

GAC ICANN78 Hamburg Communiqué: Issues of Importance (30 October 2023) - ICANN Board Comments for Board-GAC Interactions Group (BGIG) Call

Version 1.3

Updated (30 January 2024)

Issues of Importance

The section below contains comments related to the ICANN78 Hamburg Communiqué, in support of the Board-GAC Interactions Group (BGIG) Meeting on 20 February 2024. This scorecard will not be presented to the Board for resolution.

Issue	Issue Text <i>(from the Communiqué)</i>	ICANN Board Comments
1. High Level Government Meeting (HLGM)	The GAC welcomes the invitation from the Government of Rwanda to the next High-Level Government Meeting (HLGM) in Kigali on 9 June 2024. This meeting will be held ahead of the ICANN80 Policy Forum scheduled for 10-13 June 2024, offering potential opportunities for participation throughout this meeting. The GAC agreed to pursue the matter and finalize topics of interest to be covered during the HLGM. GAC representatives are also invited to inform the Rwandese hosts of the names and contact details of the high-level representatives to be invited at the earliest convenience, for the invitations to be sent in November, together with a proposed agenda.	The Board acknowledges and thanks the GAC for coordinating with the Government of Rwanda to host the next HLGM in Kigali. We understand the significance of this meeting, particularly as it precedes the ICANN80 Policy Forum, and we are committed to engaging in discussions that contribute to the success of both events. The Board also acknowledges the importance of finalizing the agenda for the HLGM, and we look forward to participating in constructive dialogues during the meeting. The Board is inviting all stakeholders, not only the GAC members, to reach out to their governments, and make sure they are aware of the HLGM and that they have received an invitation to participate.
2. Future Rounds of New gTLDs - Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs	The GAC takes note of the Board’s decision per the September Scorecard on GAC Advice to defer GAC Advice on auctions in New gTLDs as policy recommendations on this topic are under discussion. The GAC further notes that the Board is engaging an expert to analyze the issue, and looks forward to continued engagement with the Board and community on this matter prior to a Board decision.	The Board has directed ICANN org to implement the relevant recommendation on auctions from the Final Report (Topic 35). As noted there is work underway and the Board also looks forward to continuing the discussion once relevant expert information has been gathered and there is a Board understanding of what options could be available with regard to resolving contention sets.
3. Future Rounds of New gTLDs - Latin Script Diacritics in New Generic Top Level Domains (gTLDs)	The GAC notes that a potential gap in policy has been identified on the use of diacritics characters in the Latin script. The GAC strongly supports a multilingual Internet free from barriers in existing policy and looks forward to continued engagement with the GNSO Council on this issue, and to reviewing the anticipated GNSO Council’s Issue Report on this topic.	• We understand the value to the community to have Latin script IDN top-level domains and their corresponding ASCII version (without diacritics), operated by the same entity. • We support the community in developing a long-term solution through policy development processes for such strings that are found confusingly similar by the string similarity panel, but otherwise are perceived as equivalent to their intended language communities and applied-for by the same registry operator or applicant. • Developing even a narrow policy to address this specific issue could have an impact on the timeline of the next round. • Staff are all committed to supporting the community to address policy issues as quickly as possible; however, it will be challenging for such discussions to conclude before the Applicant Guidebook for the gTLD next round is finalized.
4. Future Rounds of New gTLDs - GAC Consensus Advice and Early Warnings on new gTLD Applications	In view of the changes to the future Applicant Guidebook regarding the “strong presumption” language, pursuant to recommendation 30.4 of the GNSO SubPro Recommendations, the GAC expresses its understanding that such wording modifications do not affect nor change in any way, shape, or form the high importance attached to GAC	The Board does not have the power to amend GNSO Council-approved policy language; that prerogative lies with the GNSO. The Board’s rationale in the September scorecard noted that “Bylaws Section 12.2 (a) details all relevant procedures concerning GAC Consensus Advice and that this Bylaws Section, not language in a future Applicant Guidebook, determines how the Board engages with GAC Consensus Advice - regardless of whether it is issued with regard to the Next Round or any other issue.”

