

GAC/ICANN Board Communique Clarification Call - ICANN78 Communiqué

5 Dec 2023 - 1400 UTC

In the spirit of issue spotting and candid information exchange, these high-level summary notes are intended to reflect the general nature of the discussion during the GAC/ICANN Board Communique Clarification Call - ICANN78 Communiqué. Certain specific aspects of the meeting discussions are provided to enable understanding of the flow and context of the discussions.

I. Introduction

Tripti Sinha (ICANN Board Chair) thanked participants for joining this discussion of GAC Advice in the ICANN78 GAC Hamburg Communiqué, and recalled the constructive and engaging conversation the GAC and ICANN Board held on several issues of interest to the GAC in Hamburg. She noted that the ICANN Board takes the GAC's advice very seriously and seeks a robust discussion of the clarifying questions.

Nicolas Caballero (GAC Chair) reviewed the topics on the agenda of the call and encouraged a meaningful and fruitful discussion.

Becky Burr (ICANN Board) praised the helpful nature of these conversations for the ICANN Board as it considers formulating its response to GAC Advice and Follow-up on Previous Advice. She shared her appreciation to GAC and ICANN Board members for their participation in the call and their contribution to a very good and robust relationship between the GAC and the ICANN Board.

II. Clarifying Discussion On Closed Generic gTLDs

GAC Advice §1.a.i

a. The GAC advises the Board:

- i. Prior to the next round of New gTLDs, to ensure that the forthcoming Applicant Guidebook clearly states that Closed Generic gTLD applications will not be considered.***

RATIONALE

The GAC offers this advice in recognition of the support of the message from the Chairs of the ALAC, GAC, and GNSO to the participants of the facilitated dialogue that “unless and until there is a community-developed consensus policy in place, any applications [for closed generic gTLDs] [...] should not proceed.”¹

A clear statement in the Applicant Guidebook will help potential applicants to avoid confusion and possibly the waste of resources.

Additionally, the GAC recalled in its Comment on the Draft Framework for Closed Generics (15 July 2023)² its concerns on “competition issues, the overall assessment of the value of Closed Generic

¹ [ALAC, GAC, GNSO Chairs Letter to Facilitated Dialogue Participants](#) (7 August 2023)

² [Governmental Advisory Committee \(GAC\) Comment on the Draft Framework for Closed Generics](#) (15 July 2023).

TLD for the Internet, their potential negative economic and social impacts, and the evaluation panel". The good faith deliberations that took place in the Facilitated Dialogue addressed directly the question of whether Closed Generics could serve a "public interest goal" (as advised in the 2013 Beijing Communiqué) without reaching a solution garnering consensus within the community. The GAC further underlines the importance to promote an open digital space and is of the view that under these circumstances determining and arbitrating whether a proposed closed gTLD would meet a public interest goal would likely create significant costs without providing any corresponding benefit.

Board Clarifying Question(s):

The Board notes that there is currently no community-developed consensus policy on closed generic gTLDs, since the SubPro PDP did not come to consensus on this topic and the recent facilitated dialogue did not result in a final community-agreed framework for further policy work.

The Board thus understands that the question of how to handle any applications for closed generic gTLDs that may be submitted in the next round is a decision for the Board. The Board is considering how to proceed and will take into account the GAC's advice as well as that of the ALAC and the input sent via correspondence from the GNSO Council.

Can the GAC confirm its belief that Board acceptance of this advice will not amount to unilateral policy making, and should not be considered a precedent or policy for future rounds of new gTLDs?

Can the GAC also clarify how this advice item aligns with its 2013 advice that for gTLD strings representing generic terms, exclusive registry access (i.e. closed generics) should serve a public interest goal?

