

Marrakech, 9<sup>th</sup> March 2016

### **GAC Communiqué – Marrakech, Kingdom of Morocco <sup>1</sup>**

#### **I. Introduction**

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Marrakech, Kingdom of Morocco during the week of the 5<sup>th</sup> of March 2016.

Seventy-six (76) GAC Members and twelve (12) Observers attended the meeting.

#### **High Level Governmental Meeting**

The GAC expressed its sincere appreciation to the Kingdom of Morocco and to His Excellency Moulay Hafid Elalami, Minister of Industry, Trade, Investment and Digital Economy for hosting the High Level Governmental Meeting on 7 March 2016. The meeting enabled Ministers and senior officials to assess the transition of the IANA stewardship function from the U.S. Government to a community based arrangement, including greater accountability of ICANN; reaffirmed the importance of governments as part of the ICANN community, including through the GAC; and identified opportunities for developing countries in the domain name system.

The Chair of the meeting, His Excellency Moulay Hafid Elalami, Minister of Industry, Trade, Investment and Digital Economy, presented a Chair's Summary and informed the GAC that he will subsequently submit a chairman's report under his responsibility.

#### **ICANN CEO**

The GAC expressed its sincere appreciation for the service rendered to the ICANN community by outgoing ICANN President and CEO Mr. Fadi Chehadé, and wishes him well in his future endeavours. The GAC also warmly welcomes the incoming ICANN President and CEO Mr. Göran Marby.

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<sup>1</sup> To access previous GAC advice, whether on the same or other topics, past GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings> and older GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Meetings+Archive>.

## II. Inter-Constituency Activities & Community Engagement

### 1. Meeting with the ICANN Board

The GAC met with the ICANN Board and discussed the following topics:

- ICANN CEO selection process
- Timing of work and general workload across the community
- Board intentions for the first “B” meeting
- ICANN and the global public interest
- Privacy and Proxy Services Accreditation Issues PDP
- Future gTLD rounds – timing
- Board-GAC exchange on gTLD safeguards

### 2. Meeting with the Generic Names Supporting Organization (GNSO)

The GAC met with GNSO Council members and reviewed the work of the GAC-GNSO Consultation Group, including reports regarding the GNSO Council Liaison to the GAC and opportunities for GAC early engagement in Policy Development Processes (PDPs).

There was an exchange of views on the Supplemental Final Proposal from the CCWG-Accountability, including ways in which the GAC and the GNSO were developing their input to the ICANN Board.

It was agreed that the new format of the ICANN “B” Meeting provides an opportunity for more substantive GAC-GNSO discussions and this will be considered for the ICANN meeting in June 2016.

In response to GAC Members’ concerns, the GNSO noted that GAC input to the PDP on Privacy and Proxy Services Accreditation Issues had been given due consideration, but there had not been consensus support for its inclusion in the final report.

The GAC recalled its previous advice to the ICANN Board that permanent protection of Red Cross, Red Crescent and Red Crystal designations and names should be implemented as soon as possible. The GAC expects, therefore, that the current discussions involving the GNSO and ICANN staff will resolve the differences between GNSO policy recommendations and the GAC’s advice on this matter.

### 3. Meeting with the At-Large Advisory Committee (ALAC)

The GAC met with members of the At-Large Advisory Committee and discussed:

- Their respective processes for responding to the Supplemental Final Proposal of the CCWG-Accountability.

- **New gTLD safeguards:** The GAC expressed interest in a possible ALAC-GNSO review of problematic strings and PICs.
- **Future gTLD rounds:** The GAC and the ALAC agreed that appropriate review and analysis of the current gTLD round should occur before policy development for future rounds advances substantially.
- **Enhanced GAC-ALAC cooperation:** The possibility of mutual liaisons and engagement at the national level will be explored.

