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**68**

# Preparation for Meeting with ICANN Board

**Session 3**

**Monday 22 June 2020 (700 UTC)**

**Session Lead - GAC Chair, Manal Ismail**

**ICANN | GAC**  
Governmental Advisory Committee

# Session Goals (GAC Chair)

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- Background to GAC Members regarding Board-GAC interaction at ICANN Public Meetings
- Review and Confirm GAC Topics, Questions and Statements To ICANN Board





# Background (GAC Chair)

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1. Board-GAC Meetings are an important and regular feature of ICANN Public Meetings
2. Back when GAC meetings were “closed” the Board-GAC meeting was one of the few meetings that the public could witness
3. Even after most GAC sessions have become public, the sessions have remained important regular interaction points to maintain useful GAC connections with the Board and to provide a venue to highlight and emphasize areas that are likely to be in the upcoming GAC Communiqué
4. In recent years, the meeting preparations have achieved more structure. A formal exchange of questions have become expected so that preparations can be made for the meeting dialogue.



# Board-GAC Preliminary Meeting Agenda

*Meeting scheduled for Wednesday 24 June 2020 at 08:30 UTC*

A. Introductions

B. Review of GAC Efforts Since ICANN67

C. Discussion of Specific GAC Priority Areas (including specific GAC questions – shared in advance of meeting):

- New gTLD Subsequent Procedures
- DNS Abuse Mitigation; and
- Domain Name Registration Directory Service and Data Protection issues

D. Issue-Spotting - Recognition of Issues Coming up (including Global Public Interest, MSM Evolution, GAC Review (as chartering organization) of Auction Proceeds Recommendations and ATR3 Final Report)

E. Closing



# Topics For GAC Questions/Statement to the Board

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- New gTLD Subsequent Procedures
- DNS Abuse Mitigation
- Domain Name Registration Directory Service and Data Protection issues
- Other Upcoming Topics of GAC Interest

*(Text editing to be attempted via Google Docs)*





# I. New gTLD Subsequent Rounds/Procedures

- Subsequent procedures for new gTLDs remain a high priority for the GAC. The GAC has participated extensively in the GNSO PDP process and the committee provided extensive summaries of its ICANN67 discussions in its ICANN67 GAC Communique.
- Since ICANN67, the GAC has worked productively internally to develop particular positions on the high priority GAC topics being addressed in the GNSO PDP process and has shared several of those views in that venue. GAC leadership has also engaged with other communities, particularly the ALAC, to explore areas of common interest to ensure that all community views are thoroughly vetted during the PDP process. The GAC high priority topics include:
  - Applicant Support and Participation of Underserved Regions
    - Closed Generic TLDs
    - Public Interest Commitments (PICs)
      - Global Public Interest
    - GAC Early Warnings and GAC Advice
      - Community Based Applications
- The GAC understands that the Final Report of the GNSO PDP is still being prepared. The committee will use the ICANN68 meeting to further refine its views in order to be prepared to share its views on the Final Report document when it is published.
- It is important that the entire community be given sufficient time to review and respond to the Final Report of the PDP working group

## II. DNS Abuse Mitigation

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### a. Privacy/Proxy Services

#### Background:

Law Enforcement reported during ICANN68 that the majority of domains involved in pandemic-related fraud, phishing, or malware have employed **Privacy/Proxy Services** to hide the identity of the registrant.

#### Question:

- What does the ICANN Board intend to do to ensure that such services can't continue to facilitate threats to the security and consumer trust in the DNS ?

### b. Proactive Anti-Abuse Measures

#### Background:

The CCT Review recommended that ICANN negotiate contractual provisions providing financial incentives for contracted parties to adopt proactive anti-abuse measures (Rec. 14). This recommendation has been placed in pending status by the ICANN Board.

#### Questions:

- What steps, if any, have been taken by ICANN org “*to facilitate community efforts to develop a definition of ‘abuse’ to inform further action on this recommendation*” ?
- Why aren't existing community-developed definitions of DNS abuse sufficient ?
- Would ICANN (even absent a definition) consider incentivizing validation of registrant information by Registrars?

## II. DNS Abuse Mitigation

### c. Accuracy of gTLD Registration Data

#### Background:

In 2012, **the first WHOIS Review Team** found that “*the low level of accurate WHOIS data is unacceptable*” and recommended that one of ICANN’s priority should be to improve WHOIS data accuracy.

