ICANN | GAC

Governmental Advisory Committee

ICANN67 Virtual Community Forum, 16 March 2020

GAC Communiqué – ICANN67 Virtual Community Forum[1]

The GAC ICANN67 Communiqué was drafted and agreed remotely during the ICANN67 Virtual Community Forum. The Communiqué was circulated to the GAC immediately after the meeting to provide an opportunity for all GAC Members and Observers to consider it before publication, bearing in mind the special circumstances of a virtual meeting. No objections were raised during the agreed timeframe before publication.

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met via remote participation, from 9 to 12 March 2020. Per ICANN Board resolution[2] on 19 February 2020, in response to the public health emergency of international concern posed by the global outbreak of COVID-19, ICANN67 was transitioned from an in-person meeting in Cancún, Mexico, to the first-ever remote participation-only ICANN meeting.

Sixty one (61) GAC Members and six (6) Observers attended the meeting.

The GAC meeting was conducted as part of the ICANN67 Virtual Community Forum. All GAC plenary and working group sessions were conducted as open meetings.

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

[2] See resolution "Impact of COVID-19 on ICANN67" at: https://www.icann.org/resources/board-material/resolutions-2020-02-19-en

II. Inter-Constituency Activities and Community Engagement

Meeting with the ICANN Board

The GAC met with the ICANN Board and discussed:

- GAC views on key priorities for action of ICANN in 2020 and
- Other issues of current importance to the GAC, including:
    - Acquisition of PIR (.org)
    - Subsequent Rounds of New gTLDs
    - CCWG Accountability Workstream 2 Implementation
    - Access to non-public gTLD Registration Data; and
    - RDS-WHOIS2 Review Recommendations

Meeting with the At-Large Advisory Committee (ALAC)

The GAC met with members of the ALAC and discussed:

- The Expedited Policy Development Process (EPDP) on gTLD Registration Data, and
- Subsequent Rounds of New gTLDs.

Cross Community Discussions

GAC Members participated in relevant cross-community sessions scheduled as part of ICANN67, including Public Forum discussions of the Proposed Transfer of Ownership of the Public Interest Registry and meetings of GNSO Policy Development Process Working Groups on gTLD Registration Data, New gTLD Subsequent Procedures and Rights Protection Mechanisms.

III. Internal Matters

1. GAC Membership

There are currently 178 GAC Member States and Territories and 38 Observer Organizations.

2. GAC Working Groups

The GAC endorses the PSWG 2020-2021 work plan[3].

[3] https://gac.icann.org/file-asset/public/pswg-work-plan-2020-2021.pdf

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

The GAC Public Safety Working Group updated the GAC on ongoing discussions of DNS Abuse prevention and mitigation, including during virtual ICANN67 meetings held by various parts of the ICANN Community. The PSWG also shared information from its meeting with ICANN Compliance. The PSWG provided an overview of its work plan for 2020-21 for endorsement by the full GAC.

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

The GAC held its first GAC Capacity Building Workshop fully dedicated to Subsequent Rounds of New gTLDs with the support of GAC topic leads from Canada and Switzerland, co-chairs of GNSO New gTLD Subsequent Procedures PDP Working Group (Sub Pro PDP WG), ICANN Global Domains Division (GDD) and Government Engagement (GE) teams. The well-attended session offered an overview of policy development status and of GAC positions to date on topics of high interest to the GAC, for continued discussions in plenary sessions on the matter.

3. GAC Leadership

The GAC thanks Mr. Chérif Dialo (Senegal) and Mr. Pär Brumark (Niue) for their service as GAC Vice Chairs and wishes them well for the future.

IV. Issues of Importance to the GAC

Although it experienced a slightly reduced remote meeting agenda, the GAC had the opportunity for discussion of a number of topics of interest to GAC Members.

1. Acquisition of PIR (.org)

As a result of its discussions during ICANN67, the GAC agreed on sending this letter to the Chair of the ICANN Board:

> *The GAC highly appreciates the ICANN Board reviewing the transaction and considering it in the light of the global public interest, including the interests of the ".org" community;*
>
> *The GAC commends and encourages the ICANN Board to keep engaging with the ICANN community, including the GAC, and to ensure that the views of the community and the .org community, are properly taken into account. In this regard, we welcome the recent transparency steps both by ICANN and PIR to build the trust of the broader Internet community through public dialogues and other measures.*

Further, the GAC expects that clear and enforceable safeguards in the contractually binding Public Interest Commitments (PICs) are duly put in place to protect the public interest, including the interests of the ".org" community, in the long-standing spirit of the .org registry.

