
BARCELONA – GAC: ICANN63 Communique Drafting Session (3)

Wednesday, October 24, 2018 – 15:15 to 16:45 CEST

ICANN63 | Barcelona, Spain

UNIDENTIFIED MALE: Good afternoon. ICANN 63 Communique Drafting Session 3.

MANAL ISMAIL: Welcome back, everyone, and thank you for being on time. If you can please take your seats, we'll be starting. And please note that we have set the Google doc on view only for now because we don't want edits real-time as we discuss the document. So if you're not able to edit in the document, this is because we have changed the document to view only. Tom, should I hand over to you?

TOM DALE: Thank you, Manal. Good afternoon, everyone, and for the last time, I'll say welcome to another GAC communique drafting session. What Manal and I have agreed to do is to run through to highlight the changes in text that were made since the version that you saw late yesterday afternoon. Not to pause for detailed explanation but just to highlight the major changes.

Some of them are factual changes which I'll note very quickly, then we'll try to move to the substantive changes, particularly regarding those that'll link to GAC advice or follow up to GAC advice. So this is the first read through just for sake of completeness since the version that you saw on the screen yesterday, but of course, this has been available to

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you since this morning with some changes which continue to be made, but as Manal has said, they are now frozen for the time being.

The meeting section has simply been included with some factual material, with one exception. This is something that we need to draw to your attention. On the meeting with ALAC, the third bullet point there has been added. It says that an agreed follow-up joint statement on enabling inclusive, informed and meaningful participation in ICANN was one of the issues discussed.

This statement is attached to the communique now. The statement, you'll recall, was the one that was provided to you, I think it was yesterday. I'm sorry, I'm trying to remember when we met with ALAC. But whenever, and my understanding is that ALAC has today agreed to adopt that statement. So it's not yet a joint statement until the GAC agrees to it as well, but you'll recall you were asked to consider whether or not you agree to the GAC joining itself to that statement. So for the purposes of this draft, I have included it as an attachment to the communique but not as advice, just as an attachment. Thank you.

The remainder of that section is factual internal matters to note that we have slightly amended the GAC's appreciation of a number of departing members. The GAC expresses deep appreciation to a number of longstanding members who are leaving after significant and exemplary service, in particular, Ambassador Benedicto Fonseca Filho, Mr. Thomas de Haan, Ms. Elise Lindeberg and Mr. Ørnulf Storm.

There are some reports from the GAC working groups, which I won't dwell on because they're factual material suggested by the chairs and

with some slight changes from the GAC chair to streamline the process, but they're factual. The BGRI has not changed, the independent secretariat has not changed significantly.

GAC operational matters, we're recording what happened this morning, that the GAC established a working group on GAC operating principles evolution. The working group will be chaired by Guo Feng from China and Pär Brumark from Niue. The task of the working group is to review and make recommendations on the structure and substance of the GAC operating principles. The GAC also [reviewed, work planned] or underway on meeting attendance onboarding of new members and travel support guidelines.

There is some new text there concerning the high-level governmental meeting which has been agreed by the government of Spain. It reads the GAC expresses its sincere appreciation for the government of Spain for hosting the fourth high-level governmental meeting. The meeting was attended by 124 delegations and addressed a range of issues including opportunities for government in ICANN post-IANA transition, cybercrime, data protection and privacy, the role and impact of Internet technological evolution on ICANN, and the global digital agenda and Internet policies.

On WHOIS and GDPR, there is some new text here which has been prepared by a number of countries involved in the PSWG and EPDP work. It reads as follows. "The GAC reviewed developments across ICANN with regard to WHOIS access and compliance with the European General Data Protection Regulation and GAC members participated in

cross-community sessions and the expedited policy development process. The GAC had an exchange of views with the Noncommercial Stakeholder Group and the Intellectual Property Constituency on developments with regard to the EPDP and unified access model.”

“Protecting the public in the context of the domain name system requires balancing data protection and the legitimate and lawful practices associated with protecting the public, including to combat illegal conduct, promote cybersecurity and user confidence in the Internet, protect consumers and businesses and prevent the infringement of intellectual property. Prior GAC advice and current ICANN bylaws recognize these vital interests.”

“Moreover, both the Article 29 Data Protection Working Party and the European Data Protection Board have recognized that enforcement authorities entitled by law should have access to personal data in the WHOIS directories and stated their expectation that ICANN should develop a WHOIS model that will enable legitimate uses by relevant stakeholders such as law enforcement.”

“The current temporary specification has created a fragmented system for providing access consisting of potentially thousands of distinct policies depending upon the registrar involved. This lack of consistent policies to access nonpublic information causes 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 time is of the essence for implementation for a

final specification governing gTLD directory services and developing a unified access model for third-party access to nonpublic WHOIS data.”

