

Reconsideration Request

**Union of Orthodox Jewish Congregations of
America, *et al.***

Annex U

GAC Singapore Communiqué



Governmental Advisory Committee

Singapore, 27 March 2014

GAC Communiqué - Singapore¹

I. INTRODUCTION

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Singapore during the week of 22 March 2014. Sixty-one (61) GAC Members attended the meeting and ten (10) Observers. The GAC expresses warm thanks to the local hosts IDA and SGNIC for their support.

II. Inter-constituencies Activities

1. GAC-Generic Names Supporting Organisation (GNSO) Consultation Group

The GAC met with GNSO members of the GAC-GNSO Consultation Group and agreed a charter for the group. The Group will consider processes for smooth and timely information exchange; early engagement of GAC in GNSO PDP work; resolving early stage conflicts; and accommodating the different working methods of the two organisations.

2. Discussion of Brand Registry Issues

The GAC discussed the Brand Registry Group proposal for a streamlined process under an addendum to the Registry Agreement for the approval of country names and 2-letter and character codes at the second level. While the GAC has no major concerns about brand owners seeking approval for such names, this approval should be done directly with the countries concerned rather than through a GAC-level operational process. Individual GAC members can assist with proposals relevant to their particular country if requested. GAC suggests that consideration be given to establishing a register of countries that do not require individual requests to be made.

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 Meeting with At-Large Advisory Committee (ALAC) Leadership

The GAC and ALAC leadership groups met and discussed a range of issues. There are common concerns with regard to new gTLD Public Interest Commitments (as noted by the GAC in this communiqué).

4. Meeting with Country Code Name Supporting Organisation (ccNSO)

The GAC met with the ccNSO and noted progress by the Framework of Interpretation Working Group, with further dialogue to be progressed inter-sessionally. GAC and ccNSO will explore possible approaches to more effective interaction across all relevant issues.

5. Meeting with Root Server System Advisory Committee (RSSAC)

The GAC met with RSSAC and discussed a range of issues including the RSSAC's new structure; transparency of proceedings; and potential role in the IANA functions transition process.

6. Briefing on Meeting Strategy Working Group (MSWG)

GAC Members of the MSWG presented the Group's report to the GAC. The MSWG is a cross community Working Group with the mandate to gather information, exchange ideas and propose changes to future ICANN meetings at both a strategic and operational level.

III. Internal Matters

1. **New Members** – The GAC welcomes Croatia, Grenada and the Solomon Islands as Members.
2. **Future Rounds of New gTLDs** – The working group on issues for future rounds of new gTLDs reported on its progress.
3. **Working Methods** – Terms of reference were agreed for the working group on GAC working methods. Specific deliverables will be identified for the London meeting.
4. The GAC paid homage to the late Pankaj Agrawala who served as the GAC vice chair during the period of 2005-2007.

IV. GAC Advice to the Board²

1. Internet Assigned Numbers Authority (IANA) Functions: US Government Announcement

The GAC received a briefing from Assistant Secretary Larry Strickling of the National Telecommunications and Information Administration regarding the announcement of 14 March 2014 that the United States Government would transition key Internet domain name functions to the global multistakeholder community. This is a timely step in the process of making Internet governance truly global, and marks major progress in the development of a multi-stakeholder model.

The GAC also notes that a number of conditions were stated in the announcement in order that this transition be effected.

The GAC welcomes that ICANN will convene global stakeholders to develop a proposal for this transition and takes note of the preliminary timeline proposed by ICANN (<http://www.icann.org/en/about/agreements/iana/functions-transfer-process-14mar14-en.pdf>). The GAC is willing to participate in, and contribute to, this process and underlines that the consultations and discussions should reach out to all parties, including those governments that are not presently members of the GAC and also not part of the ICANN multistakeholder community.

The GAC also recommends that ICANN make full use of existing events and fora to ensure a broader engagement in these important discussions, including the forthcoming NETmundial meeting (Brazil, 23-24 April 2014), and the Internet Governance Forum (Turkey, 2-5 September 2014).

