

GAC ICANN77 Washington D.C. Communiqué: Issues of Importance (20 June 2023) - ICANN Board Comments for Board-GAC Interactions Group (BGIG) Call

Version 1.3

Updated **(18 September 2023)**

Issues of Importance

The section below contains comments related to the ICANN77 Washington D.C. Communiqué, in support of the Board-GAC Interactions Group (BGIG) Meeting on 20 September 2023. **This scorecard will not be presented to the Board for resolution.**

Issue	Issue Text <i>(from the Communiqué)</i>	ICANN Board Comments
<p>1. Closed Generic gTLDs</p>	<p>The GAC expresses its appreciation to GAC representatives who are collaborating with members of the GNSO and ALAC in the facilitated dialogue group, and remains committed to continuing this work after ICANN77.</p> <p>Considering that the Draft Framework for Closed Generic gTLDs (Draft Framework) has been circulated for review and input by the GAC/GNSO/ALAC facilitated dialogue group on Closed Generic gTLDs just ahead of the start of ICANN77, the GAC conducted only a preliminary discussion on the proposed Draft Framework.</p> <p>Preliminary reactions from the GAC addressed various areas of the Draft Framework. The GAC raised concerns over the lack of convincing resolutions for preliminary yet fundamental matters in the Draft Framework and discussed the need for further clarification on use cases contained. These pertain among the others to competition issues, the overall assessment of the value of Closed Generic gTLDs for the Internet, their potential negative economic and social impacts, and the evaluation panel including the criteria for its selection as well as its membership.</p> <p>The GAC also expressed doubts regarding the identification of compelling case studies or the lack of operational definitions of critical concepts such as public interest. The GAC also discussed potential ways and means for governments to intervene during the evaluation of potential applications for Closed Generic gTLDs.</p> <p>The GAC reiterates its commitment to further elaborate its position in the period set for community comments on the Draft Framework, and seeks to address the above mentioned questions, and understands that a final framework, if one is agreed upon, could serve as a basis for future policy work to define criteria and rules for Closed Generic gTLD applications in the next round of new gTLDs. It further emphasizes that additional steps, including the possible initiation of a GNSO policy process, should only be undertaken if in the final draft specific solutions are proposed and the above mentioned issues are adequately addressed.</p>	<p>Over time, the Board has received various input from the GNSO Council and the GAC concerning closed generic gTLDs. During the 2012 round of the New gTLD Program, the Board notes that with regard to closed generics, it has received the following 2013 correspondence from the GNSO Council which states that “the GNSO did not explicitly consider the issue of “closed generic” TLDs as part of the new gTLD PDP, we recall that the issue of restricting new gTLDs was, in general, considered and discussed. At that time, it was the view within the GNSO that it should not be the responsibility of ICANN to restrict the use of gTLDs in any manner, but instead to let new gTLD applicants propose various models; open or closed, generic or not [emphasis added].”</p> <p>The Board notes that the Beijing GAC Advice from 2013 states that “For strings representing generic terms, exclusive registry access should serve a public interest goal [emphasis added].</p> <p>The 2015 Board resolution with regard to Closed Generics was not a prohibition. It was a moratorium on processing closed generics applications in anticipation of a to-be-developed consensus policy: “Advise Exclusive Generic Applicants for non-contended strings, or Exclusive Generic Applicants prevailing in contention resolution that they must elect within a reasonably limited time to either:</p> <ul style="list-style-type: none"> ● submit a change request to no longer be an exclusive generic TLD, and sign the current form of the New gTLD Registry Agreement; ● maintain their plan to operate an exclusive generic TLD. As a result, their application will be deferred to the next round of the New gTLD Program, subject to rules developed for the next round, to allow time for the GNSO to develop policy advice concerning exclusive generic TLDs; or ● withdraw their application for a refund consistent with the refund schedule in the Applicant Guidebook.” <p>Therefore, the Board will have to consider next steps given the complexity of this issue.</p>

