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BARCELONA – GAC: ICANN63 Communique Drafting Session  
Tuesday, October 23, 2018 – 17:00 to 18:30 CEST  
ICANN63 | Barcelona, Spain

UNIDENTIFIED SPEAKER: Good afternoon. ICANN63 GAC Communique Drafting Session.

MANAL ISMAIL, GAC CHAIR: So we are just getting the document on the screen and then we will start immediately. Sorry to keep you waiting. So thank you, everyone, for your patience. The document is now on the screen. This is communique 0. We will make a full read through first as we always do and then we will go section by section. So, Tom, over to you.

TOM DALE: Thank you, Manal. And welcome to another GAC Communique Drafting Session. As is usual, for the benefit of newcomers, what will happen is normally there is a read through of this very first version of the communique. I will do my best to explain the origin of some of the takes and provide a bit of background. And then hand back to the Chair to identify priority issues and possible changes that you might want.

Please bear in mind that this is the first of the GAC drafting sessions. There are more sessions scheduled for tomorrow, for later tomorrow, and a number of issues reflecting discussions the GAC had only a few hours ago have still to be incorporated. But I would hope they would all be noncontentious. So this is actually the 16th GAC Communique

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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that I have been helping you in drafting. I counted. It's also the last one that I will be doing, as you may know. So I'm looking forward to getting maximum enjoyment and fulfillment out of the exercise and I hope you will too. Thank you.

The opening wording for the communique is fairly standard. The Governmental Advisory Committee of ICANN met in Barcelona Spain from 20 to 24 October. We have the numbers of GAC members and observers still to be included. Although I've just noted the stage. I believe it is quite substantial. The GAC meeting was conducted as part of ICANN63. All GAC plenary and working group sessions were conducted as open meetings. Thank you. That's a bit easier. The GAC met with the ICANN Board and discussed - and there are some issues still to be included there, but you heard what was discussed with the Board. That will be reflected in another version later.

Meeting with the GNSO. The GAC met with members of the GNSO Council and discussed the operation of and proposed improvements to the GNSO Policy Development Process and issues associated with the final report of the PDP on IGO-INGO Access to Curative Rights Protection Mechanisms including reconciliation with previous GAC advice.

The meeting with the ccNSO which occurred this afternoon. The GAC met with members of the ccNCSO and discussed WHOIS status and impact of GDPR on European ccTLDs and ccNSO priorities for 2019.

Meeting with the At-Large Advisory Committee. The GAC met with ALAC. Some issues that were covered are yet to be included.

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Meeting with Public Technical Identifiers. The GAC met with members of the PTI Board and discussed IANA and PTI functions, PTI Board priorities and the KSK roll over.

The Cross Community discussions, some of which haven't happened yet, but we will assume the GAC will go to them. GAC members participated in relevant cross community sessions and high-interest topics scheduled as part of ICANN63 including the Expedited Policy Development Process. I will repeat that. GAC members participated in relevant cross community sessions and high-interest topics scheduled as part of ICANN63 including the Expedited Policy Development Process, the General Data Protection Regulation, and Innovation in Top Level Domains.

Internal Matters: GAC Membership. The GAC welcomed Laos as a new member. There are currently 178 GAC members and 35 observers. The GAC expressed its thanks to a number of members who are leaving after significant and exemplary service, in particular, Ambassador Benedicto Fonseca Filho from Brazil, Mr. Thomas de Haan of the Netherlands, and Ms. Elise Lindeberg from Norway.

GAC Working Groups. There's a report here from the GAC Public Safety Working Group, a draft text from the GAC Public Safety Working Group. They may revise it, but to read it through - the PSWG discussed the serious impact of ICANN's Temporary Specification for gTLD Registration Data on Law Enforcement investigations and on that of their cybersecurity partners.

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The deficient requirement and implementation of a reasonable access to redacted WHOIS data continue to further hamper investigations and prolong the exposure of victims to crime and abuse. Participants in the working group agree effective attribution of crime and the protection of victims require an access model providing centralized, lawful direct access to decentralized nonpublic WHOIS data. Capabilities to support critical investigative techniques such as reverse lookup and historical queries should be explored. The PSWG believes this can be achieved in compliance with relevant Data Protection laws, leveraging technologies such as RDAP and data anonymization where applicable. Please bear in mind, these are reports from the chairs and co-chairs of the GAC working groups.

The GAC Human Rights International Law Working Group did meet. We're still awaiting some text for a report from the co-leads of that group. The GAC Working Group on GAC Participation in the NonCom met early today in plenary with the GAC NomCom leadership and some additional text will be provided on this by tomorrow.

With regard to the Board-GAC Review Implementation Working Group, the BGRI, that's what it was called at the start of the meeting anyway. ICANN Board and GAC members met in GAC plenary session and agreed to change the name of the group to Board-GAC Interaction Group, noted the Board's proposed timeline for responding to the Barcelona Communique, and reviewed and noted feedback on the Board's continuing initiative to ensure that the status of historical and current GAC advice is accurately recorded and tracked.

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Independent Secretariat. Independent secretariat services provided to the GAC by the Australian Continuous Improvement Group will cease on 31 December 2018. The GAC expressed its appreciation to ACIG for performing this function since 2013. The GAC is considering options for a future independent secretariat and is working with ICANN Org to ensure that staff resources support the GAC's workload.

The GAC Elections. The GAC elected Manal Ismail, Egypt, as Chair for the term March 2019 to March 2021. The GAC elected as Vice-Chairs for the term March 2019 to March 2020 Cherif Diallo from Senegal, Par Brumark from Niue, Thiago Jardim from Brazil, Olga Cavalli from Argentina, and Luisa Paez from Canada. Those names are in need of some accents as a matter of good manners on certain vowels. That was a bit of a challenge in Google Docs, but we are working on getting the names correct.

GAC Capacity Building Workshops. There is a report to be included there. You were aware of that discussion earlier today. That will be provided in a version later.

Under Other Issues. The High Level Governmental Meeting, that's an incomplete text. We will work with our Spanish hosts to ensure there's an appropriate recording of the outcomes of the HLGGM.

WHOIS and GDPR. The GAC had an exchange of views with the Non-Commercial Stakeholder Group and the Intellectual Property Constituency on developments with regard to the EPDP and Unified Access Model. We would expect there will be additional text provided there concerning other discussions that have happened. But that's a

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factual record for the time being. As with a number of GDPR related issues, we would expect some further text to be provided, perhaps later on during this drafting session.

New gTLD Subsequent Procedures. The text reads: The GAC was briefed by the leadership of the GNSO PDP on new gTLD Subsequent Procedures and discussed options for further GAC engagement in the next phase of the PDP’s work. It was noted that the range and complexity of the issues poses challenges for GAC participation and an offer from the PDP leadership to assist with this was welcomed.

The Geographic Names. The GAC was briefed by the co-leads of Work Track 5 Geographic Names of the new gTLD Subsequent Procedures PDP and reviewed recent discussions on Alpha-3 codes in ISO-3166, non-capital city names and terms not included in the 2012 Applicant Guidebook.

Auction Proceeds. The GAC reviewed developments in the Cross Community Working Group on New gTLD Auction Proceeds, in particular with regard to possible opportunities for underserved countries and regions. GAC members will consider making submissions to the public comment period for the CCWG initial report.

Two-Character Codes at the second level. The GAC had a robust dialogue with ICANN Board members concerning the substantive issue of options available to concerned governments in the case of applications to use two-character country and territory names at the second level of gTLDs. And the procedural issue of how the Board has dealt with previous GAC advice on this issue.

