

ICANN | GAC

Governmental Advisory Committee

The Hague, the Netherlands, 20 June 2022

GAC Communiqué – The Hague, the Netherlands¹

The Hague Communiqué was drafted and agreed in a hybrid setting, during the ICANN74 Policy Forum, with some GAC participants in The Hague, the Netherlands, and others remotely. The Communiqué was circulated to the GAC immediately after the meeting to provide an opportunity for all GAC Members and Observers to consider it before publication, bearing in mind the special circumstances of a hybrid meeting. No objections were raised during the agreed timeframe before publication.

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in The Hague, the Netherlands, in a hybrid setting including remote participation, from 13 to 16 June 2022.

Eighty one (81) GAC Members and eight (8) Observers attended the meeting.

The GAC meeting was conducted as part of the ICANN74 Policy Forum. All GAC plenary and working group sessions were conducted as open meetings.

¹ To access previous GAC Advice, whether on the same or other topics, past GAC communiqués are available at: <https://gac.icann.org/>

II. Inter-Constituency Activities and Community Engagement

Meeting with the ICANN Board

The GAC met with the ICANN Board and discussed:

- System for Standardized Access/Disclosure (SSAD) Light
- Accuracy of Registration Data
- Global Public Interest (GPI) Framework
- Future GAC Information Opportunities

ICANN Board responses to GAC questions and statements presented during the meeting are available in the transcript of the GAC/ICANN Board meeting annexed to this document.

Meeting with the At-Large Advisory Committee (ALAC)

The GAC met with members of the ALAC and discussed:

- Universal Acceptance and Internationalized Domain Names
- GAC-ALAC/At-Large Cooperation at National Level
- Geopolitical Issues and Advancing the Multistakeholder Model

Meeting with the Generic Names Supporting Organization (GNSO)

The GAC met with members of the GNSO Council and discussed:

- Subsequent Rounds of New gTLDs, including Closed Generics and the GNSO Guidance Process
- DNS Abuse
- Accuracy of Registration Data
- SSAD Light
- Global Public Interest

Cross Community Discussions

GAC Members participated in relevant cross-community sessions scheduled as part of ICANN74, including Working Together on Progress for Subsequent Rounds of New gTLDs and Five Year Follow-Up to Who Sets ICANN's Priorities.

III. Internal Matters

1. GAC Membership

There are currently 179 GAC Member States and Territories and 38 Observer Organizations.

2. GAC Elections

The 2022 election process for the positions of GAC Chair and GAC Vice-Chairs will be initiated shortly after the ICANN74 meeting with the start of the nomination period. The nomination period will close on 5 August 2022. If needed, a voting process will be conducted from 29 August until 20 September 2022, ending during the ICANN75 public meeting where the election results will be announced.

3. GAC Working Groups

- **GAC Public Safety Working Group (PSWG)**

The GAC PSWG continued its work to advocate for improved measures to combat DNS Abuse and promote effective access to domain name registration data. The PSWG led a session to update the GAC on DNS Abuse that included: 1) updates on various initiatives from ICANN org, the GNSO, and private entities to research, assess and mitigate DNS Abuse, in particular recognizing recommendations from the DNS Security Facilitation Initiative Technical Study Group which would support the creation of an information sharing platform which the PSWG notes, in other business sectors has contributed to the reduction in harm and an increase in best practices; 2) a follow-up presentation by a GAC Member regarding Domain Hopping and Data Free Flow with Trust; and 3) a presentation from the DNS Abuse Institute about a new centralized DNS Abuse reporting tool. The PSWG also pointed out that DNS Abuse cannot be measured just by a reduction in the number of malicious domains affected but also needs to take into account the magnitude of the harm to users of the Internet.

The PSWG continued its active participation to support the GAC Small Group through participation in the Phase 1 Implementation Review Team, the SSAD small team discussing ICANN org's Operational Design Assessment (ODA), and the GNSO Accuracy Scoping Team. The PSWG emphasized the importance of accurate registration data to deter and investigate DNS Abuse. The PSWG noted the possibility that a "proof of concept" could be a valuable addition that could "reduce overall risk through the use of a prototype to reduce the unknowns for specific technical and operational concerns" but shared concerns that a timeline for the proof of concept and proposal for dealing with the recommendations not considered under a proof of concept would need to be created.

As per its work plan the PSWG continued its outreach to public safety bodies. With the support of the European Commission and Europol, the PSWG gave presentations to 17 EU Member States. The PSWG also held discussions with a number of constituent groups within ICANN.

- **GAC Working Group on Human Rights and International Law (HRILWG)**

The GAC was briefed by the HRILWG co-chair regarding the recent discussions of the Work Stream 2 (WS2) Community Coordination Group on the diversity recommendation stemming from the GAC WS2 Perspective Proposal document. Regular updates will be provided to GAC Members as discussions develop.

- **GAC Operating Principles Evolution Working Group (GOPE WG)**

The GAC was briefed on recent activities carried out by the GOPE WG including the finalized GAC Working Group Guidelines. GAC Members endorsed the GAC Working Group Guidelines. GOPE WG Members will meet intersessionally to commence review and discussion of the GAC Operating Principles, and share relevant developments with the GAC Membership at ICANN75.

4. GAC Operational Matters

The GAC Chair alerted GAC Members to the need to start discussions regarding planning for the next GAC High Level Government Meeting, and this was welcomed by GAC Members.

IV. Issues of Importance to the GAC

1. System for Standardized Access and Disclosure (SSAD) of gTLD Registration Data

The GAC appreciates the work of the small group focusing on issues identified in ICANN org's Operational Design Assessment (ODA) and encourages progress that paves the way for the Board's consideration and action upon the approved consensus recommendations of Phase 2 of the Expedited Policy Development Process (EPDP) for gTLD Registration Data.

A small team of ICANN community members concluded that the ODA does not provide enough information to determine the costs and benefits of the SSAD recommendations. The small team also considered what further information may be needed and how this information can be obtained to allow the GNSO Council and the Board to confidently determine the costs and benefits, and if modifications need to be made to the SSAD recommendations.

