

Helsinki, 30th June 2016

GAC Communiqué – Helsinki, Finland ¹

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Helsinki, Finland during the week of the 27th of March 2016.

Seventy-Five (75) GAC Members and Twelve (12) Observers attended the meeting.

II. Inter-Constituency Activities & Community Engagement

The GAC meeting was held as part of ICANN 56, which was the first Policy Forum under the new ICANN meeting structure. Community engagement took place at the bilateral level, with GAC meeting with several ICANN constituencies; and at the cross-community level, with GAC participating in a range of cross-community sessions and leading one of them.

All GAC plenary sessions were conducted as open meetings.

1. Meeting with the Generic Name Supporting Organisation (GNSO)

The GAC met with the GNSO Council and discussed:

- The current range of policy development processes, noting the value of GAC Member representatives' participation in such processes, including sharing information on a national government basis.
- The GAC-GNSO Consultation Group on GAC Early Engagement in Policy Development, including a recent survey of GAC and GNSO Members on the Quick Look Mechanism and other outcomes; and noting the aim of completing the Group's work by ICANN 57.

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>.

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- The need to address outstanding issues concerning protections of names and acronyms of Inter-Governmental Organisations and of the Red Cross Red Crescent movement.

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

The GAC met with the ccNSO Council and discussed:

- Implementation of the adopted Framework of Interpretation regarding re-delegation aspects for ccTLDs;
- Proposed ccNSO Policy Development Process on retirement and review of ccTLDs;
- Results of the survey conducted by the GAC of relationships between governments and ccTLD administrators.

3. Meeting with the Security and Stability Advisory Committee (SSAC)

The GAC met with members of the SSAC and discussed:

- SSAC positions regarding dotless domains.
- Issues related to IPv4 exhaustion and IPV6
- Metrics for new gTLDs

4. Cross-Community Sessions

GAC Members engaged actively in the range of cross-community sessions held as part of the new Policy Forum meeting structure.

The GAC acted as lead for the session on workload scheduling and management.

III. Internal Matters

1. New Members

The GAC welcomed Belize, Suriname, Guyana, Panama, Honduras and Republic of Congo as new Members. This brings GAC membership to 168 Members, and 35 Observers.

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

The GAC met with the BGRI-WG, re-convened to consider the effectiveness of GAC advice and:

- Agreed to fine-tune the current description of what constitutes GAC advice;

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- Agreed to create a template that includes all aspects that need to be considered in any GAC advice;
- Agreed, as a pilot, to have a post-communiqué exchange with the Board to ensure common understanding of GAC advice provided in the communiqué; and
- Agreed to the BGRI-WG suggested work plan regarding activities to be accomplished intersessionally, between the Helsinki and Hyderabad meetings, and beyond.

3. GAC Capacity-Building

The GAC held a Capacity Building session at ICANN56, co-organized by the GAC Working Group on Underserved Regions and ICANN's GE/GSE team.

As an outcome of the session, the Co-Chairs of the Working Group invited the GE/GSE team to pursue closer co-operation and work together to assist GAC Member government officials in building capacity and expertise on various DNS-related topics.

In parallel, the GAC Working Group will identify priority areas and issues that the GE/GSE team could include in their engagement related to capacity building.

4. GAC Working Group: Updates as reported to the GAC

GAC Working Groups met and reported to the GAC as follows:

Human Rights and International Law: The Working Group reviewed its workplan agreed intersessionally and decided to prioritise its active participation in the CCWG-Accountability sub-group on Human Rights. Volunteers were invited to lead on other workplan topics. IGO observers on the GAC were invited to provide the Working Group with information about relevant conventions and other legal frameworks. An information exchange was held with the Cross Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights (CCWP-HR).

Protection of Geographic Names in New gTLDs: The Working Group met during the ICANN Helsinki meeting, and will continue working on documents dealing with the concept of "public interest" and "Best practices for future new gTLD rounds". Additionally, it will continue working on finding more accurate definitions and usage of geo-names lists.

