
ICANN73 | Virtual Community Forum - GAC Preparation for the Meeting with the ICANN Board
Monday, March 7, 2022 - 13:15 to 14:00 AST

MANAL ISMAIL, GAC CHAIR: Thank you very much, Gulden, and we are now starting our preparatory session for the GAC bilateral scheduled for Wednesday. As you may know, we already have -- the session is normally split into two. We received questions from the Board, and we pose some questions to the Board, so if we can go to the following slide, and let's skip this one, and I would skip this one too for the sake of time.

And this is the agenda of the meeting. If we can go one step up please, Gulden, thank you. The agenda as said it's 30 minutes for the Board questions, and then 30 minutes for the GAC questions, and topic areas included the SSR2 review recommendations, the Global Public Interest Framework, registration data including a question on SSAD and another one on data protection agreements, and data accuracy.

If we can go to the following slide, so the first question from the Board was what are the GAC's key priorities for ICANN work in 2022? And how do these priorities help achieve ICANN's common objectives as expressed in the fiscal year 21, 25 strategic plan and

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how do you see community Board and org moving forward together on a way to achieve these?

Thanks to everyone who shared responses to this question. I'm going to read the answers received, and this is what we are going to share with the Board on Wednesday so let me know if you have questions. In 2022 the GAC continues to pursue a full menu of DNS policy and operational matters. The top priorities among this menu of topics includes 1, the next round of new gTLDs, 2, DNS abuse mitigation, and 3, determining an appropriate access system for registration data. Attention to these GAC priorities will contribute to the fiscal year 2025 strategic objectives. 2, and we are quoting here from the strategic objectives, 2, strengthen the security of the domain name system and improve the effectiveness of ICANN's multistakeholder model of governance.

And all of these issues are impacted by the larger expectation that ICANN's inclusive and representative multistakeholder model achieves timely and effective outcomes that serve the public interest.

So I'm pausing to see if there are any comments or questions? I'm also reading Rob in the chat noting that GAC members have already seen these draft questions and answers and standing ready with a virtual pen to record any edits and amendments to

what is displayed on the screen. Thank you very much, Rob. So any comments or questions? Seeing no requests for the floor, then let's proceed to the following slide, and thank you, Susan, for confirming that no edits to suggest.

The second question, and I'll slow down a bit -- thank you, Jorge -- if any what suggests would the GAC have to enhance ICANN's effectiveness and efficiency with regards to the process of implementation after adoption of a PDP or review recommendations? And the GAC draft response reads, from the perspective of government's representatives long delays between the launch of policy development processes, the conclusion of these -- of those processes and the completion of the following implementation stage may lead to obsolete policies by the time they would need to actually be implemented in practice.

The scenario de facto undermine the whole effect -- the whole effort of developing them. Keeping track of implementation progress can help identify areas of difficulty or delay and prompt remedial actions. As expressed recently in the context of the CCT-RT and SSR2 recommendations the GAC would very much welcome the Board to instruct the ICANN org to develop and maintain visible and regularly updated dashboards that would monitor and reflect implementation work regarding all accepted

policy recommendations across the whole community. Such tools and processes would help all parts of the community to monitor the status of important implementation work.

With respect to the pre-implementation policy recommendations themselves, it appears to some GAC members that advice coming from ICANN advisory committees including the GAC, has little impact on the wording of such recommendations. At most, when there is an obvious clash between supporting organization policy recommendations and advisory committee advice, the Board refers the issue back to the community. i.e., normally the GNSO to find a way to resolve the disagreement.

Pausing here to see if there are any comments, noting that there is a continuation to this draft response on the following slide.

So seeing no requests for the floor, we can move on. Additionally, there are questions about how the Board treats GAC advice when that advice involves potential policy work by the GNSO or other parts of the ICANN community. The issue came into focus after ICANN71 when the GAC issued advice on DNS abuse, which included potential policy initiatives. The Board response at the time was that as this is not an issue for the Board, i.e., the GAC was not addressing actions by Board, as it could act on the advice. I'm sorry, it's not reading well. I'm not sure if it is me.

The Board response at the time was that as this was not an issue for the Board, as it could act on the advice -- sorry, so, yeah, if there are any suggestions, otherwise I'm assuming it's reading well. It does not for me. Could not act? Yeah, thank you, Jorge, for the suggestion. So can we -- okay.

