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

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Updated (09 May 2024)

Issues of Importance

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

Issue	Issue Text (from the Communique)	ICANN Board Comments
1. DNS Abuse	The GAC welcomes the addition of new DNS Abuse obligations for Contracted Parties, which will become effective in April 2024. The GAC appreciated hearing from ICANN org's Compliance department about plans for auditing and enforcing the amendments, as well as from a GAC Member on consumer fraud trends, including fraud facilitated via email and phishing attempts. The GAC also welcomed a presentation from a third party on the topic of DNS Abuse measurement, during which several terms that are included in the new amendments – "actionable evidence," "prompt action," and a requirement to "stop and/or otherwise disrupt," were discussed. The GAC acknowledged the recommendation that, to support effective enforcement, the community would need to establish minimum evidential thresholds and standards for "actionable evidence". Such standards should be consistently applied. Regarding "prompt action," reference was made to SSAC115, which outlines a 96-hour minimum standard. To develop a clear appreciation of what "stop and/or otherwise disrupt" means, it was recommended that the information Contracted Parties provide on enforcement actions taken include the action taken as well as the considerations that lead to it. The GAC also acknowledged the importance of quality of the abuse reports and that good reporting practices need to be further developed and widely shared. The GAC discussed what a reasonable timeframe for assessing the impact of the obligations might be. Some suggested six months. However, there remains a general expectation that significant progress occur in advance of the next round of new gTLD applications. The GAC will track reports from ICANN Compliance on DNS Abuse enforcement. The GAC also explored options for what prospective work on DNS Abuse might entail, recalling some topics previously identified (such as guidance on key terms or capacity building to disseminate best practices beyond the contracts baseline) as potential areas to address before the new round of gTLDs. Finally, the GAC expressed its int	 The DNS Abuse requirements further enable ICANN Contractual Compactions against contracted parties who fail to adequately mitigate or dis On 5 April 2024, Compliance started enforcing the new DNS Abuse require accompanying <u>Advisory</u>. As explained in the Advisory, what is prom specific circumstances of each case. When conducting an investigation operators to demonstrate compliance with all applicable provisions of th circumstances of the case. A case-by-case review is then performed eat taken by the contracted party and, in particular: when those actions occurred, how those actions were reasonably necessary to stop or disrupt how those actions were reasonably necessary to stop or disrupt how the contracted party evaluated damage that occurred or co potential of collateral damage; and where, applicable, why the contracted party determined that the unactionable. The reasons for resolving each compliance case are logged and added In June 2024, Compliance intends to launch a report dedicated to the e requirements. This report will eventually comprise a 12-month rolling set historical trends over time. The report will include data such as the num Compliance notifications sent to contracted parties under the DI Cases resolved with contracted parties, and their outcomes, inclaaction to stop or to disrupt the DNS Abuse or whether no action evidence; and Cases resolved with contracted parties, and their outcomes, tha enforcement agencies within the registrar's jurisdiction. By Q2 2025, Compliance intends to prepare a more detailed report rela requirements during the first 6 months in force. The intent is that Compliance's reports contribute to measuring the imp. However, determining the specific metrics and data sets that will allow in comm

pliance (Compliance) to take enforcement isrupt well-evidenced DNS Abuse. equirements consistent with the information in mpt or actionable will greatly depend on the on, Compliance requests registrars and registry the agreements in consideration of the specific each time. This review examines the actions pt the DNS Abuse, could occur and to whom, including the ne evidence provided was determined to be ed to Compliance's public reporting. enforcement of the new DNS Abuse series, updated every month, to illustrate mber of: DNS Abuse requirements; cluding whether the contracted party took n was taken because there was no actionable nat resulted from complaints submitted by law lated to the enforcement of the DNS Abuse pact of the DNS Abuse Amendments. measurement of such an impact should be a ICANN org cross-functional team working on orts. The team is considering all potential g the community in obtaining that data. It is w requirements to measure their impacts efforts of the organization related to mitigating Domains and Strategy and Global Stakeholder practices and information, training, and cluding DNS Abuse. For example, ICANN's NS Abuse. Similarly, the Contracted Parties

