ICANN | GAC

Governmental Advisory Committee

Montréal, Canada, 6 November 2019

GAC Communiqué – Montréal, Canada[1]

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Montréal, Canada, from 2 to 6 November 2019.

Sixty eight (68) GAC Members and nine (9) Observers attended the meeting.

The GAC meeting was conducted as part of ICANN66. All GAC plenary and working group sessions were conducted as open meetings.

The Governmental Advisory Committee mourns the loss of Dr. Tarek Kamel, a pioneer in the development of ICT and the Internet in Africa, the Middle East, and their governance at the global level. Tarek was highly respected across the Internet ecosystem and beloved among his colleagues and counterparts within governments worldwide, and within the ICANN community. Whether as a Ministerial Advisor, the Minister of Communication and Technology of Egypt, or ICANN's Senior Advisor to the President, Tarek will be remembered as an exemplary man, of outstanding human qualities and professional accomplishments, a pillar of inclusive multi-stakeholder governance. Dr. Tarek Kamel's legacy include the building of enduring relationships between governments, the GAC and ICANN, in the service of the global public interest.

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[1] To access previous GAC Advice, whether on the same or other topics, past GAC communiqués are available at: https://gac.icann.org/

II. Inter-Constituency Activities and Community Engagement

Meeting with the ICANN Board

The GAC met with the ICANN Board and discussed:
- Implementation of plans that will shape the future of ICANN and its multi-stakeholder model
- GDPR/WHOIS matters
- DNS Abuse Mitigation
- CCT Review Recommendations and Subsequent Rounds of New gTLDs

Meeting with Generic Names Supporting Organization (GNSO)

The GAC met with members of the GNSO Council and discussed:
- IGO Access to Curative Rights Protection Mechanisms, and the proposed charter for a new IGO Work Track under the Review of all RPMs PDP WG
- Evolving ICANN's Multistakeholder Model (including GNSO PDP 3.0 matters)
- Work of the New gTLD Subsequent Procedures PDP (including the recently concluded Work Track 5 on geographic names)

Meeting with the gTLD Registries Stakeholder Group (RySG)

The GAC met with representatives of the RySG and discussed:
- Expedited Policy Development Process (EPDP) on gTLD Registration Data
- Registries obligations and practices regarding the mitigation of DNS Abuse

Meeting with the Country Code Names Supporting Organization (ccNSO)

The ccNSO provided an informative session on the retirement of ccTLDs, in relation to an ongoing ccNSO Policy Development Process.

Meeting with the At-Large Advisory Committee (ALAC)

The GAC met with members of the ALAC and discussed:
- Updates on the EPDP on gTLD Registration Data
- Cooperation in capacity building efforts
- Collaboration of ALAC with the GAC Focal Group on Subsequent Rounds of New gTLDs

Meeting with the Root Server System Advisory Committee (RSSAC)

The GAC received an update from the RSSAC leadership on the status of its efforts regarding RSSAC 037 on a Proposed Governance Model for the DNS Root Server System.

Meeting with the Universal Acceptance Steering Group (UASG)

The GAC received an update on the work of the UASG and decided to establish a new GAC Working Group to address Universal Acceptance and Internationalized Domain Names (IDN) matters of relevance to governments.

Meeting with Cross-Community Working Group on New gTLDs Auction Proceeds

The CCWG is finalizing its Final Report which will provide opportunities for GAC input. GAC Members discussed broader considerations beyond the scope of the CCWG's work on possible mechanisms to allocate auction proceeds funds, including the importance of GAC discussion and input on:
- The mechanism that will be ultimately selected to allocate the proceeds
- Criteria for the selection of projects to be funded via this vehicle

Meeting With the GAC Work Party of the ATRT3 Review Team

The GAC met with representatives of the ATRT3 GAC Work Party who shared the status of the Review Team's efforts.

Meeting on the ICANN Legitimacy Project

The GAC met with researchers from the University of Göthenburg and received an update on the initial results of the ICANN Legitimacy Project.

Cross-Community Discussions

GAC Members participated in relevant cross-community sessions scheduled as part of ICANN66, including Phase 2 of the Expedited Policy Development Process on gTLD Registration Data, DNS Abuse and Evolving ICANN's Multistakeholder Model.

III. Internal Matters

1. GAC Membership

The GAC welcomed the Council of Regional Organisations of the Pacific (CROP) ICT and the Caribbean Community Secretariat (CARICOM) as new Observers to the Committee. There are currently 178 GAC Members and 38 Observers.

