GAC MEETINGS

Meeting 2: Berlin - 25 May 1999

E X E C U T I V E M I N U T E S

Meeting II

9:00am to 8:45pm, 25 May 1999

Ballsaal III, Hotel Adlon, Unter Den Linden 77, Berlin Germany

Present:

- Chair - Dr Paul Twomey
- Secretariat – Ms Nikki Vajrabukka (National Office for the Information Economy, Australia)
- ICANN – Mr Hans Kraaijenbrink, Mr Eugenio Triana, Mr Andrew McLaughlin
- Argentina – Mr Alfred Bascou
- Austria – Mr Christian Singer, Mr Herbert Vitzhum (advisor)
- Australia – Dr Erica Roberts
- Belgium – Mr Peter Vergote
- Brazil –Mr Airton Luciano Aragao, Mr Vicente Landim de Macedo Filho (advisor)
- Canada – Ms Michelle D'Auray, Ms Kim Haaland (advisor)
- Czech Republic – Mr Antonin Zita
- Denmark – Ms Lise Fuhr Hovind
- Finland – Ms Kristiina Pietikäinen
- France – Mr Alain Le Gourrierec, Ms Isabelle Lafontaine (advisor)
- Gambia – Mr William O. Joiner, Mr Ebrima Bandeh (advisor)
- Germany – Mr Michael Leibrandt
- Ireland – Mr Roger O'Connor
- Italy – Professor Massimo Maresca, Mr Stefano Trumpy (advisor)
- Jamaica – Mr Keith Manison
- Japan – Mr Toshiyuki Miyoshi, Mr Koichi Tamura (advisor), Mr Hirohumi Aoki (advisor)
- Libya – Mr Mohammed A Saad Ltayef
- Malaysia – Mr Ramesh Kumar Nadarajah
- Mexico – Mr Antonio Garcia-Alonso
- Moldova – Mr Dana M Gallup, Mr John D Harris (advisor)
- Morocco – Ms Najat Rochdi
- Netherlands – Mr Klaas Bouma
- New Zealand – Mr Richard Tait, Mr Peter Dengate Thrush (advisor)
- Norway – Mr Arne Litlere

- Peru – Mr Carlos Valdez, Ms Vanessa Mizushima (advisor)
- Singapore –Ms Valerie D'Costa
- Spain – Mr Cristobal Guzman
- Sweden – Mr Markus Boberg, Mr Henrik Nilsson (advisor)
- Switzerland – Mr Francois Maurer
- United Kingdom – Mr Neil Feinson, Ms Emily Roche
- United States of America – Ms J Beckwith Burr, Mr Robert Stohl (advisor)
- European Union (EU)– Mr Christopher Wilkinson, Mr Richard Delmas (advisor)
- International Telecommunication Union (ITU) – Mr Robert Shaw
- Organisation for Economic Cooperation and Development (OECD) – Dr Sam Paltridge
- World Intellectual Property Organisation (WIPO) – Dr Francis Gurry, Mr Christopher Gibson (advisor)

Observers

- Mr Kam-Hung Lau, Hong Kong
- Dr Kai-Sheng Kao, Mr William Lin, Taiwan
- Mr. Angel García, Comisión del Mercado de Telecomunicaciones, Spain

Apologies:

- Asia Pacific Telecommunications (APT)
- Korea
- Latvia
- Vietnam
- Yemen

Agenda Papers:

A. Agenda
B. Timetable
C. Attendance List
D. Draft Operating Principles (Revision 2)
E. WIPO Final Report on the Internet Domain Names Process
F. Draft GAC Advice on the WIPO Final Report
G. Draft Skeleton Communique

Agenda Item 1 – Welcome

The Chair welcomed the representatives of the Member governments and organisations, and acknowledged each attending Member's accredited representative.

