

GAC/ICANN Board Communique Clarification Call

ICANN64 - Kobe Communique

15 April 2019 - 2030 UTC

I. Introduction

The call was co-chaired by ICANN Board Member Maarten Botterman (MB) and Governmental Advisory Committee Chair Manal Ismail (MI). The call dialogue focused on the [draft “scorecard” document](#) shared with the GAC by the Board on 9 April. That document set out a number of clarifying questions the Board has about the GAC consensus advice shared in the ICANN64 Kobe Communique.

The GAC Chair noted the value of this clarifying call format and thanked the attending Board members for the time and attention they devoted to consideration of GAC advice and seeking clarification of the GAC advice. Maarten Botterman noted the value of achieving a common understanding of the advice provided and noted that the scorecard provided a good structure for that discussion.

It was confirmed that of the two main GAC advice topics, the clarifying questions focused on the advice regarding the recent GNSO Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data (EPDP) - Phase 1. Mr. Botterman noted the value of the GAC advice and the importance of being able to distinguish which parts of advice referred to Phase 1 of the EPDP and which advice was directed to Phase 2 of the EPDP.

II. Clarifying Question discussion regarding EPDP advice

1. First Clarifying Question

GAC Advice - WHOIS and Data Protection Legislation

The GAC advises the Board to:

§1.a.i Take necessary steps to ensure that the GNSO EPDP on the Temporary Specification for gTLD Registration Data institutes concrete milestones, progress reports and an expeditious timeline, similar to Phase 1, for concluding Phase 2 activities;

§1.a.ii Take necessary steps to ensure that the scope of phase 2 activities is clearly defined with a view to expeditious conclusion and implementation;

§1.a.iii Make available the necessary resources for Phase 2 to expeditiously advance on the complex legal issues deferred from Phase 1;

Board Clarifying Question - As the GNSO Council manages the EPDP process, does the GAC expect the ICANN Board to provide input to the Council on this process? What interventions or steps does the GAC suggest the Board take to ensure the EPDP institutes concrete milestones, progress reports and an expeditious timeline?

Discussion

Ms. Ismail noted the value of Board engagement and input into the EPDP Phase 2 effort. A suggestion was offered (KA) that the Board could consider engaging directly with the GNSO Council through a memo referring to the GAC advice and copying in the new EPDP Chair or, alternatively, by raising the issue through the Board liaisons to the EPDP Team.

Mr. Botterman noted the value of milestones and reporting within the EPDP process but emphasized that activities within the GNSO EPDP are outside the remit of the Board. He suggested that perhaps the Board could ask the GNSO to take the GAC input into consideration.

Ms. Ismail noted that the GAC has provided input to the EPDP effort through all possible channels - in addition to GAC Advice to the Board. It was further noted (CBB) that an expeditious timeline was needed for Phase 2 of the EPDP, even more so than for Phase 1, considering the delays introduced by Phase 1 before the EPDP could get to the substantive matters to be dealt with in Phase 2. Moreover, it was clarified that the GAC Advice did not refer to the EPDP process' reporting and management mechanisms, but was rather meant to ensure that the Board uses all options at its disposal to enable an expeditious completion of the effort.

2. Second Clarifying Question

GAC Advice - WHOIS and Data Protection Legislation

The GAC advises the Board to:

§1.a.iv Consider instituting additional parallel work efforts on technical implementations, such as that carried out by the Technical Study Group, for purposes of informing and complementing the EPDP's Phase 2 activities

Clarifying Question - How can the European members of the GAC support the ICANN org in obtaining legal advice from European Data Protection Authorities (DPAs)?

Discussion

Mr. Botterman re-emphasized that the Board could only take actions in its remit to help the EPDP, but would not take any action to replace or undermine work of the EPDP. He noted that assistance from EU member states to facilitate interactions with European DPAs for legal advice would be appreciated.

Though it indicated it was not in a position to speak for the EU member of the GAC, European Commission reiterated its willingness to help facilitate communications with DPAs, and in particular the Belgian DPAs who it indicated has been chosen to be the lead DPA on this issue for the EU, a European Commission further suggested a two-step process: first, considering with legal advisors implementation options to achieve the aims of the EPDP report; and second, start

consulting with the lead DPA to get their views before consulting the full EDPB once more, with facilitation from the Commission as needed..

KA suggested that this approach could be another element to include in a Board communication to the EPDP group. MB acknowledged this input.