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		 Summit taking place from 6-9 May 2024 in France includes a day dedic In February 2023, ICANN conducted a Registrar Training Day in Austria registrars based in the region, and ICANN staff got together to deliberat Abuse requirements and the sharing of good practices when it comes to Abuse. Capacity development is an area ICANN org continues to improve, both registries and registrars. This is going to be more of a focus going forwa industry and community on these efforts.
2. Cost Benefit Analysis of the New gTLD Program	In the ICANN56 Helsinki Communiqué the GAC advised the Board that "an objective and independent analysis of costs and benefits should be conducted beforehand, drawing on experience with and outcomes from the recent round", and the Board accepted said GAC advice. The GAC again raised this issue in its ICANN64 and ICANN70 Communiqués. In the ICANN78 Hamburg Communiqué Follow-up on Previous Advice the GAC recalled its ICANN56 Advice to the Board concerning an objective and independent analysis of costs noting that "so far the GAC is not certain of the availability of such analysis called for by the GAC" and that "the GAC is looking forward to receiving such analysis at the earliest opportunity and ahead of ICANN79." In response, ICANN org compiled the document Overview of Analyses Related to Costs and Benefits of the Next Round of the New gTLD Program. The GAC understands that the Board may consider that this document tanalysis. However, the GAC has assessed whether the document can be considered an implementation of the GAC Advice, and concludes that it cannot be considered to constitute a cost-benefit analysis, nor to be objective and independent. In this sense, the GAC notes that the document produced is a detached assessment of certain individual costs and benefits. To be considered a cost-benefit analysis, the analysis must be comprehensive, coherent, and complete, and must assess and quantify all significant advantages and disadvantages seen from a global perspective. Furthermore, the GAC is of the the view that the analysis should have been done objectively and carried out by an independent consultant.	 The Board appreciates the fruitful discussion with the GAC on this topic thorough review of the overview report provided by ICANN org. The Board understands that the overview report may have not met the and that the GAC was seeking an assessment of "all significant advant perspective" and that this "should have been done objectively and carri The Board also notes that the GAC has further stated that it "believes th would not serve the intended purpose." The Board is also of this view, a bi-lateral at ICANN79. The Board agrees with the GAC that it is essential that the Board and C regarding the GAC's advice and implementation of that advice and has Communique processes and structures, such as the Board-GAC Intera and open dialogue on the GAC's advice. Finally, the Board would like to note that it agrees with the GAC regarding understand the effects of the new gTLD Program on the DNS ecosyste Review Team suggested many data points that should be collected to b Program and that address many of the concerns noted by the GAC. Th additional CCT Review within two years of the start of the next round (a that ICANN org is currently implementing the recommendations from the the ICANN org is currently implementing the recommendations from the start of the next round (a that ICANN org is currently implementing the recommendations from the the total the the recommendations from the the total total total start of the next round (a that ICANN org is currently implementing the recommendations from the the total total start of the next round (a that ICANN org is currently implementing the recommendations from the the total total start of the next round (a that ICANN org is currently implementing the recommendations from the the total total start of the start of the next round (a that ICANN org is currently implementing the recommendations from the total start of the st

licated to a combating DNS Abuse workshop. ria where industry experts, ICANN-accredited rate upon a range of topics, including the DNS to combatting and mitigating against DNS

oth for users/victims of DNS abuse and for ward and ICANN org expects to partner with

vic at ICANN79 and appreciates the GAC's

e expectations of some members of the GAC ntages and disadvantages seen from a global rried out by an independent consultant." that conducting further analysis at this stage , as explained by the Board in the Board-GAC

GAC communicate effectively and openly as put into place since the Helsinki ractions Group (BGIG), to facilitate a consistent

ding the importance of collecting data to tem and would like to reiterate that the CCT benefit future studies of the New gTLD The Board notes that there will be one (as per recommendations from ATRT3), and the last CCT Review.

