**Board-GAC Interaction Group (BGIG) Call**

*20 September 2023 - 1300 UTC*


Summary Notes

*In the spirit of issue spotting and candid information exchange, these high-level staff summary notes are intended to reflect the general nature of the discussion during the BGIG meeting. Certain specific aspects of the meeting discussions are provided to enable understanding of the flow and context of the discussions.*

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**Meeting Agenda**


- Opening Remarks – Tripti Sinha, Nigel Hickson and Becky Burr
- Discussion of the ICANN77 GAC Communiqué
    - Board dialogue regarding the Communiqué's Issues of Importance
- AOB
- Closing Remarks


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**I. Opening Remarks**

Tripti Sinha, ICANN Board Chair, welcomed members on the call, thanking Nigel Hickson, GAC Vice Chair, for stepping in on the GAC Chair's behalf to moderate the session. Tripti Sinha noted that a Board Scorecard has been developed to respond to the GAC's advice from ICANN77, including information pertaining to the dialogue between the Board, the GAC and the GNSO Council. The Board adopted the scorecard at its recent meeting on 10 September 2023. Tripti Sinha flagged that the ICANN77 GAC Communiqué includes seven issues of importance, which will be discussed during this meeting.

Nigel Hickson, GAC Vice Chair, took the floor as moderator of the session in lieu of the GAC Chair who was indisposed and thanked Tripti Sinha and the Board for the upcoming discussion, noting that the Board GAC Interaction Group (BGIG) dialogue helps to frame the GAC's priority matters. Nigel Hickson thanked the Board for providing responses in its scorecard to the GAC advice items from ICANN77, and looks forward to continued interaction with the Board at ICANN78 in Hamburg.

Becky Burr, ICANN Board, thanked Nigel Hickson and noted that the Board/GAC discussion on Issues of Importance to the GAC is a very useful opportunity to discuss items which are important to the GAC but aren't ready for advice yet.

## II. Discussion of the ICANN77 GAC Communiqué

### 1. Board dialogue on Issues of Importance to the GAC

**Closed Generic gTLDs**

Becky Burr, ICANN Board, provided an overview on the issue of Closed Generic gTLDs since 2012, and thanked the GAC for their continued engagement within the facilitated dialogue group with members of the GNSO and the ALAC. Becky Burr flagged the Board's understanding that upcoming correspondence is anticipated on behalf of the Chairs of the ALAC, GAC and GNSO to note that the facilitated dialogue was unable to deliver an agreed framework. Becky Burr expressed the Board's appreciation for the work conducted by members of the facilitated dialogue, and noted the understanding that the issue will be back in the Board's hands.

Nigel Hickson, GAC Vice Chair, further commented on the upcoming correspondence which will be submitted by the ALAC, GAC and GNSO Chairs to the Board, noting that the recommendation from the Chairs is expected to include that the work on closed generics should not be a dependency for the next round of new gTLDs. Additionally, the letter is anticipated to advise the Board to consider extending the moratorium on Closed Generic gTLDs until the ICANN community develops policy on these gTLDs.

**Registry Voluntary Commitments (RVCs)/Public Interest Commitments (PICs) in New gTLDs**

Becky Burr, ICANN Board, noted that the Board agrees that Registry Voluntary Commitments (RVCs) and Public Interest Commitments (PICs) should remain possible for new gTLDs in order to address emerging public policy concerns. As previously discussed with the GAC, the Board is committed to being open to RVCs or PICs that can be enforced as a practical manner, i.e. where it's possible for ICANN to objectively determine whether a registry is in compliance or not. The Board has also noted potential concerns about what type of RVCs can be enforceable under ICANN's Bylaws, since some concerns were expressed about RVCs that could implicate ICANN in a content control role.

Becky Burr further noted that the Board is about to initiate a discussion with the ICANN community on the Bylaws enforceability issue, which should begin in Hamburg, and the Board welcomes the GAC's participation.

Nigel Hickson, GAC Vice Chair, thanked Becky Burr and the Board, noting that the GAC looks forward to the upcoming dialogue on the Bylaws enforceability, understanding that some RVCs could fall outside of the scope being discussed within ICANN.