In 2015, ICANN started identifying and reporting inaccurate gTLD WHOIS data through the **WHOIS Accuracy Reporting System (ARS)**. In June 2018, as a consequence of the adoption Temporary Specification for gTLD Registration Data, **ICANN suspended operations of the ARS** limiting ICANN Compliance’s ability to investigate inaccuracies.

In September 2018, the **CCT Review recommended specific work to determine whether the ARS could proceed into its ultimate phase of identity validation**. The Board placed this recommendation in pending status until the outcome of the RDS-WHOIS2 Review.

in September 2019, **the RDS-WHOIS2 Review estimated that 30-40% of registration data was inaccurate and recommended resuming operations of the ARS or a comparable tool (Rec. 5.1)**. The ICANN Board placed this recommendations in pending status until the EPDP Phase 2 addresses the matter. **It is now clear that Phase 2 of the EPDP will not do so**. The GNSO Council determined that WHOIS Accuracy is not on the critical path of Phase 2, **effectively delaying any meaningful progress indefinitely**. **In the meantime, pervasive gTLD registration data inaccuracies continue to undermine the effectiveness of the gTLD registry directory service**, including in meeting the legitimate needs of law enforcement and in promoting consumer trust (ICANN Bylaws 4.6.e.ii). This situation may also jeopardize any future registration data access model when it comes to compliance with accuracy provisions in relevant data protection law.

#### Question:

- What does the ICANN Board intend to do, to restore ICANN’s ability to address gTLD registration data inaccuracies, including but not limited to resuming the ARS identity validation phase ?



### III. Domain Name Registration Directory Service and Data Protection Issues

#### Background

- ICANN org has requested legal guidance from the European Data Protection Board (EDPB) to determine, among other things, to what extent a future system for accessing non-public gTLD Registration Data can centralize disclosure responsibilities and automate such disclosures.
- Recently, ICANN org has requested further guidance in the face of challenges for public authorities with a legitimate purpose to secure, data from Contracted Parties, reasonable access to non-public gTLD registration. On this occasion, ICANN org signaled that absent such guidance it may not be able to enforce some provisions of the Temporary Specification.
- The GAC notes that the EDPB is an independent authority that may not be able to provide the level of detailed guidance hoped for by ICANN org. Moreover, the GAC notes that when the EDPB does provide guidance to ICANN, stakeholders rarely agree on an interpretation of such guidance, let alone on how it should be implemented. As a consequence, when assessing their legal obligations and compliance exposure under any access model (current or future), contracted parties tend to adopt conservative positions by default, irrespective of legitimate third party interests in data disclosures, and irrespective of the lawfulness of such disclosures.
- The GAC understands that per the bylaws, ICANN's mission include maintaining the security, stability and resiliency of the Domain Name System. As stated before by the GAC, in the eyes of governments, this requires what the Board has called "legitimate and proportionate access to registrant data".

### III. Domain Name Registration Directory Service and Data Protection Issues

Potential specific questions related to this topic area include:

1. How will the ICANN Board ensure that the reasonable access requirements in ICANN's Interim Registration Data Policy for gTLDs are effective, enforceable, and enforced by ICANN Contractual Compliance, in the interest of the ICANN Community, and in the public interest ?
2. How could the ICANN Board ensure that any future system for accessing gTLD Registration Data serves the interest of the public as well as does not only serve the interests of ICANN's Contracted Parties ?
3. What role should the ICANN Board and ICANN organization play in ensuring that any future system for accessing gTLD Registration Data evolves appropriately and in a timely manner in response to future guidance or information available on the applicability of data protection law ?
4. What is the status of the ICANN org-led survey on the need to differentiate between Natural and Legal entities for the purposes of domain name registration data and when will the results be provided to the EPDP team? This study was supposed to have been provided last month and despite requests for an executive summary and estimated completion date, no further information has been provided. As acknowledged by staff, there is considerable interest in this topic.



## IV. Other Upcoming Topics of GAC Interest

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- Global Public Interest
- MSM Evolution
- GAC Review (as chartering organization) of Auction Proceeds Recommendations; and
- ATR3 Final Report