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ICANN Accountability. Now, this is some amended text. This relates to the final report of the Cross Community Working Group WorkStream 2 on ICANN A.countability. There have been some amendments suggested to the text that you looked at Saturday. These amendments have been submitted by Brazil quite recently. So I will read through the text now. The GAC wishes to express its appreciation for the diligent and productive work performed by the CCWG Accountability WorkStream 2, its co-chairs, its members, and all its contributors.

The GAC has considered the CCWG's final report and recommendations and supports recommendations with regard to improving diversity, guidelines for standards of conduct presumed to be in good faith associated with exercising removal of individual ICANN Board directors, a framework of interpretation for human rights, improving the ICANN Office of the Ombudsman, increasing SO/AC accountability, improving staff accountability, and improving ICANN transparency.

If these recommendations are accepted by the Board, the GAC will work with the community in monitoring their implementation, particularly with regard to diversity, human rights, and the impact of the transparency recommendations on ICANN's dealings with governments. With regard to the recommendations on jurisdiction, there is no GAC consensus view. Some GAC members support the recommendations. Other members consider that they fall short of the objectives envisaged for WorkStream 2 and only partly mitigate the risks associated with ICANN's subjection to U.S. jurisdiction.

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Now some amended text follows provided by Brazil. The reasons why the GAC has no consensus to approve the recommendations are documented in the dissenting statement submitted to the CCWG by Brazil, supported by Argentina, France, Iran, China, and Russia. As an acceptable alternative to the objecting countries, however, it is suggested that the CCWG should, in accordance with the CCWG Charter rules, amend the first sentence the of the third paragraph of recommendation 4.3 Further Discussions of Jurisdiction-Related Concerns to read as follows:

Therefore, the sub-group recommends the establishment of another multistakeholder process to allow for further consideration, and potentially resolution, of these concerns. Previously, in the San Juan and Panama Communiques ICANN 61 and 62, the GAC took note that the CCWG itself had recognized that there is a need for further discussions to address unresolved concerns relating to jurisdiction. Without amendments, the relevant passage read as follows: Therefore, the sub-group suggests that another multistakeholder process of some kind should be considered to allow for further consideration, and potentially resolution, of these concerns.

Then it goes on to read: the GAC has provided consensus advice to the ICANN Board on next steps with regard to the jurisdiction issue. And we'll get to the GAC had consensus advice section of the communique in a moment.



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Consensus Advice to the ICANN Board. The following items of advice from the GAC to the Board have been reached on the basis of consensus as defined in the ICANN Bylaws.

1. ICANN Accountability. The GAC advises the Board to note that the final report of the CCWG Accountability WorkStream 2 includes the recommendation that another multistakeholder process of some kind should be considered to allow for further consideration, and potentially resolution, of legitimate concerns raised by some stakeholders with regard to ICANN jurisdiction. 2. Take steps to initiate this multistakeholder process as soon as possible with an appropriate timeframe and organizational support.

The rationale provided for this is as follows. Issues relating to ICANN jurisdiction were not resolved in the CCWG WorkStream 1 process, but were instead included in WorkStream 2. As the CCWG Jurisdiction Sub-group notes, there remain several aspects of this issue that were not concluded in the WS2 process and there should be a path forward for these concerns. While there remains a range of views within the GAC on the substantive aspects of these concerns, there is agreement that a further process is needed as suggested in the report.

The second item of GAC Consensus Advice draft reads as follows: Two-Character Country Codes at second level. This is text provided by the GAC vice-chair Thiago. It read as follows: The GAC advises the Board (1) to explain in writing how and why it considers it is implementing GAC advice on the release of country codes at the second level and (2) To explain in writing whether its resolution of 8 November 2016 in the

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removal of the authorization process are compatible with GAC advice on this topic, or whether it constitutes a rejection of GAC advice. The GAC advises the Board to set out its explanation in writing by 31 December 2018, and reserves the right to follow-up with actions as appropriate.

The rationale given for this advice: This advice is adopted to support and oversee implementation by the Board of existing GAC advice on the matter, including calling upon the Board to work towards resolution of countries concerns relating to the release of the country codes as a result of the withdrawal of the authorization process in 2016.

In the section on Follow-up on Previous Advice, I have included some wording submitted by the OECD. It reads as follows: IGO Protections. The GAC advises the Board to facilitate a substantive solutions-oriented dialogue between the GNSO and the GAC in an effort to resolve the longstanding issue of IGO protections on, which it reaffirms its previous advice notably with respect to the creation of a curative mechanism and maintenance of temporary protections.

The rationale for this advice is as follows. As of the time of communique drafting, the GNSO is preparing to vote on the final report in the PDP on IGO-INGO Access to Curative Rights Protection mechanisms, which adopted recommendations in direct conflict with longstanding GAC advice. Noting the positive advancements achieved to bridge the gap between GNSO and GAC on identifiers for the Red Cross, the GAC remains optimistic that a substantive dialogue with the

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GSNO could help both sides better understand the issues at play and reach a lasting solution that can provide IGOs with GAC-advised protections for their acronyms while addressing the concerns of the GNSO.

Just before reading the final section, I appreciate the enthusiasm of some members in drafting, in making possible edits to the communique in the Google Doc version, but it might be easier for all GAC members to wait until we've read it through. Thank you. But, it's fun, isn't it?

The communique concludes with the next face-to-face meeting The GAC will next meet during ICANN 64 in Kobe, Japan, scheduled for 9 to 14 March 2019. Now just in conclusion, I repeat, there are a number of developments late today that will require some changes. I believe that we will be including the statement from Colombia concerning the dotAmazon issue that was made as a statement for the record and information. I believe the intention of the meeting with ALAC was also possible, but that would need to check that, to include the follow-up statement on the improvements to ICANN participation.

So that, in addition to a number of factual issues arising from meetings that happened today or indeed that will happen tomorrow, we will do our best to ensure they are in a later version. I don't know if there will be time to do that tonight, but that's the end of the first reading through of the document. Thank you, Manal.

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MANAL ISMAIL, GAC CHAIR: Thank you very much, Tom. So now, as we did a full reading through the document, we will go back to go section by section. And I think maybe we should start by the advice part rather than the informational part at the beginning. Any objections? Kavouss.

KAVOUSS ARASTEH: No objection. We always support that. We start with the easiest part, which is advice, then go to the complex part which is the noble part. Manal, we may have a comment on that. We may have some comment with respect to the recommendation relating to human rights. Now, we will come back to you. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Kavouss. Noted. So, can we get the first GAC advice on the screen which is on accountability? So the GAC advises the Board to note that the final report of the Cross Community Working Group on Accountability WorkStream 2 includes the recommendation that another multistakeholder process of some kind should be considered to allow for further consideration, and potentially resolution, of legitimate concerns raised by some stakeholders with regard to ICANN jurisdiction. 2. Take steps to initiate the multistakeholder process as soon as possible with an appropriate timeframe and organizational support. So any comments on this part?

So Tom just reminded me that this also links to the text on WorkStream 2 that we have earlier, so maybe to put things into context, we can also scroll up to the original text because it's related.

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Okay, and it reads: The GAC has considered the ccWG's final report and recommendations and supports recommendations with regard to improving diversity, guidelines for standards of conduct presumed to be in good faith associated with exercising removal of individual ICANN Board directors, a framework of interpretation for human rights, improving the ICANN Office of the Ombudsman, increasing SOAC accountability, improving staff accountability, improving ICANN transparency. Any comments? Kavouss?

KAVOUSS ARASTEH:

Yes, Manal, as I have mentioned, we suggest that we treat the framework of interpretation for human rights in a different bullet because I might have some comment on that. So the bullet is that we don't have any - we approve the diversity, guidelines for standards and removal, so on and so forth, improving the ICANN office. But the framework of interpretation, please kindly take it out of there and put it in a subsequent bullet. And we would suggest some text, so allow us a little bit of time. We are about not putting in this thing. We have some text to suggest here. Thank you.

