



Governmental Advisory Committee

London, 25 June 2014

GAC Communiqué – London, United Kingdom¹

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in London, United Kingdom during the week of 21st of June 2014. Sixty one (61) GAC Members attended the meetings and eight (8) Observers. The GAC expresses warm thanks to the local host for their support.

High Level Governmental Meeting

The GAC expressed its sincere appreciation to the United Kingdom for hosting the High Level Governmental Meeting on 23 June 2014. The meeting provided a valuable forum for Ministers and senior officials to emphasise to ICANN a range of important public policy concerns with regard to ICANN and the global internet governance ecosystem. It also enabled all parties to gain a clearer understanding of the role of governments in ICANN processes, including the GAC.

II. Inter-Constituencies Activities

1. GAC-Generic Names Supporting Organisation (GNSO) Consultation Group

The GAC agreed to proposals from the joint GAC-GNSO Consultation Group to enable greater cooperation and coordination between GAC and the GNSO, and in particular:

¹ 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>.

- Appointment of a GNSO liaison to the GAC for a one year pilot period, starting next meeting in Los Angeles;
- Liaison support through existing GNSO Council policy development process (PDP) liaisons;
- A survey of GAC members on possible mechanisms for early awareness of policy issues with public policy implications;
- Further analysis of how GAC involvement in PDPs could be managed on a sustainable and workable basis.

2. Meeting with the Country Code Names Supporting Organisation (ccNSO)

The GAC met with the ccNSO and discussed a range of issues, including finalisation of the report of the Framework of Interpretation Working Group; and the current activities on transition of IANA stewardship and strengthening ICANN accountability.

III. Internal Matters

- 1. New Members** – The GAC welcomes Barbados, Israel, Liberia, Timor-Leste and Venezuela as new Members.
- 2. GAC Working Methods** - The GAC discussed the proposals on improving the GAC working methods and the implementation plan put forward by the GAC working methods working group. The GAC agreed on the proposals and to the implementation plan of 21 June 2014. The GAC will continue to discuss the other outstanding issues.
- 3. Issues for Future Rounds of gTLDs; and**
- 4. Government and Intergovernmental Organisation Engagement Strategy** – The working group will continue its discussions with the ICANN Global Stakeholder Engagement (GSE) team on areas of cooperation.

The working groups will continue their activities inter-sessionally.

The GAC warmly thanks all of the SOs/ACs who jointly met with the GAC, as well as all those among the ICANN community who have contributed to the dialogue with the GAC in London.

IV. GAC Advice to the Board²

1. Transition of US Stewardship of IANA and Strengthening ICANN Accountability

The GAC is committed to engaging with the current processes dealing with transition of US Government stewardship of IANA; and strengthening ICANN accountability.

The GAC will participate in both processes by nominating the Chair and four additional GAC members for formal membership of the coordination group and working group respectively, to provide a balanced representation of governmental interests. The GAC will ensure that geographic, linguistic and gender diversity are reflected. GAC participants in the groups will consult with, and facilitate information flows across, the broader GAC membership.

The GAC recognizes the need for it to comment on the final draft proposals from the IANA stewardship transition coordination group and the ICANN accountability working group before the public comment periods.

2. Safeguard Advice Applicable to all new gTLDs and Category 1 (consumer protection, sensitive strings and regulated markets) and Category 2 (restricted registration policies) strings

a. The GAC advises:

- I. the Board to call on the NGPC to provide the GAC with a comprehensive and satisfactory response to the legitimate concerns raised in the Beijing and Singapore Communiqués. The GAC considers that the current responses offered to the GAC fail to address a number of important concerns, including: 1) the process for verification of WHOIS information; 2) the proactive verification of credentials for registrants of domain names in regulated and highly regulated industries (the relevant Category 1 strings); 3) the proactive security checks by registries; 4) the Public Interest Commitments Dispute Resolution Process (PICDRP), which is not defined as to length of procedure or outcome; and 5) discrimination in restricted TLDs. In addition,

² 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>

b. The GAC advises that:

- I. the Board to provide its responses to GAC advice at least four weeks prior to ICANN meetings in order to give sufficient time to the GAC to assess and provide feedback on these complicated matters.

These concerns are further clarified in an Annex to this Communique.

The GAC looks forward to the activation of the review panel on promoting competition, consumer trust and consumer choice envisaged in the Affirmation of Commitments.

The GAC notes that the Government of Israel expressed concerns about the potential for discrimination in the operation of .kosher, which Israel will study further.

3. Specific Strings

a. .africa

Consistent with the new gTLD applicant guidebook, the GAC provided consensus advice articulated in the April 11 2013 communiqué that the Dot Connect Africa (DCA) application number 1-1165-42560 for dot Africa should not proceed. The GAC welcomes the June 2013 decision by the New gTLD Program Committee to accept GAC advice on this application.

