Governmental Advisory Committee

Beijing, People's Republic of China – 11 April 2013

GAC Communiqué – Beijing, People's Republic of China[1]

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Beijing during the week of 4 April 2013. Sixty-one (61) GAC Members participated in the meetings and e**i**ght (8) Observers. The GAC expresses warm thanks to the local hosts China Internet Network Information Center (CNNIC), China Organizational Name Administration Center (CONAC), and Internet Society of China for their support.

II. Internal Matters

1. New Members and Observers

The GAC welcomes Belarus, Cape Verde, Côte d'Ivoire, Lebanon, and the Republic of the Marshall Islands to the Committee as members, and The World Meteorological Organisation as an Observer.

2. GAC Secretariat

Following a request for proposals, the GAC received presentations from two organizations and agreed that one such candidate should be providing secretariat services to the GAC, with the aim of becoming operational as soon as possible. Negotiations with such organization will start immediately after the Beijing meeting.

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[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.

3. **GAC Leadership**

   The GAC warmly thanks the outgoing Vice-Chairs, Kenya, Singapore, and Sweden and welcomes the incoming Vice-Chairs, Australia, Switzerland and Trinidad & Tobago.

III. Inter-constituencies Activities

1. **Meeting with the Accountability and Transparency Review Team 2 (ATRT 2)**

   The GAC met with the ATRT 2 and received an update on the current activities of the ATRT 2. The exchange served as an information gathering session for the ATRT 2 in order to hear GAC member views on the Review Team processes and areas of interest for governments. The GAC provided input on governmental processes and the challenges and successes that arose during the first round of reviews, and implementation of the GAC related recommendations of the first Accountability and Transparency Review Team.

2. **Board/GAC Recommendation Implementation Working Group (BGRI-WG)**

   The Board–GAC Recommendation Implementation Working Group (BGRI–WG) met to discuss further developments on ATRT1 recommendations relating to the GAC, namely recommendations 11 and 12. In the context of Recommendation 11, the GAC and the Board have concluded the discussion and agreed on the details of the consultation process mandated per ICANN Bylaws, should the Board decide not to follow a GAC advice. With respect to Recommendation 12, on GAC Early Engagement, the BGRI-WG had a good exchange with the GNSO on mechanisms for the GAC to be early informed and provide early input to the GNSO PDP. The BGRI–WG intends to continue this discussion intersessionally and at its next meeting in Durban.

3. **Brand Registry Group**

   The GAC met with the Brand Registry Group and received information on its origins, values and missions.

4. **Law Enforcement**

   The GAC met with law enforcement representatives and received an update from Europol on the Registrar Accreditation Agreement (RAA).

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The GAC warmly thanks the Accountability and Transparency Review Team 2, the Brand Registry Group, Law Enforcement, and the ICANN Board 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 Beijing.

IV. GAC Advice to the ICANN Board[2]

1. New gTLDs

a. GAC Objections to Specific Applications

i. The GAC Advises the ICANN Board that:

    i. The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:[3].

        1. The application for .africa (Application number 1-1165-42560)

        2. The application for .gcc (application number: 1-1936-2101)

    ii. With regard to Module 3.1 part II of the Applicant Guidebook[4]:

        1. The GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.

b. Safeguard Advice for New gTLDs

To reinforce existing processes for raising and addressing concerns the GAC is providing safeguard advice to apply to broad categories of strings (see Annex I).

c. Strings for Further GAC Consideration

In addition to this safeguard advice, that GAC has identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban.

    i. Consequently, **the GAC advises the ICANN Board** to:　not proceed beyond Initial Evaluation with the following strings : .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .date, .spa, . yun, .thai, .zulu, .wine, .vin

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[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/gacweb/GAC+Recent+Meetings

[3] Module 3.1: "The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.

[4] Module 3.1: "The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

d. The GAC requests:

 i. a written briefing about the ability of an applicant to change the string applied for in order to address concerns raised by a GAC Member and to identify a mutually acceptable solution.

e. Community Support for Applications

 The GAC advises the Board:

 i. that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information.

f. Singular and plural versions of the same string as a TLD

The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion.