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3.	Registry Voluntary Commitments (RVCs)/Public Interest Commitments (PICs) in New gTLDs	GAC members discussed the Implementation Framework for Content-Related Registry Commitments in the New gTLD Program in preparation for potential Committee input to the open consultation process. The discussion, to an extent, was framed by GAC advice in ICANN77 Washington D.C. Communiqué on the fundamental need for PICs and RVCs to be enforceable. GAC members shared a range of views on this issue, including that: 1) the Committee needs adequate time to analyze and consider this complex issue; 2) concerns about whether a Fundamental Bylaw Amendment related to content would be needed, and 3) whether any outcome would jeopardize the existing RVCs which registries have entered into as a result of GAC advice. The GAC is of the view that a complete and careful legal analysis is required in this regard, the result of which is to be made available to the community. It was noted that Fundamental Bylaws Amendment should be considered carefully, and that an amendment should only occur if the ICANN community believes that it is required. The GAC intends to consider these issues further, including submission of a GAC comment to the community consultation process.	 The Board appreciates the GAC's active engagement in the communit to implementing Registry Voluntary Commitments (RVCs) in the New G potential to include proposed restrictions on the content and/or usage of The Board appreciates GAC's response to the consultation questions, panelists Nigel Hickson (UK) and Thiago Dal Toe (Columbia) - to the The Board agrees with the GAC that "the fundamental need for PICs a consistent with the GNSO Council's Second Clarifying Statement that ' or Registry Voluntary Commitments (RVCs) must be enforceable under matter". The Board notes that community groups that submitted input for the con ICANN Bylaws amendment at this stage to clarify the scope of ICANN' Agreement commitments that could restrict content in gTLDs. The Board reviewed input received from the community consultation an discuss: 1) the risks of permitting content-restrictive commitments in N updates that have been made since the 2012 round of the New gTLD I concerning the scope of ICANN's Mission; and 2) whether any mitigatia approach proposed by the GNSO and explored in the Consultation, we commitments pose under the ICANN Bylaws. This discussion informed restrive RVCs may be included in the Next Round Registry Agreement The Board plans to follow up with the GAC, as well as the broader ICA level implementation approach for RVCs. The Board also hopes to discuss meeting in ICANN80 Kigali. The Board aims to reach a resolution regarding the RVC implementation steps necessary to implement RVCs in the New gTLD Program: Next R Applicant Guidebook.
4.	Registration Data - Registration Data Request Service (RDRS)	The GAC continues to support efforts to maximize participation in the Registration Data Request Service (RDRS) and reiterates that widespread use of the pilot by both registrars and requesters will help the RDRS meet its intended purpose of generating data to inform the ICANN Board's consideration of the policy recommendations related to a future System for Standardized Access and Disclosure (SSAD). The GAC believes all contracted registrars should participate. The GAC welcomes ICANN org's continued efforts to provide regular monthly reporting of usage metrics. While the pilot has only been recently launched, these metrics have already shed light on potential improvements that could help the pilot meet its intended purpose and create an improved user experience. The GAC looks forward to continuing to work with the GNSO Standing Committee on the RDRS to address challenges and, where appropriate, suggest improvements to the RDRS.	 The Registration Data Request Service (RDRS) is a pilot that will operagather usage and demand data that can inform the ICANN Board's correcommendations related to a System for Standardized Access/Disclost registration data, and ongoing consultations with the GNSO Council. A participating in the system, covering approximately 57% of gTLD doma The Board is grateful to the GAC for supporting usage of the service. If feedback we receive, the better ICANN can make the system. ICANN or users and considering various changes to the service, together with the The Board is also following the monthly RDRS Metrics Usage Reports both registrars and requestors, who are also providing feedback via suresults will be published. At the request of the GSNO Standing Committee, ICANN org has rece monthly RDRS Metrics Usage Report that provides data from the Sum ICANN staff is working closely with the GNSO Standing Committee to improvements can be considered and made in a timely fashion. This in requestor interface, particularly with respect to requests from law enfor protection frameworks. Proposed improvements will continue to be app Standing Committee. Feasibility will be evaluated against effort and the period.