2. Safeguard Advice Applicable to all new gTLDs and Category 1 (consumer protection, sensitive strings and regulated markets) and Category 2 (restricted registration policies) Strings

The GAC welcomed the response of the Board to its advice in the Beijing Communiqué regarding safeguards for new gTLDs.

a. The GAC requests

- i. Clarification from the New gTLD Program Committee (NGPC) on a number of implementation issues. These relate to the implications of changes in WHOIS verification and checks for the accuracy of WHOIS

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>

generally and for law enforcement and end users; security checks to detect risks of harm (eg phishing, malware, botnets etc); complaint mechanisms; verification and validation of Category 1 registrants' credentials and the lack of binding nature of the public interest commitments; operation of the Public Interest Commitment Dispute Resolution Procedure; and restricted registration policies (Category 2). These queries are set out in more detail in an Attachment to this communiqué.

3. Community Applications

The GAC reiterates its advice from the Beijing and Durban Communiqués regarding preferential treatment for all applications which have demonstrable community support.

1. The GAC advises

- a. ICANN to continue to protect the public interest and improve outcomes for communities, and to work with the applicants in an open and transparent manner in an effort to assist those communities. The GAC further notes that a range of issues relating to community applications will need to be dealt with in future rounds.

4. Specific Strings

a. .spa

Regarding the applications for .spa, the GAC understands that the relevant parties in these discussions are the city of Spa and the applicants. The GAC has finalised its consideration of the .spa string and welcomes the report that an agreement has been reached between the city of Spa and one of the applicants.

b. .amazon

The GAC expresses its concerns with the time the Board is taking in evaluating the GAC Objection Advice on the application of the domain name .amazon, as stated in the GAC communiqué, approved in Durban, last July. Therefore the GAC urges the ICANN Board to settle as a high priority its decision according to Module 3.1 part I of the Applicant Guidebook.

c. .ram and .indians

Further to its Durban Communiqué, **the GAC advises the ICANN Board that:**

- a. The GAC recognizes that religious terms are sensitive issues. The application for .ram is a matter of extreme sensitivity for the Government of India on political and religious considerations. The GAC notes that the Government of India has requested that the application not be proceeded with; and
- b. as noted in the Durban communiqué, the Government of India has requested that the application for .indians not proceed.

d. .wine and .vin

The GAC notes the NGPC Resolution 2014.03.22.NG01 concerning .wine and .vin as well as its rationale. In the final deliberation of the Board there appears to be at least one process violation and procedural error, including in relation to ByLaws Article XI-A, Section 1 subsection 6 which states:

“6. Opportunity to Comment. The Governmental Advisory Committee, in addition to the Supporting Organizations and other Advisory Committees, shall have an opportunity to comment upon any external advice received prior to any decision by the Board.”

The GAC therefore advises:

That the Board reconsider the matter before delegating these strings-

The GAC needs to consider the above elements more fully. In the meantime concerned GAC members believe the applicants and interested parties should be encouraged to continue their negotiations with a view to reach an agreement on the matter.

5. Singular and Plural Versions of the Same String

The GAC reiterates the Beijing advice that allowing singular and plural versions of the same strings could lead to consumer harm. Permitting this practice risks confusing internet users and could making users more vulnerable to deceptive practices that exploit this confusion.

6. WHOIS

The GAC notes the work being accomplished by the Expert Working Group on New gTLD Directory Services (WHOIS). The GAC will work inter-sessionally on privacy issues up until the ICANN 50 London meeting.

7. Data Retention and Data Provision Waivers

The GAC welcomes the explanation provided to the GAC by ICANN in relation to the state of play of the granting of the Data Retention Specification waiver foreseen in the Registrar Accreditation Agreement, in compliance with national laws. Some members asked ICANN not to take legal action against those Registrars in order to fulfill their data retention requirements pending a decision on these waivers. They further recalled that waivers might be necessary for data provision requirements accordingly in the Registry Agreement.

8. Protection of Inter-Governmental Organisation (IGO) Names and Acronyms

The GAC recalls its previous public policy advice from the Toronto, Beijing, Durban and Buenos Aires Communiqués regarding protection for IGO names and acronyms at the top and second levels and awaits the Board's response regarding implementation of the GAC advice.

