

GAC MEETINGS

Meeting 3: Santiago - 26 August 1999

EXECUTIVE MINUTES

Meeting III

9:00am to 6:30 p.m., 24 August 1999

Bulnes-Montt Room, Crowne Plaza Hotel, Av. Lib. Bdo. O'Higgins 136,
Santiago, Chile

Present:

- Chair - Dr Paul Twomey
- Secretariat - Ms Ann Marie Plubell (Secretary-Adviser to GAC)
- ICANN - Mr. Hans Kraaijenbrink, Mr. Greg Crew, Mr. Michael Roberts
- Argentina - Ms Mercedes Arbasetti, Ms Mariana Berruezo (adviser)
- Austria - Mr. Herbert Vitzhum
- Australia - Ms. Nikki Vajrabukka
- Brazil -Mr. Airton Luciano Aragao, Mr. Vicente Landim de Macedo Filho (adviser)
- Canada - Mr Michael Helm, Ms Kim Haaland (adviser)
- China - Mr Yin Chen, Mr Liu Dong (adviser)
- France - Mr. Alain Le Gourrirec, Ms Isabelle Lafontaine (adviser)
- Germany - Mr. Michael Leibrandt
- Italy -Mr. Stefano Trumpy
- Japan - Mr Shuji Yamaguchi, Mr Satoshi Nohara (adviser)
- Korea - Mr Kwang-Su Kim
- Malaysia - Dr Abdul Rahman Bidin, Mr. Ramesh Kumar Nadarajah (adviser)
- Mexico - Mr. Antonio Garcia-Alonso
- Moldova - Mr Liubomir Chiriac
- Netherlands - Mr. Klaas Bouma
- New Zealand - Mr. David McKee, Mr. Peter Dengate Thrush (adviser)
- Niue- The Hon Toke T Talagi, Mr Gerald McClurg (adviser)
- Norway - Mr. Arne Litlere
- Portugal - Mr Pedro Veiga
- Spain - Mr. Cristobal Guzman
- Sweden - Mr. Markus Boberg, Mr. Henrik Nilsson (adviser)
- Switzerland - Mr. Francois Maurer

- Taiwan - Dr Kai-Sheng Kao, Mr William Lin (adviser)
- United Kingdom - Mr. Neil Feinson
- United States of America - Ms J Beckwith Burr, Ms Karen Rose (adviser)
- European Union (EU)- Mr. Christopher Wilkinson, Mr. Richard Delmas (adviser)
- International Telecommunication Union (ITU) - Mr. Robert Shaw
- World Intellectual Property Organisation (WIPO) - Mr. Christopher Gibson

Observers

- Mr. Angel García, Comisión del Mercado de Telecomunicaciones, Spain
- Mr Jose Alexandre Novaes Bicalho, ANATEL, Brazil

Apologies:

- Denmark - Ms Lise Fuhr Hovind
- Hong Kong, China - Mr K H Lau
- Ireland - Mr Roger O'Connor
- Singapore - Ms Valerie D'Costa
- Yemen - Mr Ali Basahi
- APT - Mr John Budden
- OECD - Dr Sam Paltridge

Agenda Item 1 - Welcome

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

The Chairman noted his thanks to the Latin American and Local Organizing Committee in Santiago, Chile, who funded expenses for the GAC meeting, including meeting space & refreshments

The Chairman then gave a brief overview of the Agenda, including outlining the timetable for the day's proceedings. He noted the full agenda and the need to maintain the schedule in order to reach the open meeting with the public in a timely manner.

It was also noted that the results of the meeting would be reported at the ICANN Open Meeting on Wednesday 25 August 1999.

Agenda Item 2 - Briefing from Mike Roberts, Interim President and CEO of ICANN, on

1. Communications with the United States Congress and the U.S. Department of Commerce since the prior meeting of the GAC
2. ICANN Funding matters
3. ICANN Meeting Agenda
4. Pending Matters

Mr. Roberts reported that, consistent with its authority, the United States House of Representatives conducted hearings in July related to the status of the introduction of competition into the domain name registration system and the roles and actions of the Department of Commerce, Network Solutions, ICANN and other interested parties.

As part of the process, the Department of Commerce and ICANN provided extensive background information addressing points of concern raised by various Congressmen.

The Congressional Committee emphasized the need to move forward with the development of a structure to elect a board of directors for ICANN. Mr. Roberts confirmed that the present appointed Interim Board agrees that this is a priority and wishes to proceed with all due dispatch to accomplish this.

In response to the concern expressed by the U.S. Department of Commerce, related to the perceived openness of the ICANN Board of Directors, Mr. Roberts said that the Board would experiment with opening its August 26th board meeting to the public and would review the result at its meeting in November.

He noted that, in response to a concern expressed by certain Congressmen, ICANN had determined that it would defer any decision related to funding through the collection of a \$1 fee per domain name registered until some directors selected by the Supporting Organizations are in place. Additionally, ICANN had formed and was consulting with a funding task force composed of representatives from registries and registrars on appropriate funding models for ICANN. A report from the group is expected prior to the ICANN Annual Meeting in Los Angeles in November.