“Existing requirements in the temporary specification governing gTLD registration data are failing to meet the needs of the law enforcement and cybersecurity investigators, so their results show a clear trend that since its implementation, the temporary specification has significantly affected law enforcement and cybersecurity professionals’ ability to investigate and mitigate crime. The current WHOIS system’s ability to meet law enforcement needs has been drastically reduced. Investigations are delayed or discontinued. Many cybersecurity professionals do not know how to request access for nonpublic information, and many of those seeking access have been denied access.”

“Similar concerns exist for those involved in protecting intellectual property. Therefore, we think it would be useful for ICANN to provide a dedicated platform for the collection of evidence on the impact of the temporary specification. The GAC welcomes the progress made by the EPDP and emphasizes the commitment of the GAC to contributing to the swift delivery of a comprehensive RDS policy.”

“In view of the complexity of the subject matter, the GAC is of the opinion that here nonetheless exists a risk that the comprehensive policy may not be in place before the temporary specification expires. Therefore, the community should consider how to mitigate this risk. The GAC remains committed to working with the community and the Expedited Policy Development Process to ensure that 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.”

“Although the EPDP charter t asks the team with defining what is meant by reasonable access, community work on developing a unified access model should proceed in parallel and can complement the EPDP’s efforts.”

Now, that is in the factual statement part of the communique. There is also some text at the end as follow-up to GAC advice as well. So there is no new GAC advice suggested on GDPR, but this section plus some follow-up to GAC advice which we’ll come to shortly. I’ll just keep going.

The text on subsequent procedures is unchanged. The text on geographic names is unchanged. There is a new section with a statement on dot-Amazon, which you will recall that Colombia requested to be included towards the end of the session yesterday. You see it on the screen there. It’s essentially the statement that – or a version of the statement that Colombia made to the board for the record, so I won’t read it out just yet, but that’s the origin of the document and it reflects the request that was made by Colombia late yesterday, and I hope it meets their concerns.

Auction proceeds is unchanged. In relation to two-character codes at the second level, there is some new text here, firstly the GAC noted that – and I believe this is text coming from Brazil – the ICANN board indicated – sorry? Thiago’s waving at me.

THIAGO JARDIM: Just to clarify that this is joint proposal between Brazil and France.

TOM DALE: Thank you. Well, I'll read out both paragraphs. The first one is that the GAC had a robust dialog with ICANN board members concerning the substantial issue, what options are 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.

The GAC noted that the ICANN board indicated it will put in place a webpage enabling governments to be notified when their two-character codes are registered at the second level under new gTLDs. The GAC notes however that this measure does not address the request from some GAC members to be consulted prior to the release of their country codes at the second level under gTLDs. The GAC further notes that it would not address the procedural issue.

And I'll continue. The section on ICANN accountability is, as far as I'm aware, unchanged since the first text that was being discussed earlier in the week and yesterday. And of course, that's been the subject of some significant discussion here, so I'll move on over that for the time being until requested to do otherwise.

The section on consensus advice to the ICANN board still includes what I understand was the original text suggested for dealing with the Work Stream 2 report and recommendations or the recommendation on

jurisdiction. So that is unchanged. So as I'm sure the GAC will be returning to the Work Stream 2 issue at some stage soon, I'll just leave that for now. There's no change to the text that you've seen indeed some six or eight weeks ago. So moving on.

For two-character country codes at the second level, the advice reads, “The GAC advises the board to, one, explain in writing how and why it considers it is implementing GAC advice on the release of country codes at the second level, two, 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. Previous GAC advice on this matter stands.”

And the third element, just by way of explanation, in particular to Iran, there was a request from Iran to reflect previous GAC and board deliberations about a direction given to the ICANN CEO to engage with governments. I've checked, and as far as we can tell, this was not in GAC advice but it was in the board's response to the GAC Copenhagen communique, that's where the CEO was directed to engage with governments.

So based on that, the text now reads, “Ensure that its – that is the board's – direction to the ICANN CEO to engage with concerned governments, to listen to their views and concerns and further explain the board's decision-making process – that was board resolution 2017.06.12.01 – is fully –“

UNIDENTIFIED MALE: [inaudible]

TOM DALE: Yeah. Okay. Where am I? Thank you. “That board resolution is fully implemented, including direct engagement with those governments.” Thank you. The section on the webpage has been deleted because text has been moved further up in the section on two-character codes, you'll recall. The rationale is unchanged for that.

IGO protections, there has been a slight change because as was mentioned, I think, by Manal or [inaudible] and conveyed to the GAC, the GNSO council has withdrawn the motion to be voted on in regard to the curative rights PDP report but will continue discussing it. So that means that the rationale has been slightly changed to reflect that position. So the first sentence now reads that the GAC understands that the GNSO has decided – I should say GNSO council, my apologies – has decided at this stage to not vote on the final report for the PDP on IGO, INGO access to curative rights protection mechanisms. So that simply reflects the fact that there will not be a vote. Thank you.