**GAC Consensus Advice and GAC Early Warnings in New gTLDs**

Becky Burr, ICANN Board, noted that the Board values and welcomes the GAC Early Warning mechanism and fully expects it to be in place for the subsequent round of new gTLDs. Regarding the timing of the issuance of GAC Early Warnings (Implementation Guidance 30.2) Becky Burr noted that the ICANN Bylaws establish the requirements for the Board with respect to the Board's consideration of GAC advice. As such, the Board believes no action is required since the language noted by the GAC as potentially limiting the timing of GAC advice is not a policy recommendation but implementation guidance, and the ICANN Bylaws would prevail.

On Recommendation Guidance 30.4 which recommends the removal of language about GAC advice creating a "strong presumption" for the ICANN Board that the application should not be approved, Becky Burr, ICANN Board, expressed the Board's understanding of the sensitivities associated with this language. Becky Burr noted that the Board will always respond to GAC consensus advice as required by the Bylaws. The Bylaws ensure that  GAC advice receives special attention: under the Bylaws,  the Board must consider said advice, and must engage in constructive dialogue with the GAC if the Board disagrees with advice received (which requires a supermajority vote of the Board). Becky Burr further noted that ICANN had a series of Independent Review Procedures (IRPs) declarations since the previous round of new gTLDs that established that ICANN may not simply rely on the direction of the GAC, but must consider whether there is a well-founded public policy basis for GAC Advice. The Board understands that the GAC does not issue advice without public policy concerns, but determined that that retaining the "strong presumption"  language in the Applicant Guidebook may lead to disputes, including IRPs, about whether the Board's acceptance of GAC consensus advice is compliant with the Bylaws s in the future. Becky Burr noted that the Board decided therefore to remove the "strong presumption" language from the Applicant Guidebook and maintain the level of deference required to give to GAC advice via the Bylaws.

Finally, on Recommendation 30.6, Becky Burr, ICANN Board, noted that the Board acknowledges the GAC's concern that following the issuance of GAC Early Warnings some applications may not

be remedied. Becky Burr noted the Board's alignment with the GAC on this matter and notes that in the event that an application could not be remedied, the GAC or the issuer of the Early Warning would simply need to state that the application should be withdrawn.

Nigel Hickson, GAC Vice Chair, thanked Becky Burr for the explanations provided on the three elements which the GAC identified in the ICANN77 Communiqué pertaining to GAC Consensus Advice and GAC Early Warnings, noting that the GAC wishes to ensure there is a predictability in these processes. As such the GAC will provide the necessary views in a timely manner, while acknowledging that the GAC may issue advice to the Board in accordance with the Bylaws. Pertaining to "strong presumption" language, Nigel Hickson noted that there are diverging views, but this item can be further discussed at ICANN78.

**DNS Abuse**

Becky Burr, ICANN Board, noted the Board's recognition of the GAC's concerns pertaining to DNS Abuse and its appreciation to the newly negotiated amendments with registrars. Becky Burr shared the Board's view of the contract amendments, noting that the Board sees them as very valuable and enforceable in a meaningful way. Becky Burr noted that the contract amendments are currently out for vote by the RrSG and RySG, while recognizing that the voting threshold is quite high, and shared the Board's hope that the amendments can be taken through to the finish line.

Becky Burr further noted that the GAC encouraged greater transparency reporting by Contracted Parties, noting that the Board agrees with the GAC on the aim of increasing proactivity on transparency. Becky Burr flagged that ICANN org and the Contracted Parties began discussing transparency, and concluded that as a first step transparency reporting should be a voluntary effort.

Alisa Heaver, GAC Netherlands, asked the Board what could be done on transparency to boost these conversations further with registries or registrars and making this less "voluntary". Becky Burr, ICANN Board, responded that ICANN org and the Contracted Parties agreed that initially this reporting will be voluntary in order to understand what those requirements should be, how to implement them and tweak them. Once more experience is had on this item, discussions could evolve to make them mandatory, which would require either a further amendment or policy process.