## III. Internal Matters

### 1. New Members

The GAC welcomed Burundi, Cambodia, Haiti, Palestine, Republic of Palau and Chad as new Members, and the West African Telecommunications Regulators Assembly (WATRA) as a new Observer. This brings the number of GAC Members to 162, and the number of observers to 35.

### 2. GAC Working Groups

The GAC continues to pursue specific areas of work through its Working Groups, which cover the following areas:

- Protection of geographic names in future rounds of new gTLDs

The Geographic Names Working Group met and discussed its review of an updated work plan, a new version of its "Public Interest" document, agreement to open the email list to interested members of other SOs/ACs, and analysis of concerns expressed during a previous round of public comments.

- Public safety

The Public Safety Working Group (PSWG) continues to focus on and engage in various public safety related activities including consumer protection, DNS and IP address WHOIS accuracy and outreach to ICANN stakeholder groups, among others.

The PSWG has been engaging in several GNSO PDPs and ICANN Reviews including on Privacy & Proxy Services Accreditation Issues, Next Generation Registration Data Services, the Registry Agreement Security Framework (Spec 11), and the New gTLD Competition, Consumer Choice and Consumer Trust Review.

The PSWG held a joint workshop with the Number Resource Organization (NRO) to initiate discussions on enhancing IP WHOIS accuracy.

- Human Rights and International Law

Following endorsement by the GAC Plenary of the Human Rights and International Law Working Group's (HRIL WG) Terms of Reference on 9 March 2016, the HRILWG will develop a work plan by end-April. An update on CCWG-Accountability Recommendation 6 was provided by CCWG Co-Chair Mr. Leon Sanchez. An information exchange was held with the Cross Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights (CCWP HR).

- Underserved Regions

Cook Islands was appointed as a Co-Chair of the Underserved Regions Working Group.

- GAC participation in the ICANN Nominating Committee (NomCom)

Terms of reference for the NomCom Working Group were adopted by the GAC.

- Review of GAC Operating Principles

The Working Group on GAC Operating Principles is scheduled to meet on Thursday 10 March.

### **3. Independent GAC Secretariat**

The GAC expressed its appreciation of the outstanding service and support provided by its hybrid secretariat model, consisting of ICANN GAC Support staff and the independent ACIG GAC Secretariat. The enhanced secretariat support has increased and improved the GAC's ability to provide advice to the Board and to work more effectively with other members of the ICANN community.

The GAC wholeheartedly thanked Brazil, Norway and the Netherlands for their generosity in providing funds to support the delivery of services by the independent ACIG GAC Secretariat and discussed how best to ensure the financial sustainability of the donor funding model. Peru, the European Commission and Switzerland announced that they will make financial contributions, for which the GAC is very grateful. Other GAC members are also considering becoming donors to ensure that the high quality of independent secretariat services currently received by the GAC is maintained and, if necessary, can be expanded.

## **IV. Transition of U.S. Stewardship of IANA and Enhancing ICANN Accountability**

The GAC agreed on the following response to the Supplemental Final Proposal on Work Stream 1 Recommendations of the Cross Community Working Group on Enhancing ICANN Accountability:

*"The GAC expresses its support for the multistakeholder, bottom-up approach within ICANN and reiterates its interest in participating in the post-transition phase with a view to fulfilling its roles and responsibilities.*

*The GAC wishes to express its sincere appreciation of the diligent and productive work performed by the CCWG-Accountability, its Co-Chairs, its members and all its contributors.*

*The GAC reaffirms its role as an advisory committee to the ICANN Board and within the ICANN multistakeholder environment and will continue to advise on relevant matters of concern with regard to government and public interests.*

*The GAC has considered the CCWG's proposal and supports Recommendations 1 to 10 and 12. However, there is no consensus on Recommendation 11 and the "carve-out" provision contained in Recommendations 1 and 2.*

*As regards Recommendations 1 and 2, the GAC expresses its willingness to take part in the envisioned empowered community mechanism as a decisional participant, under conditions to be determined internally.*

*While there are delegations that have expressed support for the proposal, there are other delegations that were not in a position to endorse the proposal as a whole.*

*In spite of this difference of opinions, the GAC has no objection to the transmission of the proposal to the ICANN Board."*

## **V. Other GAC Discussions**

### **1. gTLD Safeguards: Current Round**

The GAC noted the Board's response to recent and outstanding GAC advice on gTLD safeguards, including a Resolution of the former New gTLD Program Committee of 18 October 2015, a Resolution of the Board of 3 February 2016 and a letter of 19 February 2016 to the GAC Chair.