MANAL ISMAIL, GAC CHAIR:

Thank you, Kavouss. Noted. So you want to bring it down with more elaboration?

KAVOUSS ARASTEH:

Take it out from this bullet and put it in a separate bullet with some elaborations.

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MANAL ISMAIL, GAC CHAIR: Understood, thank you. Okay then moving on. If these recommendations are accepted by the Board, the GAC will work with the community in monitoring their implementation, particularly with regard to diversity, human rights, and the impact of transparency recommendations on ICANN's dealings with governments. Any comments?

Okay. With regard to the recommendations on jurisdiction, there is no GAC consensus view. Some GAC members support the recommendations. Other members consider that they fall short of the objectives envisaged for WorkStream 2 and only partially mitigate the risks associated with ICANN's subjection to U.S. jurisdiction. Any comments? Yes, Brazil, please.

BRAZIL: Thank you, Madame Chair. There is an editing that is now missing in this screen and it is at the very end of the first sentence and the first paragraph. And our suggestion was to replace, there is no GAC consensus view, for the more accurate factual statement in line with CCWG rules, and this statement would be: The GAC, with regard to the recommendations on jurisdiction, the GAC is not in a position to approve them. Because I remind everyone here, this is what we are called to do by virtue of the applicable rules. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Brazil. Iran, please.

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IRAN: Yes, we align ourselves with the suggested text, but would like to add also that, therefore, no consensus was reached on the transmission of these recommendations to the ICANN Board. There is no consensus to their transmission. Sorry, I have not commented that with Brazil, but that is what they have discussed verbally. Thank you.

MANAL ISMAIL, GAC CHAIR: Canada, please.

CANADA: Thank you, Chair. Before we consider that text, I think it would be useful to go further into the justification text because if we have clarity on that, that would better enable us to be able to come to view on this text which is a conclusion text. So I would like a bit more clarification on the original text from the subgroup from the CWG report was: therefore, the subgroup suggests that another multistakeholder process of some kind should be considered to allow for further consideration, and potentially resolution, of these concerns.

So as noted in previous communique, this does definitely recognize jurisdiction as an ongoing issue and it definitely puts forward a multistakeholder process. And that was a compromise within the working group and it does absolutely recognize that there is a consideration of another multistakeholder process. So given that it was a compromise and it does open the door for a further consultation, to me, that is a compromise. And trying to go further and

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change that language, you could lose that compromise and actually go backward.

So, I guess, I would just ask for the rationale for those who are wanting a further multistakeholder process. This is a recognition by the subgroup and it's communicated quite clearly to consider another multistakeholder process. And we could reflect that in our advice to put this forward as a subgroup suggested. So I'm just wondering, what is the benefit of the amended language? So a question. It does not necessarily have to be addressed right at this moment, but certainly, as I stated, the language as phrased does open the door to this further process. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Canada. Brazil, please.

BRAZIL: Thank you. And maybe just a quick response because we see that indeed there is maybe a slight difference in the terminology, but the meaning and the consequences are totally different. The subgroup made two recommendations that should be adopted and implemented by the ICANN Board. And the report of the subgroup contains a number of statements including the suggestion that this discussion should go on.

So after the issue is considered by the Board, the report will be there as a historical record but it will not entail the same consequences as a recommendation. So by suggesting that the establishment of another



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multistakeholder process should also have these -- the nature of recommendation. It will entail a consequence. It will trigger another process.

And this is basically what is aimed here. We think the language that is contained in the report is weak, will not lead to concrete action. That's the meaning of making the change. And if we think on the other way around, if the notion is already there, we don't see a reason why we cannot put it in a more straightforward way so that we can indicate a path forward, which is what we want in that regard. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Brazil. Any comments? Yes, Denmark, please.

DENMARK: Thank you, Manal. We participated in the CCWG meetings and were part of the discussion. And the compromise reached was very delicate and it was accepted to have this proposal in the report at last, not as a recommendation, but as a suggestion. And we will be very hesitant to initiate a procedure where we will ask to amend the report which we have given our acceptance to. So we will not be in favor of the suggestion by Brazil. Thank you.

MANAL ISMAIL, GAC CHAIR: Yes. Iran, please.

IRAN: Thank you, Manal. When in the last meeting of the jurisdiction group in Abu Dhabi, we discussed this issue. Although we agreed to be part

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of the report, but now we have to take some actions. What we're saying here is very soft. We say there are further considerations. So we don't want to just leave ourselves to the report. That report would have no impact if we do not take any follow-up action. We have to take the follow-up actions. We have accepted that, provided that this section there. If we do not put it here, that means there will be no more follow-up actions. So put the whole question that nonacceptance at all.

So we come to the two positions. One position is that there are people agreeing with recommendations. Other people do not agree with the recommendation. But finally saying that consensus, not that we should transmit that to the Board. And then we say that one possible course of action is consideration of - and we mention that is something from the report. If we do not put that one, I think the whole thing will be [inaudible]. So this is necessary to put that. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Iran. Brazil, please.

THIAGO JARDIM: Thank you, Madame Chair. Trying to respond to the question raised by the representative from Canada and also adding to the comments that were made previously by my colleague. The question was asked, what would be the benefit of proceeding forward with the change we suggested? My reaction to that initially is, if the Canadians do not see any benefit so, they shouldn't be seeing any inconvenience as well,

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and I wouldn't understand why they would object to the proposed change.

Another and second reaction to the points raised by the Canadians, responding more specifically to the question, what would be the advantage of moving with the suggestion? As you can see, and it's stated in the document, Brazil would be ready to withdraw its objection in case the CCWG proceeded to amend the recommendation in question. It is not a huge amendment, and as I assume the Canadians recognize themselves, it wouldn't change much of the substance of what has already been agreed within the CCWG.

As you will have noticed, the changes suggested mainly revolves around the wording that was used in the original text. There is a suggestion for the establishment of a multistakeholder process, to consider issues that need to be considered, and this has been recognized by the CCWG itself. And we would be aligning the language by replacing the word suggestion with recommendation, aligning that language with the other recommendations.

This suggestion that is currently in the report is, in fact, part of the recommendations, and you will see also, that it is referred as recommendation number 4.3 because it is one of the recommendations that is currently present in the report. But there is indeed a slight difference between them because, for some reason, they added within brackets after the recommendation, the indication that this was a suggestion. Perhaps for the English native speakers here, there might not be a huge difference between words that might

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have the same meaning, but we all know that if you are using different words to express the same ideas, better to use the same words.

So I think the gain for everyone and for the GAC as a whole, if we can reach agreement on this issue, is if we forward to the CCWG the text that we are proposing here, we will be opening the door for the CCWG to make a minor change. And the outcome would be that the GAC will be perhaps in a position to approve the recommendations on the jurisdiction. So I think it would be a huge gain and there is no inconvenience at all, I think, for those who would be fine with the recommendations as they are currently. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Brazil. I have Switzerland and then Iran.

SWITZERLAND: Thank you very much, Manal. And thank you to Thiago for the clarifications because I was a bit confused by previous interventions which mentioned that this part of the recommendations of a jurisdiction was not part of the recommendations. And I was checking the text and seeing that, in fact, as Thiago now mentioned, this is under 4.3, so it's under the recommendations on jurisdiction.

And, in fact, as he mentioned, it's called Further Discussions of Jurisdiction-Related Concerns and between brackets you have, suggestion. But it's numbered under the recommendations and it's under the title Recommendations and Jurisdiction, and it goes after the recommendations relating to OFAC, which are 4.1 and 4.2, which

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are the recommendations on applicable law, applicable jurisdiction, if I recall correctly.

