

ICANN | GAC

Governmental Advisory Committee

29 January 2016

Dr. Steven Crocker
Chair, Board of Directors
Internet Corporation for Assigned Names and Numbers (ICANN)

Dear Dr. Crocker,

I am writing to you with regard to a resolution of the former New gTLD Program Committee (NGPC) dealing with GAC advice contained in its Communiqué from the June 2015 Buenos Aires meeting and dealing with safeguards for the current round of new gTLDs. The resolution is 2015.10.18.NG02.

As a general comment, the GAC remains of the view that, consistent with previous advice, as many issues as possible (within legal constraints) should be dealt with in the current round, without prejudice to considering them on their merits in the lead-up to any subsequent rounds.

Your response to the following matters would be appreciated:

1. There does not appear to have been any formal communication of this resolution to the GAC. Is it the Board's intention to make such a formal communication? It may be helpful to do so in the interests of community transparency.
2. The scorecard of Board action on GAC advice since the Beijing Communiqué (referenced in the NGPC resolution) seems to indicate that all GAC advice since then has been accepted in some form or another. As you may be aware, a recent GAC internal review of GAC advice effectiveness found this not to be the case, a conclusion supported by GAC members at the Dublin meeting. With regard to the scorecard system used by the Board, the GAC made a clear and explicit request for the scorecard to include: *a) what elements of GAC advice have been implemented; b) what remains a work in progress; and c) what has not been accepted for implementation, with a clear rationale for not being accepted.* Moreover this scorecard should comply with the following: *"In any instances of complete or partial rejection of the Advice, the GAC urges the NGPC to clarify the milestones intended to be followed in order to seek a potentially "mutually acceptable solution" as mandated by ICANN's Bylaws."*

The current scorecard does not appear to meet these criteria.

With regard to the most recent GAC advice, the GAC Buenos Aires and Dublin Communiqués requested that:

- (1) The NGPC create a list of commended PIC examples; and
- (2) "Relevant stakeholders should be identified and encouraged to devise a set of PICs..."

The Board scorecard states that in response to (1) a general list of all PICs is being created. This is clearly not the same as creating a "list of commended" PIC examples that could serve as best practice examples. Regarding (2) the NGPC simply refers to forwarding a somewhat related third-party proposal to GNSO and ALAC. This is clearly inconsistent with the GAC advice on this issue, which requested action by the NGPC to "identify" and "encourage" relevant stakeholders to devise a set of PICs that work well.

I would appreciate any suggestions you may have for the Board and the GAC working together to resolve this apparent disconnection in how we see the same set of issues.

3. With regard to industry-led initiatives, you also referred to this in your letter of 28 April 2015, and I note that there was further briefing by staff to the NGPC in September 2015, referenced at <https://www.icann.org/resources/board-material/minutes-new-gtld-2015-09-28-en>. Such initiatives are certainly welcomed by the GAC. However, the only specific example on which there appears to be any public record is the DNS Seal and Awards project, on which there seems to have been no activity since 2014: referenced at <http://dnsseal.wiki/>; and in any event this does not address the GAC's requests noted above. Is the Board able to provide any details of current industry-led initiatives, including contact details should the GAC wish to invite a briefing from those responsible?
4. With regard to reporting on the levels and persistence of abusive conduct, please note that GAC's advice contained in the Dublin Communiqué referred to a wide range of such conduct, including malware, botnets, phishing, pharming, piracy, trademark and/or copyright infringement, counterfeiting and fraudulent or deceptive practices.
5. Taking into account all of the above points, I draw the attention of the Board to the current process for consultations between the Board and the GAC including those required pursuant to Article XI Section 2.1.j of the ICANN Bylaws (attached). You will recall these were agreed following the ATRT1 Report. If the Board can clarify the steps it has taken to comply with these procedures in this instance that would be very helpful.

If possible I would appreciate a response from the Board by mid-February 2016 in order to enable appropriate consideration at the Marrakech meeting.

Best regards,



Mr Thomas Schneider
Chair, Governmental Advisory Committee