Finally, the section in the communique dealing with follow-up on previous advice, you'll recall I said the text on GDPR that you heard earlier in the body of the communique was accompanied by some follow-up on previous advice, so this is text submitted by the same group and it reads, “With the GDPR, we emphasize the GAC consensus advice from ICANN 62 that urged ICANN to take all steps necessary to

ensure the development and implementation of a unified access model that addresses accreditation, authentication, access and accountability and applies to all contracted parties. We welcome ICANN’s efforts to facilitate the necessary community discussions through the unified access model papers and emphasize the need to drive these discussions towards concrete and timely results.”

And finally, there is a new section of text dealing with the dot-amazon applications. Remember, this is follow-up to previous advice, which I understand has been submitted by Brazil. Is that correct? Thank you. And it reads Brazil and Colombia –

UNIDENTIFIED MALE: [inaudible]

TOM DALE: Sorry. Brazil and Colombia. Thank you. [inaudible]. “The GAC welcomes the 16 September 2018 board resolution on the dot-amazon applications directing the ICANN president and CEO to support the development of a solution that would allow the dot-amazon applications to move forward in a manner that would align GAC advice and inputs on this topic.”

“The GAC notes that the rationale of the 16 September 2018 board resolution states that the board is taking this action today to further the possibility of delegation of the dot-amazon applications while recognizing the public policy issues raised through GAC advice on these applications.”

“The GAC recalls its latest advice on the matter where the GAC recognizes the need to find a mutually acceptable solution for the Amazon countries and for the applicant and calls upon the board to continue facilitating work that could result in such a solution. GAC Communique Abu Dhabi, 1 November 2017.”

And finally, I'll just remind you again that we have included as an attachment for your consideration the follow-up to the joint statement by ALAC and GAC on enabling inclusive, informed and meaningful participation at ICANN. Thank you, Manal.

MANAL ISMAIL: Thank you very much, Tom, and I have a request for the floor from Switzerland.

JORGE CANCIO: Yes. Thank you very much. I just forwarded Tom and [Fabian] and you also a text we proposed yesterday morning on the ACRC and which we had discussed could be best placed under follow-up advice. So if you could please take that up in the draft. Thank you.

TOM DALE: I'm sure that was probably a simple error and I apologize for the failing of the secretariat. You're able to dispense of their services if you wish. Thank you, Jorge. Can we clarify? If I can clarify from Switzerland, from Jorge, was that to be in the follow-up GAC advice? Thank you. We will fix that now.

MANAL ISMAIL:

So, I think following this, we can start – because it’s a little bit late, we can start to talk about the substantial part of the communique, GAC advice to the board. So, are we ready to discuss the Work Stream 2 part? If we have it on the screen, please.

So, the GAC advises the board to, one, note that the final report of the Cross Community Working Group Accountability Work Stream 2 includes the recommendation that another multi-stakeholder 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. And two, take steps to initiate this multi-stakeholder process as soon as possible with an appropriate timeframe and organizational support.

So this is the advice as it stands, and as we mentioned yesterday, it also links to the informational part at the beginning, so I'll pause here to see if there are any reactions. Yes, Canada, please.

PAMELA MILLER:

Thank you, chair. In order to have a multi-stakeholder process, it’s necessary to have the engagement of the multi-stakeholders of the communities. So we wanted to introduce the concept of consultation with the communities into this advice, and I have a slightly shorter formulation as well that puts these points, one and two, together. But it could equally be separated. But I will read to you my suggested text.

So “The GAC advises the board, and it starts recognizing that the CCWG –“ and just repeat that whole up to the end of the italics.

MANAL ISMAIL: Sorry, can you repeat [inaudible]

PAMELA MILLER: “Recognizing that the final report of the CCWG Accountability Work Stream 2 in the recommendations section suggested –” and then the italics part in the previous one so that another multi-stakeholder process of some kind. So that italics, that whole italicized section. And then continuing, “Regarding ICANN jurisdiction, take steps to consult with the ICANN community on ways forward regarding this multi-stakeholder process.” That’s the end [in] conclusion. Thanks.

MANAL ISMAIL: That’s it? Okay. Thank you, Canada. So, any reactions to the text proposed by Canada? Yes, Brazil, please.

THIAGO JARDIM: Thank you, Manal. Can we see the two – yes. I thank Canada for this proposal, but I think when you look into literal two and compare with the new language, it seems there was a step back, because in literal one, we note that the final report includes recommendation towards establishing a new multi-stakeholder process.

And as we understand and we heard from the co-chairs that the other chartering organizations have already approved the report, CCWG report as a whole, including the suggestion to initiate such a multi-stakeholder process. So in a way we have, I would tend to think nonobjection on the part of the other chartering organizations towards that.

So in literal two, the initial idea was to request or advise the board to take steps to initiate this multi-stakeholder process. And now we have language asking for yet another consultation. I think it is a step back. Maybe we could add at the end of literal two, “Take steps to initiate this multi-stakeholder process as soon as possible with an appropriate timeframe and organizational support, on the basis of consultation with the –“ Something like that.