So I wonder whether with this information, something less burdensome is amenable to all of us instead of sending it back to a Cross Community Working Group which is factually dismissed, dismembered? Whether there is a segue or another way to approach this and to, just as an idea, refer this recommendation in our text in the communique and perhaps mention that in the eyes of the GAC this is a recommendation and forms part equally as the other recommendations and this part of that package. So I don't know if giving that view from the GAC could help instead of trying to re-open the discussion, which could be really quite an effort with no clear outcome, in my view at least.

MANAL ISMAIL, GAC CHAIR: Thank you, Switzerland. I have U.S., please.

UNITED STATES: Thank you. Ashley with the U.S. Yeah, I think - I don't have a substantive perspective, it's more procedural. As noted, I believe the CCWG is disbanded. Is it feasible? I mean, let's assume that we all agree to make this change. Is it possible to do it at this stage? Is there any way we can get some for guidance on that, please?

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MANAL ISMAIL, GAC CHAIR: Thank you, U.S. I have a request. I'm sorry, it's challenging, from who is this, Russa? Russia, please go ahead.

RUSSIAN FEDERATION: I would like to support what has been expressed by Brazil. We totally understand that all the texts should be aligned. So if we are giving several recommendations, they should all be recommendations, not suggestions. And we totally understand that there has been a fragile consensus, but this is, in our opinion, a minor change that can put the process forward.

MANAL ISMAIL, GAC CHAIR: Thank you, Russia. So Brazil, please. And I think that the question of the U.S. -because I had the same question, in terms of process, is this even doable? Brazil, please.

BRAZIL: Thank you very much, Madame Chair. Trying to respond to the U.S. question. I have in front of me the relevant passage from the CCWG Charter and reads as follows: Supplemental Draft Proposal. In the event that one or more of the participating SOs or ACs do not adopt one or more of the recommendations contained in the draft proposals, the co-chairs of the CCWG shall be notified accordingly. This notification shall include at a minimum the reasons for the lack of support and a suggested alternative that would be acceptable if any. The CCWG may, at its discretion, reconsider posts for public comments and/or submit to the chartering organizations a

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supplemental draft proposal which takes into account the concerns raised. End of quotation.

So, as you can see, the door is open for what we're doing here. In fact, we are required to do just that in case we are not in a position to approve the recommendations. That's why in the suggestion made by Brazil, we indicated the reasons why we cannot support the recommendations and also, in a good gesture, we also indicated what would be in our view the alternative that would make the recommendations acceptable. And again, these would be, I understand, a huge gain if the whole GAC could, along with Brazil, support the recommendations on jurisdiction as amended in accordance with our suggestion. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Brazil. I have the U.S. and then Canada. U.S., please.

UNITED STATES:

Thank you to Thiago to for that. And I remember having this conversation in Panama. And I think one thing that we perhaps need to focus a little bit more on is the fact that it's up to the discretion of the CCWG as to whether or not to accept any changes.

So I'm just curious, would it perhaps be a better use of our time to perhaps get some clarification first as to whether or not the intention as described by Brazil and Switzerland, that this was indeed a recommendation and is actually a simple change as indicated in the room is actually the case before were we embark on this. Because I'm

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wondering what kind of signal we would be sending after the conclusion of this effort to somehow give an indication that we're objecting to the report. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, U.S. I have Canada and then Brazil. Canada, please.

CANADA: Yes, I think further clarification on the status of the original wording would be very helpful. And I would emphasize, as I did in my first intervention, this was a compromise and I think it is a valuable wording, that it does recognize the concerns. And if one were to open it up to a whole other consultation, it's very difficult to predict the outcome of that. So with the thought that the wording does exist, it can be reflected and it can be referred to in GAC advice as this is a consideration for a further process.

So one does not know the outcome of embarking upon another process, how long that would be, even if the CCWG would even consider it. So very uncertain, a lot of unknowns, where we have the wording that is actually in the report that gives something to work with. So, thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Canada, Brazil, please.

BRAZIL: Thank you very much, Madame Chair. First, in relation to Canada's point. While I appreciate the concerns raised by the Canadian



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representative in regard to whether this is really something that is possible, is this something that the CCWG will embark upon? While I appreciate those concerns, we consider that this is a question for the CCWG. We're not trespassing any rule here. In fact, we are relying upon the rule that applies to us and to the CCWG. There are specific rules saying that they may, at their discretion. We accept that. But let them decide and make use of the discretion that is recognized upon them by virtue of the applicable rules.

On the second point, I think this is in response to the U.S. question as to whether the suggestion for the continuation of discussions is a recommendation. I recall participating during the last ICANN meeting session in which we had the CCWG chairs presenting the outcome of our work. And I did ask the question about whether the suggestion for the continuation of discussions, whether that suggestion was a recommendation that had the same status as the other recommendations. And the response that I got, and this is on the record, and perhaps staff could help us finding this in the record, the response that we got was that indeed the suggestion was a recommendation as all the others on the subject of jurisdiction.

So the answer to your question, Ashley, would be yes, this is a recommendation. And to conclude, if I can wrap up having. I think, considered those two points, I think there are no reasons for us to refrain from doing what we are suggesting which is just applying the rules that apply. Thank you.

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MANAL ISMAIL, GAC CHAIR: Thank you, Brazil. So would it make sense to - I mean when we say we ask CCWG, are we talking about the co-chairs? I mean, are we thinking of just drafting an email and sending this to them maybe today, expecting an answer tomorrow before we finalize our communique drafting? I'm just thinking out loud. U.S., please.

UNITED STATES: Thank you, Chair. So if I understood you correctly, you are proposing asking the CCWG chairs for clarification. And if that's the case, the U.S. would support that before we finalize the communique text. Thanks.

MANAL ISMAIL, GAC CHAIR: Brazil, are you okay with this? Please, go ahead.

BRAZIL: I would just like to comment, first of all, to apologize. I think in my first intervention I made a confusion and I think I was - unfortunately, I do not have the same dedication today as I would like to have, so I think I had in the back of my mind a false memory that this would not have the same status of other recommendations. I apologize because I said it would not go into the document, but my colleague diligently corrected that. So just for the record, this was wrong.

But I think the important thing about this discussion is following: the subgroup discussed extensively many topics and nailed down to two, what I'd say, hard recommendations that are in the documents. It's very clear they are [inaudible] knows what to do about that. And there

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are these recommendations/suggestions, we can discuss the status about that, that indicates they need [inaudible]] suggest something should be done.

But in our view, with regard to the terminology used, in regard to so many aspects to be dealt with in regards to this, it does, in practice, not have the same strength or it's not, I would say, a hard recommendation as the other two. So basically what we are saying here, and I think this is the basis maybe for what we can reflect on how to put it into the paper, if we retain only the two hard recommendations in the end, if we are in a path that the Board, in the end, will adopt those two, we cannot support it.

If we find a way through which we indicate that if the three recommendations are indeed acted upon, if there would be concrete implementation, then we can get on board and approve and be part of the consensus. So I think this, at the end of the day, that's what we're talking about. We can discuss subtleties of terminology, but the message we want to convey is this: If this will have the same treatment and the same action on the part, it's okay, we can go along.

Otherwise, we will have difficulties, as we have been saying from day one. From day one of the first phase of the transition, we said this would be the most important topic for us to address. It has been postponed to Work Stream 2. Now we are at the end of Work Stream 2 and there's not a clarity on how - if that remains it's unacceptable for us to accept the report. I think this is to be very transparent of what our intention is here. Thank you.