2. GAC Elections

The GAC elected as Vice-Chairs for the term starting after ICANN67 (March 2020) and ending at the close of ICANN70 (March 2021):

- Olga Cavalli (Argentina)
- Guiguemde Ragnimpinda Jacques Rodrigue (Burkina Faso)
- Luisa Paez (Canada)
- Pua Hunter (Cook Islands)
- Jorge Cancio (Switzerland)

3. GAC Working Groups

- **GAC Public Safety Working Group (PSWG)**

The PSWG discussed DNS abuse mitigation measures, including the need to implement the CCT Review Team recommendations on DNS Abuse, the importance of the Domain Abuse Activity Reporting System, and the need to ensure that the requirement for "reasonable access" to non-public Domain Name Registration Information is operating effectively given the impact on investigations and other activities to preserve public safety and enforce the law.

The PSWG also participated in the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data and the Cross-Community Session on DNS Abuse. Finally, the PSWG held discussions with ICANN Compliance, the Security and Stability Advisory Committee, and the Non-Commercial, Registry and Registrar Stakeholder Groups, and Intellectual Property and Business Constituencies.

- **GAC Human Rights and International Law Working Group (HRIL WG)**

The HRIL WG and Cross Community Working Party discussed community implementation of the Human Rights Core Value in collaboration with a panel comprised of SO/AC Members and an ICANN Board Member. It was confirmed that the Human Rights Core Value will come into effect once the ICANN Board adopts the CCWG Accountability Work Stream 2 (WS2) recommendations, and is on

the agenda of the Annual General Meeting of the ICANN Board at ICANN66. The HRIL WG and community panel recognized that once the Board adopts the WS2 recommendations, cross community work will be crucial in the implementation process. The HRIL WG encouraged GAC and other community members to participate in this effort. Specifically an understanding is needed regarding the consequences of a negative Human Rights Impact Assessment in Policy Development Processes.

- **GAC Working Group to Examine the GAC's Participation in NomCom**

The Working Group presented to the GAC recommendations that the Nominating Committee of ICANN (NomCom) should consider when selecting candidates for ICANN Board positions. The GAC approved the recommendations which will be communicated to the NomCom leadership.

- **GAC Underserved Regions Working Group (USRWG)**

The USRWG discussed the outcome of the GAC Middle East workshop held in Bahrain on 30 September 2019 with ICANN's Stakeholder Engagement team for the Middle East. The USRWG is now considering GAC capacity building workshops for fiscal year 2020. The USRWG also considered an update on the GAC Focal Group effort regarding subsequent rounds of New gTLDs and will continue to contribute to GAC capacity building in this area.

WG members are invited to lead and assist with inter-sessional activities, consistent with the USRWG Work Plan including: development of a survey for newcomers engagement kit, creation of a newsletter and webinars on regional DNS issues and ICANN processes. The USRWG will report on progress of these activities during ICANN67.

- **GAC Working Group to Examine the Protection of Geographic Names in Any Future Expansion of gTLDs**

The GAC plenary considered the conclusion of the deliberations in Work Track 5 on Geographic Names at Top Level, a sub-team of the New gTLD Subsequent Procedures Policy Development Process Working Group. With an inclusive leadership composed of four co-leaders from ALAC, ccNSO, GAC and GNSO, Work Track 5 conducted 52 meetings in nearly two years to review the existing protection of geographic names at the top level and determine if new recommendations were needed for future rounds of New gTLDs. The consensus recommendations of Work Track 5 have been submitted for consideration by the PDP Working Group.

In order to facilitate the processing of future applications for gTLDs, many GAC members expressed interest in the development of a tool that would provide timely notifications to GAC Members of strings that consist in geographic names, drawing inspiration as appropriate from the existing tool for the 2-character codes.

- **Working Group on GAC Operating Principles Evolution (GOPE WG)**

The GOPE WG met in plenary session to review the GAC Working Group Guidelines document developed since ICANN64, with a view to supplement the GAC Operating Principles. The WG aims to finalize the document by ICANN67, with input from GAC Members on pending items.