The GAC notes the recent action taken to put on hold the ZACR African Union Commission endorsed application due to the Independent Review Panel (IRP) mandated by ICANN Bylaws.

The GAC advises:

1. The ICANN Board to provide timely communication to the affected parties, in particular to provide clarity on the process and possible timelines;
2. The ICANN Board that, following the release of the IRP recommendation, the Board should act expeditiously in prioritising their deliberations and delegate .africa pursuant to the registry agreement signed between ICANN and ZACR.

b .spa

The GAC welcomes the NGPC's acceptance of the GAC advice on .spa. The GAC reiterates its advice (<https://gacweb.icann.org/display/GACADV/2014-03-27-spa>) on the

issue that "the relevant parties in these discussions are the city of Spa and the applicants." The GAC therefore seeks NGPC's clarification on whether its explanation that "the applications will proceed through the normal process" means it will follow the Applicant Guidebook taking into consideration the GAC advice.

c .wine / .vin

There was further discussion on the issue of .wine/.vin, but no agreement was reached because of the sensitive nature of the matter.

The matter of .wine and .vin was raised at the High Level Governmental Meeting, where some members expressed concerns in terms of ICANN's accountability and public policy. These concerns are not shared by all members.

4. Protection of Children

The GAC reiterates its advice in the Buenos Aires Communiqué that new gTLD registry operators should be made aware of the importance of protecting children and their rights consistent with the UN Convention on the Rights of the Child.

5. Protection of Inter-Governmental Organisation (IGO) Names and Acronyms

The GAC reaffirms its advice from the Toronto, Beijing, Durban, Buenos Aires and Singapore Communiqués regarding protection for IGO names and acronyms at the top and second levels, as implementation of such protection is in the public interest given that IGOs, as created by governments under international law, are objectively different rights holders; notes the NGPC's letter of 16 June 2014 to the GNSO concerning further steps under the GNSO Policy Development Process while expressing concerns that the process of implementing GAC advice has been so protracted; welcomes the NGPC's assurance that interim protections remain in place pending any such process; and confirms its willingness to work with the GNSO on outcomes that meet the GAC's concerns.

6. Protection of Red Cross / Red Crescent Names

The GAC refers to its previous advice to the Board to protect permanently the terms and names associated with the Red Cross and Red Crescent, including those relating to the 189 national Red Cross and Red Crescent societies, and recalls that the protections afforded to the Red Cross and Red Crescent designations and names stem from universally agreed norms of international law and from the national legislation in force in multiple jurisdictions. Accordingly,

a. The GAC now advises, that:

- I. the Red Cross and Red Crescent terms and names should not be equated with trademarks or trade names and that their protection could not therefore be adequately treated or addressed under ICANN's curative mechanisms for trademark protection;
- II. the protections due to the Red Cross and Red Crescent terms and names should not be subjected to, or conditioned upon, a policy development process;
- III. the permanent protection of these terms and names should be confirmed and implemented as a matter of priority, including in particular the names of the international and national Red Cross and Red Crescent organisations.

7. WHOIS

The GAC notes that there continue to be range of initiatives being progressed relevant to WHOIS, including outcomes from the WHOIS Review Team and the recently finalised report of the Expert Working Group on gTLD Directory Services. Many of the issues under discussion and analysis have public policy dimensions, including privacy, law enforcement, consumer protection and public safety.

a. The GAC requests that:

- I. ICANN make further efforts to explain and clarify the linkages between the full range of WHOIS activity for the benefit of GAC and the community between now and the Los Angeles meeting, to ensure that WHOIS activity adequately reflects GAC's earlier comments and concerns. ICANN should also consider the implications of short, restrictive comment deadlines for community workload. The GAC suggests that ICANN conduct a session for the community on these issues in Los Angeles.

8. Accountability and Transparency

The GAC was briefed by the Board-GAC Recommendation Implementation Working Group (BGRI) and agreed to specific ATRT2 recommendations being progressed by the BGRI as follows:

- Development of a formal process for the Board to notify and request GAC advice (Recommendation 6.4) – Document current process and seek comment on options for improvements.

- Bylaw changes to formally implement the documented process for Board-GAC Bylaws consultation developed by the BGRI (Recommendation 6.5) – GAC advises the Board that there are no further requests for Bylaws amendments, in light of the new gTLDs, and hence sees no need for Board action on this to be further delayed.
- Regularisation of senior officials’ meetings (Recommendation 6.7) – GAC agrees that regular high level meetings are beneficial, and will examine ways to maximize their benefits and continually improve the way they are arranged and scheduled.
- GAC to use opportunities to provide input to ICANN policy development processes (Recommendation 10.2) – GAC noted that the GAC-GNSO Consultation Group is addressing this.