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MANAL ISMAIL, GAC CHAIR: Thank you, Brazil. It's very clear now. So in terms of process, how to make sure that this is really part of the recommendations and will be treated as such? Are we looking to receive a confirmation over email from the co-chairs? I'm just trying to figure out - yes, please, Brazil.

BRAZIL: Yes, I think we can get this confirmation, the kind of language we are proposing, how it would be addressed by CCWG and what would be the prospects of. As my colleague said, this is exactly what is in the rules we should be abiding by, so we are not inventing anything. We are just saying, in regard to the context, we are proposing something to address the situation. So we can have their feedback on this.

The other way I think would be -- and that was initially part of our discussion -- to address it in our advice. In my personal opinion, it would be also a weak way to address the issue because we have seen how the Board is treating GAC advice. For example, you've got the two-letter codes.

If the same kind of treatment is going to -- and we're going to receive reports about how they cannot do it because of budgetary restrictions, because of this, because there are other priorities, because they have to launch the second round of gTLDs, because this is more important for the community, and so on, so forth, we don't think addressing only in the advice section is appropriate. We don't think it will entail the same kind of action we're expecting with regard to this.

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So again, to try to respond to you, Madame Chair, I think maybe we can have some more clarity on the prospects and on the viability and in regard also to the time we have, but my comments were aimed at allowing ourselves to reflect collectively in regard to the language as a whole that should come here, in order for everyone to be on board with regard to the report. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Brazil. So can I first ask if interested GAC colleagues are willing to go draft concrete questions that we can send? Maybe if we take a short break, afterward, we can send them directly to the co-chairs. But I'm also interested to go through the discussion. I mean, if we receive an affirmative reply, then I believe there is no problem. If not, how are we going to proceed? Just not to postpone the thing until tomorrow and then we get stuck.

So two things. If interested GAC colleagues are willing to put down concrete questions that we need to ask to the co-chairs of the CCWG? And another more complicated question is what if the answer is not affirmative, depending on the question, of course? Brazil.

BRAZIL: Thank you, Madame Chair. From our perspective, the proposal that is on the screen is what we're looking for. This would produce the end result where you see the guarantees we're looking for could be provided by the CCWG. In terms of process, we would be, by adopting this text, communicating also this to the CCWG. And the

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communication would be stating the reasons why certain recommendations were not approved and suggesting an alternative. Once the CCWG gets this notification with the reasons for non-approval and the suggested alternative, they will at their discretion, consider the possibility of amending. Our suggestion already indicates what would be the amendment that would make us happy, right?

It is also at their discretion whether or not to post it to public comment. I would invite you to consider also, that the suggested amendment is somewhat not very substantial, but it is important to us. Which, in our view, would only mean that perhaps the CCWG, once being notified of the suggested amendment, they will not even consider posting it to public comment. They would probably simply put it to a vote among the CCWG and eventually, if this voting process led to the changes that we're asking for, the supplemental draft report would be then submitted again to the GAC, and the GAC could ideally approve of the recommendations. We're not asking for much there, which means that the process also within the CCWG, at their discretion, may not involve all those different stages that I indicated there as possibilities.

In the extract of the CCWG rules that I read, I call your attention to the fact that the different stages that might follow after this reception by the CCWG of a suggested alternative, include the possibility of posting whatever changes they agree to for public comments and/or direct submission to the charter organization which will then reconsider the supplemental draft and ideally approve. So trying to summarize, and I apologize for being somewhat repetitive on this answer, in terms of

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process, the Brazilian delegation understands that once the text that is shown on the screen is adopted, our concerns would be resolved and then we would see what would result from that.

And I would, to conclude, reiterate the statement that I got from the CCWG chairs, which is in the record, from the previous ICANN meeting in which the CCWG chairs expressly stated that the suggestion for the continuation of discussion, which is what is at stake now, is one of the recommendations so to speak, that are for consideration by the chartering organizations. And that's why we're discussing it here. In a document prepared by the independent secretariat, all those recommendations are displayed there. And the recommendations include this specific one.

And what we're asking here is for the language used in that recommendation be aligned with the language used in the other recommendations. But we see no reasons for these differentiations once they are all recommendations as the CCWG chairs acknowledged. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Brazil. Any reactions to this? U.S., please.

UNITED STATES: Thank you, Chair. And thank you to Brazil for that explanation. I'm not disagreeing with what you have characterized as the process and I'm not disagreeing with your -- you clearly have an impression or interpretation of what this text is.

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I think that the crux of the matter is, is I think there's, at least for the United States, that wasn't our interpretation of the report, that it was actually a recommendation. And that's what we would like to get clarification on. And then we would feel comfortable proceeding with this conversation. Thank you.

MANAL ISMAIL, GAC CHAIR: So can you please try to come up with concrete questions that we can send to the co-chairs of the CCWG, then? Any clarifications that we need? I mean, as soon as we take a short break, I can send this email immediately, trying to get clarification as soon as possible. Is this a way forward?

Okay. Then I think maybe we can leave this issue at this until we receive concrete feedback from the co-chairs and move on to the two-character? So on the two-character the text reads, the GAC advises the Board to (1) explain in writing how and why it considers it is implementing GAC advice on the release of country codes at the second level and (2), explain in writing whether its resolution of 8 November 2016 and the removal of the authorization process are compatible with GAC advice on this topic or, whether it constitutes a rejection of GAC advice. The GAC advises the board to set out its explanation in writing by 31 December 2018, and reserves the right to follow-up with actions as appropriate. Yes, Kavouss.



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IRAN: Thank you, Manal. I think you have mentioned on two occasions that expect that the CEO and the President of ICANN get involved or engage with the government if they have concerns. So that was also discussed today in the board meeting. So we need to put something to that effect. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Kavouss. If you can provide us with concrete text so that we can discuss it here, it would be great. Yes, please.

IRAN: Manal, it is in the previous GAC consensus advice. We can take it from there. It is already drafted and so we don't want to - The President and CEO of ICANN is requested or is invited to engage with those governments that have expressed their concern in relation to the release of the two-character to be used for the second level. It's there and I think our distinguished colleague Tom could find it in one of the previous GAC advices. We don't want to redraft it again. Thank you.

MANAL ISMAIL, GAC CHAIR: Sure, sure. If you are referring to taking that exact same text from before. But I have to know that we will receive the exact same answer. But, we'll do this. Yes, Denmark, please.

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DENMARK: Thank you, Manal. Just to state one observation, it is in the point 2 of it in the last sentence: and reserve the rights to follow-up with action as appropriate. I would suggest that this is not included. We always have the right to follow-up, and if we are indicating here, it seems like we already have the conclusions and think that there's something to follow-up on. I think we should wait for the Board's response and then take the necessary action. We do not need to indicate it here. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Denmark. And frankly, I had the same feeling. I mean, we're giving them a deadline after which we're going to take action. So is this acceptable? Yes, please.

RWANDA: Madame Chair, we've been discussing this issue -

MANAL ISMAIL, GAC CHAIR: If you can use another microphone maybe.

RWANDA: Thank you, Madame Chair. We've been discussing this issue for a long time and the response from the Board has been the same. They are always saying that they are going to improve the communication with the GAC and that they are working on the mechanism that would help us to monitor the use of two characters.

But we are also, as GAC, saying that those mechanisms not enough for us. We're always exchanging the same content. I think we should now

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propose in advance that is clearly a question, concrete action that should be taken by the Board so that it can have the final decision on this issue. Thank you very much.

MANAL ISMAIL, GAC CHAIR: Thank you, Rwanda. So if there is concrete text, Rwanda, that you are proposing, please share with us and we can discuss it here. So before moving on, please also consider Denmark's suggestion and whether the text between brackets should remain or go. I have Brazil and Comoros? Brazil, please.