And please, I'm not sure who proposed the draft response, so please, if it is your text, make sure it is what you intended to say. These considerations lead to a number of related questions. First, what is the value of GAC advice regarding GNSO policy recommendations? To what extent may such advice serve to adapt, change, or complement GNSO policy recommendations? Question 2, what is the role of the Board regarding GNSO policy recommendations? Is it according to its own understanding able to adapt, come pleasant and or change such recommendations? Or does it limit itself to adopting or rejecting them, the recommendations, in full or in part?

Third question, on those occasions example as there is with the topic of DNS abuse, where the GAC seeks actions which rest with the wider community, and not just the Board, what expectations, if any, should there be for the Board to react to the advice by initiating a conversation with the community to seek views on the GAC advice? The GAC would welcome a rationale based on the bylaws explaining the Board's views on these questions.

So any comments? Are we good to move on? Reading Velimira in the chat, one "as" needs to be deleted. There seemed to be a typo. Just above the last word in the first paragraph.

VELIMIRA GRAU NEMIGUENTCHEVA: Manal, I think the Board response at the time was that as this was not an issue. I think the S is too much because we are saying the Board response at the time was that --

MANAL ISMAIL, GAC CHAIR: Okay, thank you. I -- noted, and I see already it's highlighted on the screen, so if we can delete the as. Thank you. So I see Rob's hand up. Please Rob, go ahead.

ROBERT HOGGARTH: Thank you, Manal. I'm not asking a question about the text itself, but just any discussion that you might want to have about how the information is presented, as you all know from the GAC side I shared with you all the draft questions, so we have 5 other questions that we will be getting to shortly and then the 3 questions that came out of this response to the Board chair questions. So the only issue I think would be logistically how you would like to handle this will response, whether you want to read it during the session, whether folks are comfortable with you paraphrasing it and then you just focus on these 3 questions as

part of the dialogue with the Board? That's entirely up to you all but I just identify that as a potential production or logistical issue in terms of how you conduct the meeting. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Rob. I think it's a good point. So I don't think we have shared this response with the Board before. I understand that we will be sharing the final response after our session today, right? Is this the process?

ROBERT HOGGARTH: Yes, thank you. Yes, what I do is after this session concludes, and all of the documentation has been confirmed, I share a slide deck which includes this information. So the Board will two days ahead of time, have this in terms of something for them to review, which may make it easier for you to paraphrase once Wednesday comes. Thanks.

MANAL ISMAIL, GAC CHAIR: Thank you, Rob. So, exactly, I was going to say, if it is going to be the first time for them to see the text then we will need to read it, but if it is shared -- if this part will be shared because we haven't shared it before. If it's going to be shared after the session today then definitely we will focus on the questions because I'm sure the Board will have read the slides. So thank you Rob, well noted.

Any comments from GAC colleagues or shall we move on to our questions to the Board? Again, I'm sorry, I'm just reading Nigel in the -- agree if shared with the Board they do not read to be read out in full. Thank you very much, Nigel. Okay. Let's move on to our questions to the Board, and as mentioned we are we have 3 topic areas, SSR2 review recommendations, the Global Public Interest Framework which we have just discussed, and registration data in relation to the SSAD and data protection agreements and data accuracy.

So if we can go to the following slide. First under SSR2 review recommendations, the background reads in its scorecard GAC advice, ICANN72 virtual annual general meeting communique actions and updates dated 16 January, the Board notes that an update on the pending recommendations stemming from the SSR2 review final report was expected by the 22nd of January.

That's to say within six months of the Board's action to the SSR2 final report. And the GAC's question is could the Board share with the GAC the findings of this update, and the Board's first reaction to these findings? So any comments or questions on this? Okay, if not then let's move on.

The second is on Global public interest framework and the question reads, what conclusions does the Board draw from the

pilot SSAD use case of the GPI framework, and how does the Board see the evolution of the GPI framework? So, are we keeping the questions as is in light of two previous discussions with Avri? Are we adding? Modifying any suggestions otherwise we are keeping the question as is of course. And thank you, Susan, supporting the question as is, and seeing no further -- Velimira, please go ahead.