3. Third Clarifying Question

GAC Advice - WHOIS and Data Protection Legislation

The GAC advises the Board to:

§1.a.v Facilitate swift implementation of the new Registration Directory Services policies as they are developed and agreed, including by sending distinct parts to implementation as and when they are agreed, such as the questions deferred from Phase 1

Clarifying Question - With regard to “Facilitate swift implementation of the new Registration Directory Services policies as they are developed and agreed”, could the GAC please clarify if the “swift implementation of the new Registration Directory Services policies” part of the advice is in reference to the implementation of the Phase 1 recommendations from the EPDP Team? If yes, could the GAC clarify what is meant by “...as they are developed and agreed” since the EPDP Team has already concluded its Phase 1 work? With regard to “including by sending distinct parts to implementation as and when they are agreed”, could the GAC clarify if this is in reference to the phase 2 work of the EPDP Team?

Discussion:

Ms. Ismail explained that “swift implementation” did indeed refer to immediate steps toward implementation of current policy outcomes of Phase 1. She confirmed that items deferred to Phase 2 should also be implemented as soon as they are agreed upon rather than waiting until the end of the EPDP Phase 2 effort. It was further clarified that the GAC’s intention with this Advice was that both Phase 1 and Phase 2 should be implemented expeditiously as and when specific parts are resolved and ready. It was further noted that while certain dependencies might require further implementation study, where dependencies did not exist, then implementation should proceed immediately.

Mr. Botterman reinforced that the Board was completely supportive of the Phase 2 effort and would try to help as appropriate but that it would take no action to replace or undermine the EPDP. He said the process is not driven by the Board, but the Board is prepared to do what it can to support the GNSO in an expeditious outcome. The Board can only help the EPDP and will make sure that all perspectives will be heard. A reference was also made to the input the Board is expecting from the GNSO Council on this aspect of GAC Advice.

III. CCT Review Advice

Although there were no clarifying questions regarding the GAC's Communique advice regarding the Competition, Consumer Trust and Consumer Choice Review Team (CCT) recommendations, Mr. Botterman reported that a [letter](#) from the ICANN Board to the CCT Review Team had been quickly issued in Kobe that addressed [concerns](#) raised on the Board resolution and the Board had already agreed to meet with CCT Review Team at ICANN65 in Marrakech. He noted that timely contacts will be established to resolve any outstanding issues. He emphasized that the Board understands the importance of engaging with the community for establishing a sustainable cadence of implementation, with the understanding that ICANN must be able to handle the load.

IV. Additional Discussions

Upon completion of the clarifying questions, meeting participants continued the conversation sharing several additional perspectives and re-emphasizing other previous points including:

MB noted that the Board will make sure all advice is taken into account before making a final decision on the GNSO's EPDP Phase 1 recommendations.

MB also referenced the GAC's previous San Juan Advice regarding IGO Protections () and noted that the Board is continuing to monitor the effort.

KA encouraged the Board to maintain EPDP support in terms of staff, financial support for legal advice and travel support for those countries who needed it, plus the flexibility for planning critical meetings outside of ICANN meetings.

MB noted the positive efforts of the Board liaisons on the EPDP.

KA noted that the importance and urgency of Phase 2 for the GAC may not be shared by other stakeholders - with some doubting the importance of the issue and the need for urgency. He encouraged the Board to mention the importance of these views to those doubters. MB expressed that the Board and GAC are "in sync" in that perspective.

MI noted that the GAC is working on a response to the recent Board letter regarding the GNSO EPDP Phase 1 Policy Recommendation, that asked for potential further GAC advice. the GAC Chair indicated that this response would reflect the collective GAC comments submitted on the EPDP and should be expected by the Board shortly.

In closing, MI reiterated the GAC's commitment to the EPDP Phase 2 process, its success, expeditious completion, and interest in providing all comments through available channels.

V. Meeting Participants (speakers during call indicated in **bold text with initials)**

GAC

Manal Ismail (MI), GAC Chair

Ashley Heineman, US

Hisham Aboulyazed, Egypt

Holger Sperlich, Germany

Kavous Arasteh (KA), Iran

Luisa Paez, Canada

Olivier Girard, Switzerland

Shelley-Ann Clarke-Hinds, Trinidad and Tobago

Tshoganetso Kapaletswe, Botswana

Thiago Jardim, Brazil

Wendy Jap-A-Joe, Suriname

Cathrin Bauer-Bulst (CBB), European Commission

ICANN Board

Akinori Maemura

Avri Doria

Chris Disspain

Danko Jectovic

Lito Ibarra

Nigel Roberts

Maarten Botterman (MB)

Goran Marby

Matthew Shears

Merike Kaeo

Ron da Silva

Tripti Sinha

ICANN Org

Amy Bivins

Cassia Oliveira

Christine Willett (CW)

Christopher Bare

Cyrus Namazi

David Olive

Danielle Rutherford

Jamie Hedlund

Jared Erwin

John Jeffrey

Mandy Carver
Michelle Bright
Theresa Swinehart
Wendy Profit
Sally Newell Cohen

ICANN GAC Support Team

Robert Hoggarth
Fabien Betremieux
Julia Charvolen
Benedetta Rossi
Gulten Tepe

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