Discussion

Jorge Cancio (Switzerland) thanked the ICANN Board for its detailed review of the advice and its clarifying questions noting that due to their circulation on Friday 1 December, the GAC did not have the time to consider agreeing on responses. Sharing his opinion in his national capacity, he suggested that what is being discussed is not unilateral policy making but rather a long standing issue which did not come anywhere near resolution despite many years of policy development deliberation in the Subsequent Procedures PDP Working Group. He also noted that despite important efforts to set up a basis for possible new policy development conducted by the Facilitated Dialogue on Closed Generics between the GAC, ALAC and the GNSO, which he commended the ICANN Board for establishing, the 3 Chairs had agreed to not recommend further policy consideration and to effectively put the matter on hold, including due to the already existing burden on the multi-stakeholder community. He therefore stressed his understanding of this matter as being on hold from a policy decision perspective, without prejudice to consideration of this matter again in the future. He proposed that this is the rationale underlying the GAC Advice which comes in support of the [GAC/ALAC letter to the ICANN Board](#) on this matter (13 October 2023). As it relates to the second clarifying question, he stressed his understanding of the 2013 GAC Advice³ as still standing and addressing the substance of the issue, which should now be read jointly with the new GAC Hamburg Communiqué Advice advising that the matter be put on hold.

³ See [GAC Beijing Communiqué](#) (11 April 2013), Annex 1 Safeguards on New gTLDs, Category 2, 2. Exclusive Access, p.11

Susan Chalmers (United States) noted too that the GAC had not had time to discuss the Board's questions. She therefore shared the United States' position, as largely in agreement with that of Switzerland, indicating that she did not believe ICANN Board acceptance of this Advice would amount to unilateral policy making. She stated that the Hamburg Advice should indeed be read in conjunction with the 2013 GAC Advice on this matter and noted that some GAC members had discussed whether or not to recall its 2013 Advice explicitly, but did not reach consensus to do so. She further noted that the GAC's advice in the Hamburg Communiqué does not foreclose the ability for Closed Generic gTLDs to be considered in the future. Regarding the next rounds of New gTLD currently under consideration, in light of the inability of stakeholders in the Facilitated Dialogue to reach an agreement despite their good faith effort, and due to the lack of outcomes supporting the need for Closed Generics, she shared with the ICANN Board a strong sense that Closed Generics gTLDs should not be considered and that this should be made clear for the benefit of everyone, including prospective applicants.

Nico Caballero agreed with Switzerland and the United States that this Advice does not amount to policy making vis a vis future rounds of new gTLDs as it relates to Closed Generics. He further noted that discussion of Closed Generics could benefit from lessons learned from the 10 years passed since the previous round of New gTLDs, while still aligning with the public interest objective stressed in the original GAC Advice, which he understands still holds.

Nigel Hickson (United Kingdom) acknowledged the importance of the Board's questions in light of differences between the GAC and GNSO's communications to the ICANN Board⁴. In this context, he recalled that the Facilitated Dialogue on Closed Generics set out to establish a basis to initiate a Policy Development Process taking note of the 2013 GAC Advice and possibly seeking to define Closed Generics gTLDs within a public policy process, but that it was deemed among the 3 Chairs (of the GAC, ALAC and GNSO Council) to not be possible. It was therefore agreed among them, inter alia, that there should not be Closed Generics gTLDs in the next round of New gTLDs, which he noted was in effect an extension of the ICANN Board's decision on this matter in the previous round. Noting the GNSO Council's statement that it did not have a policy position on the matter, he stressed his understanding that the GNSO Chair had agreed with the GAC and ALAC Chairs on the conclusion that there should not be Closed Generics in the next round, as noted in the communication submitted on behalf of the three Chairs to the Facilitated Dialogue group⁵. He offered that it was logical, commendable and consistent therefore, for both the GAC and ALAC to agree on their joint letter⁶ and for the GAC to provide this Advice.

Gemma Carolillo (European Commission), recognizing that the GAC did not have the opportunity to discuss the Board's questions, but noting the extensive discussions held by the GAC during ICANN78 in Hamburg, stressed that the GAC was not aiming to change the nature of GAC Advice. She recalled that GAC Advice is the GAC's position on important issues as conveyed to the ICANN Board and that no GAC advice can be considered unilateral policy making. On this subject matter, she noted that the GAC participated intensively and fully in the multistakeholder process, that no common position was reached, and that therefore the GAC provided its position to the ICANN Board. As it relates to the interaction between the Hamburg advice and the 2013 GAC Advice, she observed that the ICANN Community has had 10 years to analyze the issue of Closed Generics and proposed that the GAC had not identified a compelling case for Closed Generics gTLDs serving the public interest, as stressed in the rationale of the Hamburg Advice. She concluded that there was no contradiction and that this new Advice reflects the work accomplished on this matter since 2013.