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	Consensus Advice by the ICANN Board whenever issued regarding applications under the future Applicant Guidebook. Some GAC members also noted surprise at the promptness with which the Board proceeded to accept recommendation 30.4, following intersessional engagement between the GAC and the Board. Some GAC members had proposed adjustments to that language rather than omitting it altogether, pointing to its political significance beyond the legal implications listed by ICANN org and the Board.	On that basis, the Board recognized in adopting the recommendation that this adoption did not impact the Board’s consideration of GAC Advice as required by the ICANN Bylaws: “Accordingly, the Board’s adoption of this recommendation does not in any way prejudice or otherwise impact the processes regarding Board consideration of GAC Consensus Advice detailed in the Bylaws Section 12.2 (a).”
5. Future Rounds of New gTLDs - New gTLD Applicant Support Program	The GAC welcomes efforts to take forward a successful Applicant Support Program (ASP) in various areas of the ICANN community, including through the Implementation Review Team’s (IRT) work on applicant support and the GNSO Guidance Process Working Group (GGP) on the ASP. The GAC thanks the GGP on the ASP for the opportunity to provide a public comment and looks forward to receiving the group’s Final Report expected in December. The GAC also looks forward to participating in the IRT sub-track on applicant support and the ‘small team plus’ effort to address the Final Report on the New gTLD Subsequent Procedures Policy Development Process’ Recommendation 17.2 on the ASP. The ASP is core to the success of the next New gTLD Program and the GAC recalls that the original rationale to launch a new round was to encourage further geographic diversification of applications in the New gTLD Program. Applicant support was identified as a key topic of importance to the GAC, particularly for underrepresented and underserved regions, during the ICANN78 Capacity Development Workshop. GAC members noted the need for ICANN org to effectively communicate with GAC members about the Applicant Support Program so that members can support awareness raising efforts within their countries. GAC members also highlighted the importance of using local languages to raise awareness of the program. The GAC stressed that support for applicants should extend beyond applicant fee reductions, and include providing training and technical and legal assistance to potential applicants. Training efforts should be commenced at the earliest opportunity, and certainly ahead of ICANN79. In this regard, the GAC appreciated exchanges with the GNSO and the ALAC on applicant support, in particular the comment that the ASP should cover not just financial support but support in other areas of both the application and the operation of a top-level domain and the ALAC’s proposal to address Recommendation 17.2 by taking a “holistic approach to providing applicant support services” and utilizing an ASP incubator.	The Board appreciates the GAC’s continued interest and participation in various applicant support processes. The Board also notes that in its decision on Recommendation 17.2, that the Board is conducting “ongoing work in relation to pending Recommendation 17.2, relating to expanding the scope of financial support...” The Board understands that the GNSO Small Team+ and ICANN org plan to meet to exchange ideas under exploration for following the intent of Recommendation 17.2. The Board understands that one of the ideas under exploration in the community is the ALAC proposal for an ASP incubator, and it looks forward to hearing the outcomes of the org’s exchange with the GNSO Small Team on this and other ideas. An overview of the communications plan was included in the implementation plan. Phase 1 launched in March 2023. This phase focused on creating awareness of Universal Acceptance and Internationalized Domain names to lay the foundation for the next round campaign (Phase 2), which will launch 18 months in advance of the planned opening of the application window. ICANN org will provide periodic updates including via blogs, ICANN public meetings etc.