Mr. Roberts said that there is also a role for GAC members and all parties in interest to participate in the funding structure. He said it is important to assure diverse resources and balance in participation.

Mr. Roberts then reviewed in detail the financial position of ICANN for the year to date. He reported that ICANN presently has liabilities in excess of \$800,000 over assets. This represents a short-fall in projected contributions of \$600,000 and an excess of expenses over budget of \$200,000 consisting of start-up costs, operating, administrative and professional expenses and the unbudgeted cost of compliance with the requirements to

respond to the Congressional inquiries.

He said that, in order to pay bills to service providers and to continue operations, ICANN had approached members of international and American industry organizations and had secured \$825,000 in bridge loan financing of the targeted \$2 million required by December, 1999.

Mr. Roberts then reviewed the agenda of the ICANN Board for the upcoming public meetings and noted that, consistent with past practice, the agendas for the meetings are posted on the ICANN website together with other policy documents and he encouraged GAC members to visit the site for current information and background related to ICANN.

Mr. Roberts reported that there were no further developments related to the review process for the delegation of management of ccTLDs since the May meeting of the GAC. He said that this reflects the limited resources and funding available to ICANN to address the matter and confirmed that ICANN views the matter as important. He said that the document previously known as "RFC 1591" is now titled "ICANN Policy Document 1" or "ICP 1" and is posted on the ICANN website for reference. He confirmed that ICP 1 does not contain any policy changes from RFC 1591 and is a simple restatement in the new format.

Mr. Roberts confirmed that the ICANN Interim Board is interested in an expeditious transition to an elected board and toward that end, the Interim Board anticipated recognizing and approving an ASO at its coming meeting.

Agenda Item 3 - Proposed Interim Policy for Geographic Diversity on the ICANN Board of Directors

The Chairman noted that a paper on this subject was provided to the members and was also available on the ICANN website. He outlined the key principles as set out in the paper.

The GAC had discussions on the Proposed Interim Policy for Geographic Diversity on the ICANN Board of Directors. After discussion, it was the consensus of the members of the GAC that the following recommendation be provided to the ICANN Board:

The GAC supports the underlying principles of geographic diversity and international representation in the context of ICANN. The GAC believes that these principles are best implemented using the criterion of citizenship, as specified in the By-laws of ICANN, to determine the eligibility of directors of the board of ICANN and of participants in the Councils of the Supporting Organizations. In addition, taking into consideration the practicality of determining the electorate, the GAC supports the use of residency as the criterion for determining the eligibility of the electorate.

Agenda Item 4 - Discussion on Principles for the Delegation of Management for ccTLDs.

The Chairman noted that the GAC consensus view appears to be that it is important to keep the public interest in mind and to address this interest when considering how the Internet interacts with economies and societies.

The GAC then discussed issues concerning principles for the delegation of management for ccTLDs, including the process of delegating and, as necessary, redelegating the technical management and operation of ccTLDs.

There was general support and consensus on the following issues:

- That a ccTLD should be administered in the public interest
- That RFC 1591 should be updated and/or redrafted to remove any ambiguity as to the rights and responsibilities of each party including governments, public authorities, ICANN, and the ccTLD administrators.
- That ICANN should not have direct involvement with national ccTLD policy - the ccTLD should be viewed as a public resource subject to national and international law and should reflect the interests of the local community.
- That there is merit in exploring the relationship and roles of ICANN, the relevant government and/or public authority and the ccTLD administrators and operators. It would be useful to consider, among other things; appropriate limits to assure technical standards are met. Additional issues might include how ICANN can assure the interoperability of ccTLDs, connectivity, and the resolution of disputes where the ccTLD is marketed globally in the same manner as a gTLD.
- That a dispute resolution mechanism which would resolve issues raised related to a delegation is desirable.
- That the naming space is a public resource and a ccTLD administrator does not derive any special property rights solely because of designation as the administrator.

It was agreed that the following text would be included in the GAC communique:

The Committee reaffirmed its May resolution that the Internet naming system is a public resource and that the management of a TLD Registry must be in the public interest.

Accordingly, the GAC considers that no private intellectual or other property rights inhere to the TLD itself nor accrue to the delegated manager of the TLD as the result of such delegation.

The GAC also reaffirmed that the delegation of a ccTLD Registry is subject to the

ultimate authority of the relevant public authority or government. The GAC discussed the development of best practices for the administration of ccTLDs and agreed to continue this discussion.

It was agreed that the GAC would have further discussions on principles for the delegation of management of ccTLDs. The members also agreed that a minimal amount of information should be acquired and updated periodically to identify who is behind a domain name and to provide a way to reach them physically.

Agenda Item 5 - Discussion on domains containing restrictions or conditions on registration that serve to ensure certainty with respect to the application and enforcement of laws ("restricted domains"), as opposed to domains containing no such restrictions or conditions on registrations ("open domains").

In continuation from the discussions at the GAC's previous meeting (Berlin, 25 May 1999), the representative of the USA spoke to the attending GAC members concerning the issue of 'open' and 'restricted' ccTLDs.