BRAZIL: Thank you, Madame Chair. Perhaps replacing the text within brackets with the expression we've been using previously, that previous GAC advice on the matter stands, would be satisfactory to Denmark and would also take into account the points raised by the colleague who spoke before. And it would take into account those points because previous or existing GAC advice on this matter recommended exactly what was missing here, which is that the board should be working toward a satisfactory settlement of this issue to the concerned parties. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Brazil. Comoros.

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COMOROS: Thank you, Madame Chair. I think that the ICANN Board is fully aware of our position regarding the use of the two-character codes at the second level. Therefore, I think that we need to insist on conveying to them our concerns. I suggest that we introduce this concern and that we insist on the fact that we are asking for them to ask our consent before using the two-letter codes at the second level, that they shouldn't use it without our authorization.

MANAL ISMAIL, GAC CHAIR: - the proposal from Brazil that all past GAC advice stands, previous GAC advice on the matter stands. Because if you go through the past GAC advice. it has what you are asking for. So instead of repeating ourselves and going through drafting again, we're just putting the sentence to include previous concerns. I hope this addresses your point. Iran?

IRAN: Thank you, Madame. Before discussing the retention or otherwise of the text in the square bracket, I think the issue is not sufficiently and properly mentioned. I think after the 2018, we should put a full stop and say, upon receipt of this explanation, the GAC reserves its right. And the text should be, to take any action as appropriate.

The text saying, to follow-up with action, has no meaning. What does it mean, to follow-up with actions? To take follow-up action but not to follow up with action. To take any follow-up action as appropriate or any action as appropriate. So we expect some reply. Once the reply is

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received, we study the reply and we take any necessary action as appropriate.

MANAL ISMAIL, GAC CHAIR: I mean, there is no deadline for any actions that we can take.

IRAN: No, no, separate the sentence, put a full stop after 2018, and add, upon receipt of this information, we reserve our right to take any action as appropriate. Agree or not agree? Thank you.

MANAL ISMAIL, GAC CHAIR: Exactly my point. Why do we need to state this? I mean, if we don't receive any response, automatically we will react. I mean, there is nothing that will stop us from reacting. Why do we want to put it in writing, I mean? Am I clear? Maybe I'm not clear.

IRAN: Yeah, you are clear. I'm talking about what do you want? If you want to delete it, delete it totally. If you want to keep it, the language is not proper.

MANAL ISMAIL, GAC CHAIR: Excellent. Understood. So if we're going to keep it, we're going to change the language. If we're going to delete it, Iran is not objecting. Okay. Fair enough. Thank you. Understood. Yes, France, please.

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FRANCE: Thank you, Chair. Just maybe to answer to the question and suggestion from Rwanda about concrete steps I think today, during the meeting we had with the board, I don't remember if it was Goran or Marteen, but one board member said that by the end of the year they would implement an automatic notification mechanism for governments.

It's something we talked about. I think it was in Puerto Rico, that there would be a webpage and governments could put their email on the webpage, and then it would be automatically notified if the two-character country code was released at the second level on specific new gTLDs. So maybe we could add another point, three: The GAC advises the Board to implement, as soon as possible, the notification mechanism that was discussed during the ICANN Board GAC meeting.

MANAL ISMAIL, GAC CHAIR: Thank you, France. So France, will write something and provide us with the text. This would be perfect. Thank you. Any other comments? Shall we delete the first square brackets and leave the second? I mean we delete, to take any action as appropriate, and we leave, previous GAC advice on this matter stands. Yes, I've read it wrong, but is this okay? The highlighted text, can we remove this? I see nodding. Iran, please.

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IRAN: No problem for the removal. But the issue that we raised that we advise ICANN CEO and President to engage with the countries who express concern. We have to put that. Not everybody, but those who have expressed concerns.

MANAL ISMAIL, GAC CHAIR: Yes, we will have another version with new text on the new bullet from France and a new bullet as you have suggested from previous GAC advice. Any other comments on this? Okay.

So next we have the IGO protections. And yes, OECD?

OECD: I would be grateful if we could just move this advice, which is actually advice, to be with the all the other advice, and not in separate section, sort of housekeeping section by itself. It would be in line with what we've done in the past. It also reflects that there have been recent developments on this given the working group's report that released over the summer. And it's also important that the Board actually have to respond to this. Thank you.

MANAL ISMAIL, GAC CHAIR: Fair enough. Thank you. Noted. And shall we expect some text on GDPR? Are there any volunteers working on this? I assume, yes. Shall we pause for -- I mean, we need an email with concrete questions. Brazil first, go ahead.

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**BRAZIL:** Thank you, Madame Chair. Apologies. I was just going to suggest that perhaps the point that would be included as additional advice on two-character codes, that I understand France and Iran will provide separately, perhaps they could come as follow-up on previous advice. Because we would be making clear that there is a clear distinction between what we're asking here and it would facilitate following-up afterward on the implementation of those advices.

So it would be follow-up, if I understood France's suggestion, on the implementation of the mechanisms that is already been implemented. And with regard to Iran's suggestion, it would be follow-up on previous advice where we have asked for the engagement of the CEO with the concerned countries. So we would be keeping the language that we've had a look a few minutes ago as it is and it would be discussing follow-up actions on previous advice. Thank you.

**MANAL ISMAIL, GAC CHAIR:** Thank you, Brazil. France?

**FRANCE:** Yes, not sure it was from a previous advice. I think it was something the Board and ICANN Org committed to do during a meeting we had with them. So I'm not sure it's in previous advice, actually. I could be corrected, but we could look at the records of the meetings but if I recollect correctly, it was [in] Akram Atallah who was committed to do that, I think it was in San Juan. And today, a board member also



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talked about it. So I think it was not in a previous GAC advice, it was actually a GAC board interactions during our meetings.

MANAL ISMAIL, GAC CHAIR: Yes, Brazil.

BRAZIL: Thank you Madame Chair. Just a question of clarification. I would like to understand better what would be the advice on this issue. If the Board has already committed to adopting certain actions, why would we be advising the Board to do just that and what would be -- and this is the question for clarification -- what would be this action that the board allegedly committed to? Thank you.

MANAL ISMAIL, GAC CHAIR: Yes, so I tend to agree. If it is something we were promised, then it's a follow-up. If it is something new, then maybe it's a new GAC advice. Would you like to comment?

FRANCE: The issue, like they said they would do it, but they never did, really. Sometimes putting it in writing as an advice would formalize somehow the commitment they took orally. But to be honest, we can also put it in the follow-up if you think it's the right place to put it. It's really at your discretion, Chair.

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MANAL ISMAIL, GAC CHAIR: So I think maybe we need to check. If we have conveyed it in writing before, then it's a follow-up advice. If we haven't conveyed it in writing, then maybe it can be a new advice. Brazil.

BRAZIL: Yeah, we should look at the previous text on that because my concern would be to put some language that indicates that by doing that we would be in a way satisfied which, in my opinion, this initiative of the Board is completely different. It does not respond to the call we have been making. We have been questioning why a decision was made in opposition to GAC advice. Why? And they are saying that in the future they will put in place something that we can check.

So we are saying one thing, they're answering another thing. I don't think they connect. So my concern would be to put into our text and our communique some piece of advice or comments that would in a way seem to indicate that we are acknowledging this and by doing that this could give some satisfaction to us. Which, at least in our case, I don't think is the case. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Brazil. So I think we can move on now. We haven't read the text on the IGOs so maybe we can do this reading as well and then we can pause to have an updated version of the communique. So IGO protections, the GAC advises the Board to facilitate a substantive solution-oriented dialogue between the GNSO and the GAC in an effort to resolve the longstanding issue of IGO protections on which it

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reaffirms its previous advice, notably with respect to the creation of a curative mechanism and maintenance of temporary protections. Any problem with this text?