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	The GAC welcomes the ICANN Board’s commitment to the ASP and thanks the Board for its valuable input on the ICANN77 GAC advice on this matter. The ICANN Board stated that it plans to provide communications and engagement plans related to engaging underrepresented and underserved regions by ICANN78 and the GAC looks forward to receiving documented plans at the earliest opportunity, including on the mini-campaigns noted at the GAC’s meeting with the Board and on how ICANN intends to support the operation of supported TLDs. The GAC Small Team on the ASP is continuing discussions to provide relevant information to the Board, noting the GAC’s engagement through the IRT sub-track will help address these useful points and recalling the GAC’s previous work to agree on parameters on underserved regions.	
6. Registration Data Request Service (RDRS)	The GAC welcomes the launch of the voluntary Registration Data Request Service (RDRS) this coming November. The GAC encourages its members to inform their respective relevant communities of the launch. Widespread use of the new system from both registrars and requestors will help the system meet its intended purpose of gathering sufficient data to inform the ICANN Board's consideration of the policy recommendations related to a future System for Standardized Access and Disclosure (SSAD) of domain name registration data. To promote usage, the GAC notes that the Board urged the GNSO Council to consider a Policy Development Process or other means to require registrars to use the RDRS. The GAC remains supportive of this idea. Other factors that will impact usage relate to whether users submitting legitimate requests receive data relating to the underlying registrant as opposed to information related to a privacy or proxy service. Currently, many leading registrars provide privacy/proxy services to registrants by default. ICANN org’s Operational Design Assessment (ODA) of the SSAD analyzed the potential adverse impacts on that system noting that “Requestors may feel confused or frustrated with the system if they don’t receive the registrant data they seek due to proxy or privacy service use” and that this risks “significant user confusion and/or dissatisfaction.” The GAC highlights these risks because Registrars, including those that provide privacy/proxy services directly for their registrant customers, will have discretion on how to respond to requests. The GAC observes that the RDRS’s success depends in part on how satisfied users are with the system with positive experiences promoting repeat usage.	• The Board appreciates that the GAC is encouraging its members to inform their respective relevant communities of the Registration Data Request Service (RDRS) launch. As you are aware, the RDRS launched on 28 November. • The Board agrees with the GAC that the widespread use of the RDRS from both registrars and requestors will help the service meet its intended purpose of gathering sufficient data to inform the ICANN Board’s consideration of the policy recommendations related to the System for Standardized Access/Disclosure (SSAD). • The Board would like to point the GAC to the GNSO Council’s letter, dated 4 May 2023, with regards to the Council’s response to the Board’s request to “consider a Policy Development Process or other means to require registrars to use the System.” The letter states: “Although the Council is aligned with the ICANN Board on the importance of registrar participation in the system to ensure sufficient data is gathered, we do not believe it is feasible nor timely to consider policy development at this stage for a service that is of a temporary nature and expected to be operational by November.” • The Board notes the RDRS informs requestors to check the public registration data record first to determine if the domain name utilizes privacy or proxy service providers. If so, they should contact the provider directly instead of using the RDRS, as requests submitted via RDRS are routed to the registrar of record and not the privacy or proxy service provider. • The Board understands the importance of user satisfaction as it relates to the RDRS’ success. The Board notes that neither the RDRS nor SSAD guarantee access to registration data for third party requestors, as registrars are required to review each individual request and determine whether to disclose the underlying data based on the applicable laws. • The Board also shares the same sentiment about how users should be encouraged to provide feedback on the effectiveness of the RDRS. ICANN Org sends a user satisfaction survey to all users in an effort to collect feedback on the service.

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	Finally, the GAC also encourages users of the system to provide feedback on the effectiveness of the RDRS.	
7. Urgent Requests for Disclosure of Registration Data	The GAC welcomes the Board’s reaction to the letter sent on 23 August 2023 in which the GAC asked the Board to reconsider the publication of the proposed Registration Data Consensus Policy for gTLDs and expressed its public policy concerns on the appropriate timeline to respond to requests for registration data in select emergency circumstances, known as “Urgent Requests”. The GAC supports the initiative of the Board to separate the topic of Urgent Requests from the publication of the overarching Registration Data Consensus Policy for gTLDs and to speedily continue discussions on the former to achieve an outcome which is acceptable to all parties. The GAC reiterates that “the proposed outcome of up to three business (not calendar) days to respond to the narrowly defined category of “urgent” requests for domain name registration data does not serve its intended purpose” and that the use of “business” and not “calendar” days is particularly problematic in this respect as it can lead to significant delays and would vary across different jurisdictions, leading to uncertainty. The GAC also recalls that in April 2023 the ICANN org Implementation Project Team (IPT) carefully reviewed the public input received and concluded that there was “sufficient justification to revisit the policy language and to require a 24-hour response time for urgent requests.” The GAC looks forward to the early reopening of the discussions with the community, also based on the further input which is expected to be provided by the Security Stability Advisory Committee (SSAC), with the objective of achieving “an outcome that better meets the public safety considerations posed by urgent requests”. Because of the vital public safety interest implicated by Urgent Requests, the GAC emphasizes the need to commence and conclude this implementation work as soon as possible. Further, this work should include accreditation issues, among others.	• The GAC’s public policy interest in the collection, transfer, display, and disclosure of registration data is well reflected in its engagement in the Implementation Review Team, as well as its repeated urging in its GAC communiques to conclude the implementation of this important policy work. • The Board understands the sensitivities around emergency situations, and recognizes the difficulty of creating a single rule that is appropriate for each such case. • Per the GAC’s request, the Board has reviewed the policy requirement concerning the timeline to respond to Urgent Requests for disclosure of domain name registration data and has discussed it in several sessions. • The Board understands there has been broad agreement in the IRT to publish the Registration Data Policy, excluding the criteria and response timeline for Urgent Requests. This will allow the community to move forward on the preparations for the policy effective date. • At the same time, the Board is interested in addressing issues around Urgent Requests in a holistic way, being cognizant of this being a topic of interest for many stakeholders. • The communique has noted some work around accreditation issues related to this topic; would the GAC be able to clarify its intention or expectations here?
8. DNS Abuse	During ICANN78, the GAC welcomed updates on advancements in DNS Abuse measurement, examples of DNS Abuse mitigation solutions, and an update from the ccNSO DNS Abuse Standing Committee. The GAC urges the Contracted Parties to adopt the DNS Abuse amendments so that baseline obligations for gTLD registries and registrars regarding DNS Abuse are established in ICANN’s contracts.	• The Board appreciates the feedback the Governmental Advisory Committee (GAC) provided through its comments to the Amendments to the Base gTLD RA and RAA to Modify DNS Abuse Contract Obligations (Amendments). These comments, generally supportive of the Amendments and the accompanying Advisory, were thoroughly reviewed and considered by ICANN. • The GAC’s comments expressed concerns that there were not clear consequences for failure to comply with the proposed new requirements.