What we are looking forward here is more action-oriented language addressed to the board towards initiating the process. Again, the process was – and the CCWG co-chairs were clear about that. The suggestion was or the recommendation was in the report and the other [chartering] have approved the report. So they have approved in principle this idea that is contained in the report. I stand to be corrected.

So I think now we have to request the board to take steps towards that. If we can maybe add on the base of consultation, it’s okay, but I think we should not ask the board to do something the [other chartering] have already been asked to comment and they did not comment. They just said they approved the report as a whole. Thank you.

MANAL ISMAIL: Thank you, Brazil. Switzerland.

JORGE CANCIO: Thank you very much, Manal. Looking at the text from Canada, I wonder whether it could help also Brazil if we changed in the third line to “Take steps, –“

MANAL ISMAIL: You're amending to the original text or Canada's text?

JORGE CANCIO: Canada.

MANAL ISMAIL: Canada?

JORGE CANCIO: “Take steps, in consultation with the ICANN community –“ Well, no, this is repeating the same text, so, “To consult with the ICANN community” would be deleted. “On a way forward regarding this multi-stakeholder process.” So this is more operational, I think, but it includes the element of the consultation.

MANAL ISMAIL: So, we now have two alternative text on the screen, so I would ask Brazil if they are okay with the Swiss amendment to the Canadian text, and

Canada if they are okay with the Brazilian amendment to the bullet two.
And if there are any reactions from the floor as well, of course.

THIAGO JARDIM: I would like to have some time to look at the language. I don't see many differences, but maybe we can park the discussion for a moment and we can come back to this.

MANAL ISMAIL: Thank you, Brazil. Noted. Okay, then we will leave it at this and maybe move on. Denmark.

FINN PETERSEN: Thank you, chair. I would just like to have confirmation that if this text is approved, then I suppose that the GAC can support the CCWG recommendations or the report. I would like to have confirmation.

MANAL ISMAIL: Thank you, Denmark. So, any – yeah, Brazil, please.

THIAGO JARDIM: Thank you. I think we should look into the language that comes before. I think we have not addressed it because we see both questions as kind of a package. So we should look at how we are addressing the issue beforehand and how this will relate to that part. I don't know if we are doing this now or later, but I think it's necessary at some point to look at both parts of the same discussion.

MANAL ISMAIL: And you need to do this off-record, or we go to the text in the first part on the screen now?

THIAGO JARDIM: I think I could do it now, and if necessary, then we can break off. But maybe we can benefit from a plenary discussion on this.

MANAL ISMAIL: Iran, please.

KAVOUSS ARASTEH: Thank you, Manal. Subject to further discussions with other colleagues, perhaps while we still waiting to see which of the two texts is accepted, the text proposed by Canada in the second line [inaudible] suggested “regarding,” regarding another multi-stakeholder. So replace kindly “suggested” by “regarding.” “Regarding another multi-stakeholder process of some kind,” and then put, “Should be considered.” So we don’t make it suggested.

MANAL ISMAIL: Thank you, Iran.

KAVOUSS ARASTEH: Yeah. Thank you.

MANAL ISMAIL:

Thank you, Tom. Can we move again? So, this is the text on the accountability. “The GAC wishes to express its appreciation for the diligent and productive work performed by the Cross Community Working Group Accountability Work Stream 2, its co-chairs, its members and all its contributors. The GAC has considered the cross-community working group’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, improving the ICANN office of the ombudsman, increasing SO/AC accountability, improving staff accountability, improving ICANN transparency.” Can we move on?

“With regard to the proposed framework or interpretation for human rights, it was indicated that other aspects of human rights need to be addressed in the framework of interpretation such as negative impacts of unilateral [inaudible] measures and sanctions on the rights of the citizens of the concerned countries. 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.”

“With regard to the recommendations on jurisdiction, the GAC is not in a position to approve them. there was also no consensus on transmission of these recommendations to the ICANN board. Some GAC members support the recommendations, other members consider that they fall short of the objectives envisaged for Work Stream 2 and only

partially mitigate the risks associated with ICANN’s subjection to U.S. jurisdiction.”

“The reasons why the GAC has no consensus to approve the recommendations are documented in the dissenting statement submitted to the cross-community working group by Brazil, supported by Argentina, France, Iran, China and Russia. As an acceptable alternative to the objecting countries in which case the GAC would be in a position to approve all the three recommendations on jurisdiction, it is suggested that the CCWG should, in accordance with the CCWG charter rules, amend the title of recommendation ‘4.3, further discussions of jurisdiction-related concerns,’ then suggestion to read ‘4.3, recommendation for further discussions of jurisdiction-related concerns’ and the first sentence of the third paragraph of that recommendation to read as follows, ‘Therefore, the subgroup recommends the establishment of another multi-stakeholder process to allow for further consideration and potentially resolution of these concerns.’”