9. Protection of Red Cross/Red Crescent Names

Referring to the previous advice that the GAC gave to the board to permanently protect from unauthorised use the terms associated with the International Red Cross and Red Crescent Movement – terms that are protected in international legal instruments and, to a large extent, in legislation in countries throughout the world.

I. The GAC advises that, for clarity, this should also include:

- a. the 189 National Red Cross and Red Crescent Societies, in English and the official languages of their respective states of origin.
- b. The full names of the International Committee of the Red Cross and International Federation of the Red Cross and Red Crescent Societies in the six (6) United Nations Languages.

10. Accountability and Transparency

The GAC agreed on a revised charter for continuation of the Board-GAC Recommendation Implementation Review Team (BGRI), with responsibility for progressing relevant recommendations from the final report of the Accountability and Transparency Review Team (ATRT2). Some areas of the report are the subject of ongoing GAC working groups and some are GAC internal matters, which will feed into the overall ATRT2 process.

The GAC has established a working group to develop guidelines on ICANN-government and IGO engagement, and will work with the ICANN Global Stakeholder Engagement team, and within the BGRI process, to progress relevant recommendations from the ATRT2 report.

11. Tracking of Key Issues

I. The GAC requests:

- a. that the Board consider ways in which ICANN and the GAC can work more closely in ensuring that key issues are tracked in a more concise and structured way, so that the GAC is able to provide timely and comprehensive advice. For example, the multiple streams of activity being dealt with regard to Registrar Accreditation Agreement, data protection, and data retention issues, WHOIS (e.g. Expert Working Group, privacy and proxy services, etc). The GAC would benefit from some form of comprehensive overview by ICANN of such related issues prior to the meetings.

12. Briefings on Compliance

I. The GAC requests:

- a. that the Board facilitate ICANN staff briefings for each meeting on compliance with ICANN safeguards for registry operators, registrars and registrants.

13. NETmundial Meeting

The GAC expresses its thanks for a briefing provided by Ambassador Benedicto Fonseca of Brazil on the NETmundial meeting to be held in Sao Paulo on 23-24 April 2014.

14. High Level Meeting

The GAC received a briefing from the United Kingdom and discussed arrangements for the high level meeting to be held in London on 23 June 2014 in conjunction with the ICANN and GAC meetings. The meeting will focus on ICANN's role in the evolving internet ecosystem; and enhancing the role of governments in the ICANN model and the future role of the GAC. The GAC acknowledges the funding ICANN currently makes available to GAC members from developing countries to support their attendance at ICANN and GAC meetings.

I. The GAC requests:

- a. That additional funding for travel be provided to ensure that the high level meeting scheduled for London has representation from the widest range of countries, including Ministers and their staff from developing countries, in line with existing GAC travel support guidelines.

The GAC warmly thanks all the SOs/ACs 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 Singapore

V. Next Meeting

The GAC will meet during the period of the 50th ICANN meeting in London, England.

Attachment to GAC Singapore Communique

GAC Advice Implementation Questions for Singapore, March 2014

The GAC is pleased to share an assessment of several aspects of the NGPC's proposed approach to: the Overarching Safeguards applicable to all new gTLDs; the implementation of Category 1 and Category 2 Safeguards; and the Public Interest Commitment Dispute Resolution Process (PICDRP). Our assessment has resulted in several implementation questions set forth below.

- Will ICANN provide periodic updates to the GAC regarding the activities carried out by the Compliance Department on the effective implementation of the Safeguards (all categories)?