ity consultation, focusing on ICANN's approach gTLD Program: Next Round, which have the of gTLDs.

s, as well as the contribution of GAC selected he <u>ICANN79 plenary session</u> on PICs/RVCs. and RVCs [is] to be enforceable"; this is t "any new Public Interest Commitments (PICs) der the ICANN Bylaws and as a practicable

community consultation do not support an N's contracting remit as it relates to Registry

and analyzed applicable Bylaws provisions to Next Round Registry Agreements in light of O Program to the ICANN Bylaws language tion measure, such as a "third-party monitor" vould eliminate the risk that content-restrictive ed the Board's deliberation on whether contentnt.

ANN community, regarding the proposed highurther feedback, if any, from the GAC on the s this topic during the GAC-Board bilateral

tion in a timely manner; this will determine the tRound, including the development of the

erate for up to two years (until Nov. 2025) to onsideration of the consensus policy osure (SSAD) for nonpublic domain name As of April 2024, 88 registrars are voluntarily nains.

. The more users we have and the more I org is collecting the feedback from various the <u>GNSO Standing Committee</u>.

s and is interested to hear the experience of surveys collected by ICANN org and whose

ently published a downloadable CSV for each mmary of Data Chart.

b hear feedback from users to ensure includes feedback pertaining to the current orcement and the applicability of various data pproached in a collaborative manner with the he remaining months in the proof of concept

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	Specific issues might include confidentiality of law enforcement requests and voluntary participation by ccTLDs. In light of the feedback received from various stakeholders, the GAC encourages further review to take place to eliminate unnecessary and confusing elements of the current requester interface, particularly with respect to requests from law enforcement and the applicability of various data protection frameworks. The GAC also strongly encourages to include information about the RDRS and a link to it within the WHOIS lookup/Registration Data Access Protocol (RDAP) with a view to increase its visibility. Finally, the GAC stresses the importance of continued outreach efforts throughout the lifespan of the RDRS to ensure both requesters and registrars are aware of the uses and limits of this pilot program as well as its intended purpose. To this end, the GAC encourages ICANN org to conduct a survey of registrars who are not currently participating in the RDRS to gain insights into the concerns of these parties and potential challenges that could be addressed.	 The Board notes that information on the RDRS has been linked on ICA section on non-public registration data to increase visibility. Information and links to the RDRS can be added in the RDAP output of development process. The Board encourages the GAC to discuss this o ICANN's engagement and communications teams are both conducting usage of the system. The ICANN Board encourages the community to to present materials ICANN org has available on RDRS or to participate importance of utilizing the system can be shared with broader audience ICANN org has downloadable user guides, flyers and FAQs (available i published on the <u>RDRS website</u>. The website also contains links to ann the monthly RDRS metric reports. RDRS content is also regularly prom ICANN org also provides a generic information presentation deck to shate will publish the Quarterly Requestor and Registrar Report at the end of ICANN org will provide a six-month update on the RDRS pilot in an ICA May at 16:30 UTC.
5. Registration Data - Privacy and Proxy Accreditation Implementation	The GAC supports a Privacy and Proxy (P/P) accreditation process at ICANN. The GAC hopes the ICANN community will thoroughly explore options that allow implementation of approved recommendations that are still relevant from the previous PDP on P/P issues and appreciates ICANN Org's recently shared work facilitating this process. The GAC continues to encourage registrars and requesters to participate in the RDRS; doing so will ensure the community is able to produce evidence-based registration data policy, including on the use of P/P services and their potential impact on usage of the RDRS, or subsequent domain name registration request systems. Some requesters have noted confusion around the provision of P/P information in place of the registrant information because they expect to receive data related to the underlying registrant. The mismatch between expectations and results may lead to user frustration and discourage use of the RDRS, which was noted in the WHOIS Disclosure System Design Paper. Accordingly, the GAC looks forward to further work on these issues.	 The Board appreciates the GAC's interest in this topic and acknowledge the way forward. The Board understands that the org is in the process of convening an Ir define the best path to implementation of the existing policy recommend. Regarding the RDRS, as noted above, the team continues to work with and incorporate stakeholder feedback, including how to help address si by the GAC.
6. Registration Data - Accuracy	The GAC reiterates that registration data accuracy is an important element in law enforcement, cybersecurity, investigations to enforce Intellectual Property Rights, domain name registration management, and other legitimate third-party interests. At the same time, any changes to accuracy policy at ICANN should strive to balance the various interests involved, including those of registrants with enhanced privacy needs.	 The Board recognizes that accuracy of registration data is an important Domain Name System, and that it has been a longstanding topic of disc within the GAC. The Board notes the <u>assessment</u> ICANN org provided to the GNSO Copossible approaches for examining historical audit data on accuracy-rel Agreement. ICANN org provided this information to support the work of the GNSO's (AST), whose aim was to understand current efforts at accuracy enforced

