



13 October 2012

Heather Dryden  
Chair, Governmental Advisory Committee

Re: GAC Communiqué – Prague, Czech Republic

Dear Heather,

On behalf of the ICANN Board of Directors, I thank you for the GAC Communiqué, Prague, Czech Republic, dated 28 June 2012. We acknowledge receipt of the nine items of advice contained in the Communiqué and provide responses to each item below.

## 1. IDN ccTLDs

### GAC Communiqué:

In principle the GAC considers that the introduction of IDN ccTLDs on an expeditious basis is in the global public interest. The GAC notes that a conservative approach has been taken in respect of two character IDN applications. The GAC is of the view that decisions may have erred on the too-conservative side, in effect applying a more stringent test of confusability between Latin and non-Latin scripts than when undertaking a side by side comparison of Latin strings. A practical approach should be followed allowing confusability to be pragmatically considered on a case-by-case basis, following publicly documented criteria.

### **The GAC advises the Board:**

- that when decisions are taken in this regard, that there be transparency of process, and that decisions against the release of a string should be accompanied by a detailed rationale.
- the GAC will write to the Board with further reflections on the methodology that should be followed when evaluating two character IDNs.
- recently refused IDNs, particularly those nominated by public or national authorities should be urgently re-considered in light of the above considerations.
- Without prejudice to the previous bullet and for transparency and accountability purposes, the GAC further advises the Board to create a mechanism of appeal that will allow challenging the decisions on confusability related to proposed IDN ccTLDs.

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### **Board Response:**

The community is reviewing the issues raised in the GAC Communiqué. These issues have been the subject of community discussion during the last two annual reviews of the Fast Track process. Based on input received, ICANN has improved the process documentation to clarify the Fast Track process requirements. A more detailed explanation of the DNS Stability Panel decision is provided where possible, along with a description of options for next steps.

The annual reviews of the Fast Track process and the GAC advice provide valuable input to the ongoing ccNSO policy work on IDN ccTLD string selection criteria. The ccNSO is currently undertaking a policy development process (PDP) on the introduction of IDN ccTLDs, which includes a review of the string selection criteria and requirements, and it is within the PDP that any enhancements to the evaluation methodology and process should be considered.

As part of its PDP on IDN ccTLDs, the ccNSO IDN Working Group is presently seeking public comments from the Internet community on its Draft Recommendations Overall Policy for the selection of IDN ccTLD Strings. The draft recommendations indicate that the final policy that the ccNSO will recommend to the Board will address the GAC's concerns in the following ways:

- Provide additional guidelines, including a refined method and set of criteria, on how string similarity evaluations should be performed;
- Include an additional independent and external review panel, to allow for a final validation review relating to the assessment of string confusing similarity; and
- Allow any requests that did not successfully complete the IDN ccTLD Fast Track Process to opt for an additional final validation evaluation under the overall policy.

The public comment and reply period will remain open until 9 November 2012. We hope that all members of the community will participate in the process.

## **2. ICANN's role as an industry self-regulatory organization**

### **GAC Communiqué:**

- a. The GAC understands that ICANN's role includes:
  - i. Overseeing the global DNS industry, and accrediting organisations to participate in that industry
  - ii. Use of contracts to establish relationships with specific industry participants.



- iii. Overseeing and enforcing compliance with those contracts
- b. The GAC welcomes the briefing on ICANN's role in overseeing the global DNS industry, and looks forward to further targeted discussions on this issue

**The GAC requests a written briefing** from the Board that explains:

- The broad principles and particular mechanisms used by ICANN when overseeing the global DNS industry, including details of each of the self-regulatory mechanisms it has developed for this role (including contracts, code of conduct, and so on)
- Why ICANN has chosen to accredit and contract with some industry participants directly (for example, registries and registrars), and not others (for example, resellers)?
- How ICANN would resolve a situation where a reseller was identified as breaching an ICANN policy or contractual obligation? How would a breach involving a privacy/proxy provider be handled? It would be useful for these hypothetical circumstances to reflect any documented procedures, contractual obligations, and escalation measures.