GAC Participation in the NomCom: The Working Group met during the ICANN Helsinki meeting. Different scenarios for GAC participation in NomCom were reviewed. The WG will develop draft GAC criteria for selection of leadership positions in ICANN, to be shared with the whole GAC. The

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Working Group will continue its work and will contact NomCom leadership to set up a face to face meeting during the next ICANN meeting in Hyderabad.

Public Safety: The Working Group continued to contribute to work streams including: Privacy and Proxy Services Accreditation Issues (PPSAI); Next-Generation gTLD Registration Directory Services; follow-up on implementation of previous GAC advice concerning WHOIS cross-validation obligations in the 2013 Registrar Accreditation Agreement; and a compilation of WHOIS case studies. The Working Group also participated actively in the work of the New gTLD Competition, Consumer Trust and Consumer Choice Review. Capacity building efforts moved forward in collaboration with ICANN's Security, Stability and Resiliency (SSR) team and the GAC Underserved Regions Working Group.

Review of GAC Operating Principles: The Working Group led the GAC plenary session on this issue. A work plan will be developed and circulated for adoption by the GAC before the Hyderabad meeting.

5. Independent GAC Secretariat

The GAC re-affirmed its view that a sustainable, independent, accountable and transparent secretariat is essential for the GAC to perform its functions. Sources of funding will be explored with the aim of continuing current arrangements after the current contract with ACIG expires in July 2017.

IV. Transition of IANA Stewardship Transition and Enhancing ICANN Accountability

The GAC agreed to nominate a liaison to the Customer Standing Committee that forms part of the post-transition IANA structure.

GAC Members will work inter-sessionally to determine the conditions under which GAC will take part in the new empowered community mechanism as a decisional participant under the ICANN Bylaws.

GAC Members will continue to actively engage within the Cross Community Working Group on Enhancing ICANN Accountability as Work Stream 2 issues are progressed. The GAC agreed to nominate Denmark, Iran, Canada, Brazil and Argentina as members of the CCWG for WorkStream2.

V. Other Issues

1. Competition, Consumer Trust and Consumer Choice (CCT) Review Team

The GAC was briefed on the work of the Competition, Consumer Trust and Consumer Choice Review Team (CCT-RT) by the Chair of the Team.

GAC Members provided feedback on several issues being considered by the CCT-RT.

2. Community-based gTLD Applications

Following to the GAC's discussion in Marrakech of the many problems encountered by community-based gTLD applicants in the current gTLD round, it was noted that a review of the experience of these gTLD applications by two independent experts facilitated by the Council of Europe is now being undertaken. The outcome of this review is expected to be available at the next meeting of the GAC with a view to serving as an input into current community efforts on new gTLDs, including the New gTLD Subsequent Procedures Policy Development Process.

3. IGO Protections

The GAC remains committed to protections of IGO names and acronyms at the top and second levels, which are in the public interest given that IGOs, as publicly-funded entities created by governments under international law, are objectively unique rights holders. The GAC recalls its advice since the 2012 Toronto Communiqué in this regard, and remains of the view that:

(i) concerning preventive protection at the second level, that notice of a match to an IGO name or acronym to prospective registrants as well as the concerned IGO should be mandated in perpetuity for the concerned name and acronym in two languages and at no cost to IGOs;

(ii) concerning curative protection at the second level, and noting the ongoing GNSO PDP on access to curative rights protection measures, that any such mechanism should be separate from the existing UDRP, offer parties an “appeal” through arbitration, and be at no or nominal cost to IGOs;

The GAC notes the ongoing work of the informal “small group” and the efforts of those involved to develop mechanisms that implement the above-mentioned advice.

The GAC remains of the view that the preventive protections for IGO acronyms should be maintained pending the implementation of mechanisms for the permanent protection of IGO names and acronyms at the top and second levels.