VELIMIRA GRAU NEMIGUENTCHEVA: Yes, thank you, Manal. If you allow me just one second probably I come back to it. This is a question that we have expected European Commission and as far as I could recall the question in relation to appendix 2 was linked to one of the particular findings there, so for the sake of time, probably you can, you can continue with -- with the next slide just time for me that I have a look into the document indeed that Rob had helpfully circulated in advance to see whether there might be there might be useful to still keep a reference to the particular paragraph we had in mind.

Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Velimira. So well noted. We will return to this slide at the end of the session.

So now let's move onto topic area 3 on registration data and first question in relation to the SSAD. First the background, according to appendix 2 of the SSAD ODA page 105, while the application of the GPI framework shows that the recommendations appear to be in the public interest, the ICANN Board will have additional considerations before deciding if the recommendations are within the best interests of ICANN and the ICANN community, which could call other measures of the public interest into question.

For example, potential costs in implementation of the recommendations may rise to a high -- may rise to a high enough level that the ICANN Board might have to consider how those costs impact ICANN's ability to continue to serve of its mission and public interest more broadly. And the GAC question is, could the Board -- could the Board explain how it approaches the cost of the SSAD? And what is the Board's view of this statement, which implies that the SSAD would not be implemented due to the cost identified in the operational design assessment? Velimira, is this a new hand?

VELIMIRA GRAU NEMIGUENTCHEVA: No, apologies Manal. It's an old hand, but because you have given me the floor just if I can suggest that in the question, instead of the SSAD would not be implemented to rather say

could not be implemented because otherwise I think it's very strong statement. Thank you and also to say that question 2 as it was fine, thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Velimira. Noted. So any other comments? Okay. If not then once we finish everything we can move to the following slide.

ROBERT HOGGARTH: Always a challenge to see people -- have people see me struggle with the formatting. Thank you.

MANAL ISMAIL, GAC CHAIR: It's okay, Rob. And this is the last question to the Board I believe on registration data and data protection agreements and data accuracy, so question 4 reads what is the status of the negotiation data protection agreements between ICANN and the contracted parties? And I see Lauren's hand up, so please, Lauren, go ahead.

LAUREEN KAPIN: This is Lauren speaking in my capacity as a member of the small team on the Operational Design Assessment. So this is the previous question, I'm sorry, I put my hand up, but I don't think it

was seen. Just making an observation that it struck me that one of the issues with the ODA is the issue of costs, and the lack of ability to predict usage. They have a huge range of potential numbers of users, which in itself is contingent upon a lot of uncertainties and I'm not sure the question got at this, at this conundrum, so it's just an observation from, from diving into that Operational Design Assessment, which has a lot of variables and uncertainties, so I just wanted to add that observation to have that be considered.

MANAL ISMAIL, GAC CHAIR: Thank you, Laureen. So any concrete suggestions?

LAUREEN KAPIN: I thought you would follow up with that? Let me think about this further. It's just when I see the question, could the Board explain how it approaches cost, the ODA at least approached cost by saying well we don't know. It depends. And there are a lot of uncertainties and I'm just not convinced that the Board isn't going to say, the very same thing although perhaps the real import of this question is this implication that the SSAD can't be implemented because it's too expensive.

So I guess I'm a little uncertain and maybe I'll throw a question back to the authors. Is the issue of this question asking how the

Board approaches costs? Because that I think is a big question mark for the ODA. But if the question really is, are you saying we shouldn't do this because it's going to be too expensive, then perhaps it, perhaps it's the second part of the question that's more important. So I see Velimira's hand is up so maybe she can put me on the right path here.

VELIMIRA GRAU NEMIGUENTCHEVA: Yeah, thank you, thank you Laureen, thank you also for the useful comment. It's always good to have a pair of eyes of a GAC, of GAC colleague who was not drafting the question. So to respond, basically the aim was indeed to ask for the Board's approach to that particular finding so basically the second part of the question.

So, I see actually the consideration that you're putting forward and indeed if the Board is to be thinking of the cost how it is approached in economic or accountable terms I see what you're raising as possible concern there. So, for -- to help us both in it time, in times of worthy it would be not at all an issue for us if we take out the first part of the question. [Inaudible] stage which I believe would also give the small team more time to reflect upon the ODAF it's okay for you, I think it's a good way forward.

