GAC/ICANN Board Communique Clarification Call - ICANN76 Communiqué
11 April 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 - ICANN76 Communique. 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) welcomed all participants, and expressed the Board's appreciation for the time taken by the GAC to assemble the ICANN76 Cancún Communiqué. Emphasizing the importance of GAC Consensus Advice to the ICANN Board, which she indicated the Board takes very seriously, she reminded attendees that the purpose of this call is to clarify the ICANN Board's understanding of the ICANN76 GAC Advice with a view to addressing it before the upcoming ICANN77 meeting. Statements in the section "Issues of Importance to the GAC" of the Cancún Communiqué will be addressed in a subsequent dedicated call, to be scheduled before ICANN77 as well.

Becky Burr (ICANN Board) recalled that these clarification calls have been held regularly between the GAC and the Board, and suggested that they have been effective.

Nicolas Caballero (GAC Chair) welcomed participants and noted that the Board's presentation material for this call, which include Board comments and clarifying questions on relevant GAC Advice[1] was received by the Committee only a day in advance, and wondered whether the GAC would be able to fully respond to the questions during this call. He suggested that the GAC be given at least 3 or 4 days to review such material.

Several GAC Members concurred with the GAC Chair in noting that they were not provided sufficient time to consider the material prepared by the Board for discussion with the GAC during this call.

Tripti Sinha apologized and committed to getting the material to the GAC earlier in the future.

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[1] See https://gac.icann.org/activity-inputs/public/board-clarification-questions-gac-icann76-advice-10apr23.pdf

II. Clarifying Discussion On GAC Advice Regarding IGO Protections

GAC Advice §1.a.i

    a. *The GAC advises the Board:*

        i. *To proceed with the approval of the recommendations of the EPDP on Specific Curative Rights Protections for implementation;*

> **Board Clarifying Question(s):**
>
> The Board notes that, in addition to the recent EPDP on Specific Curative Rights for IGOs, the GNSO completed an earlier PDP (on IGO-INGO Access to Curative Rights Mechanisms) for which the GNSO has transmitted 4 approved recommendations to the Board. While those 4 recommendations do not substantively change or affect the criteria and scope of the UDRP (or the Uniform Rapid Suspension procedure that is modeled on the UDRP), the Board wishes to resolve all pending policy questions that the community has worked on in relation to the issue of IGO curative rights protections.
>
> The Board therefore informs the GAC that it intends to consider and act on both the previous GNSO PDP and the more recent EPDP at the same time.

GAC Advice §1.a.ii

    a. *The GAC advises the Board:*

        ii. *To maintain the current moratorium on the registration of IGO acronyms as domain names in New gTLDs presently in place until the full implementation of the recommendations of the EPDP on Specific Curative Rights Protections.*

> **Board Clarifying Question(s):**
>
> The Board notes that this advice is consistent with the GAC's view, expressed in October 2021 in response to the Board, seeking clarification from the GAC to ensure that the permanent protections that ICANN will put in place for IGOs are consistent with and do not exceed the legal rights that IGOs possess under international law.
>
> In view of the discussions that have taken place since that time and the understanding between the Board and the GAC that direct interaction is preferable to formal correspondence for resolving difficult issues, the Board would like to seek the GAC's agreement that any further questions regarding IGO protections be addressed via channels other than formal correspondence (e.g. the BGIG, bilateral meetings, and discussions between IGO subject matter experts from the GAC and ICANN org).

<u>Discussion</u>

Becky Burr confirmed the intention of the ICANN Board to quickly consider the recent GNSO policy recommendations stemming from the EPDP on Specific Curative Rights Protections, which she noted reflect important input and participation from IGO representatives. The Board also intends to act, at the same time, on related pre-existing GNSO policy recommendations regarding IGO Protections.

Brian Beckham (WIPO) welcomed the intent to consider all policy recommendations as one package. He stated that IGOs are supportive of the Board's deliberations and stand ready to assist in implementation efforts, including meeting   in Washington D.C. a few days prior to ICANN77 .

As it relates to the *maintaining of the current moratorium on the registration of IGO acronyms as domain names in New gTLDs presently in place*, it was noted that further informal conversations between GAC and ICANN Board members may be needed, following prior GAC and ICANN Board correspondence on this matter, to determine whether prior GAC Advice needs to be updated in light of ICANN's consideration of a post-registration notification system for IGO acronyms and the expected implementation of related Curative Rights Protections.