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4. Red Cross Red Crescent Red Crystal

The GAC noted that further consultations were being undertaken by the GNSO with the Board in order to resolve the remaining differences between the GNSO recommendations and the GAC's long-standing advice that the current provisional protection of Red Cross, Red Crescent and Red Crystal designations and identifiers should be made permanent in accordance with the distinct legal and policy grounds for such protection. The GAC urges the Board to reach a solution as soon as possible.

IV. GAC Advice to the Board²

1. Future gTLDs Policies and Procedures

a. The GAC advises the ICANN Board that:

- I. The starting point for development of policy on further releases of new gTLDs should first take into consideration the results of all relevant reviews of the new gTLD round and determine which aspects and elements need adjustment. In addition, the following should be addressed:
 - a. Requirements with regard to interoperability, security, stability and resiliency should be met.
 - b. An objective and independent analysis of costs and benefits should be conducted beforehand, drawing on experience with and outcomes from the recent round; and
 - c. There should be an agreed policy and administrative framework that is supported by all stakeholders.
- II. All measures available to the Board should be used to ensure that a comprehensive and measured approach to further releases of new gTLDs is taken in a logical, sequential and coordinated way rather than through

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>

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parallel and overlapping efforts and/or timeframes that may not be agreed by all relevant interests.

RATIONALE

1. There is currently no public policy reason why further releases of new gTLDs should not proceed as a general principle. There are, however, valid public policy reasons for applying a range of requirements at the application and post-delegation stages. The GAC believes such requirements derive at least in part from ICANN's obligations with regard to the global public interest, as contained in existing and proposed Articles of Incorporation and Bylaws.
2. Data is not currently available to allow a proper assessment, both quantitative and qualitative, of the round that is now concluding. Some important data, for example with regard to consumer safety and security, may not yet be being collected. To ensure a logical and efficient process, such data should be gathered before policy development processes move too far ahead.

2. Privacy and Proxy Services Accreditation Issues

a. The GAC advises the ICANN Board that:

- I. the recommendations set forth by the GNSO PDP Working Group on Privacy and Proxy Services Accreditation Issues (PPSAI) raise important public policy issues highlighted by the GAC in its comments on the PPSAI's Initial Report.
- II. the Board should ensure that the dialogue on constructive and effective ways to address GAC concerns is continued.
- III. if the Board resolves to adopt the PPSAI recommendations, it should direct the Implementation Review Team (IRT) to ensure that the GAC concerns are effectively addressed in the implementation phase to the greatest extent possible.
- IV. GAC input and feedback should be sought out as necessary in developing a proposed implementation plan, including through participation of the Public Safety Working Group on the Implementation Review Team.
- V. If, in the course of the implementation discussions, policy issues emerge, they should be referred back to the GNSO for future deliberations in consultation with the GAC on potential enhancements to privacy and proxy service accreditation.

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RATIONALE

In its comments on the Privacy Proxy Services Accreditation Issues (PPSAI) PDP WG Initial Report, the GAC highlighted public policy concerns raised by the PPSAI Working Group's recommendations, notably that:

1. Law enforcement and consumer protection authority requests for information from privacy and proxy service providers call for confidentiality as required and/or permitted by local laws;
2. The PPSAI's definition of "Law Enforcement Authority" as governed by the jurisdiction of the privacy or proxy service provider might imply that service providers need only respond to law enforcement requests from within their own jurisdiction while many investigations are cross-border, and;
3. Privacy and proxy services should not be available for domains actively engaged in the collection of money for a good or service. Because these GAC comments were not reflected in the PPSAI Final Report, the GAC, in its Marrakech Communiqué, advised the ICANN Board to allow sufficient time for GAC consideration and discussion of these issues at ICANN 56.

At ICANN 56 the GAC met with members of the ICANN Board, the GNSO Council, and the Co-Chairs of the PPSAI WG. Constructive discussions were held on how GAC concerns with the recommendations could be addressed during the implementation of the Working Group recommendations.