1. Safeguards Applicable to all New gTLDs:

- With regard to **Safeguard 1**, related to WHOIS verification and checks, the NGPC has shifted responsibility from individual Registry Operators (who have the direct relationships with Registrars) to ICANN to perform "periodic sampling" of WHOIS data across registries in an effort to identify potentially inaccurate records.
 - Can the NGPC clarify the advantages and/or disadvantages of having ICANN perform the WHOIS checks/audits versus the Registry Operators?
 - Does the NGPC believe ICANN has sufficient resources in place to conduct these audits, or will additional resources be necessary to conduct WHOIS checks across all Registry Operators?
 - Can the NGPC clarify the meaning of "periodic sampling" (e.g. how large will the sampling be, using what criteria, how often, etc.)? With a periodic sampling approach, will it be possible to identify/Registrars with the highest percentages of deliberately false, inaccurate or incomplete WHOIS records in previous checks?
 - Will ICANN circulate/make publicly available to the community, detailed statistical reports of how inaccurate WHOIS records were identified and resolved?
 - What steps does the NGPC think are needed to ensure inaccurate or incomplete WHOIS records are addressed? Will Registry Operators take steps to notify Registrars of inaccurate or incomplete WHOIS records? If so, will this notification trigger an obligation from the Registrar to solicit accurate and complete information from the Registrant?
- **Safeguard 3** pertains to Security Checks undertaken by Registry Operators to periodically analyze whether domains in its gTLD are being used for threats to security, such as

pharming, phishing, malware and botnets. While the NGPC has incorporated aspects of Safeguard 3 into the Public Interest Commitment Specification 11, it also calls on ICANN to seek “community participation” to develop a framework for Registry Operators to respond to identified security risks that pose an actual risk of harm. Pending the development of such a framework, it is not clear whether Registry Operators are obliged to notify a Registrar to take immediate actions in response to such security threats (including suspending the domain name in appropriate situations).

- How does ICANN define “immediate action;” what precise timeframe constitutes “immediate action”?
 - How does ICANN define “security risk”?
 - How does ICANN define “harm”?
 - What is the status of the NGPC’s plan to develop a framework for Registry Operators to respond to identified security risks that pose an actual risk of harm?
 - In the interim before an agreed framework is developed, how does ICANN intend to address such security threats?
 - Will Registry Operators be expected or obliged to notify a Registrar to take immediate action in response to a security threat that poses an actual risk of harm?
- **Safeguard 5** addresses Complaint Mechanisms, to ensure that Registry Operators provide a means by which complaints can be submitted related to: WHOIS data inaccuracy, trademark or copyright infringement, counterfeiting, fraudulent or deceptive practices, the use of malware, botnets, phishing, piracy, or other unlawful activities. The NGPC has incorporated this Safeguard in the Base Registry Agreement (e.g. Section 2.8, Specification 6, section 4.1). It is not clear, however, whether Registry Operators are required to respond to complaints from sources other than governments, law enforcement or other quasi-governmental entities.
 - What mechanisms will be used by Registry Operators for taking complaints from sources other than government entities (e.g. victims)?
 - How will inaccurate WHOIS information be corrected? Will Registry Operators be responsible for ensuring that Registrars require Registrants to correct inaccurate WHOIS information?
 - What constitutes reasonable steps for the Registry to investigate and respond to any reports from law enforcement, governmental and quasi-governmental bodies?

2. Category 1 and Category 2 Safeguards:

With regard to strings falling under **Category 1** advice, we are seeking further clarity from the NGPC on the following:

- Is it the NGPC's intention to create a separate base Registry Agreement for those Registry Operators whose strings fall under Category 1? Or does the NGPC expect such Registry Operators to incorporate the Category 1 PIC Spec into their specific Registry Agreement?
- In amending the GAC's advice that Registry Operators verify and validate a domain name registrant's credentials to a requirement that such registrants need only "represent" that they have such credentials, has the NGPC considered other measures to prevent consumer fraud and deception that could occur through false representations?
- How will ICANN prevent Category 1 registrants (i.e., those associated with market sectors that have clear and/or regulated entry requirements) that lack the proper credentials/licenses from doing business with the public under the guise of the Category 1 strings?
- How will ICANN ensure that Registrants report changes regarding the validity of their licenses/credentials?
- Has the NGPC considered the greater risks of fraud and deception that will occur as a result of failing to implement the GAC's:
 - the validation and verification requirements;
 - the requirement to consult with relevant authorities in case of doubt about the authenticity of credentials; and
 - the requirement to conduct periodic post-registration checks to ensure that Registrants' continue to possess valid credentials and generally conduct their activities in the interests of the consumers they serve
- Can the NGPC confirm whether the PIC Dispute Resolution Process (PICDRP) is the sole remedy available to regulators or industry self-regulators to rectify fraudulent registrations in strings representing regulated sectors, and if so, will the NGPC either reconsider its proposed approach or develop a faster remedy to mitigate harm to consumers?