The Chair noted his thanks to the German government, who funded expenses for the GAC meeting, including meeting space & refreshments

The Chair then gave a brief overview of the Agenda, including outlining the timetable for the day's proceedings. It was noted that this meeting had a very tight timetable / agenda.

It was also noted that the results of the meeting would be reported at the ICANN Open Meeting on Wednesday 26 March 1999.

Agenda Item 2 – Internal Communications – Practices and Procedures

The Chair emphasised the need to ensure that Members' contact details are made available to the Secretariat, and the importance of keeping these contact details up-to-date.

It was noted that the GAC should also meet online as well as via face-to-face meetings.

Agenda Item 3 – Draft Operating Principles

The Chair gave a brief background overview on the Draft Operating Principles, since they were first presented and discussed at the inaugural meeting in Singapore last March. Further to those discussions, the Friends of the Chair group and their relevant administrations progressed the Draft Operating Principles, incorporating the comments from the Singapore meeting to Revision 2, which was circulated to the GAC Members on 6 May 1999.

The Chair then opened the floor to comments from Members.

Brazil spoke to the attending Members suggesting proposed amendments to the Draft Operating Principles. Proposed amendments and comments were also heard from other Members, including Australia, France, Malaysia, Moldova, USA, EU, and ITU. After discussion, the amended Draft Operating Principles were confirmed and adopted by the GAC, by consensus, as its Operating Principles.

The motion to request the ICANN Board to amend the ICANN Bylaws to harmonise with the GAC's Operating Principles was passed.

Agenda item 4 – Report from ICANN / EU / ITU on current administrative arrangements concerning ccTLDs, including:

- **Access to information for users**
- **Basis of delegation decisions**

Due to time constraints, this Agenda Item was deferred to a later meeting.

Agenda Item 5 - Briefing from Mike Roberts, President of ICANN, on:

1. **The legal delegation and practical relationship between ICANN, governments and ccTLD administrators**
2. **Changes in policy for registrations under a gTLD (for example, as occurred in .edu and as undertaken by NSI)**
3. **Infrastructure Trust Fund - Update on progress and the litigation process**

Mr Roberts reported that a restatement of RFC 1591, the IANA TLD Delegation Practices Document, had been posted on 21 May 1999 at http://www.icann.org/tld-deleg-prac.html Mr. Roberts stated that no changes in ICANN/IANA policy concerning the administration of TLDs would be made without consultation with all affected parties, including the GAC.

Mr Roberts then outlined the proposed interim policy for geographic diversity (which may be viewed at http://www.icann.org/geo-diversity.html) for the ICANN Board, and discussed ICANN's budget objectives including an outline of the Budget Schedule. The proposed ICANN Budget and accompanying Schedule notes may be viewed at http://www.icann.org/berlin/budget.html

Agenda Item 6 – Funding for ICANN

Mr Roberts indicated that, according to the proposed ICANN Budget, ICANN Funding to date is relying on income from gTLDS, not from ccTLDs.

Queries were raised by Members regarding the likelihood of revenue from ccTLDs and revenue from regional registries. It was indicated that if ICANN were to levy fees on the ccTLDs the GAC would be interested in receiving information and/or being consulted on any proposed processes or timelines.

Agenda Item 7 - Discussion on changes in policy for registrations under a gTLD without consultation

Concerns about the apparent change in policy in registration under the .edu gTLD were raised. Examples where this had occurred were requested, and the instances of

registration of australia.edu and wollongong.edu were raised. The USA indicated changes in policy in registration was a matter addressed in the contract between the US government and Network Solutions Inc (NSI), and that as far as the US government was aware, there had been no contractual change in the policy for registrations under the .edu gTLD. The USA indicated that it would be taking steps to look into the matter with NSI.

Agenda Item 8 - Report from Dr Francis Gurry (WIPO) on intellectual property issues

Dr Francis Gurry made a brief presentation on the WIPO Domain Name Process. He outlined the WIPO Internet Domain Name Process, and included issues concerning the process, summary of results, registration practices, uniform dispute resolution procedures, definition of abusive registration, famous marks, and intellectual property and new gTLDs.