The GAC had discussions on these issues. It was agreed that the two key principles in this matter are dispute resolution processes and the clarification of clear registration details for entities that are registering.

Agenda Item 6 - Next Meeting

It was agreed that the next face-to-face meeting of the GAC will be on November 2, 1999 in Los Angeles in order to coincide with the next round of ICANN meetings.

Agenda Item 7-Other Business

UDRP for gTLD Registrars

The representative from the World Intellectual Property Organization (WIPO) spoke to the attending GAC Members on activity to date and the documents which had been released since the final report of the WIPO related to "cybersquatting" and dispute resolution in May.

ICANN's At-Large Membership

Mr. Greg Crew, member of the ICANN Interim Board of Directors and a member of the Membership Advisory Committee spoke to the GAC concerning the development of an

At-Large membership.

Mr. Crew reviewed the statutory criteria for defining "members" under the law of California where ICANN is incorporated as a non-profit corporation.

The GAC had discussions on Implementation Reports of ICANN Staff's and Counsel concerning ICANN's At-Large Membership. It was noted that these documents were posted for public comment on the ICANN Website.

Openness of GAC Meetings

It was noted that some parties continued to raise questions related to the perceived openness of the GAC and the fact that its meetings were only open to officials.

It was suggested that interested parties such as members of the ccTLDs might be invited to join the GAC meetings from time to time to discuss topics of mutual interest.

The Chairman agreed and indicated that such structured consultations are consistent with the GAC's interest in keeping an open line for dialog with interested parties.

Agenda Item 8-Communique

The GAC members then reviewed and agreed to the terms of the Communique to be published following the meeting.

There being no further business, the meeting of the GAC was adjourned at 5:20 p.m. and members were encouraged to proceed to the FACEA auditorium for the open meeting and dialogue with interested members of the Internet community.

Agenda Item 9- Open Meeting - Dialogue with interested members of the Internet community

The Chairman introduced himself, gave an overview and background on the GAC, and briefly overviewed the Communique from the GAC. The Chairman 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/santiago/archive/>.

Summarised questions and answers from the Open Meeting included:

Q. There has been discussion in the US Congress concerning the openness of ICANN's meetings, and ICANN subcommittee meetings. Why is the GAC meeting still a closed meeting? We feel that this is inconsistent with the spirit of ICANN. If Board open, then GAC should be open.

A. The GAC had discussions on how to further the interests of openness and transparency while keeping necessary confidentiality. I talked at length about this in Berlin and many of you were there, so I won't repeat the arguments on that. The GAC has talked about making its next meeting open in part for certain topics. There was the suggestion that we could perhaps invite particular constituencies to join in a dialogue about a particular topic. Complete openness is not negotiable. Governments, as I made quite clear at the last meeting, if confronted with the need to have completely open meetings, will read prepared statements, not discuss issues with each other, and then will go home. However, we are trying to find ways to open up dialogue on particular topics.

Q. Certain countries have advisers who are government officials, but some are not. What is the required criteria in order to allow an adviser to be in attendance at a GAC meeting?

A. It is required that the adviser have some "official role" within the Member's government or public administration - either as a full-time employee of the public administration, or playing a role in the public administration of that country as it relates to the Internet. Some countries have people who are not full government officials, but who do hold a formally recognised role in the public administration of the Internet policy in that country. As Chair, I always ensure that these details are checked with the representative of that Member.

Q. The Communique seems well thought out in terms of how the GAC regard ccTLDs, but what about gTLDs, current and future? Was there any discussion on that subject?

A. Discussion of gTLDs was focussed on attempting to determine the public interest; however, issues on TLDs were just as relevant when it came to their being operated in the public interest. Where the GAC Communique refers to TLDs, it is meant to encompass both gTLDs and ccTLDs.

Q. How can GAC be an ICANN Committee (in compliance with ICANN requirements of openness) while operating in a closed fashion?

A. The balance we have to try to achieve is to make the discussions both sufficiently open and also workable. Taxpayers spent tens of thousands of dollars to have their government representatives discuss issues in Santiago - these citizens would not be happy to have their representatives read prepared statements and go home. Governments don't interact effectively in the open - they need to have some degree of confidence that they can discuss confidential issues. The GAC's Agenda is put up on website, and each

Member's representative is listed on the GAC web site along with contact information - citizens therefore have the opportunity to raise issues with their relevant representative.

Q. At the moment, and as it has been for awhile now, the primary criterion for the management of a domain name has been the quality of that management and the feelings of that community of interest ie. how well that manager seems to be doing that job. It would appear that your communique seems to be abandoning that concept in favour of government ownership of the ccTLDs.

A. I don't see anything in this statement that is contrary to what we have said before. In Berlin the GAC put forward a recommendation 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 the relevant public authority or government, that, upon request, ICANN exercise its authority with the utmost promptness to reassign the delegation" - that implicitly recognises the local community. The only further thing in this communique is that ccTLDs are subject to the ultimate authority of the national government, and that is simply a statement of international law.

The Open portion of the GAC meeting was webcast and may be viewed in full at <http://cyber.law.harvard.edu/icann/santiago/archive/>.

MEETING CLOSED 6:30 p.m.