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	<p>The GAC recalls that no policy option, including the prohibition of Closed Generic gTLDs, should be excluded if a way forward that satisfies GAC concerns is not found. In any event, the framework will be subject to the GAC consensus agreement.</p>	
<p>2. Registry Voluntary Commitments (RVCs) / Public Interest Commitments (PICs) in New gTLDs</p>	<p>During GAC discussions on the New gTLD Program Next Round, the GAC noted that additional mandatory and voluntary PICs should remain possible for future New gTLDs in order to address emerging public policy concerns.</p>	<ul style="list-style-type: none"> • The Board appreciates the constructive dialogues it has had with the GAC on the Subsequent Procedures policy recommendations to continue the existing Public Interest Commitments and enable individual applicants to propose Registry Voluntary Commitments, including as a mechanism to address public policy concerns. • The Board believes these are important recommendations to the New gTLD Program, as mechanisms for resolving a variety of concerns and issues. The policy recommendations around PICs and RVCs remain pending, as the Board envisions continuing to explore the issues and options with the community, including at the ICANN78 meeting. The Board looks forward to the GAC’s continued participation in these discussions.
<p>3. GAC Consensus Advice and GAC Early Warnings in New gTLDs</p>	<p>The GAC welcomes engaging in a dialogue with the ICANN Board on GAC Consensus Advice and GAC Early Warnings, as discussed at ICANN77.</p> <p>The GAC reiterates that GAC Early Warnings and GAC Advice are both important and useful instruments to identify applications that raise public policy concerns and should be an integral part of any future rounds. The GAC remains open to increasing transparency and fairness of these, including giving applicants an opportunity for direct dialogue with the GAC. In this sense, the GAC sees value in the recommendations regarding specified time periods for Early Warnings, direct dialogue between the Early Warning issuing government and the applicant, and the opportunity for the applicant to amend its applications based on those consultations.</p> <p>The GAC believes that GAC Early Warnings are a useful mechanism for beginning a discussion with an applicant on particular issues, questions and potential sensitivities by one or more governments, where an application may potentially infringe national laws or raise sensitivities. Constructive dialogue through this process can help applicants better understand the concerns of governments and help governments better understand the planned operation of proposed gTLDs. GAC Early Warnings may help the applicant to know how it can mitigate concerns and find a mutually acceptable solution.</p> <p>The GAC hence considers a GAC Early Warning mechanism an essential element of any future round.</p> <p>However, the GAC does not consider that recommendations should constrain GAC activities which are carried out in accordance with the ICANN Bylaws and the GAC’s internal procedures. In this regard, the GAC does not support the recommended limitation (Implementation</p>	<p>Regarding Implementation Guidance 30.2:</p> <ul style="list-style-type: none"> • The Board agrees with the GAC when it notes that GAC Early Warnings are useful mechanisms that “may help the applicant to know how it can mitigate concerns and find a mutually acceptable solution.” • The Board notes that the new gTLD program cannot modify processes and procedures detailed in the Bylaws, including Section 12.2 (a) which details the GAC’s roles and responsibilities. • The Board will always consider GAC consensus advice in accordance with the relevant Bylaws provisions. At the same time, the Board encourages the GAC to issue advice as timely as practical in order to minimize unpredictable impacts on the next round of the new gTLD program. • Since the Board will not act on Implementation Guidance items, the Board does not believe that there is any action for it to take for now. <p>Regarding Recommendation 30.4:</p> <ul style="list-style-type: none"> • As the Board will always consider GAC advice in accordance with the relevant Bylaws provisions, the Board does not believe that, at this stage, any action by the Board is required. • The Bylaws specify that GAC advice shall be taken into consideration "in the formulation and adoption of policies" (Bylaws 12.2.a.x). <p>Regarding Recommendation 30.6:</p> <ul style="list-style-type: none"> • The Board notes that the GAC had previously proposed to amend the recommendation with the same language (“to the extent feasible”), see the 2020 GAC’s public comment on the Draft Final Report, and also the 2021 GAC’s public comment on the Final Report. • The Board believes that the intent of this recommendation can be met if a GAC member provides a rationale why a remedy to their early warning is not possible.