As a result, the small team recommended a pause in its consideration of the SSAD recommendations so that a "proof of concept" (formerly known as SSAD Light) approach could be implemented. ICANN org is currently supporting the small group's work in developing such a "proof of concept." The GAC emphasizes the importance of providing specific timelines and goals for the "proof of concept". This clarity will serve to notify the community of the schedule for the "proof of concept" and what will happen after the "proof of concept" phase concludes.

Providing an effective centralized system for access and disclosure of domain name registration data remains important, and the GAC looks forward to the timely completion of the "proof of concept" which may assist the Board in its assessment of the Phase 2 policy recommendations.

2. Subsequent Rounds of New gTLDs

The GAC discussed Subsequent Rounds of New gTLDs, and received an update from ICANN org about the current status of the Operational Design Phase (ODP) relative to policy recommendations on the Final Report from the Subsequent Procedures for New gTLDs GNSO Policy Development Process (PDP). In preparation for the next round of new gTLDs, noting the increasing number of GAC newcomers, GAC members emphasized the importance of organizing topical training and capacity building sessions and webinars tailored to GAC members. It was proposed that specific capacity building activities be organized in the lead up to and during subsequent ICANN meetings.

The GAC reaffirmed its intention to take part in the upcoming facilitated dialogue between the GAC and GNSO, proposed by the Board, to explore a mutually agreeable way forward on closed generics, and its encouragement for At-Large Advisory Committee participation in the effort. The GAC will continue to engage in seeking such a mutually agreeable solution on closed generic applications in the next round of new gTLDs, in keeping with the GAC Beijing Communiqué whereby "*exclusive registry access should serve a public interest goal*".

3. EPDP on Specific Curative Rights Protections for IGOs

The GAC welcomed the progress on this Expedited Policy Development Process (EPDP), specifically the agreement to the recommendations by the GNSO Council. The GAC looks forward to the adoption of the recommendations by the Board and the timely implementation of this important policy.

4. Accuracy of Registration Data

The GAC recognizes the efforts of the Registration Data Accuracy Scoping Team and appreciates the team's work to assess the current state of accuracy. At the same time, the GAC notes with concern some recent developments, namely a proposal to pause the team's work pending resolution of ICANN org's planned outreach to the European Data Protection Board (EDPB) on whether ICANN has a legitimate purpose to access non-public registration data, in order to review the accuracy of such data. The GAC believes that pausing the work would be counterproductive.²

Given the GAC's interest in seeing the work of the team resolved in a timely manner, the GAC suggests that the team focus on additional – and complementary – work that may continue in the interim.

For example, the team should strive to reach agreement on what current accuracy requirements encompass. As part of Assignment 1, the team agreed to refer to a current description of how existing accuracy requirements are understood and enforced. This topic should move towards resolution. In this context, the GAC stresses that contractual requirements are not limited to accurate but also to reliable data.³ The team has not yet analyzed whether there are procedures in place to ensure that the registration data are both accurate *and* reliable.

Further, the Registration Data Accuracy Scoping Team could focus on obtaining more detailed information from the Contracted Parties about how they currently enforce accuracy requirements. In this context, the GAC welcomes the draft Interim Report's recommendation "*that the GNSO Council requests ICANN org to carry out a Registrar Survey*" with the aim of collecting information on the verification procedures that registrars have in place to assess accuracy. The voluntary nature of the survey, however, could limit the volume of feedback received. Therefore, the GAC encourages the team to explore additional and complementary work items, such as testing accuracy controls in a manner that is not dependent upon access to personally identifiable data.

² As per Recommendation 2 of the draft Interim Report. See section C.2.2.2: "*The Scoping Team recommends that the GNSO Council pause the work of the Scoping Team until such time as it is sufficiently clear whether proposals that require access to registration data are a viable path to assess the current state of accuracy.*"

³ The GNSO Council recognized these dual obligations in its instructions to the Scoping Team, Assignment 3: "*The Scoping Team will [...] undertake an analysis of the accuracy levels measured to assess whether the contractual data accuracy obligations are effective at ensuring that Registered Name Holders provide 'accurate **and reliable**' contact information.*" [Emphasis added]

5. DNS Abuse Mitigation

The GAC reiterates the importance of building on the community's work on DNS Abuse. The GAC highlights the continued importance of effectively responding to DNS Abuse and appreciates the continued work by ICANN org and the ICANN community on these issues. Solutions can include: 1) enhanced DNS Abuse Reporting; 2) improved contractual requirements and compliance programs, including incentives for achieving anti-abuse goals; and 3) targeted policy development processes.

Enhanced Abuse Reporting would enable more focused dialogue within the ICANN community and provide the basis for targeted contractual improvements. The following would assist in developing such contract provisions: abuse reporting at the registrar and registry level; more detailed breakdowns of the types of DNS Abuse measured; and availability of raw aggregated data. The GAC welcomes the launch of a free, centralized abuse reporting tool by the community in response to recommendations made in both SAC115 and the SSR2 Review Final Report.

Improved contract provisions could focus on the reporting and handling of DNS Abuse and enforcement of related contract requirements. In its role as a public benefit corporation tasked with ensuring the stability and security of the Internet's unique identifier systems, ICANN org is particularly well placed to receive public policy input from the ICANN community and negotiate updates to the standard Registry and Registrar Agreements. This would help ensure that these contracts promote the public interest by including clear and enforceable obligations to detect and respond to DNS Abuse.

Targeted Policy Development Processes (PDPs) could also yield contract improvements. Any PDP on DNS Abuse should be narrowly tailored to produce a timely and workable outcome.

Building upon ICANN72 and ICANN73 discussions on the topic of "Registrar Hopping" and "Domain Hopping" (strategies malicious domain name registrants use to avoid detection and responsibility), a presentation was made by a GAC Member sharing a national experience highlighting that these types of abuse continue and that it is important to encourage work in this area. The GAC encourages ICANN org to conduct effective and continuous auditing of registrars to help mitigate this abuse.