Okay. If not, then maybe we can take a short break. Do we expect text on GDPR today or is it tomorrow? Today? Okay. Then we take a short break. We expect the text on GDPR concrete questions for clarification to the CCWG co-chairs which I will send immediately. And anything else? Okay. That's it.

So, just checking the time. It's 6:35, so what time -- how long do you need? So maybe we can -- we have until 7:30, right? So I mean, 15 minutes, is that okay? Let's take a short 15-minute break and then reconvene. Thank you.

So actually, we have just half an hour, so maybe we can try to accomplish as much as we can and then we will continue tomorrow.

[AUDIO BREAK]

MANAL ISMAIL, GAC CHAIR: So we have received a text on GDPR. We will read through it. But again, it doesn't -- it's a follow-up on previous advice, so it's not really a new advice.

So the next reads --

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TOM DALE:

Thank you, Manal. I'll save your voice. Not that mine's any better at the moment. We have a text to read out to you here which was submitted during the break. It has been provided by a number of GAC members and PSWG members who have been active on GDPR and related matters for some time. It is included in the section of the communique dealing with follow-up on previous advice. So this is not framed as GAC consensus advice or new advice. It is framed as follow-up on previous advice.

And the text reads as follows: WHOIS compliance with European General Data Protection Regulation. The GAC remains committed to working with the community and the Expedited Policy Development Process, EPDP, to ensure the third parties are able to have timely and predictable access to redacted WHOIS information in a manner that complies with GDPR and other data protection laws.

Further, we highlight and emphasize the GAC consensus advice from ICANN62. Specifically, we urge ICANN to take all steps necessary to ensure the development and implementation of a unified access model that address accreditation, authentication, access, and accountability, and applies to all contracted parties as quickly as possible.

The GAC would like to stress that protecting the public interest in the context of the domain name system requires balancing data protection and the legitimate and lawful practices associated with protecting the public interest, including to combat illegal conduct, promote cybersecurity, protect consumers and businesses, and

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prevent the infringement of intellectual property. Especially vital, and reflected both within prior GAC advice and current ICANN Bylaws, supporting law enforcement authority’s investigation and enforcement of national and international laws, safeguarding individuals data, and promoting user confidence in the internet as a reliable and efficient means of obtaining information and engaging in communication and commerce

International privacy laws, including the EU’s General Data Protection Regulation, recognize that public authorities performing tasks carried out in the public interest may lawfully process, that is access and use, personal data in compliance to applicable legislation. Moreover, both the Article 29 Data Protection Working Party and the European Data Protection Board have expressly recognized that enforcement authorities entitled by law should have access to personal data in the WHOIS directories. And their expectation that ICANN should develop a WHOIS model that will enable legitimate uses by relevant stakeholders such as law enforcement. December 6, 2017. Letter from Article 29 Data Protection Working Party. July 5, 2018. Letter from European Data Protection Board.

Nevertheless, the existing requirements in the temporary specification in governing gTLD registration data are failing to meet the needs of the law enforcement and cybersecurity investigators. Recent survey results from the Registration Directory Services 2 Review Team and the Anti-Phishing Working Group, Messaging, Malware, and Mobile Anti-Abuse Working Group show a clear trend that since implementation of the temporary specification, law enforcement and

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cybersecurity investigator’s ability to investigate and mitigate crime has been significantly impacted. Specifically, initial data collected thus far from around the world report that the current WHOIS system’s ability to meet law enforcement needs has been drastically reduced. Investigations are delayed or discontinued. Nearly half of the cybersecurity professionals that responded do not know how to request access for non-public information. And of those seeking access, half have been denied access.

The GAC is aware that similar evidence exists for this involved in intellectual property protection. The current temporary specification has created a fragmented system for providing access, potentially consisting of thousands of distinct procedures and policies depending upon the registrar involved. This lack of a consistent procedure and policy to access non-public information also contributes to delays. If investigations are delayed or stopped, the unlawful conduct continues to harm the public with negative results that include physical and financial harm. Hence, we urge the Board to consider the reference to GAC advice and survey results as they consider the timing in implementation of any temporary specification and unified access model.

I’ll just take a break for some water. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Tom. Any reactions to the text? Okay. Excellent. I just have a quick comment, and it's not on the substance, but rather on the structure. Because, I mean, normally we used to send the GAC advice in terms of a list of bullets, so that the Board

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knows what exactly is needed and they can follow-up on this. And we have to mind also that this is locked and archived in some platform. So I'm just again trying to see how this would go into the system. And if it is a follow-up, follow-up on which pieces of old advice exactly.

And again, this has nothing to do with the substance itself but more of the process and the structure. So I have the U.S., European Commission, and Iran. U.S., please.

UNITED STATES:

Thank you. And happy to work with the other parties to put it in the proper format. I think this being follow-on advice, we didn't take the characteristics of GAC consensus advice since this was follow-up. Thanks.

MANAL ISMAIL, GAC CHAIR:

Thank you, U.S. European Commission, please.

EUROPEAN COMMISSION:

I think what you ask is also we could work with the current draft in order to make it a little bit more concise because there are a lot of elements there that provide basically details that show also what happened between the previous advice and now and what are the evidence that we are aware of as GAC that lead us to insist or to emphasize this GAC advice. We can put them in a more succinct form, but, however, we need to highlight those in order that the Board understands that since the last communique that we addressed to

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them, we have seen evidence of things that lead us to insist and emphasize what we want to point out with this follow-up. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much. It would be very helpful. I mean, we can put whatever text we want as an additive part and then the parts that we need to bring to the attention of Board members that we will be following up on 1-3. Iran, please go ahead.

IRAN: Thank you, Madame. Could we know where this text comes from? Who has drafted that?

MANAL ISMAIL, GAC CHAIR: Yes, United States, can you help me?

UNITED STATES: So as agreed during the session, Lauren Kapin held the pen, but this was circulated to the small EPDP group. So the members of that small group had the opportunity to comment on it and most of them did. It reflects actually input from a number of individuals on the small GAC group.

MANAL ISMAIL, GAC CHAIR: Thank you, U.S. So yes, the original, after yesterday's session there was a suggestion that Lauren hold the pen and provide some initial text for feedback. She accepted this and she obviously sent the text to



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the EPDP small working group. Of course not everyone commented. Go ahead, Iran.

IRAN:

Just a question. Is it a result of discussion, I think this morning, that we said that in the working group of the issue discussion. It's not yesterday. It's not PDP. It's just working group this morning and we said whether Lauren could take up actions and consult others. Whether they consulted, I don't know about that.

Now, coming to the issue, usually we have a GAC consensus advice almost concise and precise. Then the remaining should be a form of the rationale for that. I don't know whether everything is advised or where the rationale is, but, in any case, it might be better if we try to shorten the text and put major or essential elements in the advice and the remaining part of the rationale in the advice. The first time I see such a long advice and so on and so forth.

I understand Lauren is an expert on that. She is very knowledgeable and so on and so forth. And she us an alternate of Ashley in the group and they will have to consult with each other. I have no problem with anybody, with any text, but I think we have to look at that one again and put it in a proper form that it fits with the type of advice that we have.

MANAL ISMAIL, GAC CHAIR: Thank you, Kavouss. It was agreed that we would restructure this part. The text was, obviously, circulated to everyone within the EPDP.

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Unfortunately, not everyone had the time, of course, to read it. I haven't been checking my mails for some time. It might not have been feasible for everyone to read it, but obviously, it has been circulated to everyone. And apologies again for saying it was yesterday. It seems to be a long, long day, so my fault, it was this morning, but it seems to be that it was very far away, so sorry. Yes, it was this morning and Laureen seems to be super fast.