Kavous Arasteh (Iran) stressed that the GAC had not agreed to shifting from a pre-notification to a post notification system for registration of IGO Acronyms[2], that the moratorium currently in place should be maintained until full implementation of the relevant policy recommendations, and that legal rights of IGOs should be thus considered as safeguarded, not exceeded.

Becky Burr recalled the ICANN Board's interpretation that a pre-registration notification system would provide greater protections to IGOs than are provided under international law[3]. For this reason and in an attempt to accommodate IGO concerns, the ICANN Board voluntarily directed ICANN org to create a post-registration notification system[4] to enable IGOs to monitor registrations of their acronym(s) for potential rights violations. In such cases, they would be able to seek curative protection mechanisms as recommended recently by the GNSO, once implemented.

As the GAC considers whether to update its prior Advice on pre-registration notification to reflect recent developments or not, Becky Burr indicated that should the Advice be maintained, given the previously stated Board intention to reject it[5], the ICANN Bylaws-mandated consultation would need to proceed.
In the meantime, as it relates to the Cancún GAC Advice to the ICANN Board to *maintain the current moratorium on the registration of IGO acronyms as domain names in New gTLDs presently in place until the full implementation of the recommendations of the EPDP on Specific Curative Rights Protections*, Becky Burr shared an understanding of the GAC's desire to maintain the moratorium, which she reminded attendees the Board previously agreed to maintain, until a post-registration notification system is in place. She advanced the Board's proposal to continue working with the GAC and IGO representatives in the GAC on these issues, in accordance with both previous GAC Advice and Board decisions.

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[2] See GAC Chair letter to the ICANN Board GAC Follow-up on Process and Substantive Aspects of GAC/Board Consultation on IGO Protections (24 May 2021) and the ICANN Board response (2 June 2021)

[3] See ICANN Board Chairman letter to the GAC Chair Re: Follow-up on Process and Substantive Aspects of GAC/Board Consultation on IGO Protections (23 February 2021) and Board Scorecard of GAC Advice in the ICANN71 Communiqué (12 September 2021)

[4] See ICANN Board resolution on Protection for International Governmental Organization (IGO) and Red Cross Acronyms at the Second Level of the Domain Name System (22 October 2020), in particular: "*Whereas, the Board has reviewed the GAC advice and the remaining recommendations from the GNSO's 2013 PDP, and believes at this time that the most appropriate solution (not including any curative rights mechanisms) regarding second level protections for IGO and Red Cross acronyms that is in the best interests of the ICANN community and ICANN will be for the ICANN organization to implement, as an operational matter, an ongoing (i.e. permanent) post-registration notification mechanism that will notify an affected IGO or the Red Cross when a third party registers a second level domain matching that organization's acronym.*"

[5] See ICANN Board resolution 2020.10.22.06 (23 February 2021)

III. Clarifying Discussion On GAC Advice Regarding the WHOIS Disclosure System, now Registration Data Request Service

<u>GAC Advice §2.a.i</u>

    a. ***The GAC advises the Board:***

        i. ***To direct ICANN org to promptly engage with the PSWG to identify and advance solutions for confidentiality of law enforcement requests so as not to preclude participation by law enforcement requesters when measuring usage of the WHOIS Disclosure System.***

<u>Board Clarifying Question(s):</u>

Can the GAC clarify what it means by "confidentiality of law enforcement requests?" The Board would like to understand what data needs to be treated as confidential, in what way, to and by whom.

Additionally, is it the GAC's wish to ensure that only law enforcement agencies can utilize such a confidentiality feature? If so, ICANN org worked with the EPDP Phase 2 Small Team to identify what elements of the System for Standardized Access/Disclosure (SSAD) policy recommendations would be needed for a proof of concept, which is meant to be cost effective and simpler than SSAD, for the purpose of data collection for up to two years. As the SSAD Operational Design Assessment (ODA) identified the identity verification feature (SSAD recommendations 1 and 2 from the EPDP Phase 2 Final Report) to be the major drivers of cost and complexity, the Small Team did not recommend inclusion of these recommendations in the proof of concept design, which the GNSO Council recommended and the Board has directed ICANN org to implement.

Without the identity verification feature, the Registration Data Request Service will not effectively be able to verify law enforcement agencies' identity to trigger confidential treatment of the requests. In addition, the EPDP Phase 2 Final Report did not explicitly require a confidentiality feature. Recommendation 9.7 and Implementation Guidance 17.3 both note it is a possible feature that may be considered during implementation of the SSAD. Consequently, the Org did not assess the feasibility of the confidentiality feature in the ODA to keep the design simple, instead opting to consider it during implementation. While the Board understands the GAC's interest in a mechanism to allow for confidential law enforcement requests, adding identity verification and accreditation features will 1) fundamentally change the nature of this "cost effective and simpler" system, 2) detract from the project team's resources to shift focus to designing identity verification and confidentiality features while likely putting the development of the Registration Data Request Service on pause for an unknown duration. This would result in 3) extending the development timeline from the current 11 months to an unknown duration and likely requiring additional budget to procure vendors.