Therefore **the GAC advises the ICANN Board to:**

 i. Reconsider its decision to allow singular and plural versions of the same strings.

g. Protections for Intergovernmental Organisations

The GAC stresses that the IGOs perform an important global public mission with public funds, they are the creations of government under international law, and their names and acronyms warrant special protection in an expanded DNS. Such protection, which the GAC has previously advised, should be a priority.

This recognizes that IGOs are in an objectively different category to other rights holders, warranting special protection by ICANN in the DNS, while also preserving sufficient flexibility for workable implementation.

The GAC is mindful of outstanding implementation issues and commits to actively working with IGOs, the Board, and ICANN Staff to find a workable and timely way forward.

Pending the resolution of these implementation issues, the **GAC reiterates its advice to the ICANN Board that:**

 i. appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch.

2. **Registrar Accreditation Agreement (RAA)**

Consistent with previous communications to the ICANN Board

a. **the GAC advises the ICANN Board that:**

  i. the 2013 Registrar Accreditation Agreement should be finalized before any new gTLD contracts are approved.

The GAC also strongly supports the amendment to the new gTLD registry agreement that would require new gTLD registry operators to use only those registrars that have signed the 2013 RAA.

The GAC appreciates the improvements to the RAA that incorporate the 2009 GAC-Law Enforcement Recommendations.

The GAC is also pleased with the progress on providing verification and improving accuracy of registrant data and supports continuing efforts to identify preventative mechanisms that help deter criminal or other illegal activity. Furthermore the GAC urges all stakeholders to accelerate the implementation of accreditation programs for privacy and proxy services for WHOIS.

3. **WHOIS**

The GAC urges the ICANN Board to:

  a. ensure that the GAC Principles Regarding gTLD WHOIS Services, approved in 2007, are duly taken into account by the recently established Directory Services Expert Working Group.

The GAC stands ready to respond to any questions with regard to the GAC Principles.

The GAC also expects its views to be incorporated into whatever subsequent policy development process might be initiated once the Expert Working Group concludes its efforts.

4. **International Olympic Committee and Red Cross /Red Crescent**

Consistent with its previous communications, **the GAC advises the ICANN Board to:**

  a. amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.

5. **Public Interest Commitments Specifications**

The GAC requests:

      b.   more information on the Public Interest Commitments Specifications on the basis of the questions listed in annex II.

V. Next Meeting

The GAC will meet during the period of the 47th ICANN meeting in Durban, South Africa.

ANNEX I

Safeguards on New gTLDs

The GAC considers that Safeguards should apply to broad categories of strings. For clarity, this means any application for a relevant string in the current or future rounds, in all languages applied for**.**

The GAC advises the Board that all safeguards highlighted in this document as well as any other safeguard requested by the ICANN Board and/or implemented by the new gTLD registry and registrars should:

- be implemented in a manner that is fully respectful of human rights and fundamental freedoms as enshrined in international and, as appropriate, regional declarations, conventions, treaties and other legal instruments – including, but not limited to, the UN Universal Declaration of Human Rights.
- respect all substantive and procedural laws under the applicable jurisdictions.
- be operated in an open manner consistent with general principles of openness and non-discrimination.

Safeguards Applicable to all New gTLDs

The GAC Advises that the following six safeguards should apply to all new gTLDs and be subject to contractual oversight.

1. **WHOIS verification and checks** —Registry operators will conduct checks on a statistically significant basis to identify registrations in its gTLD with deliberately false, inaccurate or incomplete WHOIS data at least twice a year. Registry operators will weight the sample towards registrars with the highest percentages of deliberately false, inaccurate or incomplete records in the previous checks. Registry operators will notify the relevant registrar of any inaccurate or incomplete records identified during the checks, triggering the registrar's obligation to solicit accurate and complete information from the registrant.

2. **Mitigating abusive activity**—Registry operators will ensure that terms of use for registrants include prohibitions against the distribution of malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.

