



Governmental Advisory Committee

San José, 16 March 2012

GAC Communiqué – San José, Costa Rica

Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in San José, Costa Rica during the week of March 10 - 16, 2012. Forty-seven GAC Members attended the meetings and 3 Observers. The GAC expresses warm thanks to the local host NIC Costa Rica, National Academy of Sciences for their support.

Capacity Building

The GAC held a Capacity Building session in which new members, and guests, were able to receive information and updates on the role of the GAC at ICANN, as well as learn about various work streams and topics currently being discussed within the GAC. As a result of recent outreach efforts the GAC has four new members, Turkmenistan, Samoa, Paraguay, and Nauru. During this meeting Ecuador, Bolivia and Regulatel attended as guests. The GAC considered and accepted the request of the World Trade Organisation to become an observer of the GAC.

The GAC continues to increase outreach to the regions in advance of meetings, as well as utilizing increased travel funding, and simultaneous interpretation during GAC sessions at ICANN meetings. The GAC continues to build on this and will continue to work toward receiving simultaneous interpretation, as well as document translation, in all UN languages and Portuguese this year.

New Generic Top Level Domains (gTLD)

A series of questions were posed to the ICANN Board by the GAC regarding each of these topics in Costa Rica. In addition to the exchange with the Board the GAC looks forward to written answers to the questions that were posed. [Annex I]

Defensive Registrations

With regard to defensive registrations the GAC looks forward to the end of the public comment period and the subsequent summary and analysis of the comments received, as well as a final decision from the ICANN Board on how to handle defensive registrations.

International Olympic Committee (IOC), Red Cross and Red Crescent

The GAC advises that the IOC, Red Cross and Red Crescent names should be protected without delay at the top level so that these protections can be applied as part of the first round of new gTLD applications. The GAC and Generic Names Supporting Organisation (GNSO) held a focused exchange on the efforts by members of the GNSO community to develop proposals to protect the IOC/Red Cross and Red Crescent names at the top and second levels. The GNSO Drafting Team provided an overview of its proposals to ensure effective protection is available at the top level, which the GAC concurred with. If approved by the GNSO Council, these proposals will be forwarded to the ICANN Board. In that event, the GAC urges the Board to act expeditiously on these proposals, to ensure that the IOC/Red Cross and Red Crescent names will benefit from full protection at the top level. During the exchange, the GAC confirmed the rationale for its consensus proposal to protect IOC/Red Cross and Red Crescent names. As this rationale is not outlined in the Applicant Guidebook the GAC notes the need for clarification of the underlying criteria.

Inter-governmental Organisations

The GAC welcomes the request from the Board for policy advice in relation to new gTLDs and the potential additional protection for inter-governmental organisations. The GAC will consider this and respond at the earliest opportunity.

Root Zone Scaling

The GAC had requested to receive a report on root zone scaling before the launch of the new gTLD application window the GAC expresses its concerns for not having received such a report as of today. Furthermore the GAC expects the Board to promptly furnish this report to GAC Members. This report should include all supporting data used to develop the conclusions of the report, as well as a description of the monitoring mechanisms that will be used to identify potential problems in the future.

Batching and Early Warning

The GAC looks forward to receiving from ICANN the final decision on how it intends to handle batching should it be necessary once the application window closes. The GAC raised concerns that a set of criteria or a process for batching has not yet been decided on. With regard to the

batching process and GAC Early Warning, the GAC appreciates the Board's consideration that should batching be necessary Early Warnings could also occur in batches. However, with no formal process or criteria for batching, it is still unclear to the GAC how batching will affect the Early Warning process and its feasibility.

Though the applicant's due diligence reports will not be available the GAC expects that if an applicant does not meet the criteria or the report is not satisfactory the application will not be allowed to proceed.

Applicant Support

The GAC welcomes the Joint Applicant Support Working Group (JAS WG) efforts and appreciate the call for Expression of Interest for the Support Applicant Review Panel (SARP). However, the GAC wishes to point out a few areas that need additional consideration:

1. Plans for a charitable foundation should be in place before the end of the application process to carry out additional fundraising functions and to enable needy applicants to make use of the support provided.

The GAC received an update from the Board about ongoing communication strategies regarding support for needy applicants, and information about how the funds will be managed throughout this process. The GAC and ALAC also discussed Applicant Support and the GAC is concerned about whether the publicity surrounding the Applicant Support program has been effective and reached those who need it.