“Previously in the San Juan and Panama communiqués, ICANN 61 and 2, the GAC took note of the CCWG itself, took note that the CCWG itself had recognized that there is a need for further discussions to address unresolved concerns relating to jurisdiction. The GAC has provided consensus advice to ICANN board on next steps with regard to the jurisdiction issue.”

And again, this is the main part why we have invited the co-chairs of the CCWG, so that we can take an informed decision on this part of the text, I believe. So, any immediate reactions? Yes, Canada, please.

PAMELA MILLER:

Thank you. Just going up to the beginning of the summary of what we are agreeing to, the section on the framework of interpretation for human rights, it's unclear why this text was introduced. It does not relate to the domain name system. It seems out of scope and we would like to put a strikeout with the text that was added to that paragraph. So "With regard to the proposed framework of interpretation for human rights was indicated other aspects of human rights," I don't actually recall that being discussed in the actual GAC session, and it doesn't seem related to the DNS, so I would recommend – Canada would recommend striking that paragraph. Thank you.

MANAL ISMAIL:

Thank you, Canada. European Commission?

UNIDENTIFIED MALE:

To be brief, I think we support exactly what was said by Canada here. we don't recall substantive discussion on this issue and we wonder why this is added there. So we support exactly what Canada said.

MANAL ISMAIL:

So, any objections to deleting this text? Yes, Iran, please.

KAVOUSS ARASTEH: Yes, Manal. I think for any addition or any deletion, we need to have justification of rationale. The justification of adding this text in fact is explained in the text itself. The human rights paragraph in the bylaw is about one and a half or two lines maximum. It refers to the framework of interpretation, and in that framework of interpretations, the issue of the rights of citizens, we emphasize that we are not dealing with anything than rights of citizens. And citizens of human rights, yeah, has not been addressed. So this is the important element, that is something has not been addressed. We need to reflect that. So providing that some colleagues' proposed deletions seems not taking care of the situation, perhaps my [distinguished colleague wants to] to add something to that.

SAEED MAHDIOUN: Thank you, and it's – I just want to mention that it's directly related to the question of domain names because if TLD, gTLD, ccTLD or a group of domains are under sanction, then the citizens of a country can be really affected. So it's related to domain name. Thank you.

MANAL ISMAIL: Thank you, Iran. I think the other thing that was raised was that it was not discussed during the sessions. Any comments to this? Yes, Iran, please.

KAVOUSS ARASTEH: Yes, Manal, we are discussing now. This is a session. What other sessions we need? [It is now] discussing human rights framework and we are commenting on that and we're discussing the issue. There was no particular session in the GAC relating to the framework of interpretation. It is just here that you brought the results of the CCWG, and one of them is framework of interpretations. And there was a comment made, and we are discussing that. Thank you.

MANAL ISMAIL: Thank you, Iran, but I mean normally, we discuss during the sessions and we come here to draft the communique on things that have already been discussed. [But] I can see a request for the floor from European Commission.

UNIDENTIFIED MALE: No, the issue as raised before is exactly that. We didn't have the time here to deliberate about this issue, we didn't have the time to have a discussion about what exactly those concerns relate to, and personally, if we have to put in a GAC communique something, I think it needs to be substantiated with a proper debate. That was the point raised before. So I don't believe that now that we draft the communique is the right time to make the discussion. It should have preceded, raised the issues – I mean the parties that are concerned should have made a good introduction, raised the issues, discussed them there, and then it is the time to put it in the communique. Thank you.

MANAL ISMAIL: Thank you, European Commission. Sorry. Russia, please.

UNIDENTIFIED MALE: Thank you. Even though we didn't have enough time for the discussion on this matter, the point has been made and the idea has been indicated, and that is what's in the text right now, that it was indicated. I think we do not support the exclusion of the text.

MANAL ISMAIL: Thank you, Russia. Yes, Iran.

SAEED MAHDIOUN: [Note the] fact that not all aspects of human rights have been addressed. This is a clear issue. I think there's no objection for that. So the text suggests that further study of other aspects of human rights can also be taken into consideration.

MANAL ISMAIL: Thank you, Iran. So, just for the sake of making some progress, can we leave it at this? And we try to, during the coming break, to work on an agreed way forward. And meanwhile, maybe we can address the rest of the substantial issues so that we can ensure some progress. Is this acceptable? Okay, then Tom, can we move on? Yeah, we were on the jurisdiction part, right?

So, any comments on this part? Yes, Denmark?

FINN PETERSEN: Thank you, chair. As we have mentioned previously on different occasions, we have [foreseen this section] interlinked with the advise section. And after listen to the two co-chairs, we cannot see the purpose of suggesting any amendments to the CCWG report. So we will be in favor of hopefully trying to reach consensus on approval of the CCWG report, combine it with an advice to the board which we already have discussed and where we have certain text. So from our point of view, the text which is present is not acceptable for us. Thank you.

MANAL ISMAIL: Thank you, Denmark. So, Brazil.