We therefore request that the GAC responds to the questions raised above while considering the limited time and resources available for implementing the Registration Data Request Service. It is important to keep in mind that the service is intended to be operational for only two years, and any additional features must be carefully evaluated in terms of their benefits versus the potential impact on the current development efforts, which may cause delays and unforeseen costs.

<u>Discussion</u>

Chris Lewis-Evans (UK, PSWG Co-Chair) assessed that it would be difficult for Law Enforcement Agencies (LEA) to fully utilize the Registration Data Request Service (RDRS) as it stands, and that this could be detrimental to gauging accurate level of usage to inform consideration of a permanent future SSAD. Noting the GAC's awareness that no identity verification is planned in the RDRS, leaving this task to the registrars (if needed), he clarified that the GAC PSWG has been seeking to engage with the ICANN org team responsible for this system[6], as it is being designed, to discuss simple solutions which would support LEA's participation in RDRS without delay and without delaying delivery of the RDRS. He further noted he did not see any reason why such conversation could not be held.

Chris Lewis-Evans stressed that LEAs need their disclosure requests to remain confidential, especially vis-à-vis registrants, in order to not compromise their investigations. He suggested that one approach could be to enable a disclosure query into the RDRS to request confidentiality (as an option or checkbox). Upon confirmation of the registrar's agreement to honor the request for confidentiality, the disclosure query could then proceed with relevant information. Another aspect to be discussed is how disclosure request data is recorded and retained in the system.

Gabriel Andrews (US) reinforced the view that if the objective of the RDRS is to quantify the anticipated usage of a future SSAD, and if law enforcement can't feel comfortable with the confidentiality of their requests, measurements of usage of RDRS may underestimate the amount of law enforcement usage that could be anticipated for a permanent SSAD.

Kavous Arasteh recalled that the need for confidentiality of LEA requests has been discussed throughout the EPDP process (Phase 1 and 2), that this is a legitimate need and that this should be addressed before the next ICANN meeting. He also pointed to the risks associated with simplifying and breaking down the deployment of systems in successive steps.

Becky Burr reminded participants of the ICANN Board's objective to deliver a simple system as soon as possible, and acknowledged the risks on the relevance of usage data as well understood. She requested on behalf of the Board that launch of the first iteration of the system not be delayed to accommodate this particular need. She noted that the Board expects requests for modification of the system, and that following a straight path to delivery of the system does not preclude conversations along the way, so long as they do not divert resources engaged in implementation. In the meantime, Becky Burr wondered how widespread were the existing systems in place at certain registries and registrars to fulfill confidential LEA requests, and whether these could continue to be used.

In response to a request for clarification on naming of the system, Becky Burr explained that changing the name of the WHOIS Disclosure System to the Registration Data Request Service was motivated by the need to avoid misleading its users given that functionality being built only facilitates submission of requests while disclosure remains the responsibility of registrars receiving the requests.

Tripti Sinha clarified that the RDRS system is being built on current specifications which she indicated does not prevent discussions on future enhancements. She also thanked for calling the Board's attention to the importance of usage data and the risk of underestimating demand.

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[6] See GAC Kuala Lumpur Communiqué (26 September 2022), section IV.4: "*Finally, the GAC stresses the importance of including a mechanism to allow for confidential law enforcement requests. The GAC recommends ICANN org engages with the GAC PSWG to further discuss the issue of how confidentiality of law enforcement requests will be ensured and how the (meta) data of all the requests of law enforcement agencies will be handled.*"

IV. Clarifying Discussion On GAC Advice Regarding Privacy and Proxy Services

<u>GAC Advice §3.a.i</u>

   a. *The GAC advises the Board to:*

      i. *Prioritize the assessment related to the pending RDS- WHOIS2 Review Recommendation R10.1 which called for the Board to monitor the implementation of the PPSAI policy recommendations, and all necessary steps to resume this implementation, consistent with the intent of the GAC's previous advice.*

Board Clarifying Question(s):

The Board understands that this assessment is already underway within the org, including how the Registration Data Request Service work could serve to streamline the implementation of the PPSAI recommendations.