- **GAC Focal Group on Subsequent Rounds of New gTLDs**

The GAC was briefed on recent developments from the Subsequent Procedure PDP WG Co-Chair including timeline, priority topics for the GAC, and upcoming opportunities for GAC input. The GAC Focal Group provided an update of its intersessional work since ICANN65 towards building capacity on priority topics for the GAC. The GAC agreed for the GAC Focal Group to review and update relevant GAC positions, with a view to providing input in the upcoming Sub Pro PDP WG public comment proceeding. GAC members are encouraged to volunteer as topic leads to assist in this effort.

4. Board-GAC Interaction Group (BGIG)

ICANN Board and GAC members met in GAC plenary session and discussed follow-up on the ICANN Board's GAC Marrakech Scorecard, the schedule for addressing advice in the GAC Montreal Communique, the status of previous GAC advice and feedback on use of the 2-Character Tool.

5. GAC Operational Matters

The requirements of GAC Operating Principle 32 and 35 (GAC Vice Chair elections) were satisfied, as a total of 101 ballots (more than 1/3 of the GAC Members) were submitted. There were no ties requiring further in-person paper balloting.

The GAC Leadership will consider developing recommendations for amendment of the Guidelines for GAC participation in the Empowered Community.

A new process will be considered to enable efficient GAC assessment of the ICANN Board's response to Consensus advice.

IV. Issues of Importance to the GAC

1. .AMAZON

ICANN's government engagement staff provided a short overview of the ".amazon" applications process and updates since the ICANN65 meeting.

During Session 9 of the GAC meeting, a delegation expressed that granting the ".amazon" application without a mutually agreeable solution would contradict previous GAC advice, which states (ICANN 60 Abu Dhabi Communiqué):

> *The GAC advises the ICANN Board to: i. continue facilitating negotiations between the Amazon Cooperation Treaty Organization's (ACTO) member states and the Amazon corporation with a view to reaching a mutually acceptable solution to allow for the use of .amazon as a top level domain name.*

Some delegations supported the proposal that the GAC should request the Board to exhaust all possible means to facilitate parties to arrive at a mutually agreeable solution through the organization of a time-limited and independently mediated final negotiation round which they believe would be important to strengthen the GAC and ICANN roles in Internet governance.

Other delegations stated that they believe that all relevant GAC Advice on this matter has been addressed by the Board, no further GAC Advice is needed, and that the applications should not be further delayed in accordance with the applicable IRP decision. These delegations did not necessarily agree with the basis of the concerns as articulated above.

V. GAC Consensus Advice to ICANN Board

The following items of advice from the GAC to the Board have been reached on the basis of consensus as defined in the ICANN Bylaws[2]:

1. CCT Review and Subsequent Rounds of New gTLDs

a. The GAC advises the Board:

i. not to proceed with a new round of gTLDs until after the complete implementation of the recommendations in the Competition, Consumer Trust and Consumer Choice Review that were identified as "prerequisites" or as "high priority".

RATIONALE

The Competition, Consumer Trust and Consumer Choice Review is the first completed Bylaw-mandated review after the IANA Stewardship Transition and serves as a vital accountability mechanism. The review identified a number of issues that should be addressed, in areas such as the necessity and availability of data, including on costs and benefits, the effectiveness of safeguards, the promotion of consumer trust, the mitigation of DNS abuse and improved geographic representation of applicants. The review produced 35 consensus recommendations. It said that 14 of the recommendations must be implemented prior to the launch of subsequent procedures for new gTLDs ("prerequisites") and a further 10 recommendations ("high priority") should be implemented by 8th March 2020 (eighteen months after the issuance of the report).

It is particularly important that a new round of gTLDs should not be launched until after the successful implementation of those recommendations that were identified by the Review Team as necessary prior to any subsequent rounds of new gTLDs. It has been suggested that although some of the recommendations are for the Board to implement, other recommendations are for other parts of the community to implement. It would be helpful for the Board to monitor progress on all of the recommendations and support other parts of the community to implement the recommendations that are addressed to them.

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[2] Bylaws section.12.2.(a)(x) The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee advice, it shall so inform the Governmental Advisory Committee and state the reasons why it decided not to follow that advice. Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection ("GAC Consensus Advice"), may only be rejected by a vote of no less than 60% of the Board, and the Governmental Advisory Committee and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee will state whether any advice it gives to the Board is GAC Consensus Advice.