THIAGO JARDIM: Thank you, Manal. And I think we'll need to work a little bit more on that text, because as we explained before, it is not acceptable for my delegation [and] others to simply say we approve the report or we let the report go without any qualifications. Indeed, the proposal that is contained in that report was tested in the interaction we had with the co-chairs, and we had their affirmative response that this is in line with the CCWG charter.

Whether it is feasible or not is something to be seen. I recall one of the co-chairs saying that to give a final reply, he would need to receive a formal notification according to the charter. So actually, we do not see a reason why we should change this since it is in line with the CCWG charter, and if according to the co-chairs, there would be issues, they would have to look into before making a positive reply.

And again, in substance, we do not agree that the report should proceed without qualification, without the assurance that the recommendation 4.3 will receive the same treatment as the other recommendations. We don't think it is contradictory with what is contained in the advice. In the advice, we are again advising the board to initiate such a process. In case the GAC – the board initiates such a process, we would of course feel satisfied, but at this point in time, just put it in the advice does not ensure anything.

As we have seen in other occasions, just by saying things in our advice do not have the assurance the board will act upon it even if it is a GAC consensus advice. We have been discussing for two years this two-letter code on the base of GAC advice, and we have been seeing how the ICANN board treats our advice.

So we don't feel comfortable just by making that call in the advice section to give away and to not insist in that part of the text. I think maybe we'll need some offline discussions to see how we can address that.

MANAL ISMAIL:

Thank you, Brazil, and also be guided by what was shared today as the response from other SOs and ACs I think also would be helpful, because we saw them also putting some conditions and caveats. So, anything that we can work online before pausing for a break and having the side discussions? Sorry, UK, please.

PAUL BLAKER:

Thank you, chair. Just on this question of jurisdiction, I think a number of us have been trying to work towards a compromise here. We heard from the co-chairs that actually, the GAC does not have to approve this or reject it, we could abstain. But from our point of view, we would like to find a common consensus GAC view if we can. And that means we need to find a balance between both this section and the advice that we give. And for the UK, we think that our advice should be that the board should consider this. That's the language that we've been proposing.

If I understood the distinguished ambassador from Brazil, he made proposals which are based on what is in the report and the fact that the other communities have accepted the report. So in order to be consistent, I assume that also means Brazil would consider the GAC should approve the report as well. That would be a consistent position and might help us towards a compromise position.

But as you've said, there's a lot of text here. Perhaps we need some offline discussions to try to find a way forward. Thank you.

MANAL ISMAIL:

Thank you, UK. So, we'll go to the two-character code now, again, have an initial discussion on this, and then maybe pause for a short break so that we can try to find an agreed way forward on the controversial text. So, the two-character code reads, "The GAC advises the board 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 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, and whether it constitutes a rejection of GAC advice. The GAC advises the board to set out its explanation its writing by 31st of December 2018. Previous GAC advice on this matter stands.”

“Three, ensure that its direction to the ICANN CEO to engage with concerned governments to listen to their views and concerns and further explain the board’s decision-making process. Board resolution 2017.16.12.01 is fully implemented including direct engagement with those governments.” So, Palestine, and then Iran.

ENG ALAN SALAHALDEEN.

Thank you, Manal. I would like to make a comment about that, [that] we talked about that before [inaudible] today the board has adopted this. I think there is no changes in what was written here. They did not consider our advice. This is very clear. They have to write back to us their feedback about what we have advised, and until yesterday, until today also the matter is still opened and pending, and they gave me 80 request – I don't know how to describe the discussion about this topic. They tone of the conversation maybe should be something different.

If there is any proposal, please let me know. And if you want to say something, maybe we can support each other in an informed discussion to see what we can do and what we can tell the board in our upcoming session with them maybe or in any other session and the public session about the advice of the GAC. Yes, you are right, but the thing is pending since two years, and we are looking for responses but did not get anything.

This thing is pending since Morocco meeting in Marrakech. It is very difficult to put a deadline without having any specific proposal. And about that proposal, how long would it take? And a date maybe could be not suitable for them, so we need to put something concrete, and there is a working group. Maybe we can consider that and maybe we can follow on that between the ICANN meeting. Thank you, Alan.

MANAL ISMAIL: Iran, you were next. No? Okay. Any comments, Switzerland?

JORGE CANCIO: Yes. Thank you, Manal. Regarding the text, it's more a technical issue, or to be as precise as possible, in the second small [inaudible]] we mention an authorization process, and we put it between –

MANAL ISMAIL: Quotation.

JORGE CANCIO: Quotation, thank you. And I think this concept is not really used or defined anywhere, so perhaps it could be good to improve the language and make reference to how this [Spec 5] describes the prenotification and agreement process that existed up and until the 8th of November. Because if we use authorization process between quotations, this may give rise to questions and issues with the ICANN board.

MANAL ISMAIL: Thank you, Jorge. So if we can – the exact terminology and the exact language, so Jorge's point is if we're using between quotation “authorization process” then this has to be a well-known and well-defined terminology used by ICANN as well so that there is no misunderstanding. So maybe we can try to dig the right language during the coming break. Iran, please.

