

GAC ICANN76 Cancún Communiqué: Issues of Importance (20 March 2023) - ICANN Board Comments for Board-GAC Interactions Group (BGIG) Call

Version 1.3

Updated (30 May 2023)

Issues of Importance

The section below contains Board comments related to the ICANN76 Cancún Communiqué, in support of the Board-GAC Interactions Group (BGIG) Meeting on 6 June 2023. **This scorecard will not be presented to the Board for resolution.**

Issue	Issue Text <i>(from the Communiqué)</i>	ICANN Board Comments
<p>1. Subsequent Rounds of New gTLDs</p>	<p>The GAC notes the results of the Operational Design Assessment (ODA) as well as the upcoming ICANN Board vote on most of the recommendations from the New gTLD Subsequent Procedures Policy Development Process at ICANN76, with the view to initiating policy implementation required to prepare for subsequent rounds of new gTLDs. The GAC welcomes continued consideration by the ICANN Board before a vote on the topics of registry voluntary commitments/public interest commitments, GAC advice and early warnings, auctions of last resort, community applications, closed generics and applicant support. These topics continue to be a priority for the GAC. The GAC recalls its previous input on these matters, and underscores its willingness to engage with the Board and the rest of the community in their resolution.</p> <p>In view of the initial outputs from the facilitated dialogue group on closed generics, involving representatives from the GAC, GNSO and At-Large, the GAC acknowledges the importance of this work, which needs to address multiple challenges. While the GAC continues to be committed to the facilitated dialogue, no policy option, including the prohibition of Closed Generics, should be excluded if no satisfactory solution is found. In any event, any potential solution would be subject to the GAC’s consensus agreement.</p> <p>The GAC reaffirms the importance of increasing the number and geographical distribution of applications from underrepresented regions in future rounds of New gTLDs through the Applicant Support Program. The GAC reiterates its “support for proposals to reduce or eliminate ongoing ICANN registry fees to expand financial support”, in order to sufficiently cover all applications.</p> <p>Also, GAC members will continue to engage in the GNSO Guidance Process on Applicant Support with the aim of “fostering gTLD applications from a diverse array of applicants.”</p> <p>Finally, the GAC stresses the importance of raising awareness of the Applicant Support Program, including providing applicants with</p>	<ul style="list-style-type: none"> ● As part of its action on 16 March 2023, the Board identified a subset of the recommendations from the New gTLD Subsequent Procedures Policy Development Process as pending, to allow for further consideration or dialogue with the GNSO Council. ● These included recommendations on many of the topics for which the GAC has previously provided input, including Public Interest Commitments / Registry Voluntary Commitments, GAC Advice and Early Warnings, Auctions of Last Resort, and Applicant Support. ● The Final Report included no recommendations on closed generics; however, the Board has invited the GAC and others to participate in a facilitated dialogue on this topic. The Board understands there is good progress being made in this dialogue, and appreciates the GAC’s continued engagement. ● The Board also appreciates the support of GAC members in the GNSO Guidance Process on Applicant Support. The perspectives and input from governments are particularly important in increasing the number of geographical distribution of applications from underrepresented regions in future rounds. ● The Board notes that on the topic of community applications, the GAC has expressed support for the policy recommendations relating to transparency and consistency, including in the Community Priority Evaluation process. The Board has accepted these recommendations in its resolution of 16 March 2023. ● The Board looks forward to engaging with the GAC on these areas and sent correspondence to the GAC on 22 May to start a dialogue, notably on the pending recommendations regarding ‘GAC Advice’.