The full text of Dr Gurry's presentation has been posted on the Internet and may be accessed from http://ecommerce.wipo.int/process/index.html

In the discussion on the Final Report of the WIPO Internet Domain Name Process, the GAC noted that extensive public international consultations were undertaken by WIPO in cooperation with ICANN during 1998-1999.

After further discussion, it was agreed that the GAC would make its recommendations to the ICANN Board on the Final Report of the WIPO Internet Domain Name Process. The agreed recommendations were as follows:

1. The GAC welcomes the World Intellectual Property Organisation (WIPO) report on the Management of the Internet Names and Addresses and endorses the general principles developed in the report related to best practice, Administrative Dispute Resolution (ADR), abusive domain name registration, and generally to help resolve differences between domain name and intellectual property rights address holders. The GAC notes, that, for the time being, the proposed trademark policy and disputes policy recommended by the WIPO report could be applied to gTLD's including existing and future Registries and Registrars.
2. The GAC reaffirms the requirement for transparency and reliability of DNS registration data, as recommended by the WIPO report, and requests that ICANN put in place an appropriate system to authorise and ensure access to data, consistent with applicable law or standards, including defining the purposes of such access.
3. In view of the extensive public international consultations undertaken by WIPO in cooperation with ICANN during 1998-1999, we look to ICANN's procedures to result in rapid resolution of the issues concerning dispute settlement and treatment of well known and famous marks. Specifically, the GAC calls on ICANN to report on implementation of the dispute settlement proposals by its Santiago

meeting and to engage in further consultations with the Supporting Organisations and Advisory Committees with respect to the treatment of well known and famous marks.

* **NOTE FOR MINUTES, Agenda Items 9 and 10** – Considering that the Operating Principles of the GAC specifically state that *" ...The accredited representative [of a Member] must hold a formal official position with the Member's public administration. The term 'official' includes a holder of an elected governmental office or a person who is employed by such government, public authority or multinational governmental or treaty organisation, and whose primary function with such government, public authority or organisation is to develop or influence governmental or public policies"*

As the representative for Moldova and his advisor did not hold such positions as required by the Operating Principles of the GAC, and considering the conflict of interest concerns raised by several national delegates with regard to the issues to be discussed at Agenda Items 9 and 10, the representative for Moldova and his advisor were requested to leave the meeting room during discussion at these two Agenda Items

Before leaving the meeting for the duration of these two Agenda Items, the representatives of Moldova were invited by the Chair to make representations on behalf of Moldova with regard to the ccTLD position of the .MD domain space. All of the comments made by the representative for Moldova in this regard were taken into consideration during discussion on the two Agenda Items. His comments are summarised as follows:

- The .MD ccTLD is an 'open' ccTLD.

- Moldova has gained many benefits from the operation of the .MD ccTLD in this regard. The .MD ccTLD has provided a revenue stream for Moldova and that there is a desire for .MD to remain open in order to maximise this valuable asset.

- With regard to ICANN's processes, the representative for Moldova stated that ccTLD holders should have some mechanism of control over their ccTLDs

- The representative for Moldova feels that separation between ccTLDs and gTLDs is not appropriate; ccTLDs should be able to register like the gTLDs and enjoy the profit and benefit that NSI has enjoyed, and that the "wealth should be spread".

- The representative for Moldova stated that he is opposed to the idea of a 'closed meeting' for the GAC, and feels that details should be made available to the full Internet community.

For all parts of the meeting, other than discussion at Agenda Items 9 and 10, either the representative for Moldova or his advisor were present.

Agenda item 9 - Report from USA and ITU on applicability of specific business rules / regimes to ccTLDs which are classified as "open" or "restricted"

The USA and ITU spoke to the attending GAC Members on the issue of 'Open' vs 'Restricted' ccTLDs.