SAEED MAHDIOUN: Yes, excuse me. I would like to suggest to replace “listen to the reviews” with “address the reviews and concerns.” Because listen is very neutral.

MANAL ISMAIL: I take your point, but the problem is that we're quoting here from the board resolution, so this is already a board resolution.

SAEED MAHDIOUN: So maybe put this in the quotation mark then, if possible.

MANAL ISMAIL: Okay. We'll do this. So, shall we take this as – oh, Brazil.

THIAGO JARDIM: Thank you, madam chair. I was just going to suggest in response to the point raised by Switzerland that we add a footnote in front of the expression authorization process within quotations, and within that footnote, we would refer to the exact name of the process. And I'm saying this because if I'm not mistaken, the expression within quotation

marks, “authorization process,” appears in the rationale of the GAC advice.

So to resolve this problem, we would be adding a footnote at the very first time the expression appears and qualifies that expression. Thank you.

MANAL ISMAIL: Thank you, Brazil. Switzerland?

JORGE CANCIO: Thank you, Manal. And just reacting to this, and also, I think my comment also triggered some useful information from ICANN staff. I would like to insist that we don't use this kind of terminology which is not contained in the spec five and which, in my opinion, only can give rise to further lack of understanding with ICANN board and ICANN Org. So I would really suggest that we refer to the resolution of 8th November as changing from the prenotification and agreement procedure, which is in Spec 5, to the [exposed] procedure and use as much as possible the terminology of the Spec 5 so that there is no shape or form of misunderstanding of what we are referring to. Because authorization in itself in the eyes of other beholders has certain connotations, which we don't need to go into because they can only give rise to further miscommunication. Thank you.

MANAL ISMAIL: Thank you, Jorge. So we'll try to work on this during the break. So I think we haven't done the GDPR yet, so maybe we can do a first reading of this as well. I'm sorry, Iran, please go ahead.

SAEED MAHDIOUN: Sorry, just a supplementary comment. If you can add, "Is fully implemented including direct engagement with those governments in order to address their concerns." Thank you.

MANAL ISMAIL: Thank you, Iran. Noted. So the GDPR part is under follow-up to previous GAC advice, so it's not really a new GAC advice but rather a follow-up, and the language reads "We emphasize the GAC consensus advice from ICANN 62 that urged ICANN to take all steps necessary to ensure the development and implementation of a unified access model that addresses accreditation, authentication, access and accountability and applies to all contracted parties. We welcome ICANN's efforts to facilitate the necessary community discussion through the unified access model papers and emphasize the need to drive these discussions through concrete and timely results."

I think it's pretty straightforward, and again, it's reiteration or follow up to previous GAC advice. Brazil?

THIAGO JARDIM: Thank you, madam chair. I would like to suggest replacing – I'm referring here to point one, WHOIS compliance with European General

Data Protection Regulation, and our suggestion is to replace European General Data Protection Regulation with data protection laws. Thank you. Or international and national data protection laws. Thank you.

TOM DALE: I'm sorry, was that international and national, or international? Thank you.

THIAGO JARDIM: International and national data protection laws.

MANAL ISMAIL: Yes, Lithuania, please.

FELISKAS DOBROVOLSKIS: I'm sorry, but European legislation is not international neither national, so we should stick to a more general formulation here. So the data protection legislation would be better.

MANAL ISMAIL: Okay. So any comments on this? We have three proposals on the screen, European General Data Protection Regulation, international and national data protection laws, and Lithuanian, you mentioned just data protection laws, right? Legislations, okay, I'm sorry. Yes, Turkey, please.

SEZEN YESIL: Thank you, madam chair. Another proposal could be improvement of WHOIS according to best practices. Thank you. More general one.

MANAL ISMAIL: Thank you, Turkey. India?

RAHUL GOSAIN: I think what we are possibly dealing with or what our advice pertains to is compliance with the law and not improvements to the WHOIS per se. So I think we should stick to WHOIS compliance with national, international, and regional data protection laws maybe? Because that covers the regional law like the European GDPR.

MANAL ISMAIL: Yes. U.S., please.

ASHLEY HEINEMAN: Thank you. Perhaps a simpler construct would be WHOIS compliance with data protection regulations.

MANAL ISMAIL: Thank you. Any objection to this? India.

RAHUL GOSAIN: I think we're not dealing with regulation but legislation, so legislation is the more appropriate word. Thank you.

MANAL ISMAIL: So, data protection legislations as was suggested by Lithuania? Is this okay? Good. So I think we will pause here. Yeah, Brazil, go ahead.

THIAGO JARDIM: Sorry, still on the terminology we are using [under] point one, is it possible to have legislation in plural form so it would read legislations?

MANAL ISMAIL: Yeah, I've been told that legislation is plural. But European Commission.