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	comprehensive information and sufficient time to prepare for the Program.	
2. DNS Abuse	<p>The GAC welcomes the fact that the Contracted Parties proactively initiated contract negotiations with ICANN to improve existing obligations related to Domain Name System (DNS) abuse. The creation of effective and enforceable requirements for registrars and registries to disrupt or mitigate DNS abuse will represent a positive and concrete first step in addressing this important topic area at ICANN. The GAC encourages the negotiations to proceed expeditiously and looks forward to providing feedback on the proposed amendments during the public comment period. Presentations during ICANN76 by the Public Safety Working Group and the Internet and Jurisdiction Policy Network, as well as discussions with the Contracted Parties and the At-Large Advisory Committee, provided the GAC with a diverse range of information to inform the GAC for the upcoming public comment period. The GAC considers that continued efforts in this area will be required, including further improvement of contractual obligations and/or targeted policy development processes prior to the launch of a second round of New generic Top-Level Domains (new gTLDs). The GAC would like to reiterate that maintaining accurate and complete domain name registration data is an important element in the prevention and mitigation of DNS abuse, and encourages the Contracted Parties and ICANN to further consider, inter alia, proactive measures as well as positive incentives for registries and registrars in future work on DNS abuse mitigation or disruption. The GAC also welcomed information regarding the Abuse Contact IDentifier tool (acidtool.com), provided by the Registrar Stakeholder Group (RrSG) to identify the appropriate parties to whom DNS abuse should be reported. During ICANN76 GAC plenary sessions, it was agreed that “DNS Abuse” should form the basis of the next wave of GAC Capacity Building interventions in the lead up to, and at ICANN77.</p>	<ul style="list-style-type: none"> • The Board shares your appreciation for the Contracted Parties proactively initiating the contract amendments to improve the existing abuse obligations to create clear, effective and enforceable requirements for contracted parties to mitigate or disrupt DNS abuse. • Contractual Compliance has been an active participant in the negotiations to ensure to the greatest extent possible that any new obligations are clear and enforceable. • The Board understands that in addition to the discussions the GAC held at ICANN76 with various constituencies about DNS abuse and the amendments, the org team also provided a helpful briefing to the GAC prior to the ICANN meeting to explain the scope of and approach for the amendments. The Board welcomes the GAC’s inputs and feedback on the amendments during the public comment proceeding. • The Board agrees these amendments, if successful, will be both a significant improvement, and also a helpful building block for discussions regarding potential additional obligations. • The Board is very supportive of helping the GAC with capacity building related to DNS abuse and has instructed the Org to engage and provide support for capacity development on this important issue. We understand the Org has already supported two of the capacity development sessions with speakers.
3. Registration Data	<p>Registration Data Consensus Policy</p> <p>The GAC welcomes the implementation work on the Registration Data Consensus Policy deriving from the Expedited Policy Development Process (EPDP) Team Phase 1 final recommendations and appreciated the opportunity to provide feedback as part of the public comment process. The GAC supports the EPDP Team’s efforts to develop a policy that complies with existing data protection principles while establishing clearly defined minimum data elements that allow contracted parties to process data in line with their relevant obligations within their jurisdictions. At the same time, the GAC looks forward to receiving the</p>	<ul style="list-style-type: none"> • The Board thanks the GAC for their thoughtful engagement and participation in the implementation of the Registration Data Policy • The Board understands the GAC submitted comments on a number of items and the Org has evaluated the comments. On some of the items in the GAC’s list, particularly, the timing for processing of urgent responses, the Org team has made an adjustment to its approach for urgent requests and is discussing that with the IRT now. This is one of the last substantive items to close to complete the policy language. <p>Registration Data Request Service (RDRS) (Previously referred to as the WHOIS Disclosure System)</p> <ul style="list-style-type: none"> • The Board appreciates the GAC’s support of the now ongoing development of the Registration Data Request Service (RDRS). • The Board also welcomes the GAC’s inputs to, and participation in the GNSO Small Team work on both defining success criteria for the RDRS and encouraging service participation by both requestors and ICANN-accredited registrars. The Board agrees with the

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	<p>Implementation Review Team’s analysis and response to the public comments, including, inter alia:</p> <ul style="list-style-type: none"> ● The issue of response times to urgent requests to ensure that responses to such requests are in fact expedited in a manner consistent with an emergency response; ● Defining urgent requests to include those involving “imminent or ongoing cybersecurity incidents”; ● Avoiding the risk of implementing a partial system resulting in a policy gap by, among other things, resolving inconsistencies between the Phase 1 recommendation regarding the optional collection of the registrant organization and the subsequent Phase 2A recommendation to require the functionality of distinguishing between legal and natural persons; ● Clarifying the obligation for Contracted Parties to enter into a data protection agreement; ● Requiring the collection and publication of “reseller” data; and ● Clarifying the policy’s impact on the Thick WHOIS Transition Policy. <p>WHOIS Disclosure System The GAC welcomes the launch of a proof-of-concept WHOIS Disclosure System, soon to be renamed Registration Data Request Service, to generate data that can inform further community discussion on Phase 2 of the Expedited Policy Development Process and the Recommendations on the System for Standardized Access/Disclosure (SSAD), which are currently on hold. In line with the GAC’s discussions with the Board and GNSO at ICANN76, the GAC notes the importance of maximizing voluntary participation in the system, including through potential incentive structures.</p> <p>Accuracy of Registration Data The GAC would like to reiterate that maintaining accurate and complete domain name registration data is an important element in the prevention and mitigation of DNS abuse. The GAC recognizes the importance of revisiting Recommendations 1 and 2 from the Accuracy Scoping Team at such time that the Data Protection Agreement (DPA) negotiations between ICANN org and the Contracted Parties have completed and there is feedback from ICANN org, or after a period of six months, whichever is shorter. The GAC encourages resuming the work of the Accuracy Scoping Team at whichever comes first. As per the Scoping Team’s recommendations, undertaking a registrar survey and a registrar audit will help to inform the GAC’s consideration of further work on these issues.</p>	<p>GAC on the importance of maximizing voluntary participation in the system, and notes that ICANN org is working on an outreach and engagement strategy, which includes collaborating with the GNSO Small Team.</p> <ul style="list-style-type: none"> ● The Board also notes that the ICANN org project team is engaging with PSWG members along with the GNSO Small Team to discuss a confidentiality feature that may increase the participation of law enforcement authorities. <p>Accuracy of Registration Data</p> <ul style="list-style-type: none"> ● The Board welcomes the GAC’s continued interest in this topic. ● The Board understands that the Scoping Team’s recommendations are currently with the GNSO Council for a decision. Most recently the Council considered the 14 March letter from ICANN org updating them on possible scenarios for measuring registration data accuracy and other outstanding issues related accuracy including the pending work of the Registration Data Accuracy Scoping Team, and as the period of six months has now passed, it is expected to consider if/how to proceed during its meeting in May. ● The Board encourages the GAC to share its views and continue its engagement with the GNSO Council.

