labels that receive objections from relevant governments, the labels will remain reserved. Should the registry operator and the objecting government reach an agreement regarding the release of the label, the registry operator shall notify ICANN that it has reached agreement, and ICANN will approve the release request and issue an authorization.”

- 2) GAC Advice recommended the establishment and retention by ICANN of the "Authorization Process", i.e. a process where governments had a role to play before the release of their country codes.
- In the [Los Angeles Communiqué](#) (15 October 2014), the GAC issued advice to the Board "ask[ing] that relevant governments be alerted by ICANN about these requests [by gTLDs registry operators to use two-character labels at the second level of their TLD] as they arise."
 - In the [Singapore Communiqué](#) (12 February 2015), the GAC advised the ICANN Board to "amend the current process for requests to release two-letter codes to establish an effective notification mechanism, so that relevant governments can be alerted as requests are initiated. Comments from relevant governments should be fully considered."
 - In the [Dublin Communiqué](#) (21 October 2015), the GAC advised the Board that "comments submitted by the relevant Governments be fully considered regardless of the grounds for objection", having "note[d] that the process for considering comments [revised taking into account the Singapore advice] [was] not consistent with [that] GAC advice which recommended that governments' comments be fully considered."
 - In the [Helsinki Communiqué](#) (30 June 2016), the GAC clarified that, with regard the "Authorization Process", "in the event that no preference has been stated, a lack of response should not be considered consent."
- 3) ICANN developed and implemented this "Authorization Process" because of GAC Advice accepted by the Board.
- In response to the Los Angeles advice, under Board [resolution](#) of 16 October 2014, "the Board authorize[d] the President and CEO, or his designee(s), to develop and implement an efficient procedure for the release of two-character domains currently required to be reserved in the New gTLD Registry Agreement, taking into account the GAC's advice in the Los Angeles Communiqué."
 - In response to the Singapore advice, under Board [resolution](#) of 12 February 2015, the Board "accept[ed] the advice of the GAC from the 11 February 2015 GAC Communiqué regarding the release of two-letter codes at the second level in gTLDs. The Board direct[ed] the President and CEO, or his designee(s), to revise the Authorization Process for Release of Two-Character ASCII Labels".
 - In response to the Dublin advice, under Board [resolution](#) of 3 February 2016, the Board "clarifie[d] that all comments from relevant governments are fully considered under the current process."
- 4) Notwithstanding all the above, Board [resolution](#) of 8 November 2016 authorized the replacement of the "Authorization Process" by a "blanket authorization" for the release of all country codes.
- By virtue of the "[blanket authorization](#)", governments can no longer be alerted of requests of release of their country codes, nor can they provide comments on these requests, nor provide comments before the release of their country codes, as has been recommended in GAC advice.

Key action from the GAC

The following is proposed GAC advice to the ICANN Board on the matter:

The GAC advises the Board to:

Follow the procedure laid out in Section 12.2 (a) (x) and (xii) of the Bylaws for authorizing the replacement of the "Authorization Process" by a "blanket authorization" for the release of 2-character country codes.

Rationale

The GAC concluded that the decision by the ICANN Board to authorize the removal of a procedure recommended by and subject to GAC Advice, within which governments had a role to play for the release of their 2-character country codes, was an action inconsistent with GAC Advice. Therefore, the ICANN Board should follow the procedure laid out in Section 12.2 (a) (x) and (xii) of the Bylaws, in particular to try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution; and if no such mutually acceptable solution can be found, the Board should state the reasons why GAC advice was not followed, without prejudice to the rights or obligations of GAC members with regard to public policy issues falling within their responsibilities.

Actions from individual countries

By virtue of GAC Consensus Advice adopted in Panama at ICANN 62 (see above), the Board should work with GAC members who have expressed concerns relating to the release of their country codes at the second level in order to establish a mechanism to resolve their concerns. These concerns may not be limited to the procedural concerns already identified, which the whole GAC might share. Therefore, individual members should consider which actions to suggest for adoption by the Board to resolve their concerns, as well as which steps they would be willing to take to either persuade or compel the Board to resolve their concerns.

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