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	<p>Guidance 30.2) regarding the timing of GAC Consensus Advice on future categories of TLDs and particular applications, oriented to disincentivizing any such Advice being submitted after the finalization and publication of the next Applicant Guidebook.</p> <p>Some GAC Members disagree with Recommendation Guidance 30.4 which notes the removal of language regarding possible changes to Section 3.1 of the 2012 Applicant Guidebook which states that GAC Consensus Advice “will create a strong presumption for the ICANN Board that the application should not be approved.” With a view to responding to the concerns that inform the recommendation to omit such language, some GAC Members propose the following alternative wording to that specific part of Section 3.1 of the future Applicant Guidebook: “will create a strong presumption for the ICANN Board that the application should not be approved, without prejudice to the applicable provisions of the Bylaws”. The GAC welcomes the opportunity to engage in constructive dialogue with the Board in order to explore alternatives which may offer a way forward and accommodate the different views existing on this matter.</p> <p>Regarding Recommendation 30.6, the GAC agrees with the notion that a GAC Early Warning should be explained and that in order to ensure constructive dialogue at an early stage of the procedure and mitigate these concerns it is important for government(s) issuing Early Warning(s) or the GAC in its advice to provide a written explanation/rationale. However, the GAC wishes to recall the compromise language brought forward by the GAC, as applications may not always be able to be remedied in the opinion of the government(s) issuing a GAC Early Warning. Therefore, the GAC proposes the adoption of an updated language to Recommendation 30.6 as follows: “[...] how the applicant may potentially address the GAC member’s concerns to the extent feasible”.</p>	
<p>4. DNS Abuse</p>	<p>Governments at ICANN are concerned by the negative impacts of DNS Abuse. The GAC therefore appreciates the proactive and focused efforts of ICANN and the Contracted Parties to negotiate clear and enforceable contract amendments to disrupt or mitigate DNS Abuse.</p> <p>The GAC welcomes the clarity provided during its DNS Abuse session that in case of non-compliance ICANN Compliance would be able to suspend or revoke the agreement with the contracted party, and it encourages ICANN org and the negotiating team to ensure this is clear in this process under the amendment. The GAC further welcomes the elaboration in the ICANN Advisory on the concept of "actionable evidence." The GAC shares</p>	<p>The Board thanks the GAC for their engagement on the topic of DNS Abuse generally and specifically on the proposed contract amendments. The Board appreciates the constructive dialogue thus far by the GAC on the amendments and appreciates the GAC’s participation in the public comment proceeding.</p> <p>For avoidance of doubt, the amendments were designed to create clear, meaningful and enforceable obligations on registries and registrars to address DNS Abuse. This means, if the amendments are approved and become effective in the agreements, registries and registrars will have new obligations to mitigate and disrupt DNS abuse. If ICANN finds that a registrar or registry has violated the provisions and is unable or unwilling to remediate the non-compliance, ICANN may suspend or terminate the agreements in accordance with the applicable provisions in the RAA and RA.</p>