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<p>4. Transparency in GNSO Participation</p>	<p>The GAC strongly supports transparency at ICANN and takes note of ongoing discussions within the GNSO on disclosure obligations under the GNSO’s Statement of Interest (SOI) policy. GAC Members expressed deep concern regarding a proposed exception in the SOI that might permit GNSO participants to refrain from disclosing the identity of the entities they represent in GNSO working groups. The GAC looks forward to further engagement with the GNSO on this issue.</p>	<ul style="list-style-type: none"> The Board understands that this topic is still under active discussion in the GNSO and prefers not to opine on the specific issue while active community discussion is still ongoing. However, the Board is mindful that, under the ICANN Bylaws, “ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness”. If the GAC has specific views that it wishes to raise with the GNSO Council, the Board would suggest that the GAC engages directly with the GNSO Council on this topic. <p>Background: All participants in GNSO policy development activities are required to complete a Statement of Interest (SOI) form that is intended to facilitate transparency in policy participation. The current SOI form was created during implementation of the recommendations from the 2008 Board Governance Committee Working Group Final Report, which noted that the “traditional concept of conflict of interest test may [thus] be difficult to apply ... Rather than a conflict of interest policy (which might preclude an individual from taking part in a policy process because they stand to gain from the outcome – which is exactly the reason why most participants in the GNSO policy development process do take part), what is needed is a “Statement of Interest” approach that allows the interests of participants to be declared publicly”.</p> <p>As a result, there is currently no prohibition against joining a GNSO policy effort simply because a person may have an interest in the potential outcome of the work, as long as this is publicly declared and made known to other participants.</p> <p>In September 2021, due in part to concerns about the usefulness and effectiveness of the SOI in highlighting potential conflicts of interest, the GNSO Council formed a GNSO SOI Task Force to review the existing GNSO SOI requirements and recommend changes, if any, to the requirements, instructions and/or template. One of the concerns that had been raised was about the lack of a requirement in the current SOI for a consultant or lawyer to declare if they have clients who are paying for their participation.</p> <p>The GNSO SOI Task Force published its initial report and recommendations for Public Comments in September 2022. The Task Force had proposed narrowing the exception language in the current SOI, but several commentators were of the view that this did not go far enough and disclosure should be required, potentially following permission from the clients in question. The CEO of Public Interest Registry published a blog post advocating for participants to “disclose the identities of their clients or the employers they represent as a condition to participating, without exception”. In contrast, the IPC opposed this view, arguing that such a requirement could result in excluding participants representing clients that do not give the requisite permission.</p> <p>Despite numerous conversations, the Task Force was not able to resolve this issue and has sent its report with an explanation of the various positions on this issue to the GNSO Council committee that oversees the Task Force, for resolution. The Council Committee has commenced its deliberations and aims to resolve this one outstanding issue following which the report and recommendations will be sent to the GNSO Council for its consideration.</p>
<p>5. Emergency Assistance Program</p>	<p>The GAC acknowledges the information received from the ICANN Board on this program and looks forward to receiving more information on expected dates, criteria and modalities of implementation, including potential partners for further consideration.</p>	<p><u>Partners</u></p> <ul style="list-style-type: none"> ICANN org has identified three (3) suitable third party organizations as a result of an open call for Expressions of Interest. ICANN is currently discussing terms for a \$0 three-year Master-Service Agreements (MSA) with them in preparation for future contributions for emergency readiness. Partners will be announced as soon as negotiations are finalized. <p><u>Criteria</u></p> <ul style="list-style-type: none"> The Emergency Assistance Program for Continued Internet Access contributes financial support to relevant third parties that enable Internet access and recovery for local populations during large-scale emergencies and disasters.

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		<ul style="list-style-type: none"> ● The program intends to have a positive impact on the security, stability, and resiliency of the Internet and the management of the unique identifiers. <p><u>Modalities of Implementation</u></p> <ul style="list-style-type: none"> ● As emergencies arise where ICANN could provide support, and subject to availability of funds, ICANN org will coordinate with the partners to identify if a monetary contribution would be appropriate in the specific instance. <ul style="list-style-type: none"> ○ Qualifying emergency events are large-scale natural or man-made disasters that have resulted in disruptions to Internet access. ○ Eligible events may be new or protracted crises. ○ Partners will propose responses for the specific crises and ICANN org will assess proposals, taking into consideration alignment with the purpose of the program and ICANN’s mission. ○ ICANN will then enter into specific project agreements reflecting the selected proposals. ● Partners will be required to report on the use of funds to ICANN, with that information becoming publicly available. <p><u>Dates</u></p> <ul style="list-style-type: none"> ● Master Service Agreement negotiations underway; signings expected in June 2023. <p>ICANN has created a dedicated page for the program on ICANN.org where the latest information and updates are available.</p>