9. Human Rights

GAC noted the written analysis on ICANN's procedures and policies in the light of human rights, fundamental freedoms and democratic values, prepared by experts of the Council of Europe. The GAC noted that there is a developing interest in the ICANN community to include human rights issues in future discussions.

10. Protection of Geographic Names in gTLDs

The GAC provided a briefing, led by the sub-group on geographic names of the working group on future gTLD issues, to the community on protection of geographic names in future new gTLD application rounds. Further work will be done on this matter and new updates will be provided at the next ICANN meeting.

11. GAC Open Forum

The GAC convened an open session for the community to inform about and exchange views on the GAC and its working methods, in accordance with recommendation 6.1.a of the ATRT2 report.

V. Next Meeting

The GAC will meet during the period of the 51st ICANN meeting in Los Angeles, California.

ANNEX TO GAC LONDON COMMUNIQUE

NGPC Response to GAC Advice on Six GAC Safeguards Applicable to All New gTLDs and Advice on Category 1 and Category 2 Safeguards

Issue: The June 6, 2014 NGPC response to the GAC's advice and questions set forth in the Singapore Communiqué lacks key details, appears to sidestep certain GAC questions, and arrived too close to the London meeting to provide sufficient opportunity to consider, confer, and react to the NGPC positions.

Background: The GAC's Beijing Communiqué included specific safeguards applicable to gTLD strings that raised heightened consumer protection concerns (the Category 1 Safeguards) including sensitive strings (*e.g.*, health, financial, children) and regulated markets (*e.g.*, charities, gambling, professional services). These safeguards covered five general areas, with three additional safeguards regarding strings associated with regulated entry requirements in multiple jurisdictions. The NGPC has distinguished these safeguards as applicable to "regulated" and "highly regulated" strings and has adopted a Category 1 Public Interest Commitment Specification (PIC Spec) applicable to strings falling into these categories. The Category 1 PIC Spec weakens the GAC's advice in several areas. The GAC also addressed the issue of applicants seeking restricted registration policies for strings representing generic terms, through Category 2 safeguards intended to ensure that applicants must demonstrate that such exclusive access serves a public interest goal, and should not provide undue preference or discrimination against domain name registrants. The NGPC's proposed implementation of Category 2 safeguards is reflected in PIC Spec 11, Sections C and D. The NGPC has determined that the transparency requirement in Section C fully meets the GAC's request that Registry Operators be prevented from granting preferential or discriminatory treatment to domain name registrants. As a result of the concerns arising from the NGPC's flawed implementation of certain safeguards, the GAC issued consensus advice and questions in its Singapore Communiqué.

Assessment of the NGPC Response: With regard to the GAC's request for periodic updates regarding ICANN's enforcement of safeguards, the NGPC has committed to periodic updates at times and using methods determined by the GAC. The NGPC's responses to the series of GAC questions related to WHOIS data accuracy (*e.g.* checks/audits, consequences for failing to correct inaccurate WHOIS data, etc.) revolve around the implementation of a WHOIS Online Accuracy Reporting System, for which an RFP was issued on May 16, 2014. The NGPC response also indicates that ICANN intends to complement what is essentially a "work in progress" with consultations with the "broader ICANN community" to define the process by which inaccurate records are forwarded to registrars, resolved, and re-checked by the Accuracy Reporting System (which has not yet been created). The NGPC's response to the GAC's questions regarding steps taken by Registries to periodically analyze whether registrations in their TLDs raise security threats indicates that ICANN would solicit the community to develop a framework for Registry Operators to respond to identified security risks. However, there is no detail provided as to when and how the community, particularly the GAC, would be consulted on this matter.

With regard to the GAC's Category 1 advice, the NGPC maintains its previous position that requiring Registries to verify and validate the credentials of registrants for domain names in regulated and highly

regulated industries would potentially discriminate against users in developing countries whose governments do not have regulatory bodies. This position is inconsistent with proposals from several applicants for strings representing regulated strings to ensure that registrants possess the appropriate credentials. Most importantly, the NGPC's position undermines the GAC's efforts to minimize consumer harm and fraud through the actions of uncredentialed registrants.

The NGPC's response to the GAC's questions related to the PICDRP is disappointingly superficial. More information will apparently only be forthcoming as a result of the use and experience with the PICDRP. The proposed PICDRP process is complex, apparently lengthy, and as yet untested. Further, the PICDRP process does not appear to result in a final resolution of compliance issues.

Finally, the NGPC's response to the GAC's questions related to Category 2 safeguards appears unchanged from previous responses. The GAC's explanation in Singapore that transparency alone is insufficient to deter discriminatory and preferential registration policies do not appear to have persuaded the NGPC to revisit its original position.