Further work by the GAC will focus on ensuring that existing gTLD safeguards (including those based on previous GAC advice) are maintained and improved. The GAC encourages work by the GNSO and the ALAC to review Public Interest Commitments (PICs) for strings corresponding to highly regulated sectors, including through a dedicated group if possible, and will work through the range of processes considering future gTLD rounds, to ensure public policy considerations are taken into account.

With regard to process, the GAC notes that the Board acknowledges that the agreed Process for Consultations "was not formally observed in this instance." Like the Board, the GAC looks forward to work on improving Board-GAC communications through the Board-GAC Review Implementation Working Group (BGRI-WG).

## 2. CCT Review

GAC Members of the Competition, Consumer Trust and Consumer Choice Review Team (CCT RT) updated the GAC on the Review Team work. The GAC noted that a range of public policy issues are within the scope of the review, including impact of the new gTLD program on consumer trust and the effectiveness of safeguards in that context, and on competition and consumer choice aspects. GAC Members were invited to submit their views either to the Review Team's GAC Members or at the CCT Review public meeting at ICANN 55 and were reminded of the possibility to follow the work as observers.

## 3. Community Applications

The GAC noted the response of the ICANN Board to GAC advice in the Dublin Communiqué concerning community applications for new gTLDs and the Community Priority Evaluation process. The GAC intends to undertake data gathering and analysis on experiences with the current new gTLD round in this regard and to make appropriate contributions to the GNSO PDP on New gTLD Subsequent Procedures and to the CCT Review.

## 4. 2-character labels at the second level

The GAC discussed with ICANN staff operational issues relating to implementation of GAC advice on 2-character labels at the second level. Several suggestions for improvement were provided to ICANN.

## VI. GAC Advice to the ICANN Board<sup>2</sup>

### 1. Future gTLDs Rounds : Public Policy Issues

GAC Members reviewed the public policy aspects of current work across the ICANN community that impacts on the policy framework for future rounds of new gTLDs. This work includes the PDP on Subsequent Procedures, the CCT Review, the Program Implementation Review, Reviews of Root Stability and the Trademark Clearing House; and development of metrics to assess gTLD developments.

The GAC recalls the ICANN-wide shared understanding that development of a policy framework for future new gTLD rounds should follow a logical sequence of review of the current round and associated issues so that this can inform policy development through GNSO-based community processes. The GAC notes with concern that current PDP scheduling may put this logical sequencing at risk, potentially leading to policy development work that does not have access to the most up to date and comprehensive data and analysis.

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<sup>2</sup> To track the history and progress of GAC Advice to the Board, please visit the GAC Advice Online Register available at: <https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>

**a. The GAC therefore reiterates previous advice to the Board to:**

- I. ensure that a proper assessment of all relevant aspects of the new gTLD program is made, taking into account feedback from all stakeholders, and that development of future rounds should be based on the conclusions of this assessment.

**b. The GAC advises the Board to:**

- I. give particular priority to awareness raising in, and facilitating applications from, underserved regions.

Having noted these concerns, GAC members will nevertheless make efforts to participate in open processes such as PDPs. The GAC, with the support of its independent Secretariat, will strive to provide input to all relevant work on future gTLD policies at an early stage and relevant later stages. In view of the overall community workload, the GAC notes the importance of allowing sufficient time for appropriate engagement.