Becky Burr, ICANN Board, noted that the issue of transparency reporting was initially put aside to prioritize the contract negotiations, and once this issue is finalized the priority will shift back to transparency reporting. Becky Burr agreed with the GAC that the work on DNS Abuse is not done, and shared the Board's recognition that this is an evolving landscape and the need to be prepared for emerging forms of DNS Abuse. The Board stands ready to work with the ICANN community on further evolving DNS Abuse mitigation, and will continue discussions with Contracted Parties and liaise with the GAC and wider ICANN community to address DNS Abuse.

Nigel Hickson, GAC Vice Chair, thanked the Board on behalf of the GAC for the community effort on contract amendments, and thanked GAC members who actively worked on providing input to the public comment on these negotiations.

**Registration Data Accuracy**

Becky Burr, ICANN Board, shared the Board's appreciation of the GAC's continued engagement within the Accuracy Scoping Team. ICANN org conducted data protection impact assessments to determine what methods might be available to gather more data about data accuracy. Becky Burr noted that compliance auditing is already part of the Registrar Accreditation Agreement and noted that the Board doesn't think anything new is needed in this aspect since compliance with those accuracy requirements is a part of ICANN's standard audit of registrar compliance. The Board had discussions about whether data could be collected proactively to evaluate data for accuracy noting that there are privacy concerns and privacy laws which need to be respected. Becky Burr noted that ICANN org is looking at ways to get a baseline understanding of what accuracy means in this context and how to measure it, while flagging that any proactive audits or reviews would be voluntary under the current Registrar Accreditation Agreement.

On the data processing specification pertaining to data protection agreements, Becky Burr, ICANN Board, noted there are a small number of open items for ICANN org to negotiate with Contracted Parties. Becky Burr expressed ICANN org's optimism about getting this specification in place in time for the implementation of the registration data policy which is now part of the IRT work. The Board understands that the GNSO Council adopted a motion to continue its pause of the Data Accuracy Scoping work for an additional 6-month period or until some of the dependencies have been addressed. While the pause continues, ICANN org is continuing to prepare a complete assessment of what tools are present to assess accuracy both as to what accuracy means in this context and how to measure it. ICANN org will share this with the GNSO and the community, including the GAC as soon as this is available.

**Registration Data Request Service**

Becky Burr, ICANN Board shared the Board's alignment with positions expressed by the GAC on the launch of the Registration Data Request Service (RDRS) and the importance of participation on the part of registrars to maximize voluntary participation in the system. Becky Burr shared that ICANN org is working with the Registrar Stakeholder Group to encourage members to participate in this effort and that there are commitments to participate from major and smaller registrars. Becky Burr further noted that the participation by requesters is also important since in order to gather data the system needs to be used. The Board hopes that those who are seeking information will use the RDRS system as well, while noting that law enforcement in particular has other avenues to get this data to be in compliance with national laws. ICANN org has been and will continue to conduct webinars to inform the community about the RDRS and expects a soft launch of the service in the not too distant future as included in the timeline shared with the community.

Nigel Hickson, GAC Vice Chair, agreed with Becky Burr and the Board on the importance of the need to analyze data, and that as such the system needs to be used in order to produce data to analyze.

**Registration Data Consensus Policy**

On the EPDP Phase 1 recommendation, Becky Burr, ICANN Board, noted the GAC's reiteration of the importance of compliance with existing data protection principles and applicable laws. The Board also noted the GAC's input with respect to the timeline for urgent requests and additional safeguards with respect to legal and natural persons.

Becky Burr noted that the IRT is underway, and the Board noted its appreciation for GAC participation in this effort. The Board received the GAC's letter regarding the timing for urgent requests, as well as the letter from the RrSG. The Board's initial response when discussing this item was that registrars maintain lines of communication with law enforcement in jurisdictions where they are doing business, and that these lines of communication are likely a more effective way to address truly imminent threats to people and infrastructure.   The Board is continuing to discuss this issue and thinks this urgent request system as part of the Registration Data Consensus Policy really should be considered a second line of defense, particularly in the absence of readily available methods to authenticate law enforcement outside of the registrars area of operation. Becky Burr noted that the Board will continue to engage on this matter and discuss this with the GNSO as the IRT moves forward. The Board understands the GAC's

comments on legal and natural persons, noting that this discussion continued through the multistakeholder process after the conclusion of the EPDP Phase 2 and the Board's approval of recommendations from EPDP Phase 2A in March 2022 which are in the queue for implementation.