6. Uniform Domain Name Dispute Resolution Policy (UDRP)

a. UDRP and Geographical Indications

Following the public comment period on the Policy Status Report relating to the UDRP, the GAC received input from some GAC Members in relation to whether the scope of the UDRP could be extended to address Geographical Indications. The GAC therefore intends to consider the matter in preparation for discussion at subsequent meetings.

b. Review of the UDRP

The GAC received an update on the status of a planned review of the UDRP, and in particular notes reference to section 13.1 of the ICANN Bylaws which calls on and indeed encourages, the Board and constituent bodies to seek advice from relevant public bodies with existing expertise that resides outside of ICANN (notably the World Intellectual Property Organization—WIPO, as author and steward of the UDRP) to inform the policy process, and looks forward to further exploring this provision prior to any review of the UDRP.

7. New gTLD Auction Proceeds

The GAC acknowledges the ICANN Board’s adoption of recommendations from the Cross Community Working Group on New gTLD Auction Proceeds (CCWG-AP) Final Report. The GAC intends to follow implementation planning and design of the CCWG-AP recommendations, and remains available to provide input throughout the process.

V. Next Meeting

The GAC is scheduled to meet next during the ICANN75 Annual General Meeting in Kuala Lumpur, Malaysia, scheduled for 17-22 September 2022.

ICANN74 | Policy Forum - Joint Session: ICANN Board and GAC
Wednesday, June 15, 2022 - 10:30 to 12:00 AMS

MANAL ISMAIL, GAC CHAIR: So good morning, good afternoon, and good evening everyone in the GAC room and on Zoom. Welcome to the Board GAC bilateral. I would like to start by welcoming all Board members who joined us today and as always, we very much appreciate and value our exchange with the Board. Before we get started, allow me first to hand the floor over to you, Maarten, for any opening remarks, please.

MAARTEN BOTTERMAN: Thank you, Manal, and thank you for being here, as I understand there are about 70 countries actually in the room or online. Which is really good in this time where in this world we need all the guidance we can get from you guys on how to serve the public interests. Having the GAC in our multi-stakeholder system is an important element of making this global Internet work together. So really appreciate that. I hope you like The Hague. It's the place where I was born, not too far away from here, and looking forward to see what comes out of these proceedings.

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.

As always, we have two levels of interaction. We do have next to this forum where we meet face-to-face with the Board and the GAC, also the Board GAC interaction group, which is really about how can we optimize processes, make things better in the room? And that is something that is chaired by Manal and Becky, very important element, grateful for that interaction as well. And with that, next to of course the fact that nowadays we can just see each other, walk up to each other in the corridors and share thinking, and grateful. So welcome to all in the room and online and look forward to interacting on the questions that you have been posing to us.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Maarten, and thanks, Göran, Becky and everyone. The general agenda, we have the topics and more of a dialogue on future opportunities on how to keep new GAC colleagues informed. So if we can go to the next slide please, and this is more focusing on the areas where we have concrete questions. First is the SSAD Light prioritization and community-driven solutions, then accuracy registration area data, and finally follow-up regarding global public interest framework. Next slide please.

So first the SSAD Light prioritization and community driven solutions, the first question is how can the ICANN Board ensure

that an evaluation of an SSAD Light concept is completed in a timely manner? And is the ICANN Board aware and if so, what are its views on community driven proposals for implementation of GDPR compliant registration data disclosure systems? And third, given efforts on the SSAD developments to date, has the Board developed any general perspectives on the general usefulness and scope of the system concept? Thank you.

MAARTEN BOTTERMAN: Yes, thank you for the question, and as you know, we interact with the GNSO on how to move forward with that, and Becky, can you answer the question.

BECKY BURR: Yes, thank you, and good morning everybody. The GDPR EPDP Board caucus has been engaged with the GNSO small team throughout the discussion since the time that the council asked us to consider pausing review of the SSAD recommendations, and we met again on Monday this week to discuss next steps. We have provided information to the GNSO Council regarding the impact of the design paper on other ICANN activities which obviously org is attempting minimize to the maximum extent possible, and we expect to hear back from the GNSO Council regarding its views on the impact, any potential delay, and following that the Board will move quickly to make a final determination. Meanwhile, org has

been extremely busy. Some of you may have seen that there was a presentation in a session earlier this week demonstrating the kind of tools that ICANN already has, the tools and functionality that it has and would be able to reuse to do this.

Obviously there are also some other questions that have to be reconciled with it but if a decision is made finally to move forward with it, org has indicated that it can complete the design work in time for a discussion with the community at ICANN 75, so quite quickly, with respect to community driven proposals, we have been following those very closely and certainly welcome any community input on those proposals and on the SSAD Light design, if that moves forward. So a great deal of interest and willingness to be informed and educated and enhanced by that.

With respect to the third question, efforts on the SSAD developments to date, do we have any general perspectives? I think this really goes back to the letter that the Board sent to the council in January when the ODA was released, and we have been engaged throughout this. With the council on potential next steps related to SSAD policy, those SSAD policy recommendations. As I said, we have temporarily paused or consideration of the recommendations themselves at the request of the GNSO Council in light of the potential for the registration disclosure system as we are now calling SSAD Light. So we have been engaged in

conversation with the team, we think that there are still some unanswered questions about the SSAD itself, and we are looking forward to making a final decision, further discussions between the caucus and the small team about a design for a less complex version of the SSAD as a potential path to move the discussion forward.

GÖRAN MARBY:

In context to the question, what we did with the discussion of the GNSO, the ability to build a system that simplifies for the requestor and for the contracted parties, most of the time the registrars, and to build a utilizing around systems. For newcomers, it's good to know that the system itself will not change the underlying principles of the law, which is that the contracted parties according to the registration are responsible for the actually balancing test. IP want to notify that in the [indiscernible] 2 there is a provision and I call it simplifying the balancing test but also reconfirms the role of the data controller which are most of the time the registrars. And my understanding is that is not a flaw; that is the intent with GDPR to prevent access to people's private data. So the solution's mostly to simplify for both the registrar and the requestor of the data. Thank you.

And by the way, we now call it the WHOIS Disclosure System, with the new theory that we should actually call things what they are.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Becky and Göran. Göran, this is very helpful. New GAC colleagues are struggling with the acronyms so good to know. Any comments or follow-up questions? Yes, Kavouss, go ahead.