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	<p>the Advisory's encouragement for registrars "to proactively monitor the Registered Names that they sponsor to identify potential DNS Abuse" and stresses that registry operators should also obtain actionable evidence through their own proactive efforts.</p> <p>The GAC supports the increased contract obligations to raise the baseline in addressing DNS Abuse and looks forward to contributing to the Public Comment Process. The GAC also welcomes any further work the negotiating team can do to clarify forthcoming reporting obligations with a view to promote transparency of the contracted parties' policies and how they respond to DNS Abuse. The GAC also reinforces its commitment to contribute to further work (including contract amendments, PDPs and creation of best practices) within the multistakeholder process that will be necessary in the continuing journey to address this threat to the security of the DNS, including before the next round of new gTLD applications.</p>	<p>Regarding transparency reporting by contracted parties, ICANN and the contracted parties have suggested in the Public Comments report that this effort should begin as a voluntary framework. Discussions along these lines started with the RySG prior to the amendment negotiations and were suspended to prioritize the amendment negotiations. These discussions can be resumed after the conclusion of the amendment process.</p> <p>The Board similarly stands ready to support community discussions on whether and how to evolve DNS abuse obligations beyond those established in the amendments. We note that the contracted parties demonstrated support for initiation of well-scoped PDPs as shared with the community during the GNSO Small Team on DNS Abuse data gathering process.</p>
<p>5. Registration Data Accuracy</p>	<p>The GAC remains committed to working within the Accuracy Scoping Team to assess the current state of accuracy under ICANN's contracts. Accuracy of registration data is an important element in law enforcement and cybersecurity investigations, domain name registration management, and other legitimate third-party interests. At the same time, the GAC reiterates that maintaining accuracy must be considered along with any policy's impact on the privacy needs of all registrants, including those with enhanced privacy needs.</p> <p>The GAC welcomes ICANN org's completion of a Data Protection Impact Assessment (DPIA) on a contractual compliance audit that could shed light on the current state of accuracy. In particular, the GAC is encouraged by ICANN org's determination that this audit would comply with the EU General Data Protection Regulation (GDPR). The GAC supports ICANN and Contracted Parties' efforts to finalize its Data Protection Agreement (DPA) and stresses the importance of finalizing these agreements expeditiously which will support the Scoping Team's effort to move forward with its work. Completion of a DPA and DPIAs will help ensure ICANN org is best equipped to receive feedback from the relevant European Data Protection Authorities regarding ICANN's legal basis to process registration data for the purposes of measuring accuracy.</p> <p>Finally, the GAC notes that over six months have passed since the GNSO adopted a motion to pause the work of the Scoping Team. In light of the expiration of this pause, the GAC would welcome an update on plans to resume the Scoping Team's work, including on any progress toward</p>	<ul style="list-style-type: none"> ● The Board appreciates the GAC's commitment to working within the Accuracy Scoping Team. ● The Board shares the same view that accuracy in registration data is important and an integral part of ICANN's mission, including maintaining a secure and stable internet. ● The Board also recognizes that any policy regarding maintaining accuracy in registration data or any activity undertaken by ICANN or the community to study and measure accuracy must consider the privacy needs of all registrants/data subjects as well as applicable data protection laws. ● The Board understands that a contractual compliance audit would be limited to testing current requirements within the Registrar Accreditation Agreement (RAA). The Board recognizes that ICANN Compliance's current Audit Program includes testing verification/validation requirements) in its standard Registrar RAA audit and will continue to do so. ICANN has committed to providing enhanced reporting on these requirements as to past audit rounds, as well as those going forward to provide more granular data for use by the Accuracy Scoping Team. ● The Board also understands that ICANN is currently conducting outreach with appropriate authorities within the European Union with respect to the NIS2 implementation, which includes provisions on accuracy, to ensure the existing ICANN policies and ICANN community role are understood and ICANN's multistakeholder model is respected. ● With regard to the Data Processing Specification: ICANN org and the Contracted Parties have just a few issues remaining to negotiate. ● ICANN org will conduct a public comment period on the DPS once negotiations are completed, so the community can review the terms. ● Both ICANN org and the Contracted Parties say they remain optimistic the DPS will be in place in time for the implementation of the Registration Data Policy. ● The Board is informed that the GNSO Council has adopted a motion to continue its pause of the work of the Accuracy Scoping Team until the shorter of an additional six months, or certain dependencies are met, including completion of the Data Processing Agreement (DPA) negotiations and feedback from ICANN org on if/how it anticipates the requesting and processing of registration data in relation to studying accuracy. The Board understands that ICANN is preparing a comprehensive assessment of what activities it may undertake to study accuracy and/or current registration data obligations in light of applicable data protection laws and its contractual authority to collect such data, which it plans to share with the GNSO.