## **2. Privacy and Proxy Services Accreditation Issues**

The GAC thanks the GNSO Privacy & Proxy Services Accreditation Issues Policy Development Process Working Group for its significant effort in producing its Final Report, which contains many beneficial recommendations. The GAC submitted comments on the Initial Report, reflecting public policy issues, which are attached at Annex A.

The GAC welcomes the request by the Board, in a letter dated February 19<sup>th</sup> 2016, to submit any public policy issues raised by the recommendations set forth in the Final Report.

Consistent with the GAC's prior comments on the initial report and the 2007 GAC Principles regarding gTLD WHOIS Services, particularly Principle 3 regarding assisting law enforcement authorities in investigations, and Principle 6 regarding contributing to user confidence in the Internet by helping users identify persons or entities responsible for content and services online, the GAC believes that the recommendations set forth in the Final Report may raise certain public policy issues regarding consumer safety and trust.

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

- I. allow sufficient time for GAC consideration of possible advice on these important public policy issues and requests that the Board meets with the GAC prior to considering adoption of the Privacy Proxy Services Accreditation Issues PDP Final Report. The ICANN 56 meeting would be an appropriate opportunity to consider these issues further.

### 3. Work scheduling and workload management

The GAC is concerned that there continues to be a high number of concurrent work programs across ICANN with significant workload implications for the GAC and the wider community. For example, existing reviews on the first round of new gTLDs, preparation for subsequent rounds, and a wide range of work on WHOIS issues have continued without timeline adjustment despite the high priority work generated by the IANA Stewardship Transition Process.

The GAC acknowledges the need to consider the different priorities of each of the SOs and ACs.

#### a. The GAC advises the Board to:

- I. facilitate an exchange at ICANN 56 between all the SOs and ACs regarding how work requiring community input is scheduled and managed by the respective SO and AC communities, particularly for issues of broad interest across the community as a whole. The GAC considers that a joint SO/AC review will permit the Board to better assess the level of concurrent work the community can manage. This exchange should include consideration of:
  - i. how different community priorities are balanced; and
  - ii. how this process can maximise community participation in policy development processes.

## VIII. Next Meeting

The GAC will meet during the period of the 56<sup>th</sup> ICANN meeting, scheduled for the 27<sup>th</sup> to 30<sup>th</sup> of June 2016.



## **ANNEX A. GAC PUBLIC SAFETY WORKING GROUP COMMENTS TO PROXY PRIVACY ACCREDITATION ISSUES**

### **GAC Public Safety Working Group (PSWG) Comments to Initial Report on the Privacy & Proxy Services Accreditation Issues Policy Development Process<sup>1</sup>**

After review of the Initial Report on the Privacy & Proxy Services Accreditation Issues Policy Development Process, the PSWG provides the following comments and recommendations:

#### Distinction between Commercial and Non--Commercial Users:

- In order to promote transparency and consumer safety and trust, the PSWG recommends against permitting websites actively engaged in commercial transactions – meaning the collection of money for a good or service – to hide their identities using Privacy/Proxy (P/P) Services.<sup>2</sup> This includes domains used for websites that directly collect payment data, as well as for sites that promote a transaction but directly link to other sites that execute the transaction. The public is entitled to know the true identity of those with whom they are doing business. Indeed, many nations have laws specifically mandating such transparency in commercial and business transactions.
- P/P services should only be permitted for those domains that are not actively conducting business transactions, as detailed in the above. Any person or entity that engages in commercial transactions invites the public to trust them with their funds and sensitive financial account information. Hence, any privacy interest should be balanced with the public's right to know the true identity of those with whom they are doing business.

#### Transparency and Accountability:

- The PSWG supports the conclusion that ICANN should ensure transparency by publishing and maintaining a publicly accessible list of all accredited P/P service providers, with all appropriate contact information. Registrars should provide a web link to P/P services run by them or their Affiliates, and P/P service providers should declare their Affiliation with a registrar (if any) as a requirement of the accreditation program.