IRAN: Thank you very much, Manal. Thanks to the Board and to Becky and thanks for the reply because given -- in fact, I raised my hand for the second group of questions but just using the opportunity to say that we are convinced of the answer given within the time available to us. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Kavouss. So any comments or follow-up on SSAD before we move on to accuracy? Okay, seeing none, if we can go to the next slide please. Under accuracy of registration data -- and this is in connection with ICANN planned outreach to Data Protection authorities for guidance, has ICANN org requested and/or received legal advice on the issue of whether there a legal basis for ICANN org to access registration data for purposes of accuracy verifications?

MAARTEN BOTTERMAN: Thank you for the question. And again, I would like to ask Becky to take this.

BECKY BURR: I think this is a question for org. Göran, would you like to start?

GÖRAN MARBY: Well, the question is a very interesting question because you have to look upon the narrative of the question to be able to answer it so bear with me for a second. We know we can go out and check the accuracy of an individual record, that's not at dispute. The problem is it doesn't mean anything, and I will try to explain why and then please have questions to me if I don't make this easy to understand, not because you don't understand but for me, not a lawyer so hard to think about it.

So before the GDPR, WHOIS was completely open, all information accessible. And when GDPR came around we at ICANN did a lot of work and got guidance from the Data Protection Board in Europe, which they said you can keep the WHOIS, WHOIS records, but can't disclose all the data, what was called private data. So that was the legal guidance from the Data Protection Board. We were actually I think the first I think who actually received any guidance from the Data Protection Board under GDPR where the Data Protection Board has to do it. That means this information is not

freely available. To be able to get that information you need to have a legal reason to get to the information, and the contracted party as seen as controller has to make a balancing test. That's the easy way to describe this.

So what does that do to the accuracy? The problem is we can check the accuracy if we have an indication that the information is wrong. And you have seen a correct statement made from the Public Safety Working Group, we work a lot with accuracy, we have rules and contracts and have actually taken out contracted parties because they have not been working on the accuracy, a correction from the Public Safety Working Group yesterday. The problem is we don't know if the information is correct or not because ICANN can't check it either. We did ask the [indistinct] that ICANN should have a possibility to go in and check data without indications so we can actually check the accuracy because it's not generally available. So that is the core of the problem. What we would like to be able to do is go into the registrar and check the accuracy of their data. So that we cannot do, and we know that. But we all know that we can go in if we have an indication on an individual records. So that is the problem we're trying to solve.

For ICANN and the community and everybody, the accuracy of the WHOIS data has always been important. And we used to get

maybe 20,000 complaints every year that we have had to check the accuracy of the data. We don't get them anymore because it's not freely accessible anymore. We're talking about hundreds of millions of domain names which makes it a little bit complicated. Remember, the WHOIS system is not the same as the customer management system. It's the registrant who is responsible for updating the telephone book. the difference from an ordinary telephone book, the data doesn't come from the operator, it comes from the registrants themselves. So that is what we are looking for. We would like to have the ability to check the accuracy of the data.

BECKY BURR:

There has been some confusion in the registry accuracy scoping group on this point. ICANN has asked the commission for an indication about whether it would facilitate its interaction with the European Data Protection Board. Meanwhile, ICANN org is working on the kind of information that would be needed to accompany an actual discussion with the European Data Protection Board such as a Data Protection impact assessment, an articulation documentation of the application of the balancing test, and a detailed description of a different alternative proposed for proactive checking of WHOIS accuracy registration.

So we have heard some comments -- well, the sort of shortened description in the communication with the commission. That is not intended to be the request that would actually go to the European Data Protection Board, and org is very well aware of the accompanying information that would be needed to do this, and work is underway on that.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Göran and Becky. Any follow-up questions or comments from GAC colleagues? Okay. Seeing none, then I think we're good to move on to the following slide please. And this is on the global public interest.

So the GAC recognizes the importance of incorporating global public interest considerations into policy development and decision-making at ICANN. We conducted several discussions at ICANN 73 and GPI was an issue, was reflected under issues of importance to the GAC in the GAC ICANN 73 Communiqué. And this included language that reads: The requirement of inclusiveness established in the articles of incorporation should be explicitly enshrined in the GPI framework. This particular language has prompted interest from Board members who have suggested it would be useful to clarify what the GAC meant by the term subsequently the GAC has continued internal discussions regarding the concept of inclusiveness as something that goes

beyond openness in the direction of meaning of participation. GAC members look forward to future conversations with the Board about GPI, including its application to the current SSAD ODP.

So basically it's not enough that a process is open if the participants don't feel they are heard, still they may be discouraged to participate. So not only openness but meaningful participation. Yes, please, Maarten.

MAARTEN BOTTERMAN: Yes, the intent for this framework that has been developed over time is really to give meaning to the term public interest as much as we can in bylaws, and Avri has been working on that in the Board and she has been talking about it with the community before as well. Avri, can you take these questions?

AVRI DORIA: Certainly. The question isn't quite there but I could talk a little bit, but I thought there were specific questions. First of all, I'm really happy and very much appreciate that the GAC has sort of taken up this issue and the framework and putting a fair amount of thought into it. I want to reiterate that at the moment the framework is in a pilot stage. It was created initially to help the Board in making that statement at the end that it must make on

any mission on whether the decision, the motion et cetera, is within the global public interest and the framework was sort of created to sort of help us base that on the facts that we find in the articles and in the bylaws that sort of direct us to a framework, so very much appreciate it.

We had the hope that as it moved forward if it moved beyond the pilot because even appraising the pilot that we would get some of the supporting organizations and advisory committees take it up. So to see the GAC take it up at this early stage is really quite heartening.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Maarten and Avri. I think we can go to the following slide on the questions. And I note two hands up from Nigel and Kavouss. So maybe after we pose the questions and receive the answers we can follow up from you. So please bear with us. Can we go to the next slide please.

So the GAC noted in the issues of importance to the GAC section of ICANN73 GAC Communiqué that the GPI framework would be adapted and applied by all advisory committees and supporting organizations in their work, including for example through the process of developing and endorsing policy recommendations, decisions, and public comments. How has the Board considered

advancing discussion with the different ACs and SOs on ways to take into account the global public interest as part of their work and outputs?