2. Domain Name Registration Directory Service and Data Protection

With regard to Phase 1 of the EPDP,

a. The GAC advises the Board to:

    i. Take all possible steps to ensure that the ICANN org and the EPDP Phase 1 Implementation Review team generate a detailed work plan identifying an updated realistic schedule to complete its work and provide and inform the GAC on the status of its progress by January 3, 2020;

With regard to Phase 2 and the conclusion of the EPDP,

The GAC recognizes the considerable efforts undertaken by all participants within the EPDP. Nevertheless, there will likely be a significant time between finalization of the Phase 2 policy recommendations, implementation of Phase 1 and Phase 2, and the construction and deployment of any new Domain Name Registration System and Unified Access Model. Consequently,

b. The GAC advises the Board to:

    i. Instruct the ICANN organization to ensure that the current system that requires "reasonable access" to non-public domain name registration is operating effectively. This should include:

        – educating key stakeholder groups, including governments, that there is a process to request non-public data;

        – actively making available a standard request form that can be used by stakeholders to request access based upon the current consensus policy; and

        – actively making available links to registrar and registry information and points of contact on this topic.

    ii. Instruct ICANN Compliance to create a specific process to address complaints regarding failure to respond to, and unreasonable denial of requests for non-public domain name registration data, and monitor and publish reports on compliance with the current policy as part of their regular monthly reporting.

RATIONALE

Consistent with our prior advice, we take this opportunity to issue further guidance as the progress of the development and implementation of the EPDP activities have raised concerns. The GAC has consistently advised on the necessity of finding a swift solution to ensuring timely access to non-public registration data for legitimate third party purposes that complies with the requirements of the GDPR and other data protection and privacy laws, in view of the significant negative impact of the changes in WHOIS accessibility on users with legitimate purposes. The GAC

has previously noted that such legitimate purposes include civil, administrative and criminal law enforcement, cybersecurity, consumer protection and IP rights protection. The GAC also notes that the European Data Protection Board, in its guidance, has expressly encouraged ICANN and the community to develop a comprehensive model covering the entirety of the data processing cycle, from collection to access.

As already highlighted in the GAC's San Juan and Kobe Communiqués, the GDPR provides for mechanisms to balance the various legitimate public and private interests at stake, including privacy and accountability. We note that the legitimate interests reflected in ICANN's Bylaws are consistent with the recitals to the GDPR, which provide examples such as "preventing fraud"; "ensuring network and information security," including the ability to resist "unlawful or malicious actions" and reporting possible "criminal acts or threats to public security" to authorities (see GDPR Recitals 47, 49 and 50).

VI. Follow-up on Previous GAC Consensus Advice

The following items reflect matters related to previous consensus advice provided to the Board.

1. Protection of the Red Cross and Red Crescent Designations and Identifiers

The GAC welcomes the progress made towards the permanent protection and reservation of the Red Cross and Red Crescent designations, names and identifiers from registration at the second level. It takes note with appreciation of ICANN Board's Resolution of 27 January 2019 acknowledging the public policy considerations associated with the protection of the Red Cross and Red Crescent names in the domain name system, adopting the consensus recommendations of the reconvened GNSO Policy Development Process, and instructing ICANN staff to execute the protections to be afforded to the names of the 191 National Red Cross and Red Crescent Societies, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies. The GAC welcomes the outputs of the Implementation Review Team and encourages ICANN, upon completion of the current public comment forum, and pursuant to comments made, to publish and to notify ICANN's Contracted parties of the new policy and of applicable implementation/compliance deadlines.

The GAC also reaffirms its past advice that the acronyms of the two international organizations within the International Red Cross and Red Crescent Movement (the ICRC and the IFRC) be addressed under the same protection regime to be agreed and implemented for the acronyms of IGOs.

The GAC lastly encourages the Board to consider complementing the list of Red Cross and Red Crescent designations protected at the first level and included in the Applicant Guidebook, with the full and agreed list of names and identifiers of the different Red Cross and Red Crescent organizations.

2. IGO Protections

The GAC notes that the topic of re-chartering a specific PDP work track concerning a curative mechanism to address the issue of protection of IGO identifiers remains under discussion with the GNSO.

3. Domain Name Registration Directory Service and Data Protection

The GAC emphasizes again that the Privacy Proxy Services Accreditation Issues (PPSAI) policy recommendations remain highly relevant and implementation efforts should continue as appropriate, in parallel with the ongoing policy development work in the EPDP on gTLD Registration Data. The implementation of the PPSAI should not be deferred until the completion of the EPDP.

4. Next Face to Face Meeting

The GAC will next meet during ICANN67 in Cancún, Mexico, scheduled for 7-12 March 2020.