Concern was expressed, and discussion was had, regarding disproportionate costs for smaller ccTLDs, the use of appropriate terminology, and the certainty of legal procedure.

Concern was raised that the wording of the title of the report may be ambiguous, in particular the use of the words 'open' and 'restricted'. It was agreed that 'restricted' domains are defined as those with restrictions or conditions on registration that serve to ensure certainty with respect to the applications and enforcement of laws, and 'open' domains are defined as those containing no such restrictions or conditions on registrations.

It was agreed that the GAC will have further discussions with regard to domains containing restrictions or conditions on registration that serve to ensure certainty with respect to the applications and enforcement of laws, as opposed to domains containing no such restrictions or conditions on registrations.

Agenda Item 10 – Report from Australia, France, UK on the management of ccTLDs of external and dependent territories

Australia, France and the UK spoke to the attending GAC Members on the issue of the management of ccTLDs of external and dependent territories.

Concern was expressed regarding clarification of terminology.

Following discussion, it was agreed that, with regard to the management of ccTLDs of external and dependent territories, the GAC put forward the following recommendation to ICANN:

- Where the delegate of a ccTLD does not have the support of the relevant community, in the context of the ISO 3166 Code, and of the relevant pubic authority or government, that, upon request, ICANN exercise its authority with the utmost promptness to reassign the delegation.

Agenda Item 11 - Discussion concerning the Registrar Accreditation Agreements

Due to time constraints, this Agenda Item was deferred to discussion at a later date.

Agenda Item 12 – Communique / Media Release

It was agreed that a Communique would be issued to the Media following this meeting. The Communique was to be the only Media communications from the GAC with regard to this meeting. The text of the agreed communique was as follows:

BERLIN, TUESDAY, 25 MAY 1999 - The Government Advisory Committee held its second meeting today. The attending Committee members, representing over 33 national governments, multinational governmental organisations and treaty organisations, issued the following statement:

1. The Committee has established its Operating Principles and remains committed to its stated position of implementing efficient procedures in support of ICANN
2. The GAC requests that ICANN amend its Bylaws to ensure that the Membership definitions for the GAC in the Bylaws align with the Membership definitions in the adopted Operating Principles.
3. The Committee has had fruitful discussions around substantive issues relating to the usage of the Internet across the worldwide community, the administration of the country code top level domains (ccTLDs), and the WIPO Internet domain name process. The Committee initiated a positive and constructive process for addressing these and other significant Internet policy issues, and as a consequence makes the following recommendations to the ICANN Board:

- With regard to the text of the WIPO final report on the Internet domain name process, that:

   1. The GAC welcomes the World Intellectual Property Organisation (WIPO) report on the Management of the Internet Names and Addresses and endorses the general principles developed in the report related to best practice, Administrative Dispute Resolution (ADR), abusive domain name registration, and generally to help resolve differences between domain name and intellectual property rights address holders. The GAC notes, that, for the time being, the proposed trademark policy and disputes policy recommended by the WIPO report could be applied to gTLD's including existing and future Registries and Registrars.
   2. The GAC reaffirms the requirement for transparency and reliability of DNS registration data, as recommended by the WIPO report, and requests that ICANN put in place an appropriate system to authorise and ensure access to data, consistent with applicable law or standards, including defining the purposes of such access.

3. In view of the extensive public international consultations undertaken by WIPO in cooperation with ICANN during 1998-1999, we look to ICANN's procedures to result in rapid resolution of the issues concerning dispute settlement and treatment of well known and famous marks. Specifically, the GAC calls on ICANN to report on implementation of the dispute settlement proposals by its Santiago meeting and to engage in further consultations with the Supporting Organisations and Advisory Committees with respect to the treatment of well known and famous marks.