UNIDENTIFIED MALE: [inaudible] from European Commission. I appreciate that we're wordsmithing here the title, but I have to remind that we have also the reference to the ICANN62 GAC advice that I think we were more specific to the GDPR there. And I'm happy to have something more general, but please keep it with consistency with what we have in the text below.

MANAL ISMAIL: So there was a friendly suggestion here that we put a comma, "Including GDPR," but I have a request from the floor from Senegal.

UNIDENTIFIED MALE: I think, madam chair, that we will be discussing the GDPR, that this is not reflecting our discussions here, because we discuss with respect to the GDPR, and if we put a general heading, we are leaving aside some other parameters included in national and international laws that are

not considered in the discussion. So I think that it would be better to maintain the previous title, the previous heading, that it's relate to European General Data Protection Regulation and not to include the new proposal. Thank you very much.

MANAL ISMAIL: Thank you, Senegal. European Commission.

UNIDENTIFIED MALE: If I could make a suggestion, I think we should put the emphasis on the GDPR and then say WHOIS compliance with GDPR and other applicable laws or legislation. Although I still believe that we didn't have the time to discuss other applicable laws here, but since we make the reference to ICANN62 GAC advice, I would like to recall, if possible, what exactly we mentioned there.

MANAL ISMAIL: Thank you, European Commission. I have India, UK, Jamaica, and then I think we will pause and try to resolve the issues we have already identified. So, India, please.

RAHUL GOSAIN: If we need a cursory reading of the text which has been provided below does not make it very specific to the GDPR, so I think it's fairly generic, and notwithstanding the fact that it is the GDPR which has actually forced our hand in terms of the crying need for a unified access model and the advice which follows in, however, I think even WHOIS

compliance with data protection legislation, maybe including the GDPR or without even that would serve the purpose of an appropriate title given the reference to ICANN62 previous advice and because nothing in this paragraph is specific to the GDPR, and in fact, a unified access model would be a need to address the needs of all national, regional, international data protection legislation. So I think a new emphasis on the GDPR at this stage would be perhaps not be appropriate, especially when we are giving advice to the board on behalf of the GAC. Thank you.

MANAL ISMAIL: Thank you, India. I have UK next.

PAUL BLAKER: Thank you, chair. I think there are good points being made on all sides here, and India and other have made good and valid points, but for us, this is a question of procedure to some extent. This is follow-up to previous GAC advice. So we think we should use the same title as the previous GAC advice. And in the ICANN62 communique, it was GDPR and WHOIS. And in the ICANN61 communique, it was GDPR and WHOIS. So if this is follow-up to that advice, although there are good arguments to change it, we should use the same title as the GAC advice that we are following up, and that's perhaps the best way forward. Thank you.

MANAL ISMAIL: Thank you, UK. Makes sense. I have Jamaica before we pause.

UNIDENTIFIED FEMALE: Thank you very much, madam chair, and I'd like to state for the record that while we agree with colleagues that the conversation needs to move beyond GDPR, and in fact when we were having the discussion, we looked and said throughout the week, we indicated that it's not just the GDPR but other applicable legislation, I have to concur with my colleague from the UK that this particular section and how it's worded is referencing something that was specifically related to the GDPR. If, however, we could consider within the body of the statement the fact that the issue was in fact raised, that compliance should not just be with the GDPR but with other data protection legislation in other countries.

MANAL ISMAIL: So, very briefly, Turkey, please. Thank you, Jamaica. [inaudible]

SEZEN YESIL: Thank you, madam chair. I also want to support my Jamaican colleague I'm new to the GAC so apologies for my limited knowledge, but in the follow-up section if we have to stick to the original headings, then let's do it as the Paul from UK suggested. But we can make changes to the original one in my opinion, so I feel that we are free to change it. As the GAC we may decide to change the heading to a general one. Thank you.

MANAL ISMAIL: Thank you, Turkey. U.S.

ASHLEY HEINEMAN: Thank you, chair. I think we're getting closer here. I think perhaps what's best to be consistent with past GAC advice and that this section is dedicated to following up on past GAC advice, that we keep it clean. So perhaps to build off of what Jamaica and Turkey recommended, perhaps we can take that text and make sure it's reflected in our discussions under other issues because we have had those, I think, conversations recognizing other data protection legislation, and perhaps that's the best home for it. Thank you.

MANAL ISMAIL: Thank you, U.S. Okay, we will try to work on the straightforward parts of the text here, and we will pause and reconvene at 5:00. If you can please try to work on consensus language for the parts we have identified, that would be very helpful. And again, just to make sure that we can conclude on time today. Thank you.

LUISA PAEZ: Manal?

MANAL ISMAIL: Yes, Canada. I'm sorry.

LUISA PAEZ: Hi, Manal. It's just a question of procedure. If Tom can send us the latest link. We're having trouble accessing it. Maybe it's because while it has been closed while it's been edited. So if you could send us that link with

open permissions or a way that we can review the latest version. Thank you.

MANAL ISMAIL: Thank you, Canada. Okay, we'll do this. Thanks.

[END OF TRANSCRIPTION]