Second Round of New gTLD applications

The GAC requested from the Board an update on the current plans for a second round of new gTLD applications including a request for a timeline for receiving the work plan as well as what might be covered in such a work plan. The GAC looks forward to the Board developing this plan and working with the community in order to ensure that an evaluation of the first round is adequately conducted and achieves positive results before any subsequent application rounds would move forward.

Trademark Clearinghouse

The GAC noted the staff proposals for communicating awareness amongst rights holders of their need to populate the database. The GAC looks forward to the ICANN report expected to be published at the end of March regarding the operation of the Trademark Clearinghouse.

Applicant Guidebook Text on Sensitive and Controversial Strings

The GAC offered in its Dakar communiqué three types of language that will be used for GAC advice in regard to new gTLD applications and this text was published in the Applicant Guidebook (AGB). During the exchange with the Board the GAC sought clarification of the additional language that was inserted by staff in the last version of the AGB without notification to the GAC. The GAC expects that the added language will be deleted.

GAC/Law Enforcement Agency (LEA) Recommendations, WHOIS, and Contract Compliance

In its meetings with the At-Large Advisory Committee (ALAC), the GNSO, the WHOIS Review Team and the Board the GAC discussed a range of overlapping issues relating to ICANN's contractual compliance and governance structures.

The GAC notes that there are two components to an effective compliance system: clear and enforceable contracts; and effective and pro-active enforcement.

In terms of contracts, the GAC stressed the critical importance of implementing the GAC/LEA recommendations, for improvements to the Registrar Accreditation Agreements and confirms its interest and availability to assist with the effort to conclude the negotiations for RAA amendments as soon as possible. The GAC encourages the Board to consider the RAA amendments in conjunction with the recommendations of the WHOIS Review Team. The GAC broadly supports the WHOIS Review Team's Draft Recommendations, and will closely monitor the Board's response and subsequent implementation activities.

In terms of compliance, the GAC requests an update on the status of the law enforcement recommendations that relate to due diligence activities by ICANN. More broadly, the GAC emphasises the need to ensure that ICANN's compliance activities are based on best practice principles and:

- have clear and appropriate lines of reporting and accountability,
- can be pursued pro-actively and independently of other interests, and
- are given appropriate priority, with independent and expert oversight.

To better inform future discussion on these issues, the GAC requests briefing from the Board at the Prague meeting on the structure and contractual arrangements in the domain registration industry, and on ICANN's role as an industry self-regulatory organisation.

The GAC noted that a common factor between these issues is whether ICANN adequately oversees, manages and enforces the obligations contained in its contracts with contracted parties. The GAC agreed to provide some examples of how organisations with similar self-regulatory responsibilities have separated their regulatory and operational

responsibilities. The GAC believes an effective compliance regime will benefit all users of the DNS.

Board/GAC Accountability and Transparency Review Team (ATRT) Recommendation Implementation Working Group (BGRI-WG)

The GAC and the Board agreed on the definition of GAC advice posted on the GAC Website here: (<https://gacweb.icann.org/display/gacweb/GAC+Advice>).

The Board and the GAC agreed in principle on the proposed approach developed by the BGRI-WG and staff for the GAC Advice Online Register. However, certain details of implementing the process (e.g. confirming its contents) remain to be addressed.

In relation to recommendation 12 the GAC believes that further analysis must be undertaken regarding the different work methods of the GAC and the SOs engaged in policy development, as a first step. As such the GAC requests the Board consult with the GAC prior to proposing joint work between the GAC and SOs, pending the results of this analysis.

With respect to ATRT recommendation 14, the GAC agreed that convening a high-level governmental meeting is one means of raising government support and commitment to the GAC process. Accordingly the GAC will continue to work toward the possibility of holding such a meeting during the next ICANN meeting in Prague. In addition, the BGRI-WG presented proposed milestones for implementing the ATRT Recommendations 9 - 14, and would welcome comments on the proposed milestones by March 31, 2012.

Ethics and Conflicts of Interest

The reform of ICANN's ethics and conflicts of interest policy remains an issue of critical importance for ICANN, the GAC, the community, and relevant stakeholders. The GAC therefore acknowledges the recent announcement of progress made in this area. At the same time, recognizing the complexity of the matter, the GAC notes the delay in delivering an updated policy, which the Board had planned to adopt during the Costa Rica meeting. The Board indicated that this work would be completed by Prague and the GAC looks forward to future public posting of commissioned reports on the topic. The GAC will continue to monitor progress closely.

Meeting with the Country Code Names Supporting Organization (ccNSO)

The GAC had a very useful discussion with the ccNSO Council. The GAC received with interest an interim report of the ccNSO Finance Working Group on actual contributions to ICANN and looks forward to the publication of the final report.