LAUREEN KAPIN: That, that to me makes sense. And I think in the discussion with the Board it certainly could be highlighted that the ODA itself is very uncertain as to conclusions about costs.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Laureen, for flagging, and Velimira for the clarification. I see the suggestion is already reflected on the screen, so now focusing on given the outcome of the SSAD, now what -- and not necessarily the approach to the costs, so thank you, and I see also Nigel agreeing in the chat. So thank you very much everybody, and as always we pose the question here from the Board, and there is always an opportunity for GAC colleagues to reflect afterwards, so please, if there is anything you would like to add feel free to raise your hand.

Let's now move to the last slide, and we have 2 questions there. I'm sorry, yeah, this one, the first question reads what is the status of the negotiation of data protection agreements between ICANN and the contracted parties?

And I'm pausing to see if there are any remarks? And if not I'm also reading -- yes, Rob, please go ahead.

ROBERT HOGGARTH: Thank you, Manal. I'm noting that if I'm correct in this, that what you circulated earlier today to the GAC, providing some guidance from the ICANN org was a reaction to this question, sort of a foreshadowing perhaps of where the conversation might go, so just wanted to flag that. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Rob, for the reminder. Indeed, so as you may have noticed, I hope you managed to reach out to your inboxes today. We have circulated some sort of an early answer to our question, so there was initial reflections from the Board that was circulated on the GAC mailing list, and I'm just wondering whether there are any changes to the question, and, in fact, do we still need the question in light of what we have received as the expected answer that we will receive on Wednesday should the question remain?

So pausing for any comments? And, please, just let me know if you have read the draft answer or the answer, and you're fine with the question, or you didn't have the chance to read and would like to come back but I already see France's hand up. Vincent, please go ahead.

FRANCE: Thank you, Manal, and I have to admittedly that I did not have a chance to read the draft answer. Apologies for that. I wanted to make a suggestion actually. I hope I'm not coming too late, but there is a further question I think regarding SSAD and the registration data that could be most interesting in our eyes. It is how the Board sees the continuation of the process if it rejects the Phase 2 final report? Because in the letter that was sent by Maarten [inaudible] audio gone).

MANAL ISMAIL, GAC CHAIR: I'm sorry Vincent, I cannot hear you anymore. I'm not sure. Is it just me?

FRANCE: We would enter some kind of no man's land--

MANAL ISMAIL, GAC CHAIR: Vincent, I'm sorry, we lost you for a minute, if you can repeat -- I heard how the Board sees the continuation of the process, if it rejects the final report, right?

FRANCE: Oh, yes. Apologies. I -- okay, I'll repeat. So, in the letter that was sent by Maarten to the head of the GNSO council ... it was hinted that they -- it was possible that the Board would not adopt the final report. So it would -- we would enter some kind of no man's land.

What would happen then would the Board ask the GNSO to amend the final report? Would it launch a new PDP? Would it drop the EPDP all together? Well, that's some question that we have in France, and I'm very sorry, that's a really last-minute request. Maybe it's not possible but maybe we could add another question asking the Board how it sees the continuation of the process regarding registration data if it does not adopt the Phase 2 final report. That's our suggestion. Did you hear me well? I --

MANAL ISMAIL, GAC CHAIR: I was speaking while on mute. I'm very sorry. So, thank you, and I see also support from European Commission in the chat for this question, and I see Rob already trying to draft, if you can repeat with the dictation speed would be great, Vincent.

FRANCE: Yes. So, I'm sorry, I'm -- connected on my phone, and while moving, it's a bit of a strange situation. So.

MANAL ISMAIL, GAC CHAIR: So let me -- yeah, you're breaking again.

FRANCE: [Inaudible] how does it -- I'm sorry, I'm not finding the words in English.

MANAL ISMAIL, GAC CHAIR: So you mentioned how the Board sees the continuation of the process in case the recommendations are rejected, right?

FRANCE: Yes, exactly.

MANAL ISMAIL, GAC CHAIR: So if we can find a formulation, if the Board†--

FRANCE: That would be the next steps -- what would be the next steps in its opinion regarding, regarding†--

MANAL ISMAIL, GAC CHAIR: If the Board were to reject?

FRANCE: Yes, well, that is at the beginning of the question by Rob, but -- well, yes. The Phase 2 final report, what would be the next steps regarding access to registration data? I hope that's clear, and sorry, I'm very ashamed my level of English today.