And the second question, the GAC noted that the initial application of the GPI on the standardized system of [reading] what measures could the Board take to ensure that public interest concerns are not only considered but effectively addressed? Please, Avri.

AVRI DORIA:

Thank you for the questions. So first of all, we've discussed the pilot and we have discussed how we were going to use it in the pilot. One of the things that the Board has sort of recognized is that sort of while the processes and the determination of a public interest is something that comes up bottom-up. And while the Board has a certain charge to determine what that has mentioned to be, it isn't really in the position to tell the ACs and SOs that they must use a particular process, or they must use a particular framework. Now, even at this early stage there has been encouragement to say if AC and SO are using it -- at this point is involves looking at other statements made and trying to find the answers to those questions in answers that don't necessarily map to the questions being asked.

So I think that the consideration -- and there will be more because after we finish the pilot, which includes both the SSAD and SubPro, and it really is a two part and the SubPro is still very much in process; even the SSAD is to a certain extent in process in terms of determination, then we will look to it, come to the community, sort of get comments on how did it work, not work, how should it be improved? I think that encouragement to the community to adopt it, for example if the GAC adopts it in its Working Groups and it shows up in its commentary or its advice, then it can be more easily used.

So it would be an encouragement, but I don't foresee us -- I could very much be wrong, it involves predictions of the future -- but I don't foresee us in any sense trying to impose this on supporting organizations or advisory committees saying thou shalt use this. But I do see us encouraging if you want the Board to understand what the considerations are and how they map to the framework, it becomes a useful thing to do, so would sort of like to put it in that framework. Maarten, do you want to add something before I move on?

MAARTEN BOTTERMAN: It's a bit like the Internet. We don't force anybody to use it. We try to make it very attractive, and it's the same here. It's [indiscernible] to do our work better and as Avri says, if the

community finds it useful, it may help with community advice or recommendations taken up explicitly makes our job ultimately easier, but it's in that spirit.

AVRI DORIA:

In terms of the second one, what we have seen over -- and the SSAD is still being discussed within caucuses and the Board, within the ODA, the org took a specific cut at it in terms of questions that were really obviously in front of them to maps to the framework. I am not part of the SSAD caucus so someone may want to add that they can actually look at it further. The discussion is certainly not over yet in terms of how the framework may or may not apply to particular issues within that. So the limitation that was taken in the ODP and the ODA was basically limited to what the ODA and ODP was charged with looking at. Any other can still be looked at further. So the limitation is there.

Now, when it comes to a question of how can we not only consider but effectively address, sort of once considered, once someone and the Board as such makes a determination that question something is in the GPI, one would hope that the policies that come out of it, are implemented do indeed match that. But I don't know that there is any enforcement there other than continual process and continuing evaluation of whether they are indeed effective or not. So I guess I'm hand waving, as I so often

do, on how do we ensure it's not only considered but effectively addressed? But that's the hope.

MAARTEN BOTTERMAN: The intent. So you can read the question in different ways, but indeed we do it for a reason, not just to define but also to have it implemented.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Avri and Maarten. I see a queue forming already. I have Nigel, Kavouss, Pär, Jorge, Velimira. Nigel. Please, UK, go ahead.

UNITED KINGDOM: Yes, thank you very much, Manal, and good morning to the Board. My question was concerning accuracy. I just wasn't quick enough to get in when we discussed the accuracy discussions. So I'm not going to intervene now but if we have time at the end, I will like to come back to a couple of points because I think it was a very interesting explanation from Göran and others on the Board. Thank you very much.

MANAL ISMAIL, GAC CHAIR: Thank you very much Nigel, and sorry to miss you on the accuracy, we will be back.

IRAN:

Thank you, Manal. I'm sorry I am busy in two other places, three computers, three headphones and, so on, so forth, but I would like to suggest to you and the GAC, please kindly in the future make your question, precise, concise, simple but not so technically -- I'm very sorry, don't take it as criticism; take it as a constructive suggestion. Most of the issues are statements. Some of them are questions. For instance, why the Board is asking the meaning of inclusiveness? Inclusiveness has been in the incorporation articles from the very beginning of the inception of the ICANN 1998, and I don't understand why some Board members are raising the question of what does it mean inclusive or inclusiveness? That is quite a strange question by the Board if it is raised. I don't know whether that is the case, but I do not have any problem with inclusiveness. We say everybody should have equal rights in line, online, have access to the Internet, access to data and so on, so forth. So I don't understand the meaning of coming to SO and AC and asking what is the meaning of inclusiveness? That is one question.

The other, sometimes we ask the Board to ensure -- I think the Board will do every effort, and there is no insurance anywhere. They do their best. So when we give the Board the responsibility we should give them the authority. So I'm sorry I have to make

this -- please, we have only 60 minutes of time, have to be very precise, very few questions but not so many difficult and extensive questions. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Kavouss. Well noted, and it's not a long list of questions, and I'm afraid we always miss your good comments early on during our preparation. So appreciate if you can share your very valuable comments while we prepare. But well noted, Kavouss, thank you.

MAARTEN BOTTERMAN: Very quick, on the inclusiveness issue, it's not so much like please explain to us what inclusiveness is, but what do you mean by the question? That is the intent to ask. And basically for us it's clear that the inclusiveness are at the core of the bottom-up multi-stakeholder model. This is the inclusiveness we strive to have and actively pursue. Hope that helps explain the question, and thanks for your remarks.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Maarten.

GÖRAN MARBY:

I would like to go back to the using GPI to the WHOIS disclosure system, because the ICANN community including GAC might think the disclosure of WHOIS data is in the public interest. But it is restrained by law. So if you think that evoke should be open -- and I don't think there is an agreement in the world of Internet that WHOIS data should be open. But let's assume that the GAC declared the open WHOIS is in the public interest; it is still restrained by legislation. And that makes the discussion theoretically quite interesting and almost philosophical. Because as you know, and you should appreciate this being governments, that nothing we do ever cannot be restrained by law, and we see an increasing amount of laws that affects ability to make policies and affects its multi-stakeholder and your ability to be here.