**Board Response:**

ICANN will provide the requested written briefing in the near future that will describe the broad principles and particular mechanisms ICANN uses when overseeing the global DNS. In the briefing, we will describe how contracts provide ICANN its authority to require compliance from its contracted parties and will explain some distinctions between ICANN and what are typically considered industry self-regulatory organizations. The document will also describe the limitations and options within the Registrar Accreditation Agreement (RAA) obligations, as well as the position of resellers and privacy and proxy providers in the compliance enforcement chain.

**3. ICANN's role in the development of contracts (RAA):**

**GAC Communiqué:**

- a. The GAC welcomes the publication by ICANN of the draft Registrar Accreditation Agreement (RAA). It appears that this draft contains many changes from the current RAA, and has been clearly informed by a number of LEA/GAC recommendations.
- b. Several questions relating to privacy and data protection issues and the accountability of resellers remain outstanding. As discussed in the public meeting with the Board, the GAC stands ready to assist in these discussions. The GAC encourages the Board to provide written questions on any privacy and data retention matters to the GAC to facilitate an early response.



- c. The GAC emphasises the need for all ICANN contracts to be clear, unambiguous and enforceable, and welcomes ICANN's efforts to enhance its compliance and termination tools as a part of the RAA negotiation process. The timeliness of this work is increasingly important.

### **The GAC advises the Board**

- that this work should be finalized as a matter of priority, and
- that all the necessary amendments and procedures should be in place in advance of the delegation of any new gTLDs.

### **Board Response:**

Negotiations between ICANN and registrars are progressing on each of the 12 law enforcement recommendations, the GNSO recommendations, the ICANN requests and the registrar requests. ICANN and Registrars have held several negotiating sessions since Prague. A face-to-face meeting, including law enforcement representatives, was held in September in Washington, DC. Discussions have focused on the most important issues: Whois verification/validation; development of a proxy service accreditation model; and obtaining privacy law expertise through the GAC to inform data retention discussions. The meeting enabled the law enforcement representatives to clearly convey the purposes of their recommendations and there was discussion where registrars or law enforcement might make concessions.

As is stated in other published material, registrars have agreed to amendments addressing all law enforcement requests – there remains a difference in the degree of change with regard to verification of Whois information. However, there is now agreement in the area of data retention, that agreement was confirmed in the recent meeting in Washington, DC.

The key remaining issues concern the law enforcement recommendations regarding Whois validation and data retention.

For Whois validation, law enforcement appears to be in agreement that verification of registrant data can occur after the domain name resolves. With this agreement, the discussion is now focused on how many points of data are to be verified. Law enforcement requests verification of both the registrant's email and phone number. Registrars propose that they verify the email and/or the phone number, at their election. This is going to be focus of discussion at the Toronto meeting. There also appears to now be agreement in principle that re-verification could occur after a triggering event, such as a bounced email or a change of registrant data, instead of on a regular calendar schedule. The discussions



are now focusing on what will be the appropriate triggers for this reverification requirement. Significant progress has been made on this issue since Prague.

For data retention, we have also seen significant progress. It is our understanding that law enforcement will agree to the two-tiered retention schedule proposed by Registrants, requiring some data elements to be retained for two years *after* the expiration of the domain name, while some of the more sensitive data elements will be retained for only six months. The discussion on this issue is now focusing on the proper way to address and consider situations where a registrar claims that it will still be in violation of its national data retention and privacy laws under this retention schedule. Proposing the ICANN Procedure for Handling WHOIS Conflicts with Privacy Law as a model, the registrars and ICANN have jointly approached the GAC for input on whether this may be sufficient. We expect to provide the GAC shortly with some proposed revisions to the ICANN Procedure for consideration and input.

These are important areas - the crux of the negotiations. ICANN will continue to work with law enforcement and registrars to develop an agreement that meets law enforcement goals. Until agreement is reached in these key areas, ICANN has postponed the posting of a jointly negotiated agreement.