- With regard to the Management of the ccTLDs of External and/or Dependent Territories, that:

   Where the delegate of a ccTLD does not have the support of the relevant community, in the context of the ISO 3166 Code, and of the relevant pubic authority or government, that, upon request, ICANN exercise its authority with the utmost promptness to reassign the delegation.

1. The GAC will have further discussions with regard to domains containing restrictions or conditions on registration that serve to ensure certainty with respect to the applications and enforcement of laws, as opposed to domains containing no such restrictions or conditions on registrations.
2. The next face-to-face meeting of the Committee will be held to coincide with the next meeting of the ICANN Board.

Agenda Item 13 – Any Other Business

No other business was raised.

Agenda Item 14 – Next Meeting

It was agreed that the next meeting of the GAC would be held to coincide with the next meeting of the ICANN Board.

Agenda Item 15 – Open Meeting – Dialogue with interested members of the Internet community

The Chair introduced himself, gave an overview and background on the GAC, and briefly overviewed the Communique from the GAC. The Chair then opened the discussion for questions from interested parties.

Note * - The Open portion of the meeting was Webcast and has been posted at the multimedia archive produced by the Berkman Center. The Open portion of the GAC meeting may be viewed in full at http://cyber.law.harvard.edu/icann/berlin/archive/

Summarised questions and answers from the Open Meeting included:

Q. I heard a rumour that a representative of the national government of the Turks and Caicos Islands was refused access to the GAC on the grounds that that country is a former colony of UK. I would like to know if the extent of neo colonialism of GAC has been defined, and if so, how far it will go.

A. I can only deal in facts - Turks and Caicos is not a national government, and they do not appear in the United Nations, the ITU, or anything else. They are not a national government.

Q. I would like to see a list of people who you decided that you didn't like and that you kicked out, Including Norfolk Island, Moldova, and some Baltic republics that you didn't send invitations to, and I heard about some governments to which you sent invitations to the wrong people

A. Firstly, the ICANN Bylaws require that the GAC be represented by members of national governments. The last I heard, this audience hasn't redefined International Law about what a national government is, but there are very clear definitions about what national governments are. Turks and Caicos was not admitted because it is not a national government, it is a dependent territory of the UK. Official correspondence with Her Majesty's government has confirmed that this is the case. Norfolk Island, similarly, is not a national government – it is a dependent territory of the Commonwealth of Australia. If the rules of ICANN for the GAC were different, then fine, but my legal liability and position is to enforce the rules of the GAC and Bylaws – this is why those people were not permitted to attend the GAC meeting. This issue was made clear to other territories, who understood and went out of their way to make sure that their national government representative was informed. With regard to the issue of Moldova, the representation of Moldova as was here today by a private company who is the technical administrator of the .MD ccTLD. He was authorised to represent the ccTLD issues of Moldova. Conflict of interest issues were raised by a number of national delegates in the GAC, in particular the conflict of interest at the heart of public/private interest issues when the ccTLD discussions came up. The proposal was put forward, and endorsed by the committee, that the present representatives of Moldova not be in attendance during discussion of the two Agenda Items on ccTLDs. Having said that, however, it should be noted that the representative for Moldova was given the opportunity to address the GAC and put forward the concerns of the Moldovan government. The Chair has taken steps to ensure that

full details of the discussion will be communicated to the Moldovan government, and the final expression of the views of the GAC have been made public.

Q. With regard to International Law involved, it would seem that you are asserting a property right on the basis of national governments in the two-letter codes and its place in the file system in the root server. What international law specifies that you have the ownership of those two letters in the root? Or any relevant precedent? Would you clarify the legal authority for your claim of ownership by national governments of two letter codes? And also whether that extends to new TLDs which may have three-letter country codes, or a complete statement of country, will you be claiming ownership on those too?

A. I don't think that you will find anything about ownership rights. The recommendation from the GAC is a simple statement about exercising reassignment in areas where there is conflict concerning the wishes of the local community and the public interest. The recommendation is to ICANN to draw its attention to RFC 1591. There is no statement either way about ownership.