When we look at the GPI for the WHOIS disclosure system, we sort of go from a theoretical discussion into a very practical one and it's sort of a mind map that it is restrained by the legislation -- and when we try to get increased clarity of the Data Protection Board so we can easily map the differences between them. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Göran, and thanks colleagues for waiting patiently. Pär, Niue, please go ahead.

NIUE: There is no public interest without loyal interest. I'm looking at the articles -- sorry, microphone was dipping down.

Where national law -- and this has been said very many times -- supersedes ICANN bylaws. And if you look -- I'm not going to read the whole thing but section 2 commitments and core values, its local law supersedes in the article of incorporation of ICANN; local law supersedes ICANN bylaws. And I think you suspect why I ask this question. Since we have a re-delegation issue going on and that you haven't replied to for 18 months, where ICANN is acting against local law and national law.

GÖRAN MARBY: Thank you, Pär, for bringing the .nu thing to our attention. And important for requestors, even if you are relying on national Board's laws to provide evidence or at least documentation to ICANN of how taking the requested action and actually be able to preserve stable operations and uphold the stability of the identifiers. I think we should continue this conversation outside this room. Thank you.

MANAL ISMAIL, GAC CHAIR: Jorge Cancio next. Switzerland, please go ahead.

SWITZERLAND:

Hello everyone, I hope you hear me okay. This is Jorge Cancio from the Swiss government. I am not back in Switzerland, so I missed some of you so greetings from the online world for those of whom I didn't see, happy to be here. And I would like to go back to the issue of inclusiveness. And I'm very happy that Maarten mentioned that inclusiveness and diversity are at the heart of our multi-stakeholder community model. So I think we are pretty much aligned on that. I think with the whole community, what you would have seen if we would presented the original slides, we had prepared what would be a lot of thinking going on in the GAC regarding how we can accreditize or operationalize this concept of inclusiveness? So that is probably a conversation that may still to be made between us and the whole of the community, and maybe we can continue that in some informal setting at some time with interested Board members, interested GAC members, and perhaps even people from other parts of the community so that we use the opportunity of the GPI framework to include some elements to really operationalize this concept.

There are elements there, questions 8-10 if my memory serves me well, going to that direction, but maybe we can be more concrete still. But yeah, just to congratulate ourselves that we are aligned at the level of principles, because it's really at the heart of our model that we have inclusiveness as meaningful participation of

all the diverse parties of the community. So looking forward to continuing that conversation with you. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much.

MAARTEN BOTTERMAN: A quick one. Inclusiveness is not new. But it's maybe a bit much implicit, and this is why I bring it up and in mentioning, may benefit from more discussion. Avri, could you add?

AVRI DORIA: I very much look forward to the conversations with Jorge and others, especially as we sort of wind down the pilot. Because we're trying very hard not to change the framework during the pilot but then once we finish the pilot and start to look at how to take it into the next stages, I would very much look forward to those conversations. So thank you, Jorge.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Avri and Maarten. And Jorge, thank you. Looking forward to your feedback on the hybrid format. You have been stress testing it in-person and online. Next European Commission and then Velimira, please.

EUROPEAN COMMISSION: Thank you Chair. And good morning everybody. I had just several observations. The first one is in relation to the question B on the GPI. And many thanks, Avri and Maarten, for the clarifications. I just wanted to bring a little bit of context to this question, because we are all the time mindful indeed of the length of the questions but here it was probably not useful to make it short. Basically this question was referring to our ICANN73 GAC Communiqué, and it was not so much putting into question implementation or enforcement of public interest as compared consideration, it was much more [indiscernible] of the first pilot lesson of SSAD.

Because actually when going to the document where the SSAD was discussed, actually there was a minority statement from the GAC and some other parties to the EPDP Phase 2 where they were actually saying that there were some cyber security threats that were not given sufficient prior to in the sense that there were questions of different levels of priorities in this report, that basically the concern of the GAC at the time was that precisely this was not given sufficient importance or speech, and actually the conclusion on [indiscernible] SSAD was that the concerns were sufficient.

So basically to draw the attention next time the GPI framework is applied in relation to the ODA, just to be careful that because something has been raised as a concern that it has been

effectively addressed. So it was just a clarification and hope it helps.

Then very quickly on inclusiveness, I very much subscribe to what Jorge said in terms of culture and operational, but also to give the perspective of this, actually a number of colleagues has been thinking on this concept and we thought it might be useful as a background for the Board members working from this to give our reflections. So it was not supposed to be so much a question but rather some input from the GAC. And now, I'm mindful of time, but my colleague Nigel, I was probably pretty slow on the accuracy question so I don't know if Manal, I could come back to this.

GÖRAN MARBY:
or reply now?

Sorry, access to the WHOIS, you made comments -- should I wait

EUROPEAN COMMISSION:

I was just referring to the minority statement, and it was not that I was mentioning cyber threats; it was much more about the minority statement.

GÖRAN MARBY: Because we had a comment about that and would like to reinforce that. Again, the reason why we have this discussion is because of the legislation of GDPR. And sometimes in the room we have debated the interpretation of the GDPR. And article 23 provides clarifications and also reaffirms our legal assumptions from the beginning was right because the European Commission in [indiscernible] now showing the role of the [indiscernible] controller but also connecting article 23 to article 6, I think it is, from actual GDPR. And I know all [indiscernible] lawyers that in a way that makes the balancing test easier and also in a way looks at some of the definitions we were lacking. So I think the advice was written without taking the legislation, GDPR, and new potential legislation into account. Because we should never forget that the reason we're talking about the disclosure system, why this information is not there, is because of legislation which is based on Data Protection law and advice from the Data Protection Board in Europe. Thank you very much.

EUROPEAN COMMISSION: Before going then to the accuracy, if you will allow me, again, two points. First, my intervention was not meant to discuss cyber security threats and I don't think this is linked to the revision you are making a [indiscernible] neither to the GDPR, just linked to the fact how the GDPR framework was aligned in the context of the SSAD. So really linking this to the Communiqué text from

ICANN73, which I don't think that this advice was there because of GDPR or [indiscernible] I was just making reference to the GPI framework, what was the discussion of this.