#### **4. ICANN's contract oversight and compliance role:**

##### **GAC Communiqué:**

- a. At the San Jose meeting, the GAC had asked the Board for an update on the status of the LEA/GAC recommendations that relate to due diligence by ICANN, and would appreciate a response.
- b. The importance of an effective industry oversight and compliance function will become more important with the upcoming introduction of new gTLDs, and an increase in the number of contracts that ICANN will need to oversee. With the accompanying likelihood of new entrants to the industry, it will be important for ICANN to ensure that its compliance policies and processes are clear, publicly known and consistently enforced.
- c. The GAC has provided the Board with examples of organisations that have separated their regulatory and operational responsibilities (see Annex 1). As previously advised at the San Jose meeting, the GAC considers that a principles-based approach to structuring ICANN's compliance activities would support a robust and consistent oversight and compliance function.



### **The GAC advises the Board**

- to finalise improvements to its compliance and industry oversight functions before any new gTLDs are launched.

### **Board Response:**

ICANN acknowledges the GAC advice. We are continuing to improve the contractual compliance function and operations. We have recently filled three open contractual compliance positions, and are working toward ensuring we are ready for the increase in activities that will come with the New gTLD Program. With 15 full-time employees, the Contractual Compliance Department is the largest it has ever been, and includes expertise on systems and auditing tools to help make the department's work more pro-active and efficient. We are developing an audit plan for registrars and registries that will first be tested with existing registries. This will inform future audits, and we are quickly improving our tools to help us more transparently report our successes.

In September, ICANN announced that the head of the Contractual Compliance Department is now a Vice-President, who reports directly to the President and CEO. The Contractual Compliance Department is no longer reporting to the General Counsel.

## **5. WHOIS Review Team:**

### **GAC Communiqué:**

- a. The GAC welcomes the final report of the WHOIS Review Team, and notes that there are a number of common themes identified by the WHOIS Review Team's recommendations, the LEA/GAC recommendations, and the GAC's advice relating to ICANN's industry oversight and compliance function.
- b. The GAC endorse the recommendations of the WHOIS Review Team, and will closely monitor the Board's response and subsequent implementation activities.

### **The GAC advises the Board**

- to take account of the WHOIS Review Team's recommendations as part of the current RAA amendment process.



### **Board Response:**

ICANN thanks the GAC for its input on the Whois Policy Review Team's Report.

In addition to seeking the GAC's input to help inform Board action on the Report and subsequent implementation activities, the Board posted the Report for public comment and specifically asked for input from all of the Supporting Organizations, as well as the ALAC and SSAC, by 31 August 2012 (*see* <http://www.icann.org/en/groups/board/documents/resolutions-23jun12-en.htm#5>).

Further, the Board directed the President and CEO to consider this input, to assess the Report's recommendations and other WHOIS-related proposals under discussion, to evaluate the feasibility of and the potential implementation paths for each recommendation, and to provide the Board with guidance and advice on the Report. This work is ongoing, and the Board plans to take action on the Report before 12 November 2012. In addition, ICANN and the registrars are considering some of the WHOIS Review Team recommendations (such as development of a proxy service accreditation model), during the RAA negotiation process.

### **6. Root Zone Scaling:**

#### **GAC Communiqué:**

- a. The GAC welcomes the draft report on "Impact on Root Server Operations and Provisioning Due to New gTLDs" and exchanged initial views on it with the board. The GAC expressed its concern that the processes and decision taking procedures to slow down, stop and adjust the pace of insertions of TLD strings in the root in case of detected anomalies in the root system, including its harmonized metrics, mechanisms and chain of comment, are not yet defined.
- b. The GAC also looks forward to the publication of more comprehensive data for external review as planned.

#### **The GAC advises the Board**

- to take this up in advance of the delegation of any new gTLDs.