ANN's Registration Data Loop Up Tool in the

of registries and registrars via the GNSO policy s option with the GNSO Council.

ng outreach to various communities to increase to engage with potential requestor communities ate in discussions where the benefits and aces.

e in the 6 UN languages and Portuguese) nnouncements, blogs, webinar recordings and pmoted via ICANN's social media channels. share with constituencies.

the RDRS to respond to survey requests for ities as we move forward together. ICANN org of May.

CANN80 Prep Week session scheduled for 29

dgement of the org's most recent work to inform

n Implementation Review Team (IRT) to help endations on proxy and privacy services. ith the GNSO Standing Committee to gather situations with the type of confusion described

Int matter for ensuring a stable and secure iscussion within the community, including

Council in October 2023, which outlined related provisions in the Registrar Accreditation

O's Registration Data Accuracy – Scoping Team reement and reporting, as well as to define and

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	The GAC supports ICANN org's efforts to identify scenarios for assessing accuracy under ICANN's contracts that provide useful information to advance the Accuracy Scoping Team's work, and welcomes ICANN's Office of the Chief Technology Officer's (OCTO) forthcoming Inferential Analysis of Maliciously Registered Domains (INFERMAL), which could shed further light on accuracy. The GAC welcomes the timely completion of the Data Processing Agreements between ICANN and the Contracted Parties so the community can resume its work expeditiously on the topic of accuracy.	 measure levels of accuracy. The AST identified a lack of data it deemed The Board looks forward to continued community discussion on this imp Council determines how to advance possible policy discussions and the The Board also looks forward to completion of the Data Protection Spece milestone, the Board recognizes that the DPS will not grant ICANN accurate that permitted under the governing contracts and applicable law, such the previously proposed within the AST. The Board would like to clarify that the OCTO INFERMAL (Inferential A will <u>not</u> be analyzing domain name registration accuracy. INFERMAL is a research project being carried out by KOR Labs and fur conduct an in-depth analysis of maliciously registered domain names, a preferences and possible measures to mitigate abusive activities within
7. Transparency and GNSO Statements of Interest	The GAC discussed the matter of transparency and Statements of Interest, recalled concerns expressed in its ICANN76 and ICANN78 Communiqués, and stressed the central relevance of transparency in this regard as a crucial precondition for accountability and legitimacy in ICANN policy development processes. It is noted that on 28 February 2024 the GAC Chair issued a letter on the matter to the Chair of the ICANN Board. The GAC looks forward to continued engagement with the GNSO, Board and community on this issue.	 Background: The GNSO Council Committee for Overseeing and Implementing Continuity with reviewing the GNSO Statement of Interest (SOI), where there was instances where an individual is participating in the GNSO policy procesentity, but is not required to fully describe the relationship. The GNSO SOI currently has an allowance for individuals to enter "Privithem from disclosing the individual or entity that they are representing." report to Council indicates that at most, 0.03% members are making us The CCOICI therefore concluded that the perceived problem does not sconceivable that it may be a problem in the future. The CCOICI sought to refine the exemption process but was ultimately Contracted Parties were adamant that full transparency was the only so the ICANN Bylaws, while those that may have professional ethical oblig exemption could exclude them from participation if a client would not age. The Council attempted to approve a number of other improvements, whethese were ultimately not adopted because of Contracted Party concern improvements could be perceived as endorsement of the status quo (i.e. when professional ethical obligations require it). As noted above, there is already an exemption available when completit available, is rarely used. However for many (e.g., GAC, CPH), it's a man ot the issue may be. They believe that even if there are only a small he tenets of the multistakeholder model itself. Talking Points: The Board too considers this item as very important, and can be considiations that may be taken to ensure that all of ICANN's constituent bod require such disclosures in policy development and operational activitie