3. **Security checks**— While respecting privacy and confidentiality, Registry operators will periodically conduct a technical analysis to assess whether domains in its gTLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. If Registry operator identifies security risks that pose an actual risk of harm, Registry operator will notify the relevant registrar and, if the registrar does not take immediate action, suspend the domain name until the matter is resolved.

4. **Documentation**—Registry operators will maintain statistical reports that provide the number of inaccurate WHOIS records or security threats identified and actions taken as a result of its periodic WHOIS and security checks. Registry operators will maintain these reports for the agreed contracted period and provide them to ICANN upon request in connection with contractual obligations.

5. **Making and Handling Complaints** – Registry operators will ensure that there is a mechanism for making complaints to the registry operator that the WHOIS information is inaccurate or that the domain name registration is being used to facilitate or promote malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.

6. **Consequences** – Consistent with applicable law and any related procedures, registry operators shall ensure that there are real and immediate consequences for the demonstrated provision of false WHOIS information and violations of the requirement that the domain name should not be used in breach of applicable law; these consequences should include suspension of the domain name.

The following safeguards are intended to apply to particular categories of new gTLDs as detailed below.

Category 1

Consumer Protection, Sensitive Strings, and Regulated Markets:

The GAC Advises the ICANN Board:

- Strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm. The following safeguards should apply to strings that are related to these sectors:

    1. Registry operators will include in its acceptable use policy that registrants comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.
    2. Registry operators will require registrars at the time of registration to notify registrants of this requirement.
    3. Registry operators will require that registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law and recognized industry standards.
    4. Establish a working relationship with the relevant regulatory, or industry self-regulatory, bodies, including developing a strategy to mitigate as much as possible the risks of fraudulent, and other illegal, activities.

5. Registrants must be required by the registry operators to notify to them a single point of contact which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.

In the current round the GAC has identified the following non-exhaustive list of strings that the above safeguards should apply to:

- **Children:**
  - .kid, .kids, .kinder, .game, .games, .juegos, .play, .school, .schule, .toys
- **Environmental:**
  - .earth, .eco, .green, .bio, .organic
- **Health and Fitness:**
  - .care, .diet, .fit, .fitness, .health, .healthcare, .heart, .hiv, .hospital,, .med, .medical, .organic, .pharmacy, .rehab, .surgery, .clinic, .healthy (IDN Chinese equivalent), .dental, .dentist .doctor, .dds, .physio
- **Financial:**
  - capital, . cash, .cashbackbonus, .broker, .brokers, .claims, .exchange, .finance, .financial, .fianancialaid, .forex, .fund, .investments, .lease, .loan, .loans, .market, . markets, .money, .pay, .payu, .retirement, .save, .trading, .autoinsurance, .bank, .banque, .carinsurance, .credit, .creditcard, .creditunion,.insurance, .insure, ira, .lifeinsurance, .mortgage, .mutualfunds, .mutuelle, .netbank, .reit, .tax, .travelersinsurance, .vermogensberater, .vermogensberatung and .vesicherung.
- **Gambling:**
  - .bet, .bingo, .lotto, .poker, and .spreadbetting, .casino
- **Charity:**
  - .care, .gives, .giving, .charity (and IDN Chinese equivalent)
- **Education:**
  - degree, .mba, .university
- **Intellectual Property**
  - .audio, .book (and IDN equivalent), .broadway, .film, .game, .games, .juegos, .movie, .music, .software, .song, .tunes, .fashion (and IDN equivalent), .video, .app, .art, .author, .band, .beats, .cloud (and IDN equivalent), .data, .design, .digital, .download, .entertainment, .fan, .fans, .free, .gratis, .discount, .sale, .hiphop, .media, .news, .online, .pictures, .radio, .rip, .show, .theater, .theatre, .tour, .tours, .tvs, .video, .zip
- **Professional Services:**
  - .abogado, .accountant, .accountants, .architect, .associates, .attorney, .broker, .brokers, .cpa, .doctor, .dentist, .dds, .engineer, .lawyer, .legal, .realtor, .realty, .vet
- **Corporate Identifiers:**
  - .corp, .gmbh, .inc, .limited, .llc, .llp, .ltda, .ltd, .sarl, .srl, .sal
- **Generic Geographic Terms:**
  - .town, .city, .capital

