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ICANN76 - GAC Joint Meeting with the ICANN Board

Tuesday, 14 March 2023
Session #10

I C A N N | G A C
Governmental Advisory Committee



Board - GAC Meeting Agenda

1. Introductions
2. Discussion of Board Topic/Question (~10 mins)
3. Discussion of GAC Topics/Questions (~45 mins)
4. AOB



GAC - Board Meeting Preparations - Board Question

For ICANN76, the ICANN Board Chair has proposed a single topical question for GAC consideration that would cover the first part of the joint meeting. That question is:

“The ICANN Board would like to explore how to combine the efficiencies of an agile approach to problem solving, like the Council’s small teams, with the need for accountability and transparency, to make progress on policy conversations. When would such an approach be most appropriate and how can we ensure that it does not circumvent required steps in a policy development process?”



GAC - Board Meeting Preparations - Response to Board

1. Agile approaches to policy development problem-solving may be useful in particular and limited circumstances but should not be viewed as regular substitutes for an effective and ongoing use of traditional policy development processes. Given their limited size, overall PDP responsibilities should not be delegated to such groups.
2. The use of GNSO “Small Teams” in GNSO policy development is a useful exercise in that it provides helpful impetus for initial community discussions. The make-up of those teams, however, are heavily populated by GNSO representatives which can serve to foreclose discourse on complicated issues. It would be beneficial if other ACs and SOs could be invited to take part in such groups.
3. A facilitated community dialogue approach, such as is being employed for closed generics, provides a more productive approach to community dialogue. When judged as necessary, the Board should consider making this type of facilitated dialogue even more open and transparent to the community (e.g., Chatham House rules not always necessary).

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GAC - Board Meeting - GAC Topics/Questions - Overview

Topic #1 – New gTLD Subsequent Rounds

Topic #2 – Further Developments on DNS Abuse Mitigation

- A. CCT Review Recommendations
- B. Contract Negotiations

Topic #3 - WHOIS Disclosure System (WDS)

- A. Law Enforcement Requests
- B. Features To Be Built Into WDS

Topic #4 - ICANN's Emergency Assistance Program (EAP) Framework for Continued Internet Access

Topic #5 - Curative Rights Protections for Intergovernmental Organizations

GAC - Board Meeting - GAC Topics/Questions

Topic #1 – New gTLD Subsequent Rounds –

Background:

The GAC has taken note with interest of the Board’s planned approach to handle the outputs from the GNSO SubPro PDP Final Report as well as the perception that ICANN org is considering an Implementation Review Team (IRT) to be set up post-Cancun to work on specific issues.

The GAC especially takes note of the issues the Board is identifying as “pending” and subject to further dialogue with the GNSO Council.

In this regard, the GAC would like to draw the Board’s attention to the GAC’s collective comment to the Board consultation on the final recommendations of SubPro, filed on 1 June 2021. That GAC comment includes GAC consensus positions regarding many of the issues now identified as pending by the Board, inter alia:

- Registry Voluntary Commitments (RVCs) and Public Interest Commitments (PICs);
- Applicant Support;
- GAC Consensus Advice and GAC Early Warnings;
- Community Applications; and
- Auctions.

GAC - Board Meeting - GAC Topics/Questions

Topic #1 – New gTLD Subsequent Rounds –

GAC Questions:

The GAC would like to ask the Board:

- (1) Are the GAC positions on above mentioned issues (beyond GAC Consensus Advice and Early Warnings) (see June 2021 GAC Comments) being taken into account by the Board;
- (2) How will the GAC be involved in the forthcoming dialogue on these issues; and
- (3) If the Board does not adopt all recommendations from the GNSO, how will such decisions impact the overall implementation time frame for SubPro going forward?

The GAC would welcome being included in such a forthcoming dialogue. The committee may also consider elevating all or some of the above-mentioned issues to GAC Consensus Advice in order to trigger a formalized dialogue on those matters with the Board.

GAC - Board Meeting - GAC Topics/Questions

Topic #2 – Further Developments on DNS Abuse Mitigation -

A. CCT Review Recommendations

Background

The GAC appreciates more regular reporting updates from the ICANN org regarding implementation of CCT Review Recommendations (see e.g., the *ICANN Specific Reviews Q4 2022 Quarterly Report* (31 December 2022, hereafter 31 December Quarterly Report)(<https://www.icann.org/en/system/files/files/specific-reviews-q4-2022-report-31dec22-en.pdf>).