Nigel Hickson, GAC Vice Chair, thanked the Board for this update, noting that the GAC's concerns on this item fall in the public policy issue.

Laureen Kapin, co-Chair of the GAC's Public Safety Working Group (PSWG) shared the PSWG's appreciation of the Board's consideration of the GAC's perspective on these important issues and their prompt action to allow a pause for further consideration. Laureen Kapin expressed appreciation for Becky Burr's observation as to whether the current vision of this urgent request timing is really fit for purpose, and whether other systems are also in place in case of urgent scenarios. Laureen Kapin noted that one of the greatest benefits that ICANN provides is the ability to have connections with folks on the other side of a phone call when an emergency arises, and agrees with Becky Burr that law enforcement agencies have these relationships independent of ICANN. Nevertheless, there are scenarios where this could be a very valuable framework, particularly if dealing with a registrar with whom one does not have those relationships. Laureen Kapin shared the PSWG's appreciation of additional time for consideration on these issues, and looks forward to continued engagement with the Registrar Stakeholder Group to find a way to match urgent scenarios.

Becky Burr, ICANN Board, responded that the Board would encourage the GAC to provide additional concrete examples of when the "urgent request" functionality would be used and useful in order for the Board to better understand what is at stake. The Board understands Laureen Kapin's point that there could be instances where the law enforcement agency does not have an established relationship with a registrar, but noted that this situation would introduce additional considerations about verifications and authentication, for example of a law enforcement agency in a jurisdiction other than where the registrar is operating. Concrete examples would help guide future Board consideration on this matter.

Susan Chalmers, GAC USA, confirmed the USA's interest and availability to work with the Federal Trade Commission (FTC) and the FBI to produce some concrete examples for the Board to review.

**IV. Adjourn**

Becky Burr, ICANN Board, thanked all the meeting attendees and participants for their participation, noting the continued usefulness of these conversations to understand the GAC's concerns and have an opportunity to exchange thoughts on them. Nigel Hickson, GAC Vice Chair, thanked Becky Burr and the Board for their exchange with the GAC, noting the value of these discussions between the Board and the GAC. Tripti Sinha, ICANN Board Chair, thanked GAC members on behalf of the Board for this dialogue and adjourned the meeting.

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**Attendees**:

**GAC**
Nicolas Caballero, GAC Chair
Nigel Hickson, GAC Vice Chair, UK
Klaus Parrer, Austria
Stefan Vouk, Austria
Rida Tahir, Canada
Abdeldjalil Bachar Bong, Chad
Lang Wang, China
Thiago Dal-Toe, Colombia
Finn Petersen, Denmark
Manal Ismail, Egypt
Martina Barbero, European Commission
Jonas Roule, France
Rudy Nolde, Germany
Laxmi Prasad Yadav, Nepal
Alisa Heaver, Netherlands
Pär Brumark, Niue
Waleed Aloriny, KSA
Ana Maldonado, Spain
Lucas Prêtre, Switzerland
Cheng-Nan Chiang, Chinese Taipei
Susan Chalmers, USA
Kenneth Merrill, USA
Owen Fletcher, USA

Laureen Kapin, PSWG Co-Chair

**ICANN Board**
Tripti Sinha
Becky Burr
Katrina Sataki

**ICANN Org**
David Olive
Andrew Chen
Elena Plexida
Erika Randall
Jared Erwin
Jenn Shin
Karen Lentz
Theresa Swinehart
Xavier Calvez
Veni Markovski

**ICANN GAC Support Staff**
Robert Hoggarth
Fabien Betremieux
Benedetta Rossi
Gülten Tepe Öksüzoǧlu
Daniel Gluck