Then when it comes to about the disclosure, I think, and I know that some of these points we might not have the same view. It is not because of the GDPR that WHOIS is closed. The GDPR is about personal data, and we know there are also other points and not only personal dates about disclosure, a long discussion. So it was not the point I wanted to make. So if I can continue on accuracy and I give you back the floor -- [overlapping speakers]

MANAL ISMAIL, GAC CHAIR: Sorry, Göran, if we can keep the accuracy until later -- because Nigel also has comments on the accuracy -- we will go back to accuracy. So thank you. Göran. Would you like to comment now?

GÖRAN MARBY: Thank you, I recommend you read the Data Protection Board legal guidance that under GDPR the [indistinct] so that will take out any of the discussions if there is a connection to GDPR and individual data and WHOIS information. Thank you very much. I would rather avoid that discussion.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Velimira and Göran And Brazil. Very sorry to keep you waiting on GPI, so please.

BRAZIL: Thank you so much, a comment on GPI referring to what we heard before, how different bodies including GAC might employ the GPI framework. And I think just important to bear in mind that perhaps I think there are two different things here. You have the GPI framework as possibly a tool that fits in the policy-making process, and then it's a concept that somehow as ICANN understands, it's elaborated inside-out in the sense that it's very much based on analysis and elaboration on the bylaws and the rules of ICANN, and somehow it's [indiscernible] runs a little bit of a risk of being circular -- well, if I'm applying the law, that is something in the public interest. So not something very easy but a creative way to find more sophistication to this analysis. So I think it's a tool that fits in the policy-making process. And then when the GAC is in one of the Working Groups elaborating something, certainly that's something important to take into considerations.

Another thing is to have the concept of public interest, a more analytical concept in the way GAC will look into different policies and proposals that come before us. And then I think a different concept, the public interest in this context would be something a

little bit different. Every country will bring its own perspective about what public interest is based on its own national policies and laws on how it interacts with other states and so on, so forth, so external perspective on public interest. And therefore, we mentioned before in discussion previously on Closed Generics, we understand the Closed Generics would be attributed to subject to public interest. In my view in the eyes of public interest would be made based on the GPI framework, so we are looking outside-in a sense. So different perspectives on how we deal with the public interest concept, and I think GAC has a very specific perspective to bring to this kind of debate. Thank you very much.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Brazil. I see Ashwin. Is this on GPI? On the global public interest?

INDONESIA: Thank you. Ashwin from Indonesia. What I propose for the public interest is that let's [indiscernible] the problem raised by Niue on a WHOIS problem is GDPR. Sometimes there are -- what do you call it -- discrepancies between the ICANN, ICANN bylaws, and GDPR and other countries' regulations. Because there are in our [indiscernible] there are many problems within ICANN and other members and stakeholders which even goes to the [indiscernible] like epoc, ICANN and so on, the German court for example. I might

propose a step of how ICANN can increase or strengthen the arbitration dispute resolution, so we don't have to go to the Court from ICANN and stakeholders. For example the [indistinct] finally it can be concluded outside the court just in the dispute resolution or can I use a consultant for this one? So I think it's a good way to get a way out to overcome the problem within ICANN and the stakeholders. That's all, Manal. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Ashwin. So if there is nothing else on GPI, I'm just looking in the Zoom room and the room. Okay. Seeing no further requests for the floor, then with your permission, please if we can go back to accuracy, if we can get the accuracy slide on the screen. And I'm now giving the floor to Nigel, UK please.

UNITED KINGDOM: Yes, thank you very much, Manal. Thank you, and apologies for not intervening earlier. I think three things really. From the UK perspective, accuracy is one of those concepts that people have talked about for a long time, and I think it has a real importance to the wider understanding of how the Internet and DNS works. It's one of those issues which I think is a litmus test, in a way, for the credibility of the system and the way we work on the DNS, along with registration of illegitimate websites and phishing and spam and bot-nets which we discuss under DNS abuse and with

which so much work has been carried forward. The accuracy of registration data is something people understand, politicians understand, our masters in our governments understand, and hope that institutions like ICANN are working on them to enhance the effectiveness and the safety and the understanding and the appreciation and the inclusiveness of the Internet, which Göran and others have talked about before.

So in this context we really do welcome the work that the scoping group is taking forward, and the diligence of the contributors to that group and the work they're carrying forward. We thank the Board and the ICANN organization for their support of this work, the letter obviously to the European Commission and the European Data Protection Board is important in this context, but we shouldn't in any way limit the work of the scoping group because of that letter. Indeed the attention paid to accuracy across the ICANN organization, the Board and the community, means that the work of the scoping group is even more important, especially in terms of them understanding the current processes that registrars and registries undertake to ascertain accuracy.

So we really do -- as the UK government, we really do want to see the scoping group carry forward all four elements of their work. We want to see a survey carried out as to how registrars actually

carry out the accuracy assessment and therein no way touching on the data, which is subject to the legal and more formalized discussions. We will be reflecting on this in our Communiqué later, but I would like to thank the Board for their support on that issue. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Nigel. Becky, please.

BECKY BURR:

Yes, thank you Nigel. I just want to say the Board, and in particular I agree with you that the accuracy is a critical issue. It's fundamental. It was in the green paper and the white paper. The question -- the difficulty with carrying on with assignments 3 and 4 right now really has to do with the lack of data to understand whether there are inaccuracies, what kinds of inaccuracies there are and whether they prevent contact with the individual in appropriate circumstances and how prevalent those inaccuracies are. And without that data, it is very difficult to contemplate a solution that is fit for purpose. So I think the discussion that you are hearing about pause versus any other thing reflects the realization that we need to get additional information to really zero in on what the problem is, and then moving on to how to fix it.

GÖRAN MARBY:

Just for clarification -- and thank you very much. We're not pausing the work when it comes to WHOIS accuracy. We have an obligation for that inside our contracts and pursue them. The problem is really, as I said before, we have a Catch 22. We can't really check the data because it's private data we don't have that -- we can do it on a single basis but can't do the work to get to the core of legislation. And to my friends from Malaysia, you are so right. We used to have the ability in this room to sit down and have conversations that made us make policies around the world, we have for decades and been very successful, have implemented things like protection of trademarks, abuse fighting, a lot of things not only with contracted parties but like with the country code operators, doing a good job.