Q. How is the GAC formulated? Why can't meetings be open for the entire day? What is the need for secrecy if governments are only 'advising'?

A. The meetings are 'closed' for practical reasons. If you hold entire 'open' meetings with governments, then you don't have meetings – what you have is press statements. Without going into any details, in that room next door today, there were countries who were at war with each other in the last twenty years. There are countries in there that have to deal with high political issues all the time. If we get caught in the high political issues, then we'd get nowhere – it would be a meeting through a series of open statements. If the GAC is to be efficient and add value to the work of ICANN, then they have to get on with the job and have their discussions in such a way that representatives do not make a series of public statements, but rather have discussions at a pragmatic level. This is important if we are to have substantive discussions – representatives need to have confidence that they may talk among themselves and not feel like they're talking to the world press – they simply won't speak their minds. Discussions are more substantive, direct and effective when they are held during closed sessions – that is the simple pragmatic truth. With regard to openness, the Agenda is made public, people can talk to their national government representative and make their positions known, and ultimately no matter what is discussed in the meeting, what is important to ICANN is the communique – and that communique is now open for public consultation and questions . It should be noted that the GAC is only one of six entities which provides input and recommendations to the board. There are plenty of other forums to provide input to ICANN.

Q. Why were the rules with regard to who can attend meetings changed (ie. policy changes which were used to exclude people from the meeting)? And how is it that Economies may participate?

A. I will firstly address the second part of your question. The adoption of language as used in international fora, eg. APEC allows some important economies to participate without us getting caught in high politics. Participation in the GAC is very pragmatic, beginning with issues of concern to the Internet community, rather than high political issues. Discussion in the GAC does not take place in a vacuum. With regard to the first part of your question, Governments don't have a voice anywhere else in ICANN other than the GAC. Private parties have numerous occasions to discuss concerns with the Board. I would also like to clarify the wording utilised. The Bylaws specifically exclude government officials from the Board. So therefore the wording adopted in the Operating Principles of the GAC reflected that the accredited representative of a GAC Member should be an 'official'. There was no Kangaroo Court or last minute change aspect to the decision – it was an issue which had been discussed in the GAC for the last few months.

Q. IANA did not want to decide who is a legitimate government, and instead deferred to the ISO 3166 standard. I would encourage GAC to think about applying the ISO 3166 rather than putting ICANN and its staff in a position of having to arbitrate who is or is not a legitimate national government.

A. The GAC is independent of ICANN and is not a ccTLD constituency. I am normally very loathe to get into issues of hypotheticals, however you are quite right, and every day, governments must deal with the issue of deciding who is or isn't a national government – they even have large bodies of international lawyers and well established credential bodies to address the issue. Potentially, that is one of the things that the GAC can offer this community - it can offer the extensive experience of governments in those sorts of issues.

Q. With reference to the recommendation by the GAC about revoking delegations where the delegate of a ccTLD does not have the support of the relevant community - How you are going to find out what that support is? It seems that by this means, it you are proposing to revise the ISO 3166 list and remove countries from it and actually get into the business of deciding what is or isn't a country.

A. Let me address the second part of your question first. No, we are not doing that at all – we are not talking about revisiting the list, the key word here is 'reassign".

As for ascertaining support, or lack of it, for a delegate, we would be looking to a negative indication ie. where there is a clear statement of discontent, whether that be from local council, businesses or whomever. With regard to the issue of whom the indication of dissatisfaction is from, our recommendation is to ICANN in those words – we would expect that they would have some sense of evidentiary obligation ie. a single letter from someone would not be considered sufficient, but if that territory has a popularly elected body, then a letter from that body would most likely be considered evidentiary.

The full video of the Open Session may be viewed from the ICANN Public Meetings Proceedings Archive at http://cyber.law.harvard.edu/icann/berlin/archive/

MEETING CLOSED 8:45pm