Timeliness of NGPC Response

- The late receipt of the NGPC's response to the GAC's Singapore advice and questions prohibited a thorough review prior to the London ICANN/GAC meetings. Our comments in London represent only a preliminary reaction, and we anticipate the need to provide more detailed responses at a later time.

Compliance:

- The NGPC's commitment to provide periodic updates regarding ICANN's Compliance Department's enforcement of new gTLD safeguards is constructive. Such updates should occur, at a minimum, at each ICANN meeting and the GAC should be afforded opportunities to submit questions in advance of such updates on a consistent and regular basis. .

WHOIS Accuracy:

- The series of GAC questions related to WHOIS accuracy apparently hinge on the creation of a new Accuracy Reporting System, for which a Request for Proposal was posted on May 16, 2014. In view of the high level of interest in this matter among governments, ICANN should consider providing an opportunity for the GAC to review the RFP to ensure that the needs of government users of the WHOIS system will be effectively met. ICANN should also provide a complete briefing and update regarding the RFP and the initiation of the system during the Los Angeles ICANN meeting. At that point, the proposed Pilot Report would have been issued and should be reviewed by the ICANN community.
- In addition to the RFP, the NGPC indicates that ICANN is currently consulting with registrars and the broader ICANN community to define the process by which the inaccurate records are forwarded to registrars, resolved, and re-checked by the Accuracy Reporting System. ICANN should provide a briefing to the GAC on this consultation, and ensure that the GAC has ample opportunity to provide government views.

Security Audits:

- Similarly, the NGPC's response to the GAC's questions regarding the mechanisms and timeframes for the conduct of security checks by Registries indicates that ICANN would solicit input from the ICANN community to develop a framework for Registries to respond to identified security risks. However, the NGPC has provided no details as to either the parameters for this framework or when this consultation will occur. ICANN should provide a briefing to the GAC on this consultation, to ensure that the GAC has ample opportunity to provide government views.

Validation/Verification of Credentials in Category 1 strings:

- It is disappointing that the NGPC continues to resist the GAC's advice, beginning with its Beijing Communique, that Registries for strings representing regulated and highly regulated sectors should verify and validate the credentials of domain name registrants. The GAC advice required Registry Operators to proactively screen Category 1 Registrants to ensure that they are what they purport to be before they may do business with the public using the name of a regulated sector such as a bank or pharmacy. The looser requirement that registrants provide some "representation" that they possess the appropriate credentials (e.g. as a bank, insurer, pharmacy, etc.) poses the risk of consumer fraud and potential harm because bad actors will not hesitate to make false representations about their credentials. It would be in the best interests of those Registries whose gTLDs represent such strings to demonstrate their commitment to best practices by engaging in the verification and validation of credentials and the avoidance of consumer confusion, fraud and/or harm.
- By eliminating the requirement to consult with relevant authorities in case of doubt about the authenticity of credentials; and the requirement to conduct periodic post-registration checks to ensure that Registrants' continue to possess valid credentials and generally conduct their activities in the interests of the consumers they serve, the NGPC has swept away procedures designed to protect the public from falling prey to scammers and other criminals.
- The majority of new gTLD applicant responses to the GAC's Singapore advice fully endorse the GAC's advice regarding the importance of validation and verification of credentials. It would be constructive for the GAC to consider reaching out to the new and potential Registries on this subject during the London meeting if possible. The ICANN Board should, at a minimum, publicly recognize that a significant number of potential Registries associated with highly regulated sectors are willing to conduct the verification and validation of credentials, as an example that other Registries should endeavor to follow.

Public Interest Commitments Dispute Resolution Process (PICDRP):

- As an untested process, it is difficult to assess whether the PICDRP will provide a suitably nimble method of addressing serious threats, such as botnets and malware.
- As currently drafted, the PICDRP suggests that ICANN may decline to impose any remedial measure, even if the Registry Operator fails to comply with the compliance notice generated through the process, raising questions as to its effectiveness.
- There also appears to be a critical loophole in the PICDRP, in that there may be no resolution to the report of non-compliance. If the Registry Operator disagrees with the proposed remedial measure, they can invoke yet another alternate dispute resolution process (see B.4.4.6), all of which would occur after potentially more than 105 days has elapsed, an excessive time period in circumstances where time is of the essence, i.e, botnets, public safety concerns.

- The NGPC to reconsider the GAC's Singapore advice and, in particular, to provide a more definitive resolution process to ensure that non-compliance is effectively addressed.

Ensuring Non-Discriminatory Registration Policies:

- Transparency alone is insufficient to deter Registries from adopting discriminatory or preferential registration policies.
- The NGPC should reconsider its position, particularly since the GAC has clearly advised that it does not believe the current requirements in Specification 11 actually meet either the spirit or the intent of the GAC's advice.