### **Board Response:**

The ICANN Board thanks the GAC for its advice on the draft report on "Impact on Root Server Operations and Provisioning due to New gTLDs." ICANN notes the GAC's concern that the processes and procedures to slow down, stop and adjust the pace of insertions of TLD strings in the root may not yet be defined.



ICANN, NTIA, and Verisign do have an emergency response process that has been in place for many years. The existing process is triggered by existing TLD operators and has been used to reverse, stop and adjust changes to the root zone on an emergency basis. A new process will be defined to accommodate slowing down, halting, or reversing entries in the root zone in the case of detected anomalies in the root system. As part of the development of the new process, ICANN supports the effort within RSSAC to define a common set of quantitative measurements to be collected from all root servers.

As the RSSAC defines the common measurements to be collected, ICANN will collect relevant data specific to L-Root and will publish that data, enabling ICANN and the general public to identify trends correlating to the delegation of new gTLDs.

Systems and processes to achieve the collection and publication of this data will be deployed before January 2013. Confirmation of the precise measurements to be made will be published before November 2012.

The root zone scaling reports that have been shared to date include:

- 1) Root Zone Augmentation and Impact Analysis conducted by the independent DNS Operations and Research Center (DNS-OARC) in 2009. The report's conclusion was that the deployed software was capable of handling at least 100,000 top-level domains before there was potential degradation in response times.  
<http://www.icann.org/en/about/staff/security/ssr/root-zone-augmentation-analysis-17sep09-en.pdf>.
- 2) Report on the Impact on the DNS Root System of Increasing the Size and Volatility of the Root Zone was written in 2009 by a specially convened "Root Server Scaling Team comprised of experts from the RSSAC, SSAC, and experts from outside the ICANN community."  
<http://www.icann.org/en/groups/rssac/root-scaling-study-report-31aug09-en.pdf>.
- 3) Analysis of Root Zone Decay, published in 2012, concludes that TLDs have high resiliency with aged data. The vast majority of the 314 TLDs in existence at the time of the analysis would continue to function effectively from the perspective of end users, even with stale Root Zone data. *See Appendix D*,  
<http://newgtlds.icann.org/en/about/historical-documentation/root-scaling-27jun12-en.pdf>.
- 4) Quantitative Analysis of Root Zone Growth compared twelve-year period of root zone data and created a model for extrapolating root zone size in the future. This report is Appendix E of "Impact on Root Server Operations and Provisioning Due to New gTLDs." Under the model, with a projected 1,000 new gTLDs added per year from 2013, the size of the root zone is expected to increase to a size of over 2.5 megabytes by 2016 from its current size of around 200 kilobytes. This root zone size is comparatively small considering the size of files that modern computers can





accommodate. See Appendix E,

<http://newgtlds.icann.org/en/about/historical-documentation/root-scaling-27jun12-en.pdf>.

These reports complement the "Impact on Root Server Operations and Provisioning due to New gTLDs," published by ICANN on June 27, 2012 (<http://newgtlds.icann.org/en/about/historical-documentation/root-scaling-27jun12-en.pdf>).

## **7. Financial and Budgetary Reporting:**

### **GAC Communiqué:**

- a. The GAC believes that transparency and accountability with regard to financial budgeting and allocation of resources between and within the different constituencies of ICANN is a matter of fundamental importance.

### **The GAC advises the Board**

- to provide tools urgently for reporting on the distribution of allocation of financial resources between and within ICANN in order to assure transparency and accountability in financial matters.

### **Board Response:**

ICANN has implemented the infrastructure required to manage the allocation of its resources, notably as it relates to disclosing separately the financial data of the new gTLD application program and the financial data of the ICANN Operations. As part of this overall infrastructure, ICANN is developing with the Board a set of financial reports on both the ICANN Operations and the new gTLD program to provide full transparency and accountability on all financial matters.

## **8. Ethics and Conflict of Interest:**

### **GAC Communiqué:**

- a. The GAC welcomes the ongoing work concerning ethics and conflicts of interest.