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1. These comments were produced by an internal GAC Working Group and do not represent a consensus GAC view.

2. Any definition of “commercial transactions” and limitations on use of P/P services should not apply to registrants whose sites are supported by advertising (and thus arguably “commercial”), but are not actively

- The PSWG supports the conclusion that a “designated” rather than a “dedicated” point of contact will be sufficient for abuse reporting purposes and a designated point of contact should be “capable and authorized” to investigate and handle abuse reports, consistent with RAA Section 3.18.
- The PSWG agrees that proxy and privacy services should be treated equally for the purpose of accreditation process.
- The PSWG concurs with the P/P WG preliminary conclusion that domain name registration involving P/P service providers should be clearly labelled as such in the WHOIS.
- The PSWG recommends that P/P customer data should be validated in compliance with the RAA Cross--Validation requirement, pursuant to RAA WHOIS ACCURACY PROGRAM SPECIFICATION, paragraph 1 “... Registrar will, with respect to both WHOIS information and the corresponding customer account holder contact information related to such Registered Name...” validate the information provided.
- PSWG believes that proxy/privacy services should continue to be required to publish their relevant terms of service and to abide by those published terms (as currently provided in the Interim Specification to the 2013 RAA).

#### Definition of Law Enforcement

- “Law Enforcement Authority” is defined as “law enforcement, consumer protection, quasi--governmental or other similar authorities designated from time to time by the national or territorial government of the jurisdiction in which the privacy or proxy service provider is established or maintains a physical office.” To the extent this definition could be viewed as suggesting that P/P service providers need only respond to law enforcement authorities within their own jurisdiction, the PSWG urges the P/P Working Group to consider revising this definition. Malicious conduct involving domains often takes place across borders and the definition of law enforcement should recognize the multi--jurisdictional aspects of investigative and enforcement activities in order to promote protecting the public no matter where they are located. If such revisions are made, the Working Group should consider a requirement that a P/P service consult with its local law enforcement authorities in the event it receives a request from a foreign authority (to ensure that the local authorities believe that the request is a proper request from a recognized foreign authority).

## Confidentiality of Law Enforcement (including Consumer Protection) Requests

- Although the Initial Report did not reflect an agreement on the issue of whether P/P Service Providers should disclose requests from law enforcement, the PSWG appreciates the Initial Report's recognition of the "need for confidentiality in relation to an ongoing LEA investigation." Section 1.3.2 at p. 15. Law Enforcement Agency and Consumer Protection Agency (collectively "LEA") requests are directly related to ongoing investigations. Notifications to customers, who may be the alleged criminal or violator, could threaten not only the effectiveness of the investigation but could also threaten the safety of individuals. Accordingly, the PSWG urges P/P Working Group to require P/P Service Providers to keep LEA requests confidential as required and/or permitted by local laws.
- Requests by LEAs are directly related to sensitive investigations involving violations of the law. Many malware and other seemingly less critical violations have hidden connections to more malevolent criminal enterprises. Given the variety of subject areas for LEA investigations, it would be virtually impossible to confine the topics of potential investigations into select categories for the purposes of P/P Services. If a P/P provider were to provide notice of a LEA investigative request to the target of the request, remedies for such disclosure by the P/P provider would be determined by the respective national, state, provincial, or other governing laws.
- The confidentiality of individual requests does not impair the P/P service providers in publishing statistics in the form of transparency reports on the law enforcement requests received.

## Conclusion

Public safety authorities, including law enforcement and consumer protection agencies, play a vital role in responding to incidents of crime, victim distress, potential harm, and in worst case scenarios, victim identification. To the extent, privacy services are used to hide the actors responsible for malicious activities or obscure other pertinent information, there must be reasonable mechanisms in place for public safety authorities to unmask bad actors and obtain necessary information. We urge the P/P Working Group to take into account the law enforcement need to obtain information cloaked by privacy services in order to continue to protect the public from malicious conduct that involves internet domains.