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## AT-LARGE ADVISORY COMMITTEE

### ALAC Statement Advice to the Board on the ICANN74 Travel Acknowledgement

#### Staff Introduction

On 28 April 2022, Marita Moll, ALAC Member sent a note to the At-Large worldwide mailing list in which she listed her views on the ICANN74 Travel Acknowledgement.

On 29 April 2022, Maureen Hilyard, ALAC Chair, sent a note to both the ALAC members and the At-Large worldwide mailing list of her intention to send Marita's note on the ICANN74 travel acknowledgement to the ICANN Board as ALAC advice.

On 30 April 2022, Maureen Hilyard the ALAC Chair, with support from her advisors, drafted the introduction.

On 1 May 2022, Maureen announced that the ALAC had unanimously supported the ALAC advice to the Board on the ICANN74 Travel Acknowledgement.

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#### **Introduction**

After considerable consultation with the At-Large Community, some serious concerns have been raised about the waiver that ICANN expects participants to sign to attend ICANN74 in person. A summary of the contributions made by the community has been compiled and the ALAC has unanimously agreed that this should form the basis of Advice to the Board to either withdraw the waiver that has been presented or re-write it to address the egregious issues. The ALAC and the At-Large Community do not consider this expectation to be a responsible action by the Board and ICANN Org. In particular, we do not believe that the waiver takes into consideration important overarching principles, such as the trust relationship between ICANN and its important volunteer base and the bottom-up multi-stakeholder model, in which ICANN takes such great pride within the Internet community.

Among the most offensive aspects of the waiver are:

- Despite the exclusion of gross negligence in the Release section, ICANN absolves itself from any negligence of fault in the COVID-19 section and in the Acknowledgement. All parts of the Travel Waiver must be consistent.
- The waiver absolves ICANN from almost all forms of liability, despite claims to the contrary in the ICANN 74 Health and Safety FAQ (<https://74.schedule.icann.org/health-safety>, section 1.16) claiming that *“There will be times, of course, where ICANN might not perform to an expected best practice, and that might be the cause of injury or damage to an attendee. Those claims against ICANN are not waived.”* There is no such limitation in the waiver, even by implication. If the waiver reflected what the FAQ falsely claims, it would be far more acceptable.
- The waiver requires that all participants indemnify and/or “hold harmless” ICANN with no limitations as to cause or amounts.
- These are only examples; there are numerous additional instances where the waiver is one-sided, aggressive, overreaching, and onerous. Community members are forced to choose between signing an oppressive document and not attending the first in-person meeting since 2019 (and most likely, future meetings as well). Adding insult to injury, participants must swallow their objections and agree that they are “knowingly,” “freely” and “voluntarily” signing this waiver.
- If the terms and conditions for attending ICANN meetings are to change, they must be subject to community input and not be unilaterally declared. Moreover, the COVID-19 pandemic must not be the occasion to impose completely unrelated and unnecessarily draconian terms on ICANN participation.

The waiver has become a major disincentive for ALAC and At-Large community members to attend ICANN74, which will both limit their inputs and hamper our functioning. There are strong indications that the same is true in other non-At-Large parts of the ICANN Community.

It is unclear whether this waiver is the result of Board action or originates wholly within ICANN Org, but the ALAC advises the ICANN Board to take control of the situation and ensure that this

waiver does not endanger both its relationship with the ICANN Community and the success of ICANN74.

The ALAC or its representative(s) would be happy to participate in a review of any re-drafted document.

The following is the substance of the text which introduced this issue to our community and is included so that the Board can fully appreciate how this waiver has been perceived.

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With thanks to all those who provided input, here are our top 10 reasons why this waiver is a bad idea for ICANN and for the community:

10. It is insensitive to the global community as it can be interpreted as an exportation of U.S.-based litigious culture.
9. It disregards the fact that participants at ICANN meetings have always willingly and knowingly accepted personal responsibility for health issues that arise during meetings.
8. It is a disincentive to attending ICANN meetings in person, thereby damaging the ability of the community to work together.
7. Concerns which have arisen throughout the community about the broad scope of the waiver are not being addressed - including legal opinions warning potential participants against signing.
6. No one is taking ownership of this waiver. The Board position on it is unclear.
5. There has been no general explanation to the community or any attempt to seek buy-in for this waiver.
4. This kind of blanket waiver could be unenforceable and, in that case, serves only as intimidation.
3. The waiver infringes on individual rights.
2. ICANN appears to be abandoning its duty of care to the participating community who are voluntarily contributing their time and energy to fulfilling ICANN's mandate to operate as a bottom-up multi stakeholder organization.

Top reason why this waiver is a really bad idea:

1. It leaves a lasting unpleasant taste in the mouths of participants contributing to ICANN's multistakeholder model -- which is presented as a source of pride and accomplishment to the internet governance community.

For your added information, here is a list of At-Large community members who have explicitly offered immediate support for this Advice. It includes the full complement of ALAC Members.

<b>ALAC supporters</b>	<b>Community supporters</b>
<b>Dave Kissoondoyal – AF</b>	<b>Seun Ojedeji &amp; AF Leadership Team</b>
<b>Raymond Mamattah – AF</b>	<b>Hadia El Miniawi - AF</b>
<b>Sarah Kiden – AF</b>	<b>Satish Babu &amp; AP Leadership Team</b>
<b>Maureen Hilyard – AP</b>	<b>Lianna Galstyan – AP</b>
<b>Holly Raiche – AP</b>	<b>Shreedeeep Rayamajhi - AP</b>
<b>Naveed Bin Rais – AP</b>	<b>Roberto Gaetano - EU</b>
<b>Matthias Hudobnik - EU</b>	<b>Christopher Wilkinson - EU</b>
<b>Joanna Kulesza – EU</b>	<b>Sébastien Bachollet - EU Chair</b>
<b>Pari Esfandiari - EU</b>	<b>Vanda Scartezini – LAC</b>
<b>Laura Margolis – LAC</b>	<b>Carlos Raul Gutierrez – LAC</b>
<b>Carlos Aguirre – LAC</b>	<b>Sergio Salinas Porto - LAC</b>
<b>Sindy Obed - LAC</b>	<b>Carlton Samuel - LAC</b>
<b>Marita Moll – NA</b>	<b>Alan Greenberg – NA</b>
<b>Jonathan Zuck – NA</b>	<b>John More – NA</b>
<b>Greg Shatan - NA</b>	<b>Eduardo Diaz - NA Chair</b>
	<b>Alfredo Calderon – NA</b>