MANAL ISMAIL, GAC CHAIR: Not at all. I think it reads well, and it's clear. Thank you for the valuable addition, and we have also question 5 that we haven't read this. I will read this and then we will have the 3 questions on the screen for any final comments. So question 5 reads is ICANN able to access registration data under the GDPR on the basis it has a legitimate -- in checking the accuracy of the data? Has ICANN ever received or plans to receive legal advice on the topic?

And I'm not sure if we can show what we have received from, from ICANN today, Rob? I'm sorry for surprising you with my last minute request. If it is not possible, just let me know.

ROBERT HOGGARTH: I'm trying, Manal. I think what I'm trying to do is I'm going to create a separate slide and just insert the text. You're referring to the sample answer that was circulated correct?

MANAL ISMAIL, GAC CHAIR: Yes, so†--

ROBERT HOGGARTH: Right.

MANAL ISMAIL, GAC CHAIR: I got my e-mail now. Maybe I can, for the sake of time, start reading it without having it on the screen until we are able to have it.

ROBERT HOGGARTH: Sure.

MANAL ISMAIL, GAC CHAIR: So what we received reads, the ICANN Board first of all would like to highlight its support for continued efforts to ensure the accuracy of registration data. ICANN org continues to advocate for greater clarity from the competent European authorities on several outstanding questions and issues regarding the application of the GDPR to registration data when opportunities arise.

The issue of data accuracy is one of the areas that will benefit from greater clarity.

In relation to data accuracy the ICANN Board has requested ICANN org to prepare a number of specific scenarios for which it will consult with the European data protection Board on whether or not ICANN org has a legitimate purpose that is proportionate, i.e., not outweighed by the privacy rights of the individual data subjects, to request contracted parties to provide access to individual records as well as bulk access to registration data in order to review the accuracy of registration data.

The ICANN Board is of the view that this clarification will further inform discussions on this topic and will be helpful to address the issue of accuracy as ICANN org could make further steps by... the WHOIS or -- the European Commission has committed to facilitate ongoing dialogue with the European Data Protection Board and European Data Protection Authorities. We hope the European Commission will help bring this question to the level of the European Data Protection Board. The -- we highlight that the contracted parties have responsibility for the accuracy of the data. A registrant has to provide accurate data to a contracted party who has the obligation to confirm that existing accuracy requirements are being met. If a registrant is found not to meet the obviously -- provide accurate data the registration will be suspended.

Furthermore, upon notification by any person of an inaccuracy including a contracted party's own initiative in the contract negotiation associated with the registered names... then registrar must take reasonable steps to investigate that claimed in inaccuracy but here is the problem. Registration data is no longer publicly available which makes it difficult, if not impossible, to see if the registrant listed is Mickey Mouse even for ICANN org.

So, this is what we have circulated on the GAC mailing list earlier today. I appreciate you did not have a chance to read and digest, but just wondering, we already up front know the answer that we will receive to our question because the questions were already shared with the ICANN Board, so this is the prepared answer that we will receive so any comments in light of the already-known answer?

I see Laureen's hand up. Please, Laureen, and we are already at the end so please let's†--

LAUREEN KAPIN: I will keep it quick.

MANAL ISMAIL, GAC CHAIR: Yes.

LAUREEN KAPIN: I'll just observe that it doesn't quite answer the question because essentially it is saying we would like the European Commission to facilitate having the European Data Protection Board give us legal advice which is different from ICANN pursuing its own legal counsel, you know via its outside council or inside counsel and it's also separate from the question of whether ICANN does have an intention or whether it has actually requested access to nonpublic data period.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Laureen. So we're keeping the question as is, and I see also support from European Commission in the chat, so thank you for this.

Any last comments on the order of the questions? Are we good with the presented order? And Nigel also supporting that we keep the question. So seeing no comments on the order, then we are keeping the order as is, and we will be circulating thanks to Rob, the updated version to the Board after the session.

So thank you very much, everyone. I'm looking at the schedule. We have 30-minute break, and then there is the session on Global Public Interest. I hope you will be able to participate.

We are reconvening for our bilateral with the GNSO at 16:30 San Juan time, 20:30 UTC.

Thank you very much, everyone.

[END OF TRANSCRIPT]