ed necessary for its work. mportant topic, particularly as the GNSO he work of the currently paused AST. pecification (DPS). While this will be a welcome ccess to nonpublic registration data outside of a that it will enable wide-scale accuracy studies

Analysis of Maliciously Registered Domains)

funded by ICANN. The goal of this project is to , aiming to uncover cyber attackers' in the domain name space.

ntinuous Improvement (CCOICI) was tasked as a perceived lack of transparency in cess as a representative of another individual or

ivate" if professional ethical obligations prevent J. This allowance is rarely used; the CCOICI use of the exemption.

t seem to be a current problem but rather, it is

ly unable to come to agreement. The solution, which they believe to be in line with ligations are of the view that removing the agree to disclosure.

which enjoyed consensus from the CCOICI, but erns that approval of the incremental

i.e., an exception process being available

eting one's SOI, which based on data natter of principle, no matter how widespread or handful of instances, they still undermine the

idered as a broader issue of evaluating what odies, including the GNSO, are expected to ies.

a discussion on the need for a broader ethics . The Board upholds the idea that all those

the benefit of all who are participating -

lss	ue Issue Text (from the Communique)	ICANN Board Comments
		 maintain up-to-date statements of interest identifying which persons or processes. 3. The Board discussed encouraging informed participation across ICANN participating within processes is important at all levels of ICANN's work are expected to bring their interests to the table to support broad and ir consideration of those recommendations, which includes understanding the recommendation development processes. 4. As the GNSO has been discussing this issue, the Board has repeatedly for the community to consider how to evolve processes designed to en The community has an important role in facilitating reasonable, objective making. 5. The Board appreciates the GAC's interest in this issue and is interested continued engagement on this issue.
8. Region Interne Regist	et concerning AFRINIC, and welcomes the fact that AF	 RINIC ent concern about bution of nat there are ongoing legal regarding ICANN org continues to monitor the progression of issues regarding AF ready to provide appropriate and proper support. The multistakeholder functioning well in their designated capacity. The Board appreciates the initiative of the community in recognizing the recent experiences, and supports work by the ASO to evolve the policies of is blishment of ng forward to
9. IPv6	The GAC recognizes the need for accelerated deploy IPv6 protocol and looks forward to continuing discuss relevant ICANN constituencies any policy options to to expedite the adoption of IPv6.	 The Board continues to support efforts by the Regional Internet Registr

or entities they are representing within ICANN

NN's processes. Understanding the interests ork, from the working group level where people d informed policy development, through to Board ling what ideas and concerns were brought into

edly called on all involved to consider the need ensure ethical and accountable participation. ctive and informed participation in ICANN policy

ted in any further outcomes from the GAC's

AFRINIC's governance challenges and stands er model relies upon entities like AFRINIC

the need to evolve policies in light of these icies documented in ICP-2.

rate the deployment of the IPv6. istries (RIRs) in their respective communities in

nent processes, the Board encourages the GAC onal Internet Registries (RIRs) in their IPv6 ies.

a positive direction. Data provided here shows