Finally, the GAC welcomes the reassurance you gave in the GAC/Board meeting during ICANN67 that all options remain open and that the Board will consider the public interest in its decision-making.

2. Subsequent Rounds of New gTLDs

The GAC prioritized Subsequent Procedures for new gTLDs during ICANN67, notably by devoting several GAC sessions to this topic, by not scheduling concurrent sessions with meetings of the GNSO New gTLD Subsequent Procedures PDP Working Group (Sub Pro PDP WG), and by actively participating in such PDP WG meetings. The GAC wishes to warmly thank the Sub Pro PDP WG Co-Chairs for their participation and engagement in GAC sessions on this topic. GAC Leadership in cooperation with USRWG conducted Intersessional work in order to prepare discussions on key topics of high interest to the GAC:

- Closed Generics
- Public Interest Commitments (PICs)
- Role of GAC Early Warning/GAC Advice
- Applicant Support Program
- Community Applications

The main aims for GAC preparations, discussions and engagement in this regard were to:

- Increase GAC awareness and knowledge of policy development in the Sub Pro PDP WG;
- Enable GAC members' participation in ICANN67 Sub Pro PDP WG sessions;
- Review and aim to update previous GAC positions;
- Identify positions/concerns for potential input to the PDP WG and upcoming public comment period of reports expected July 2020.

The Sub Pro PDP WG Co-Chairs noted that the text in their current working document reflects draft final recommendations, based on work conducted by the PDP WG. Current and further discussions are important to finalize recommendations, which are not final, and are all being submitted for public comment. The GAC expects, as anticipated by the PDP WG Co-chairs, that all recommendations being drafted, in consideration of past, current and future discussion, will all be submitted for public comments and any such comment considered fully.

Highlights from discussions in Sub Pro PDP WG and related GAC Plenary Sessions:

Closed generics

In the Beijing Communiqué the GAC advised that closed generic TLDs could be allowed if serving a public interest goal. The criteria for determining that a closed generic TLD serves such a public interest goal are still subject to discussion in the PDP WG. After initial exchanges, on the basis of the Beijing Communique, GAC Members agreed that further intersessional work should be conducted by them with a view to identifying criteria, examples and use-cases that may serve for assessing the public interest within the context of closed generics.

Public Interest Commitments (PICs)

Discussions on Public Interest Commitments (PICs), both voluntary and mandatory (mandatory PICs were not included in the 2007 GNSO policy recommendations) go in the direction of confirming the existing practice as policy for the future. One important area of focus for GAC Members was DNS Abuse as mandatory PICs were used to implement GAC advice on DNS Abuse, and specifically due to the referral of relevant CCT-RT Recommendations, which were passed by the Board to the GNSO and from its Council to the Sub Pro PDP WG. The PDP WG Co-Chairs indicated that the current recommendation text would refer DNS Abuse to a separate policy development process or other effort, which would address the issue holistically (i.e. not only for the next round). GAC members expressed concern with this approach, highlighting the importance of the CCT-RT Recommendations and the need to implement them in light of the GAC Montreal Advice on this matter.

GAC Early Warning/GAC Advice

The GAC notes that the current recommendations of the Sub Pro PDP WG contrast to some extent from GAC input on its Initial Report, since, inter alia, it is considering removing in future editions of the Applicant Guidebook that GAC Consensus Advice on an application "*will create a strong presumption for the ICANN Board that the application should not be approved*". Additionally, GAC Members expressed the need for further discussion of draft PDP WG recommendations regarding: the scope of the rationale of GAC Advice; and proposing that "*GAC Advice issued after the application period has begun must apply to* ***individual strings only****, based on the merits and details of the applications for that string, not on groups or classes of applications*."

Sub Pro PDP WG discussions on this topic noted that, with the intent to take into account the concerns expressed by GAC participants, alternative language will be drafted possibly referring recommendations back to the new ICANN Bylaws. The GAC noted the need for further discussion within the GAC and with the PDP WG.