With regard to **Category 2** safeguards, we are seeking further clarity on the following:

- For those Registry Operators affirmatively seeking exclusive registration policies, how does the NGPC intend to assess such Operators' assertions of serving the public interest?
- Has the NGPC considered that transparency alone might not only be insufficient to deter unduly preferential or discriminatory registration policies, but it will be equally difficult for anyone seeking redress to meet the standard of harm required in the PICDRP? In other words, if Specification 11 Section C is limited to a transparency commitment, then the harm stemming from discriminatory registration policies that are publicized cannot be amended or corrected through a PICDRP.
- Will ICANN monitor Change Requests made by those applicants that claim they are moving from a closed to an open environment?

3. Public Interest Commitment Dispute Resolution Process (PICDRP):

- In the case of clearly deficient PICs, will ICANN formally require applicants to restate their PICs or address their inconsistencies?
 - Will ICANN turn PICs into real binding commitments not subject to unilateral modification or revocation by the applicant?
- A. **Timeframe for consideration of a PIC Spec complaint is unclear.** The PICDRP does not specifically detail the timeframes in which ICANN will review and enforce the results of PICDRP disputes. Based on time calculations derived from PICDRP document, it may take up to **105** days for a dispute resolution, in addition to the undefined time periods for ICANN to conduct preliminary review, time for ICANN to investigate itself or form a standing panel; and time for ICANN to impose remedial measure:

In addition, there are questions related to specific provisions in the PICDRP, including:

- **Preliminary Review** (Section B.1.3): How long will ICANN take to complete preliminary review? No timetable has been provided. In certain cases, *.e.g.*, botnets, malware, etc., time is of the essence.
- **Standing Panel** (Section B.3.3; B.4): When will ICANN make determination of investigating the report itself or handing it to the Standing Panel? What criteria will ICANN use to make this determination? Who will be on the Standing Panel? How long will ICANN take to choose members of the Standing Panel? Will it be

ICANN staff, private industry, and government? How long will it take to institute Standing Panel?

B. Standing for Law Enforcement and Appropriate Government Agencies to Report:

The PICDRP requires reporters of PIC violations to state how the reporters “have been harmed.” This requirement seems to require the reporter itself to have suffered harm. Although law enforcement is not harmed, law enforcement is acting on behalf of the public, who have been harmed.

- Will government entities or law enforcement have standing to raise concerns re: non-compliance with the Public Interest Commitments?
- If government entities and law enforcement do have such standing to raise public policy related concerns, would this be cost-free?
- How would law enforcement or other government entities (who act to protect the public) raise violations of the Public Interest Commitments?

C. Clerical Mistakes by Reporter:

- Does the Reporter have a chance to correct clerical or incomplete data before it is dismissed by ICANN (B.1.1.2)?

D. ICANN vs. PICDRP?

- What will determine whether a dispute regarding the Public Interest Commitments is enforced via ICANN directly versus the PICDRP? (See B.2.3.3)

E. No Final Resolution:

- There appears to be a critical loophole in the PICDRP, in that there may be no resolution to the report of non-compliance. If the Registry Operator disagrees with the proposed remedial measure, they can invoke yet another alternate dispute resolution process (see B.4.4.6), all of which would occur after potentially more than 105 days has elapsed.

F. Remedial Measures:

- In the event that a Registry Operator fails to resolve its non-compliance, what would be the remedial measures that ICANN will consider and how long will ICANN take to determine the appropriate remedial measure? Under what

circumstances would ICANN elect not impose a serious remedial measure?
(B.4.4.5)

G. Repeat Offenders:

- ICANN does not specify what sanctions (e.g. financial or otherwise) will be imposed on repeat offenders. (See B.5.5.4)

4. Auctions

Is ICANN able to provide more detailed information confirming that rules for auctions are consistent with its Bylaws, its not-for profit status, the objectives of the new gTLD Program and the Applicant Guidebook to promote competition, diversity, innovation and consumer choice?