

22 January 2020

Maarten Botterman
Chairman, ICANN Board of Directors

Subject: GAC Response to ICANN Board Clarification Questions on the GAC Montréal Communiqué Advice

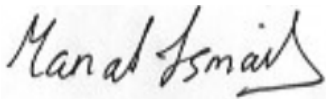
Dear Maarten,

In response to the ICANN Board's clarification questions regarding the GAC Montréal Communiqué Advice, including the letter from the CEO of the ICANN org on 16 December 2019¹, please find enclosed the GAC's response.

This response covers the two topics identified in your clarification questions, as discussed during our 17 December 2019 call:

1. CCT Review and Subsequent Rounds of New gTLDs (Advice §1.a.i)
2. Domain Name Registration Directory Service and Data Protection (Advice §2.b.ii)

Best Regards,



Manal Ismail
Chair, Governmental Advisory Committee (GAC)
Internet Corporation for Assigned Names and Numbers (ICANN)

¹ See <https://www.icann.org/en/system/files/correspondence/marby-to-ismail-16dec19-en.pdf>

1. CCT Review and Subsequent Rounds of New gTLDs (Advice §1.a.i): GAC response to the letter from the ICANN CEO of 16 December 2019

CEO letter: The Board understood the CCT Review Team’s use of the term “prerequisite” to encompass those items that, in the Review Team’s view, should be undertaken prior to a new round. The Board also considers the distinction between items that the CCT Review Team considers “high priority” and items that it considers “prerequisites” to be meaningful, and wonder whether the GAC intends, through its advice, to expand on the Review Team’s list of “prerequisites.”

GAC response: The rationale of the GAC Advice notes in its first paragraph that *“It said that 14 of the recommendations must be implemented prior to the launch of subsequent procedures for new gTLDs (“prerequisites”) and a further 10 recommendations (“high priority”) should be implemented by 8th March 2020 (eighteen months after the issuance of the report).”* Hence, the GAC is not expanding the list of CCT “prerequisite” Recommendations, but referring to the timeline set by the CCT itself (see page 14 of CCT final report, <https://www.icann.org/en/system/files/files/cct-rt-final-08sep18-en.pdf>). Anyway, considering the state of play of diverse ongoing preparations for a next round, it is quite foreseeable that the **8th March 2020** will be prior to the launch of any next round. Hence the distinction between “prerequisites” and “high priority” loses some importance.

CEO letter: The Board accepted the CCT “prerequisite” Recommendation 30 to “Expand and improve outreach into the Global South.” This is viewed as a recommendation for continuous improvement rather than something can be accomplished through a one-time initiative that could be “completed.” The Board’s acceptance of this recommendation was based on the expectation that ICANN should develop and deploy a program to expand and improve outreach to the Global South in parallel with ongoing policy development work. We assume that the GAC would agree with this continuous improvement approach rather than a one-time outreach program, but are not certain given the GAC’s advice that all outreach activities following from the recommendation must be complete before the recommendation is considered fully implemented.

GAC response: We agree that expanding and improving outreach should be an ongoing effort. Instead, we would expect the Board to make a judgment, in good faith, as to whether it considers outreach has been expanded and improved enough to justify proceeding with the new round of gTLDs.

CEO letter: The Board referred the CCT “prerequisite” Recommendation 25 to the GNSO’s New gTLD Subsequent Procedures PDP Working Group (SubPro WG). This recommendation provides, in part, that: “To the extent voluntary commitments are permitted in future gTLD application processes, all such commitments made by a gTLD applicant must state their intended goal and be submitted during the application process so that there is sufficient opportunity for community review and time to meet the deadlines for community and Limited Public Interest objections.” This recommendation anticipates that certain requirements would be incorporated into an application process that is the product and a reflection of community developed policy. Given the community’s authority with respect to policy, we assume that the GAC’s intent is that this advice should be duly taken into account by the SubPro WG – and the Board supports that goal. But even if the SubPro WG was to adopt this input as a policy recommendation, it could only be fully implemented as part of – not in advance of - the application process itself.

GAC response: The GAC notes that this recommendation is being addressed in the New gTLD Subsequent Procedures PDP Working Group (SubPro WG). We hope that the SubPro WG will accept it and include it in their policy. With regard to the timing, we recognise and accept that of course this particular recommendation can only be completely implemented in reality when the new round of gTLDs is initiated.