And when legislators move in specifically to the area that a multi-stakeholder used to do, we end up with the limited ability of the multi-stakeholder model, which you are a part of but also puts strains on the conversation. When the GDPR came around, one of the things was to make ICANN org responsible for legal disclosure, we called that the strawberry model, unfortunately didn't get traction. You can see reasons in the letter to the European Commission. After that we proposed the ICANN org should be the legal entity responsible for disclosure of data because every time the contracted party gives out data, if they do it wrong they might

pay fines. And we were willing to pay fines to check things. Tried to go to Germany twice, and the last thing was to propose the [indistinct] that we should have the ability to have greater impact when it comes to accuracy of data.

We have been trying to do this for the last four years, and still talking about technical details and I think it's time to move on. And I really agreed, we are getting effective around the world, the multi-stakeholder model is about legislation. And whatever the government comes up with will always be law for us and for you. And that limits us. I just wish in the future that we can continue to use the multi-stakeholder model. And even if you don't always get what you want, there could be good reasons for it. Because together in the bottom-up process, different opinions comes to the table. And we usually get it right and we have for decades. The Internet has not gone down for 35 years. Every time you go online, this group and our partners provide you with the Internet. As Maarten said, it's voluntary, but today we serve the biggest global community in the world, 5.5 billion users. Unfortunately we see a scattering of [indiscernible] around the world, and that can only be bad for users, to fight about DNS abuse, to make sure [indiscernible] becomes stable.

I would like to move on from this discussion. There are laws that affect our ability to make decisions in the system. ICANN and the

community has always stood out for hard questions and were able to solve them. I would like to have those questions come back to the ICANN community. We have been able to solve them for a long time with governments as partners in this conversation, reaffirmed by many of your countries and the letters from European Commission and Telecommunications Union and letters from White House.

MANAL ISMAIL, GAC CHAIR: Thank you, I have European Commission next, Velimira please.

EUROPEAN COMMISSION: Yes, so as I said, I wanted to come back to Becky's question on accuracy before saying anything -- and I don't want to prolong the discussion. I think it's obvious that the position of European Commission is a bit different than compared to what the ICANN CEO has -- and we should find a way to be constructive. As regards to Becky, I want to thank you for the clarification report to the letter of ICANN was read and then sent by the European Commission, I can confirm that we have well received and taken note of this letter, and we will deal with it and send of course a response to ICANN.

What I wanted to mention is I have also taken your point about the clarification and some point before discussing also with other

GAC colleagues, we had a doubt whether the scenarios under which you work have changed or how we should read it, but indeed a procedural one, an open question, and we understand that the scenarios are being refined and [indiscernible] so question, the GAC will receive a response from the commission.

Why I definitely appreciate the fact that ICANN is looking for advice from EPDP and we are waiting for this, I just wanted to come back and apologies if it was me who did not understand the response but the response that GAC colleagues had put there -- sorry, the question they have put there and about whether ICANN org has requested to receive legal advice, which is different from the European Data Protection Board, so with ICANN requesting to receive legal advice on the issue.

Thank you, Göran, as we did answer. Yes, we have received legal advice to do that, and I didn't -- we can go out and ask for individual information but that doesn't solve the problem of accuracy, as I explained.

MANAL ISMAIL, GAC CHAIR: Thank you very much, European Commission and Göran, and I'm just pausing to see if there are any further questions or requests for the floor. And if not, then if I may ask we go to slide 9. Thank you. And this is basically to recognize the substantial progress

that we have made over last few years with the Board through the BGIG, the Board GAC interaction group and also with org in bringing new GAC colleagues up to speed and recognizing the next round of new gTLDs that is being foreseen and given the significant role played by the GAC during the first round, specifically with the Applicant Guidebook, again, we're trying to bring new GAC colleagues up to speed.

And as we have mentioned several times we now have 150 new GAC representatives ever since Montreal, ICANN 66. And we are trying to also follow up on what org promised to share regarding summarizing how GAC advice has been handled during the first round of new gTLDs, and maybe also consider methods for future Board GAC dialogue on the topic. So as I said, no complete questions, just to recognize the progress, make sure we receive the paper summarizing of how GAC advice was handled during the first round and agree on a way forward.

MAARTEN BOTTERMAN: Thank you for that. And yeah, we always look for opportunities to even further enhance our interaction and come to the best possible outcome. In this I must say also very much appreciate the specific issues with direct dialogue with responsible [indiscernible] like ALAC or GNSO which I think helps to enhance the ultimate recommendations that have come to the Board as

well. So yes, let's also keep the Board/GAC interaction group as kind of a focal group in helping to enhance communications, it's very useful, and of course the Board is ready for any questions or interaction at any point in time.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Maarten. Anything else before concluding? Any final remarks from the Board side or...

MAARTEN BOTTERMAN: Again, we appreciate the interaction. And what we see is a world that is in a way changing. The dynamics in the world change and we need to find a way through that together. ICANN stands very much for the global Internet, one global Internet, and we want to continue to deliver on our mission and make the better Internet possible in terms of how do we connect to each other. So that things on the Internet can benefit from that.

So with that, appreciate the support and the interest of governments around the world to help make this happen. In the end, that is the shared objective, that I think -- I know you are not representing everything, but I think we share that, this one global Internet that functions, serves the world, and let's benefit from that. So thank you all very much for your questions and interaction and your dedication to this.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Maarten, Göran, Becky, Avri, and all GAC colleagues in the room. And I see also Board members on Zoom, so thank you very much. And thanks to my GAC colleagues for your participation and active engagement and all community members who are interested in our bilateral with the Board. Looking forward to continuing the constructive dialogue, and this concludes our bilateral, thank you.

And GAC colleagues, we will reconvene after lunch to start with the Communiqué drafting. So please be back at 1315 The Hague, 1115 UTC.

Thank you.

[END OF TRANSCRIPT]