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	<p>selection of a new chair. The GAC also flags that it would be helpful to receive quarterly updates on the status of the DPAs and to give further consideration to activities that may be resumed by the Accuracy Scoping Team in the interim.</p>	
<p>6. Registration Data Request Service</p>	<p>The GAC looks forward to the launch of the Registration Data Request Service (RDRS) and supports efforts to generate data that can inform further community discussion on how an access and disclosure system in line with Phase 2 of the Expedited Policy Development Process can best meet the needs of the system’s users and the public.</p> <p>The GAC notes the importance of maximizing voluntary participation in the system, including through effective outreach and potential incentive structures.</p> <p>Further, the GAC stresses the importance of providing users of the RDRS with easy to access step-by-step training, and guidance in the form of Frequently Asked Questions (FAQs) and answers</p>	<ul style="list-style-type: none"> ● The Board appreciates the GAC’s continued support on the RDRS development. ● The Board shares the same sentiment as the GAC on the importance of maximizing the participation of the users, both from ICANN-accredited registrars and requestors. The Board notes that ICANN org has been conducting its various engagement and outreach efforts and will continue to do so up until and beyond the launch of the service. ● The Board also notes that ICANN org has been working with the GNSO EPDP Phase 2 Small Team to collaborate on the engagement and outreach effort for the ICANN community and beyond. ICANN org has also been collaborating with the RrSG to drive up awareness and participation from ICANN-accredited registrars. The ICANN77 RrSG meeting resulted in a number of registrars sharing their commitment to participate in the RDRS when it launches in November. ● The Board understands that ICANN org has been, and will provide a number of webinars to walk through how to use the system. The Board also understands that the ICANN org is preparing various informational materials, such as FAQs, user guides, and how-to videos, to ensure participating users can utilize the service with ease.
<p>7. Registration Data Consensus Policy</p>	<p>The GAC welcomes implementation of the EPDP Phase 1 recommendations and reiterates the importance of the Consensus Policy’s ability to comply with existing data protection principles while allowing Contracted Parties to process data in line with relevant obligations within their jurisdictions.</p> <p>The GAC takes note of ICANN’s summary of public comments on Phase 1 implementation and supports the Implementation Project Team’s suggestion, in line with the GAC’s public comment, to reduce the timeline for urgent requests to twenty-four hours.</p> <p>Separately, the GAC notes that other public policy concerns remained unaddressed. The GAC recalls its initial comments, which retains in full, that “contracted parties should collect and make data of legal persons publicly available.” Further, “Additional safeguards may be considered for the case where the email address of a legal person contains personal data, in which case a functional email address can be published instead.” Additionally, the GAC highlights the need to require the collection and publication of reseller data. The latter is especially critical to identifying the parties responsible for selling domain names directly to registrants and to highlight an important point of contact that may be best positioned to provide meaningful data on these registrants and/or investigate and mitigate abuse conducted by those registrants.</p>	<ul style="list-style-type: none"> ● The Board appreciates the GAC’s support of the progress on EPDP Phase 1 implementation. As noted, this is an important policy effort to support compliance with data protection principles in the processing of registration data. ● As part of this effort, the Board appreciates the participation of GAC members in the implementation work, including the provisions on responses to urgent requests. ● The Board also notes the receipt of letters on this topic from the GAC and from the Registrars Stakeholder Group. ● The Board understands that for most cases of an urgent nature, law enforcement or other parties seeking registration data rely on existing channels including direct contacts with the relevant registry operator and/or registrar. The Board further understands that this may not be possible in all cases, and the policy requirement on responses to urgent requests is to provide a “ceiling” so that when this process is relied upon, these responses have maximum time constraints.. ● The Board would be interested in any data the GAC can provide as to experiences of its members in working with contracted parties on requests of an urgent nature, including the channels used and timing for responses provided. ● The Board notes the GAC’s previous comments around distinction of legal and natural persons in registration data and notes that this discussion continued through the multistakeholder process after the conclusion of EPDP Phase 2, and that the Board approved the recommendations of the EPDP Phase 2a in March 2022. These recommendations are in the queue for implementation.