⁴ See [GAC, ALAC Chair Joint Letter to ICANN Board on Closed Generics](#) (13 October 2023) and [GNSO Chair letter to ICANN Board on Closed Generics](#) (21 October 2023)

⁵ See [GAC, GNSO, ALAC Chair Letter to Facilitated Dialogue on Closed Generics](#) (7 August 2023) noting this quote from the subsequent GNSO Chair letter of 21 October 2023: "providing guidance on how applicants seeking to impose exclusive access for 'generic strings' should be treated in the next and future rounds of new gTLDs, was unable to be supported by the GNSO Council"

⁶ [GAC, ALAC Chair Joint Letter to ICANN Board on Closed Generics](#) (13 October 2023)

Becky Burr acknowledged the participants' input as very helpful and noted that the ICANN Board now has to grapple with the handling of applications for Closed Generics in the next round of new gTLDs, and that it will do so taking the GAC's input into account. She further noted that the ICANN Board will follow the bylaws-mandated process should it have questions, concerns or disagreements with the GAC Advice, and in the meantime extended her appreciation for the constructive, active and diligent participation of the GAC in trying to find a resolution to this matter.

III. Clarifying Discussion On Enabling Inclusive, Informed and Meaningful Participation in ICANN

Follow up on Previous GAC Advice (Item 1)

The GAC would welcome a written status update from the Board on the activities adopted and implemented by ICANN org pursuant to the ICANN60 GAC Abu Dhabi Communiqué Advice regarding the development of a simple and efficient document management system and the production of easily understandable executive summaries for all relevant issues, processes and activities.

Board Clarifying Question(s):

The Board is committed to accountability and transparency and pursuing easily understandable and relevant information on matters of concern to all stakeholders. The Board notes that the greatly enhanced searchability on icann.org, resulting from the Information Transparency Initiative, gives users the ability to search by name, date, and subject, which satisfies the intent of the advice regarding the development of a simple and efficient document management system.

The Board notes that the At Large leadership has met with staff regarding the need for executive summaries. Ten executive summaries will be produced, after which the 2017 joint advice can be closed. At Large has committed to provide the list of topics.

Will the GAC be working in collaboration with At Large on these ten topics and if so, is there a timeline for the GAC and At Large to provide these topics?

Discussion

Becky Burr reiterated that the ICANN Board agreed to provide executive summaries and asked the ALAC to provide the 10 topics for which these should be created. She invited GAC input on these topics and indicated that as soon as this is agreed, ICANN org will work on delivering the materials.

Nigel Hickson (who acts as the GAC Contact Point for the ALAC), noted in comments that the GAC has interacted with the ALAC previously on this issue and therefore welcomed the ICANN Board's suggestion.

IV. Clarifying Discussion On Future gTLDs Policies and Procedures

Follow up on Previous GAC Advice (Item 2)

The GAC recalls its advice to the Board in the ICANN56 GAC Helsinki Communiqué (30 June 2016) that "An objective and independent analysis of costs and benefits should be conducted beforehand, drawing on experience with and outcomes from the recent round." So far the GAC is not certain of the availability of such analysis called for by the GAC. The GAC is looking forward to receiving such analysis at the earliest opportunity and ahead of ICANN79.

Board Clarifying Question(s):

The Board notes that the benefits and costs of subsequent rounds of new gTLD are contained in the [PDP Final Report](#), the [CCT Final Report](#), and the [ODA](#).

In the view of the GAC, what additional analysis is required that is not already covered in these documents?

Becky Burr stressed that the CCT Review Team Final Report, the Subsequent Procedures PDP Working Group Final Report and ICANN's Operational Design Assessment (ODA) of the GNSO Policy Recommendations regarding New gTLDs contain substantial information on costs and benefits of New gTLDs and therefore reiterated that the Board would like to know what additional analysis is required.