Your point is taken. The text is going to be reformatted and restructured. We will take care of this point. Thank you, Kavouss. So apart from this, I'm sorry, Tom, what else do we have to go through? I think we have new text on two-character code, received from France. Again, Kavouss, we haven't been able to dig the previous GAC advice yet, but we are working on it.

Can we go to the two-character?

TOM DALE:

Thank you, Manal. Yes, as suggested by France before the break, an additional item of advice has been included in the section on two-character codes. It reads as follows - this is consensus advice to the board. 3. Put in place, as soon as possible, a webpage enabling governments to be notified when their two-character codes are registered at the second level of new gTLDs as agreed during the meeting between the ICANN Board and the GAC. I also have some draft text for a rationale to support that, but I haven't had the time to include that. That's the only other addition since then. Thank you, Manal.

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MANAL ISMAIL, GAC CHAIR: Thank you, Tom. France, you wanted to comment.

FRANCE: Yeah, thank you, Tom. I also just sent you more text for the rationale to take into account the concern of Brazil. I think we should make it very clear in the rationale that the implementation of such as process does not constitute satisfactory closure of the issue for the concerned countries, to make sure it's not at all the end of the process. It's just one step that might satisfy some concerns of the countries, but it does not constitute at all a satisfactory closure, just to make that very clear in the rationale. Thank you.

MANAL ISMAIL, GAC CHAIR: Brazil, please.

BRAZIL: We would like, for the moment, to put this in brackets because we really do think this does not directly adverse the request because we're talking about a webpage for the government to be notified when their two-character is registered. And our basic request refers to a procedure to be established to allow governments to be consulted before. So I think it's slightly different, what we are saying here. Maybe we can sleep on it and come back. Again, our concern is not to confuse the issue and give some wrong interpretation of what we mean. Thank you.

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MANAL ISMAIL, GAC CHAIR: Fair point. So we'll have it between square brackets for now because we have 12 minutes to finish. So yes, Comoros?

COMOROS: Thank you, Madame Chair. I think that the fact that governments should be notified after the fact means that this is too late. Our request is to be consulted, to be able to give our opinion before these codes are used. If they go ahead with the use, then it would be useless to have the notification.

MANAL ISMAIL, GAC CHAIR: We will have another look at the text and maybe discuss it further tomorrow. For now I just -- before we leave I just need to clear everything on the CCWG, whether we're sending an email or not. So if we can agree on a way forward within the few remaining minutes, the co-chairs have been notified that this may come to them, so they are staying tuned and waiting for the email.

If we agree that this is needed, we should do it. Brazil, please go ahead.

BRAZIL: Thank you, Madame Chair. In Brazil, we would like to know whether there is a group in charge of writing and editing the text on GDPR, and if that is the case, we would like to be part of that drafting group. Thank you.

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MANAL ISMAIL, GAC CHAIR: Thank you, Brazil. Yeah, Laureen is holding a pen right now and I think the European Commission, you offered to draft. So I think between Laureen and the European Commission, they are holding a pen but obviously, sharing with everyone the proposed draft. Is this okay?

So on the CCWG Work Stream 2, are we sending an email or not? Because on a second discussion during the break, I got the sense that the mail is not needed. So that's why I'm trying to finalize this at least before we leave. Because if we need to send it then it has to be sent right away. Yes? No? U.S., please.

UNITED STATES: Thank you, Chair. So I thought there was a group meeting to discuss what the text of that email should be. So I'm curious to know if that happened. If not, I would just like to say again, from the U.S. perspective, we're not in a position to consider this text without clarification on this point. Thank you.

MANAL ISMAIL, GAC CHAIR: So Brazil, please.

BRAZIL: Yeah, Madame Chair. I think I was involved in those discussions we had during the break. And part of the difficulty is to understand exactly what we would be doing through this request because if there is some doubts or some need of clarification in regards to what is the

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understanding of the CCWG with regard to the nature of these suggestions, recommendations, I think as my colleague has said, this has been a matter of direct question and answer in one of the formal meetings. So we could revert to the transcription for that.

If it refers to whether the language we're proposing is aligned with the rules we have to follow, I think, again, we can check that without asking the co-chairs. So I think there was even some difficulty to understand beyond those two points which are duly documented and can easily be responded to whether there will be any other elements.

I thought that the idea was to have an assessment of the co-chairs whether what is being proposed, in spite being aligned with the letter of the rules, if in their assessment it would be viable, feasible to do it at this point in time. So maybe that might be a reason to do that, but if we want to ask them whether it's a recommendation or not, I think this has already been asked and responded. If we want to ask if the procedure we're proposing is aligned, I think this is also documented. So maybe we need some further clarification in order to craft, a consultation in case we need such consultation to the co-chairs. Thank you.

MANAL ISMAIL, GAC CHAIR: So U.S., please.

UNITED STATES: Thank you, Chair. Yes, I do think getting that further clarification is actually quite critical, because, again, upon reading the document and

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having followed the conversations, there appears to be a divergence of interpretation with respect to what was the intention of the text in the final report. And it was not our understanding that this was indeed a recommendation, but it was noted under a recommendation as a suggestion.

So I'm happy to reconsider and I'm happy to be found wrong in my interpretation, which is why we would like to get some clarification from the CCWG co-chairs. Thanks.

MANAL ISMAIL, GAC CHAIR:

So would it be, again, through an email or would you like us to invite one of the co-chairs tomorrow and maybe ask them here in our sessions? I see nodding. So we'll try to reach out to the co-chairs of the CCWG and hopefully find an appropriate slot so that we can seek this clarification here in the room.

So anything else before we conclude? Iran?

IRAN:

Thank you, Manal. As you kindly recall that when we were discussing the other reports or a part of the report of the CCWG with respect to framework of the interpretation, we asked that you kindly separate that paragraph and you have done that or Tom has done that. Now we have a suggestion to make with respect to that if you allow us, my distinguished colleague will make that suggestion.

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UNKNOWN SPEAKER: Thank you very much. So I read the proposed paragraph. So this is the proposed paragraph. It was indicated that other aspects of human rights -

MANAL ISMAIL, GAC CHAIR: Excuse me, can you just read slowly because Tom is writing.

UNKNOWN SPEAKER: It was indicated that other aspects of human rights need to be addressed in the framework of interpretation such as negative impacts of Unilateral Coercive Measures, with capital, please -- unilateral with U and C-M, capital -- and sanctions on the rights of the citizens of the concerned countries. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much. So again, this is text that we can sleep on until tomorrow. It's difficult to discuss here now because we have to leave the building. So we'll stop here and thank you very much. And I hope we can have a fruitful discussion tomorrow.

Tomorrow we're reconvening here at 8:30. Have a lovely night and see you all in the morning. Thank you. Very sorry, there was a request for the floor from Colombia which I have overlooked. Extremely sorry. Sincere apologies. I'm sorry. Go ahead.



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COLOMBIA: Thank you very much, Madame Chair. We were trying to summarize as much as possible the report we submitted with respect to dot Amazon. But since this is not a report of what Colombia did, the latest steps of Colombia, but has been made by the eight countries regarding the issues on which a consensus had been reached, we would like to ask you and the whole of the GAC room to make a translation of three or four paragraphs of the reports I made in the first session in the morning and in the afternoon, so that these three or four paragraphs may be included in our communique. So I'm asking for your authorization for the translation and I will deliver to you these paragraphs.

MANAL ISMAIL, GAC CHAIR: Okay, thank you, Colombia. Noted, and apologies again for overlooking your request. I'm sorry. Thank you.

So this concludes our session today and see you tomorrow at 8:30. Thank you.

**[END OF TRANSCRIPTION]**