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	The GAC also urges ICANN org to provide the community with the ability to monitor the implementation of the amendments. At the same time, the GAC notes with disappointment that suggestions made in its submission to the public consultation on the contract amendments were not reflected in the final amendments or Advisory. The GAC underlines the importance of taking GAC input into account in future work. In particular, the GAC reiterates the importance of considering proactive monitoring and transparency of reporting. The GAC also recalls the practical need to recognize the inevitable evolution of DNS Abuse, including how it is defined in the amendments, as well as abuse report handling, tackling systemic abuse and additional reporting and data collection requirements. Once the amendments are adopted, the GAC intends to engage with the community in discussions on policy efforts around the above mentioned topics as well as other key themes linked to effective implementation of the amendments, such as clarification of key terms from the amendments (i.e., “reasonable”, “actionable”, “prompt”), and further actions to mitigate DNS Abuse, such as capacity building efforts. Finally, the GAC recognizes that the accuracy of domain name registration data as it pertains to DNS Abuse remains an ongoing topic of great interest to be pursued.	• The Board would like to point out that the new requirements which will take effect on 5 April 2024, will not constitute a stand-alone document; rather, they will be incorporated into the Registrar Accreditation Agreement (RAA) and the Registry Agreement (RA). As explained in the Public Comments Summary Report (report), both the RAA and the RA expressly include the specific consequences for non-compliance with <i>any</i> of the requirements in those agreements. The report listed these consequences along with the section of the RAA and RA that corresponds to each consequence. Therefore, noncompliance with the new requirements will trigger the same consequences that are currently applied to noncompliance with any existing requirements and that includes the suspension, termination, or non-renewal of the contracted party’s agreement with ICANN. ICANN Contractual Compliance has an established and published process through which ICANN enforces <i>all</i> requirements in the RAA, the RA, and Consensus Policies, and applies such consequences. In addition, the Board would like to point out that, in response to the GAC’s comments, the report also indicated the possibility to include in the Advisory a link to the relevant provisions in the RAA and RA that contain such consequences as well as to ICANN Contractual Compliance’s established process for added clarity. • The Board agrees that subsequent work in the DNS Abuse realm could include multiple areas of discussion for the community. This could include consideration of enhanced reporting requirements and data collection, defining “systemic abuse”, and identifying mechanisms to address systemic abuse, which may be appropriate to address through a potential PDP. The Board also recognizes that accuracy of registration data is an important matter for ensuring a stable and secure Domain Name System, and that it has been a longstanding topic of discussion within the community. The Board would like to reiterate that the Amendments were narrowly targeted to allow for a quicker enhancement of the existing requirements by requiring reasonable action to specifically stop or disrupt DNS Abuse. • With respect to ICANN’s enforcement of the new requirements, which were approved by the Board on 21 January 2024 and will take effect on 5 April 2024,, the Board would like to point out that ICANN Contractual Compliance has a dedicated page for Contractual Compliance reporting on the enforcement of obligations, including abuse-related requirements. ICANN Contractual Compliance will collect metrics and data with respect to the enforcement of the new obligations, enhance its reporting page and regularly publish such data and metrics.
9. Transparency and GNSO Statements of Interest (SOI)	The GAC strongly supports transparency at ICANN and takes note of ongoing discussions within the GNSO and the work conducted by the GNSO Council Committee for Overseeing and Implementing Continuous Improvement (CCOICI) on the Review of the Statement of Interest (SOI) Requirements. The GAC notes that the GNSO Council motion on this matter on 25 October 2023 was not adopted. The GAC expresses ongoing concerns, as noted in the GAC ICANN76 Communiqué, 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. Section 3.1 of ICANN’s Bylaws state that “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”. Transparent disclosure of interests represented in GNSO working	Background: • The GNSO Council Committee for Overseeing and Implementing Continuous Improvement (CCOICI) was tasked with reviewing the GNSO Statement of Interest (SOI), where there was a perceived lack of transparency in instances where an individual is participating in the GNSO policy process as a representative of another individual or entity, but is not required to fully describe the relationship. • The GNSO SOI currently has an allowance for individuals to enter “Private” if professional ethical obligations prevent them from disclosing the individual or entity that they are representing. This allowance is rarely used; the CCOICI report to Council indicates that at most, 0.03% members are making use of the exemption. • The CCOICI therefore concluded that the perceived problem does not seem to be a current problem but rather, it is conceivable that it may be a problem in the future. • The CCOICI sought to refine the exemption process but was ultimately unable to come to agreement. The Contracted Parties were adamant that full transparency was the only solution, which they believe to be in line with the ICANN Bylaws, while