- .reise, .reisen[5]
- .weather
- .engineering
- .law
- **Inherently Governmental Functions**
  - .army, .navy, .airforce
- In addition, applicants for the following strings should develop clear policies and processes to minimise the risk of cyber bullying/harassment
  - .fail, .gripe, .sucks, .wtf

The GAC further advises the Board:

1. In addition, some of the above strings may require further targeted safeguards, to address specific risks, and to bring registry policies in line with arrangements in place offline. In particular, a limited subset of the above strings are associated with market sectors which have clear and/or regulated entry requirements (such as: financial, gambling, professional services, environmental, health and fitness, corporate identifiers, and charity) in multiple jurisdictions, and the additional safeguards below should apply to some of the strings in those sectors:

   6. At the time of registration, the registry operator must verify and validate the registrants' authorisations, charters, licenses and/or other related credentials for participation in that sector.
   7. In case of doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents.

   8. The registry operator must conduct periodic post-registration checks to ensure registrants' validity and compliance with the above requirements in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve.

Category 2

Restricted Registration Policies

The GAC advises the ICANN Board:

1. **Restricted Access**
   - As an exception to the general rule that the gTLD domain name space is operated in an open manner registration may be restricted, in particular for strings mentioned under category 1

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[5] Austria, Germany, and Switzerland support requirements for registry operators to develop registration policies that allow only travel-related entities to register domain names. Second Level Domains should have a connection to travel industries and/or its customers

above. In these cases, the registration restrictions should be appropriate for the types of risks associated with the TLD. The registry operator should administer access in these kinds of registries in a transparent way that does not give an undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage.

2. **Exclusive Access**
   - For strings representing generic terms, exclusive registry access should serve a public interest goal.

     - In the current round, the GAC has identified the following non-exhaustive list of strings that it considers to be generic terms, where the applicant is currently proposing to provide exclusive registry access

       - .antivirus, .app, .autoinsurance, .baby, .beauty, .blog, .book, .broker, .carinsurance, .cars, .cloud, .courses, .cpa, .cruise, .data, .dvr, .financialaid, .flowers, .food, .game, .grocery, .hair, .hotel, .hotels .insurance, .jewelry, .mail, .makeup, .map, .mobile, .motorcycles, .movie, .music, .news, .phone, .salon, .search, .shop, .show, .skin, .song, .store, .tennis, .theater, .theatre, .tires, .tunes, .video, .watches, .weather, .yachts, .クラウド [cloud], .ストア [store], .セール [sale], .ファッション [fashion], .家電 [consumer electronics], .手表 [watches], .書籍 [book], .珠宝 [jewelry], .通販 [online shopping], .食品 [food]

ANNEX II

List of questions related to Public Interest Commitments Specifications

1. Could a third party intervene or object if it thinks that a public interest commitment is not being followed? Will governments be able to raise those sorts of concerns on behalf of their constituents?

2. If an applicant does submit a public interest commitment and it is accepted are they able to later amend it? And if so, is there a process for that?

3. What are ICANN's intentions with regard to maximizing awareness by registry operators of their commitments?

4. Will there be requirements on the operators to maximize the visibility of these commitments so that stakeholders, including governments, can quickly determine what commitments were made?

5. How can we follow up a situation where an operator has not made any commitments? What is the process for amending that situation?

6. Are the commitments enforceable, especially later changes? Are they then going into any contract compliance?

7. How will ICANN decide whether to follow the sanctions recommended by the PIC DRP? Will there be clear and transparent criteria? Based on other Dispute Resolution Procedures what is the expected fee level?

8. If serious damage has been a result of the past registration policy, will there be measures to remediate the harm?