The discussions highlighted that most of the GAC concerns might be addressed during the implementation phase. Specific measures discussed include:

1. A law enforcement Disclosure Framework that could detail the appropriate authorization and confidentiality requirements for law enforcement requests linked to ongoing investigations. Such a disclosure framework could also possibly address processes for P/P service providers to respond to requests from jurisdictions other than their own.
2. A de-accreditation process that could provide the means to revoke the accreditation of providers harboring actors engaged in deceptive, unfair, or fraudulent conduct or repeatedly not responding to LEA requests.

3. Two-letter country/territory codes at the second level

The GAC has discussed plans proposed by Registry Operators to mitigate the risk of confusion between country codes and 2-letter second level domains under new gTLDs.

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Some countries and territories have stated they require no notification for the release of their 2 letter codes for use at the second level. The GAC considers that, in the event that no preference has been stated, a lack of response should not be considered consent. Some other countries and territories require that an applicant obtains explicit agreement of the country/territory whose 2-letter code is to be used at the second level.

a. The GAC advises the ICANN Board to:

- i. urge the relevant Registry or the Registrar to engage with the relevant GAC members when a risk is identified in order to come to an agreement on how to manage it or to have a third-party assessment of the situation if the name is already registered.

RATIONALE

This advice is consistent with previous advice given by the GAC on this matter and reflects discussions across a wide range of GAC members during the Helsinki meeting.

4. Use of 3-letter codes in the ISO-3166 list as gTLDs in future rounds

a. The GAC advises the ICANN Board to:

- i. encourage the community to continue in depth analyses and discussions on all aspects related to a potential use of 3-letter codes in the ISO-3166 list as gTLDs in future rounds, in particular with regard to whether such a potential use is considered to be in the public interest or not.
- ii. keep current protections in place for 3-letter codes in the ISO-3166 list in place and not to lift these unless future in-depth discussions involving the GAC and the other ICANN constituencies would lead to a consensus that use of these 3-letter codes as TLDs would be in the public interest.

RATIONALE

In view of the intense debates and controversies over the use of geographic names in new gTLDs, the GAC requests that the community does not rush into a removal of the Applicant Guidebook protection of ISO 3166-1 alpha-3 codes. This move could have political ramifications.

ISO 3166-1 3-letter codes have strong associations with the country or territory they represent, sometimes even stronger than their 2-letter equivalent. Some GAC Members consider it appropriate to reserve their use for the local community or for purposes related to the country or

territory identified. Some other Members consider that there may be other legitimate uses for the code that they would consider to allow.

The interests of countries and territories not yet represented in the GAC should also be taken into account.

For these reasons, the GAC requests time and sincere engagement in an all-inclusive dialogue among governments and stakeholders to identify and address concerns and potential risks before any proposal to change the status quo is made.

5. Protection of IGO Names and Acronyms

a. The GAC advises the ICANN Board to:

- i. pursue its engagement with both the GAC and the GNSO on the issue of IGO protections in an effort to reconcile differences between GNSO and GAC advice on this topic while remaining responsive to concerns laid out in GAC advice issued since the Toronto Communiqué;

Taking into account the number of individuals who have joined both the Board and the GNSO since the GAC first brought this issue to the attention of the ICANN Community,

b. The GAC advises the ICANN Board to:

- i. engage the IGOs in its discussions (both within the Board and with the GNSO) where appropriate, given that the IGOs are best-placed to comment upon the compatibility of any proposals with their unique status as non-commercial, publicly-funded creations of government under international law.

RATIONALE

This piece of advice is designed to encourage the Board to engage proactively with the GAC and GNSO on this important issue in order to continue the productive exchanges undertaken in Helsinki.

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VIII. Next Meeting

The GAC will meet during ICANN 57 in Hyderabad, India, scheduled for 3-9 November 2016.