CEO letter: Another example of this possible timing issue is Recommendation 11, which would require ICANN to conduct periodic end-user consumer surveys. This recommendation was directed to the ICANN organization and to future CCT Review Teams. Per ICANN's Bylaws, a future CCT Review can only take place following a round of the New gTLD Program. Thus, by definition, this recommendation about future CCT reviews cannot be completely implemented in advance of a new round.

GAC response: Recommendation 11, "Conduct periodic end-user consumer surveys", was directed by the Board to ICANN Org and future CCT Review Teams. The part, directed to ICANN Org, can be implemented before any new round of gTLDs. Whereas we accept that the part directed to future CCT Review Teams can, of course, only be implemented after a new round of gTLDs.

CEO letter: As you are aware, a number of the CCT Review Team recommendations in addition to those noted above have been referred to the Generic Names Supporting Organization (GNSO) or specific GNSO working groups for consideration for policy development. In these cases, the ICANN Board has asked the respective groups to consider and act on the CCT Review Team recommendations. However, to be very clear, the Board does not have the authority to compel the GNSO to adopt such recommendations. Accordingly, the Board's ability to accept GAC advice in regard to certain recommendations is entirely dependent upon the outcome of various policy development processes. Until the SubPro WG completes its work, the Board is not in a position to accept or reject GAC advice on these recommendations.

GAC response: We recognise that the Board has asked the respective groups to consider and act on the CCT Review Team recommendations and that the Board is not able to compel the GNSO to adopt such recommendations. However, The GAC reiterates its input from the GAC Public Comment in June 2019, regarding the need for a clear, shared understanding of the distinct roles and responsibilities of the ICANN community. The GAC particularly sees this need relative to the role of the ICANN Board. As noted in the GAC's Public Comment in June 2019, the Board's general reliance on community consensus and its deferral in certain situations to community consensus is a positive role to adopt. Current Bylaws protections ensure that substantial community consensus should not be overruled by the Board without clear reasoning and considerable (e.g., supermajority) support, as noted in the Next Steps to Improve the Effectiveness of ICANN's Multistakeholder Model document. Nevertheless, what the GAC wishes to reiterate since it is not currently captured in the document, is that the Board should remain respectful of the advice received from its advisory committees.

CEO letter: Finally, it is important to note that some of the recommendations identified as "prerequisite" and "high priority" have not yet been accepted by the Board at all. These are in a pending status for a variety of specific reasons, including significant dependencies, feasibility concerns, and concerns that the recommendations may not be the best way to achieve the underlying public policy goals.

GAC response: We would welcome clarification from the Board on how the Board intends to proceed and an understanding of when the Board will make its decision.

2. Domain Name Registration Directory Service and Data Protection (Advice §2.b.ii)

In response to the ICANN Board clarification question on Advice §2.b.ii of the [GAC Montréal Communiqué](#), the GAC emphasizes that in considering complaint and reporting mechanisms regarding failures to provide reasonable access to (or inability to obtain) non-public WHOIS data per the Interim Registration Data Policy for gTLDs, ICANN Compliance should do so with the goal of gathering factual data to understand the scale and causes of the problem.

The GAC agrees with the ICANN Board that we advised ICANN Compliance to create a unique complaint form, and report on specific metrics regarding compliance with this aspect of Temporary Specification in their monthly reports.

We seek a standalone complaint form because embedding complaints of failures to provide reasonable access in the existing WHOIS complaints forms available at <https://www.icann.org/resources/pages/whois-2013-03-22-en> would likely not provide an effective mechanism to collect and report on the data.

ICANN Compliance should ensure that any new complaint forms are easily accessible in all the relevant locations, including on the highest level page of the ICANN Compliance section of the ICANN org website at <https://www.icann.org/resources/pages/compliance-2012-02-25-en> as currently done for Domain Name Renewal and Transfer Complaints. ICANN Compliance should also publicize the ability to submit complaints on this topic and make the complaint forms available wherever appropriate upon implementation of the related GAC Advice §2.b.i in which the GAC advised that a “standard request form” and “links to registrar and registry information and point of contact” should “actively” be made available.

Additionally, in relation to complaints regarding the inability to obtain non-public WHOIS Data, ICANN Compliance should collect data (and eventually report on) various possible reasons for such occurrences, including (but not limited to):

- Absent or deficient information on how to make a request,
- Incomplete or deficient request,
- Non-response by contracted party,
- Unreasonable grounds for denial of request
- Inaccurate response,
- Incomplete response.