Nico Caballero shared the opinion that if no additional information is necessary, at least a summary in the form of a simple-to-read consolidated document would be welcome, including for engaging with minister-level authorities. He suggested that for topics not already covered, further analysis may be warranted.

Finn Pertesen (Denmark) observed that the documentation of this matter is very fragmented and would make presentations to ministers very difficult. He also wondered whether the analyses were of an independent nature. He proposed that a clear statement on the costs and benefits of New gTLDs be provided, including a clarification of the type of costs that were considered in this analysis, such as those related to defensive registrations and DNS Abuse for example.

Becky Burr confirmed her understanding of the request to be for a succinct statement about what analysis has been conducted and what it concludes in terms of cost and benefits for future rounds of New gTLDs.

V. AOB: Urgent Requests for Disclosure of Domain Registration Data

Nico Caballero requested clarification on what work is being planned to make progress on the matter of Urgent Requests for Disclosure of Domain Registration Data.

Becky Burr, in response, recalled that this is part of GNSO policy recommendations stemming from the EPDP on Registration Data Phase 1 which the Board previously accepted. She shared that the ICANN Board now thinks this needs to be refined, and started a conversation with GNSO Council to this effect. She noted that there is no existing mechanism for such a situation, which is not without precedent. The ICANN Board is currently planning to engage the GNSO Council on how to handle this matter and will share feedback it receives with the GAC. She concluded by noting that consistent with the GAC's request, the proposed Consensus Registration Data Policy will be published with the exception of the provisions related to Urgent Requests, and that it is unclear at the moment how the specific issue of Urgent Requests could be resolved.

VI. Conclusion

Becky Burr shared her appreciation for GAC Members' participation in this discussion and for the input provided to the ICANN Board which it will now use to finalize its response to the GAC Hamburg Communiqué Advice, in advance of ICANN79. She observed that the Communiqué clarification process has been effective.

Tripti Sinha shared the sentiment that this conversation was very helpful as the ICANN Board moves to formulating its response to the GAC, and expressed her appreciation for the candid conversation.

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Meeting Participants

GAC

Nico Caballero, GAC Chair
Klaus Parrer, Austria
Suada Hadzovic, Bosnia and Herzegovina
Luciano Mazza de Andrade, Brazil
Jose Hernandez, Cayman Islands
Tomboye Ibrahim, Chad
Wang Lang, China
Thiago Dal-Toe, Colombia
Mislav Hebel, Croatia
Finn Petersen, Denmark
Manal Ismail, Egypt
Christine Arida, Egypt
Gemma Carolillo, European Commission
Martina Barbero, European Commission
Jonas Roule, France
Adriano Daddario, Italy
Toshiharu Mochizuki, Japan
Sanae Katayangi, Japan
Mina Ogihara, Japan
Zeina Bou Harb, Lebanon
Ousmane LY, Mali
Myo Swe, Myanmar
Laxmi Prasad Yadav, Nepal
Marco Hogewoning, Netherlands
Rudy Nolde, Germany
Viacheslav Erokhin, Russian Federation
Waleed Aloriny, Kingdom of Saudi Arabia
Sasa Kovacevic, Serbia
Ana Maldonado, Spain
Jorge Cancio, Switzerland
Ken-Ying Tseng, Chinese Taipei
Shelley-Ann Clarke-Hinds, Trinidad and Tobago
Nigel Hickson, UK
Rosalind KennyBirch, UK
Susan Chalmers, USA
Kenneth Merrill, USA
Owen Fletcher, USA
Pearl Risberg, USA
Laureen Kapin, PSWG Co-Chair
Beatriz Rodriguez, Uruguay
Franklin Zingani, Zimbabwe

Tracy F. Hackshaw, UPU

ICANN Board

Tripti Sinha, ICANN Board Chair
Alan Barrett
Becky Burr
Catherine Adeya
Chris Buckridge
Danko Jevtović
Harald Alvestrand
Katrina Sataki
León Felipe Sánchez Ambía
Maarten Botterman
Patricio Poblete
Sajid Rahman
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