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	groups is part of the basis of credibility and legitimacy of ICANN's multistakeholder model. The GAC looks forward to continued engagement with the GNSO, Board and community on this issue.	those that may have professional ethical obligations are of the view that removing the exemption could exclude them from participation if a client would not agree to disclosure. • The Council attempted to approve a number of other improvements, which enjoyed consensus from the CCOICI, but these were ultimately not adopted because of Contracted Party concerns that approval of the incremental improvements could be perceived as endorsement of the status quo (i.e., an exception process being available when professional ethical obligations require it). Talking Points: • The continued evolution of SOI practices is key to promoting transparency for participation in policy development activities. The Board is extremely supportive of transparency to support all participants acting in reasonable, objective and informed manners within ICANN's processes. • The Board urges all entities, as they continue to consider what ethical, accountable participation means within the ICANN processes, to continue to consider issues of transparency. • The Board appreciates the GAC's interest in this issue and is interested in any further outcomes from the GAC's continued engagement on this issue.
10. Emergency Assistance Program for Continued Internet Access	While the GAC acknowledges the information previously shared by the Board, the GAC reiterates its interest in having further details on criteria, dates and updates related to the Emergency Assistance Program for Continued Internet Access.	• The Board appreciates the GAC's continued interest in the ICANN Emergency Assistance Program for Continued Internet Access. • Last year, ICANN org solicited Expressions of Interest from eligible organizations focused on supporting Internet access and recovery for local populations during natural disasters and man-made emergencies. • ICANN has signed master service agreements with two qualifying organizations that stand ready to support Internet accessibility when operators or other relevant actors might otherwise not have the resources to do so: ◦ NetHope is a consortium of leading global nonprofits working across geographies and missions to solve some of the world's greatest development, humanitarian, and conservation challenges. ◦ Télécoms Sans Frontières (TSF), founded in 1998, is the world's first nongovernmental organization focusing on emergency response technologies. • ICANN org is currently engaged in negotiations with another third party, and if an agreement is reached, an official announcement will follow. • Criteria for participating organizations include: ◦ Being classified either as a not-for-profit, 501(c)(3) or equivalent for non-US organizations, or an Intergovernmental Organization; ◦ Organization must have a demonstrated ability to use contributions in a method that is consistent with ICANN's mission, and; ◦ Demonstrated experience implementing successful projects to provide Internet accessibility in emergencies in multiple regions around the globe. ◦ Additional details about the selection criteria are available on the program page. • Moving forward, ICANN org could (1) proactively seek out and/or (2) consider project proposals from the qualifying organizations, as and when emergencies arise where ICANN could provide support. ICANN org will determine if ICANN's contribution to the proposed relief project is appropriate in the specific instance.

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		• We are proud of this opportunity to support people around the world where access to the Internet is jeopardized by unexpected events. The latest information and updates can be found on the program’s dedicated page.