ICANN|GAC
Governmental Advisory Committee

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Governmental Advisory Committee Comments Regarding Community Consultation on Updated Operational Design Phase Proposal

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General GAC Comments

The GAC appreciates the intentions of ICANN org to help find more effective ways to assist the ICANN Board in obtaining relevant information about operational and resourcing issues associated with certain policy implementation efforts. Members of the GAC still have concerns about the overall practicality of creating a new Operational Design Phase (ODP) when more efficient efforts could be directed toward making basic improvements to the policy development process (PDP) that would incorporate fact finding, operational and resource considerations that would appropriately inform the Board's deliberations.

Nevertheless, some GAC Members are pleased to see that several improvements have been made to the original ODP concept proposal presented to community leaders prior to ICANN69 and they appreciate that the ICANN org staff has taken the time to clarify aspects of the revised proposal to the community. The GAC believes that a few additional considerations would further improve the concept before it is tested for the first time and that subsequent assessment of the experiment should be made before making the ODP a more permanent fixture in the PDP framework.

Initial GAC Concerns

The updated proposal addresses several concerns identified by GAC Members and other community groups during and after ICANN 69 (see transcript of GAC-Board Meeting at ICANN69).

Re-litigation Concerns

GAC members expressed concerns at ICANN69 that the proposed ODP should not be seen as an opportunity to relitigate policy questions that were settled during the policy development

process or inordinately extend the time available for implementation of policy recommendations agreed to by the multistakeholder community.

GAC Members are pleased that ICANN staff have clarified that the ODP is intended to be used sparingly for implementation considerations regarding particularly complex policy matters with a focus on "facts and figures". Nevertheless, during community policy working group deliberations, appointed policy development process (PDP) chairs should be encouraged to assure that community deliberations consider issues of potential financial resource and other implementation matters and inquiries made of ICANN org staff as part of those deliberations where the expertise of the working group members may need supplementation or further support.

ICANN org staff may wish to consider how the GNSO community has previously attempted to address similar "relitigation"concerns as a way to provide more detailed assurances and clarity about the ODP for the community (see e.g., *GNSO Policy & Implementation Working Group Final recommendations Report* (June 2015) - https://gnso.icann.org/sites/default/files/filefield_47797/pi-wg-final-recommendations-01jun15-en.pdf , and see also *Implementation Review Team (IRT) Principles and Guidelines* (August 2016) - https://www.icann.org/en/system/files/files/irt-principles-guidelines-23aug16-en.pdf.

Flexibility

At ICANN69, GAC Members noted that any new operational design phase should not reflect a static or over-regimented process but should offer flexibility depending on the policy being evaluated for implementation and the circumstances surrounding a particular policy matter. GAC Members are pleased that this aspect of the concept has been adjusted.

GAC members seek further assurances from ICANN org that the envisioned ODP be used sparingly as a Board tool for only the most complex policy cases rather than allowing it to become an additional new bottleneck introduced into an already lengthy policy development timetable.

Community Workload Concerns

GAC Members have been particularly concerned about the creation of a new process "phase" that would place new demands on community volunteer time and focus. They expressed reservations about a new process that could add disproportionately to the length of the overall policy and implementation lifecycle. GAC members expressed during ICANN69 that the information the ODP is intended to produce should, as much as possible, be gathered during

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the time a particular policy is being developed – not after. GAC Members are pleased that ICANN org staff have clarified that the ODP is not something that is intended to be exercised for all policy processes but should only be anticipated for particularly complex matters requiring substantial organizational implementation.

Community Consultations

GAC Members welcome the indication from ICANN org staff that community consultations will be a feature of each ODP. With the previous admonition that the community work load be considered before too many consultations are pursued, GAC members welcome the staff plans to provide regular information resources to update the community about progress regarding any particular ODP. The commitment to offer web page resources, public timelines, progress updates and the availability of ICANN staff to brief community groups are a step in the right direction.

Design Feedback Group

Mindful of the need to preserve community consultations in any ODP, GAC members are pleased to see that the concept of a Community Design Feedback Group (DFG) has been dismissed. It is not clear, however, if replacing that group concept with a single liaison from the GNSO Council is, in itself, a practical improvement and it is noted that there was some concern expressed about this degree of change during the 12 January 2021 ODP webinar hosted by ICANN org staff (see https://community.icann.org/display/ODP/Webinar+January+2021). Some GAC Members are reassured that there is a commitment to preserve community consultations via existing mechanisms, but also caution that all communities interested in a particular policy matter (not just the GNSO) should be consulted on an equal footing. GAC Members believe such a balance point could be achieved without the creation of a new bureaucratic structure like the DFG.

Continuing GAC Concerns

Despite the improvements made to the initial ODP proposal, GAC Members challenge ICANN org staff to consider a number of additional points and adjustments before moving forward with an initial test of the ODP concept.

Need for the ODP Proposal

Members of the GAC continue to express concerns about the overall practicality of creating a new ODP when more efficiency could be achieved by making basic improvements to the PDP

that could incorporate fact finding and resource considerations that would appropriately inform the Board.

Understanding, nevertheless, that the ICANN organization seems intent upon proceeding with ODP experimentation, GAC Members encourage ICANN org and the ICANN Supporting Organizations to consider adoption of default working group charter provisions that would charge PDP working groups and those staff who support them to proactively anticipate, discuss and factor into their recommendations any financial, resource and other implementation matters in a structured and targeted fashion. Such charter expectations would compel discussions of such matters earlier in the PDP and potentially render any additional ODP redundant and unnecessary in most cases.

Impact on Implementation

GAC Members are concerned that the revised proposal lacks specificity regarding generally expected timeframes for any ODP. Mindful of GAC concerns that an ODP phase could unnecessarily delay policy implementation, clear timing parameters should be established for each time an ODP is initiated and those expectations should be publicly articulated via a clear public announcement (perhaps easily associated with the existing PDP) and not relegated to an ICANN Blog post or a community leader email communication.

GAC members appreciate that given the "flexibility" anticipated for different ODPs that default maximum timelines should be developed for ODPs, with a bias for establishing potentially shorter timeframes when circumstances allow them.

Finally, some GAC Members note that the revised proposal also does not appear to clearly provide an opportunity for community reaction to any particular ODP conclusions (e.g., if an ODP were to conclude that a certain policy recommendation was not feasible due to resource constraints). While it is understood that the Board would apparently use the ODP conclusions as a substantial factor in its review of any policy recommendations, this feedback gap should be addressed in the ODP process.

Timely Feedback and Assessment of Initial ODP Efforts

GAC members welcome the willingness of ICANN org staff to conduct an evaluation of the ODP concept shortly after the first two practical tests of the process. The GAC Leadership team will closely follow the first two ODP tests and, as experience and data are gained, GAC Members look forward to offering further suggestions and changes to or replacement of the nascent process. ICANN org should also be willing to conduct a thoroughly candid review of the first few

tests and keep open the option of abandoning or substantially revising the structure of the ODP concept if it does not prove to be a useful innovation for the Board or the ICANN community.

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