Questions

(4) Pursuant to the GAC Montréal Advice not to proceed with a new round of gTLDs until after the complete implementation of the CCT Review recommendations identified as ‘prerequisites’ or as ‘high priority’, including recommendations pertaining to DNS abuse, can the Board share its view of the role of ongoing ICANN org negotiations with contracted parties with respect to CCT Review Recommendations 14 and 15? (see 31 December Quarterly Report at page 20); and whether the negotiations will satisfy these recommendations; and

(5) Also, when can implementation be expected to start on CCT Review Recommendation 22 which requires engagement with stakeholders to discuss best practices implemented to offer appropriate security measures when dealing with sensitive information such as health or financial matters (see 31 December Quarterly Report at page 27).

GAC - Board Meeting - GAC Topics/Questions

Topic #2 – Further developments on DNS Abuse Mitigation -

B. Contract Negotiations

Background

ICANN and Contracted Parties have been negotiating improved DNS Abuse contractual provisions. The GAC understands that ICANN plans to publish proposed changes for community review and public comment before ICANN77.

In The Hague Communiqué, the GAC recalled that *“ICANN org is particularly well placed to receive public policy input from the ICANN community and negotiate updates to the standard Registry and Registrar Agreements.”*

So ICANN org may avail itself of timely community input, and to promote transparency, the Board could hold a listening session on the contract negotiations prior to the publication of proposed changes for public comment. Such session would focus on matters within the scope of the negotiations as agreed between ICANN and the contracted parties.

Question:

(6) Will the Board consider organizing a listening session on the DNS Abuse negotiations within one month of the conclusion of ICANN76?

GAC - Board Meeting - GAC Topics/Questions

Topic #3 - WHOIS Disclosure System (WDS)

A. Law Enforcement Requests

Background:

The Board's recent resolution from 27 February on the WHOIS Disclosure System Implementation included a reference to law enforcement requests that raises questions:

“Whereas, the ICANN Board encourages the GNSO Council to consider how best to promote and secure comprehensive use of this System by ICANN-accredited Registrars for all data access requests other than those submitted by law enforcement or as otherwise required by applicable law, including through consensus policy development undertaken in parallel with System development.”

Question:

(7) This could be read to suggest that law enforcement requests are excluded from the WHOIS Disclosure System. Was that the Board's intent? If it was not, we suggest that the Board issue a written clarification so that there is no unintended confusion about law enforcement's ability to use the WHOIS Disclosure System.

GAC - Board Meeting - GAC Topics/Questions

Topic #3 - WHOIS Disclosure System (WDS)

B. Features To Be Built Into WDS

(8) The GAC also deemed it important to: properly log Information about approvals or denials of requests, timing of the response, and reasons for denial; and to include a mechanism to allow for confidential law enforcement requests. Will these features be built into the system?

(9) The rationale of the ICANN Board resolution on the WHOIS Disclosure System (27 Feb. 2023) states that

“ICANN org is prepared to incorporate the following requests from the community into the System: [...] Additional System logging functionality, to log data associated with requests attempted for non-participating registrars that have been identified as “low risk” to data subjects and system security”.

Does this mean this additional logging functionality will be incorporated in WDS once it becomes operational in 11 months?

GAC - Board Meeting - GAC Topics/Questions

Topic #4 - ICANN's Emergency Assistance Program (EAP) Framework for Continued Internet Access –

Questions:

(10) The GAC would appreciate further information regarding expected dates and EAP design developments with the goal of better GAC understanding of the EAP initiative, its scope and implications and modalities of implementation, including potential partners.

(11) During ICANN75 in Malaysia, the possibility of ICANN developing a more structured assistance/cooperation program was suggested. Does the anticipated EAP include this concept?

GAC - Board Meeting - GAC Topics/Questions

Topic #5 - Curative Rights Protections for Intergovernmental Organizations -

(12) The Board recently received a Staff summary of public comments on the EPDP on Specific Curative Rights Protections for International Governmental Organizations (IGOs) which stated that “[w]hile some commentators expressed support...a few commentators [notably the BC/ICA] noted specific concerns, including the potential consequence for registrants should IGOs [not be required to] submit to a [court] jurisdiction.” In reviewing the Staff summary of public comments on the Final Report, is the Board aware that:

(a) the Recommendations specifically state that a complaint “must also include a notice informing the respondent...of its right to challenge a UDRP [or URS] decision...by filing a claim in court”?

(b) the BC/ICA participated in the EPDP and the Recommendations received a Full Consensus designation?

(c) The GNSO Council’s vote to approve the EPDP recommendations was unanimous?

(13) Noting that there was Full Consensus for each of the 5 Recommendations of the EPDP on Specific Curative Rights Protections for Intergovernmental Organizations (IGOs), the GAC supports timely implementation of these Recommendations.

GAC - Board Meeting - AOB

Thank you!