The Board looks forward to reviewing this work and taking action on Recommendation 10.1.

<u>GAC Advice §3.a.ii</u>

   a. *The GAC advises the Board to:*

      ii. *To regularly update the GAC on the status of activities related to privacy and proxy services.*

Board Clarifying Question(s):

Can the GAC clarify whether it has identified other activities related to proxy and privacy services that it would like updates on, in addition to what is noted in 3.a.i?

<u>Discussion</u>

Chris Lewis-Evans, in response to the question of whether the GAC *has identified other activities related to proxy and privacy services that it would like updates on, in addition to what is noted in* [its advice] *3.a.i,* pointed out that the Board's discussion of the Registration Data Request Service as an opportunity to "streamline the implementation of the PPSAI recommendations" provides one area of interest, on which more information would be welcomed by the GAC, in addition to gaining a better understanding of how the resuming the PPSAI policy implementation itself will be prioritized.

Becky Burr shared that from the beginning of discussions on a WHOIS Disclosure System, the Board has noted the opportunity to leverage it to reinvigorate the implementation of the PPSAI policy recommendations. Until now, it did not appear to make sense to continue without clarity on what action would be taken in relation to SSAD. Acknowledging the increasing use of Privacy/Proxy services and that meaningful access to registration data means including these services into the system, she suggested that it should not be difficult to integrate Privacy/Proxy Services Providers into the the RDRS in the same way that

registrars are integrated and expected to participate. As it relates to effectively resuming the PPSAI implementation, she could not provide a timeline on this call but stressed that there is common agreement that this is important and needs to be done.

Nigel Hickson (UK) stressed that it is urgent this implementation be brought to a conclusion and welcomed the understanding that this will now be expedited.

VI. Conclusion

Tripti Sinha and **Nicolas Caballero** thanked the participants for the very good conversation and input provided during the call. **Becky Burr** welcomed the various upcoming conversations contemplated during the call.

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V. Meeting Participants

GAC

Nico Caballero, GAC Chair
Klaus Parrer, Austria
Houégnon Geoffroy Bonou, Benin
Iglika Ivanova, Bulgaria
Francis Olivier Cubahiro, Burundi
Jason Merritt, Canada
Rida Tahir, Canada
Wang Lang, China
Mislav Hebel, Croatia
Finn Petersen, Denmark
Manal Ismail, Egypt
Abdalmonem Galila, Egypt
Rudy Nolde, Germany
Ashwin Sasongko, Indonesia
Kavouss Arasteh, Iran
Nobuhisa Nishigata, Japan
Toshiharu Mochizuki, Japan
Dai Morishita, Japan
Nana Tamaoki, Japan
Zeina Bou Harb, Lebanon
Khaled Altarhuni, Libya
Batbold Toiruul, Mongolia
Belaid Nouar, Morocco
Lourino Chemane, Mozambique
Constantino Sotomane, Mozambique
Laxmi Prasad Yadav, Nepal
Alisa Heaver, Netherlands
Oladejo Olawumi, Nigeria
Russell Woruba, Papua New Guinea
Ignacio Daniel Velázquez Guachir, Paraguay
Ana Neves, Portugal
José Franco, Portugal
Viacheslav Erokhin, Russia
Deolindo Costa de Boa Esperança, São Tomé and Príncipe
Waleed Aloriny, Kingdom of Saudi Arabia

Sasa Kovacevic, Serbia
Ana Maldonado, Spain
Jorge Cancio, Switzerland
Lucas Prêtre, Switzerland
Isabelle Lois, Switzerland
Wen-Fong Tsen, Chinese Taipei
Shelley-Ann Clarke-Hinds, Trinidad and Tobago
Nigel Hickson, UK
Rosalind KennyBirch, UK
Chris Lewis-Evans, PSWG Co-Chair
Beatriz Rodriguez, Uruguay
Susan Chalmers, USA
Kenneth Merrill, USA
Owen Fletcher, USA
Gabriel Andrews, PSWG

Nia Nanan, CTU
Tracy F. Hackshaw, UPU
Brian Beckham, WIPO

ICANN Board

Tripti Sinha, ICANN Board Chair
Alan Barrett
Avri Doria
Becky Burr
Danko Jevtović
Edmon Chung
James Galvin
Katrina Sataki
Maarten Botterman
Patricio Poblete
Sarah Deutsch
Wes Hardaker

ICANN Org:

Sally Costerton, ICANN CEO
Andrew Chen
Cynthia Tinsley
David Olive
Eleeza Agopian
Jamie Hedlund
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