### **The GAC advises the Board**

- to proceed urgently with all the necessary steps to implement an effective and enforceable ethics and conflicts of interest policy, to strengthen ICANN governance



framework both in the context of the new gTLD process and in all other areas of its activity.

**Board Response:**

ICANN is completing a three-phase review and improvement plan of its conflicts of interest and ethics policies and processes. Experts in all three phases have indicated that ICANN does have an effective and enforceable conflicts of interest policy, and that improvements have already been made. This improvement effort continues. The Board has approved all recommendations from Jones Day (phase 1), taking account of public comment, and recommendations from Cooley (phase 2) have all been implemented. The new or revised documents that have been put into operation are (i) revised conflicts of interest policy; (ii) revised Code of Conduct; (iii) new Corporate Governance Guidelines; and (iv) revised Expected Standards of Behavior. ICANN has also implemented improvements to the location and accessibility of the documents. The public comment period has recently closed on the Independent Expert Report and recommendations, and comments are being synthesized for Board consideration. The Expert recommendations (phase 3) will become part of a report on Board actions on these issues, which will be posted for public comment and subsequent Board consideration.

**9. New gTLDs**

**GAC Communiqué:**

In addition to the advice previously communicated to the Board on June 17, 2012:

**The GAC advises the Board**

- to review and plan action for the next round to ensure there is no repetition of the low uptake in applications from developing countries,
- that there is still important work to be undertaken to finalise the operation of the Trademark Clearinghouse. The GAC therefore requests a status report for its consideration no later than two weeks before the Toronto meeting,
- that it requires further clarification as to the status of its pending request for enhanced protections for the IOC and Red Cross/Red Crescent names at the top and second levels, in light of the Board's rejection of the GNSO's recommendations intended to refine the means of enhanced protection at the top level in April, 2012.

**Board Response:**

ICANN seeks to increase the participation of developing countries in the next round of new gTLD applications, in opportunities presented by existing and new gTLDs, and in the



bottom-up policy-making model. We are committed to soliciting input from potential new gTLD applicants, DNS community members in developing countries, the GAC and the At-Large community in order to develop a plan (including a communications plan) to increase that participation.

ICANN is also developing a strategy to globalize our organization that will include a concentrated effort to increase participation among developing countries in the ICANN community and in new gTLDs.

Trademark Clearinghouse implementation work is proceeding according to the project plan. While this work continues, ICANN is also listening to community member concerns and questions in order to clarify the roles of registries, registrars and registrants in the new environment. ICANN will provide a status report no later than two weeks before the Toronto meeting.

The New gTLD Committee of the Board addressed the issue of IOC and Red Cross/Red Crescent names in the "Progress Report on New gTLD Issues Raised in Prague." The Board has also instructed the ICANN staff to review and report back on all contributions.

The Board acknowledges receipt of the GAC advice in the Prague Communiqué and is mindful of the GAC letters on this topic of 11 May 2011 (<https://gacweb.icann.org/download/attachments/18645054/20110512-GAC+Statement+on+IOC+and+Red+Cross+Movement.pdf>) and 12 April 2012 (<http://www.icann.org/en/news/correspondence/dryden-to-crocker-icann-board-12apr12-en>).

We are committed to reaching a timely resolution. On 13 September 2012, the New gTLD Program Committee undertook a resolution on the IOC and Red Cross/Red Crescent names, citing the GAC advice on this issue and seeking input from the GNSO no later than 31 January 2012 on second-level protections (<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-13sep12-en.htm>). This will allow for second-level protections (if appropriate) to be in place for those gTLDs entering the root as part of the first round of the New gTLD Program. The Board is aware that it is necessary to provide a response to the GAC in time for subsequent processes to occur within the time allotted for new gTLD application evaluations.



I hope that you find the above responsive to the GAC Communiqué. Thank you again for providing advice and input to the Board.

Best regards,

A handwritten signature in black ink, which appears to read "Steve Crocker". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

Steve Crocker,  
Chair, ICANN Board