Applicant Support

The GAC has expressed in prior input to the Sub Pro PDP WG its support for expanding and improving outreach to underserved regions, noting that such outreach in the Global South requires a more comprehensive approach and better targeting. Current PDP WG deliberations seem to align with GAC advice. It is envisaged that the GAC USRWG will submit further input to the PDP WG on current draft final recommendations on this matter. The GAC previously noted that ICANN Org

should identify which regions are considered as 'underserved' and 'underrepresented' and in what context they are defined as such. The GAC also previously recommended that once identified, in preparation for subsequent rounds, ICANN Org should provide regional targeted capacity building efforts on the Applicant Support Program for new gTLD Applications to all ICANN community stakeholders.

Community Applications

This topic was discussed in GAC sessions but was not addressed due to time constraints in the Sub Pro PDP WG sessions at ICANN67. The GAC supported the proposals in the Sub Pro PDP WG Initial Report for procedures to deal with community-based applications, as consistent with previous GAC advice. Additionally, the GAC notes that current text in the Sub Pro PDP WG draft final recommendations support the GAC's opinion that evaluators should also have necessary expertise in the field of communities and additional resources at their disposal to gather information about a Community Priority Evaluation (CPE) application and any opposition to that application. It was further noted that draft final recommendations include measures for improved transparency and predictability, aligned with concerns expressed by the GAC regarding the need for greater consistency in the CPE process, and the establishment of an appeals mechanism for the New gTLD Program. The GAC notes that consideration be given to providing support for non-profit community-based applications.

GAC Next Steps on Subsequent Rounds of New gTLDs

GAC Leadership and its current "topic leads" will lead intersessional work on the high-interest topics identified in the GAC Scorecard on Subsequent Rounds of New gTLDs. The aim is to coordinate potential GAC consensus input to the Sub Pro PDP WG, prepare for the upcoming ICANN68 meeting, and ultimately coordinate GAC views for public comment on the PDP WG Final Report expected in July 2020.

Interested GAC Members are encouraged to approach GAC topic leads in order to co-lead and/or actively contribute on any of the Subsequent Procedures key issues.

3. Domain Name Registration Directory Service and Data Protection

The GAC welcomes the progress made in the Expedited Policy Development Process (EPDP) on gTLD Registration Data and in particular the publication of the Phase 2 Initial Report for public comment. In this report, several policy recommendations are proposed, including the layout of a model for a Standardized System for Access and Disclosure (SSAD). The GAC will examine thoroughly those recommendations and will provide its input accordingly. Furthermore, the GAC notes the interaction between the Belgian Data Protection Authority and the ICANN Org with respect to the possibility of developing a centralized model that is GDPR-compliant and the encouragement to continue efforts to develop a comprehensive system for access. The GAC also notes that according to the Belgian DPA, the GDPR would not prohibit the automation of various functions in an access model.

In its Montreal Communiqué, the GAC advised, among other things, that ICANN should make available a standard request form for access to non-public information. In response, the ICANN Board noted that it could not obligate the contracted parties to use a standard form but that it could "collaborate" with Registries and Registrars to develop and make available such a form. During its meeting with the GAC, the Board acknowledged that such collaboration has not taken place. The GAC highlights that the EPDP Phase 2 Recommendations already contain consensus agreement on the Criteria and Content of Requests for access to non-public registration data (see Preliminary Rec. 3). The GAC also notes the recent work of the Registrar Stakeholder Group to develop a document that represents the minimum requirements for Registrars to respond to data disclosure requests for registration data.

The GAC emphasizes that the creation of a standard form is the most efficient way to ensure consistent access to non-public data for parties with a legitimate interest. Reasonable access to this information is essential to allow public authorities and other relevant entities to serve objectives such as law enforcement, cybersecurity, consumer protection or the protection of intellectual property. Such access remains a high priority for the GAC, especially in this interim period before a final system is implemented – a period which may take several years to complete. The GAC emphasizes that there already appears to be widespread consensus on what information requesters should provide. Consequently, the GAC strongly encourages the Contracted Parties to make every possible effort as quickly as possible to ensure the creation and adoption of a standard form across all Registrars and Registries based on the EPDP Phase 2 Recommendation 3 and the work of the Registrar Stakeholder Group, for use by those requesting access to non-public domain name registration data. In this process, consultation with the GAC is recommended.

V. Next Meeting

The GAC is scheduled to meet next during ICANN68 in Kuala Lumpur, Malaysia on 22-25 June 2020.