The GAC also received an update on progress of the Study Group of Use of Names for Countries and Territories.

The GAC agreed in principle to the Report on Consent provided by the Framework of Interpretation Working Group, noting that final approval depended on oversight and review of all chapters of the final report of the Working Group.

Meeting with the Security and Stability Advisory Committee (SSAC)

The GAC held yet another informative and valuable meeting with the Security and Stability Advisory Committee (SSAC) that focused on update an SSAC's recent activities. The update included the SSAC latest report on the Delegation of Single-Character Internationalized Top-Level Domains (SAC052) and a second SSAC report (SAC053) on dotless domains. The SSAC chair also informed the GAC about their ongoing work concerning deeper views on the issue on DNS blocking. The SSAC chair described report SAC051 that proposes a uniform WHOIS taxonomy and a structure including a roadmap that is currently for public comment (<http://tinyurl.com/SAC051>). The Chair further described the advanced analysis concerning the impact of new gTLDs on the stability of root zone file management with new gTLDs.

In the discussion after the information from SSAC, the GAC informed the SSAC that it is still very interested to hear more about potential harm of blocking of top level domains, IP addresses and also WHOIS related issues.

The GAC expressed its gratitude for the work of SSAC and showed a high interest in further dialogue with the SSAC.

Meeting with the ASO

The GAC thanks the ASO for a productive meeting regarding the ASO review status and for providing an update to the GAC on IPv4 Depletion and IPv6 adoption.

GAC Secretariat

The GAC discussed roles and responsibilities of the Secretariat and has agreed to form a taskforce to look at improvements to the existing model and appropriate governance arrangements with a view to taking a decision at the next GAC meeting to ensure that the GAC is adequately resourced to meet the challenges which will be imposed by the demanding schedule for processing new gTLD applications as well as its other activities.

The GAC warmly thanks the GNSO, the WHOIS Review Team, the ALAC, the SSAC, the ccNSO, the ASO, and the ICANN Board, as well as all those among the ICANN community who have contributed to the dialogue with the GAC in San José.

The GAC will meet during the period of the 44th ICANN meeting in Prague, Czech Republic.

ANNEX I

1. (Defensive Applications) What is the anticipated time at which the defensive applications issue will be resolved?
2. (Root zone scaling) When will the preview copy of the expected documentation be available? When will the document ultimately be available?
3. (Root zone scaling) Request for clarification that preview copy should go to whole GAC (i.e., not on a request basis) and status of document (i.e., represents point of view of Board, staff)
4. (Batching) When will the criteria for the batching process be decided?
5. (Batching) Will there be public comment on the process?
6. (Batching and EW) If batches are established, does the GAC Early Warning process apply to batches, or to all the applications? Will the batch timelines overlap/coincide with the 60 days currently in the AGB?
7. (Batching) Slide say that there would be "flexibility" with regard to GAC timelines for Early Warning – whose position is this (i.e., identify the “we” in the slide)? Is this a formal position of ICANN management or of the board? What does "flexibility" mean exactly? How is this "flexibility" going to be matched with the clear Early Warning deadline included in the Applicant Guidebook?
8. (Applicant Support) Is there a foundation to be established, and how will funds be managed? When will these details be available?
9. (Applicant Support) What additional outreach is planned or can be done in the next few weeks to developing regions?
10. (Early Warning) Can translations of the strings be provided?
11. (Early Warning) Which kind of information on applicants will be made available to the GAC? In particular, will information from the due diligence/background checks be available to the GAC to take into account for their advice?
12. (Cross-ownership) When will the procedure for removal of restrictions (for existing registries for TLDs they operate) be available?
13. (Cross-ownership) Competition authorities are not bound to the 90 days period (at the end of which ICANN may decide to proceed with removing cross-ownership restrictions to existing registries). Should not this be clarified to stakeholders, to avoid misunderstandings?
14. (Second application round) When will the work plan be available? What will it cover (e.g., what conditions formally close the first round, the Affirmation of Commitments reviews, the reviews agreed upon with the GAC, how this is impacted by batches, when the date of the second round will be determined)?

15. (Trademark Clearinghouse) What plans are in place for outreach and communications around the launch of the Clearinghouse?
16. (Trademark Clearinghouse) What steps are being taken to ensure the neutrality of the Clearinghouse provider?
17. (Trademark Clearinghouse) Request for a paper to the GAC chair concerning the operational model.