

# ST18 subgroup report

23 november 2015

# ST 18 subgroup

- The ST18 subgroup, convened by the co-chairs, to:
  - Assess existing options, areas of agreement / disagreement
  - Provide the full CCWG with brief summary of views and options
  - Report to the CCWG so that consensus can be assessed around how to respond to ST18, which identified the risk that GAC could change its decision-making rule and thereby require ICANN board to arbitrate among sovereign governments.
- Meetings
  - 4 calls over 8 days
  - Robust email discussions on mailing list
  - Efforts from many in the group, including many GAC members, to provide constructive compromise proposals

# CCWG 2<sup>nd</sup> report proposal

## ICANN BYLAWS

### Article XI Advisory Committees

#### Section 2, Item 1. referring to the GAC

j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. **With respect to Governmental Advisory Committee advice that is supported by consensus**, the Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

Explanation in 2<sup>nd</sup> draft proposal:

The GAC currently uses the following consensus rule for its decisions: “consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.” The proposed bylaws change above recognizes that GAC may, at its discretion, amend its Operating Principle 47 regarding “Provision of Advice to the ICANN Board.”

# Considerations

- Stress test 18 concern is that GAC could change OP47, which could require the ICANN board to arbitrate among sovereign governments.
- Agreed-upon considerations
  - the GAC may define its own rules
  - working by consensus within the GAC
  - Not working on the basis of simple majority for GAC Advice
  - the Board has the ability to disagree with GAC advice, after trying to find a mutually acceptable solution
  - GAC advice needs to provide clear direction and to provide rationale (=> **will be included in the general advisory committee section**)
- Discussed in ST18 subgroup
  - GAC Dublin input (includes several considerations from above, plus a 2/3 threshold for Board to reject GAC advice)
  - Suggestions to avoid having GAC advice create new policy

# Options for CCWG consideration

## European GAC members proposal

j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies.

In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice.

Any GAC advice approved by **a full GAC consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection, may only be rejected by a vote of two-thirds (2/3) of the Board.**

**Any advice approved by the GAC by consensus with objections only from a very small minority of GAC members, may be rejected by a majority vote of the Board.**

**In both instances**, the Governmental Advisory Committee and the ICANN Board will try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

## Compromise proposal

j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies.

In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice.

Governmental Advisory Committee advice **which enjoys broad support of Governmental Advisory Committee members in the absence of significant objection** may be rejected by a majority vote of the Board.

In this case, the Governmental Advisory Committee and the ICANN Board will try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

# Co chair view

- Both options provide a balance between :
  - Concern that GAC might change its OP47 despite commitment to consensus
  - GAC Dublin input
- The 2/3 threshold apparently raised significant concerns => ST18 subgroup was split on the GAC European Members proposal
- Compromise option appears to reduce chance of objections :
  - A sacrifice for all parties within ST18 subgroup
  - Satisfies some, but not all of GAC's Dublin input
  - Approach enables CCWG to consider Public comment #2 and Dublin input

# Options for CCWG consideration

European GAC members proposal	Compromise proposal
<p>j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies.</p> <p>In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice.</p> <p>Any GAC advice approved by <b><u>a full GAC consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection, may only be rejected by a vote of two-thirds (2/3) of the Board.</u></b></p> <p><b><u>Any advice approved by the GAC by consensus with objections only from a very small minority of GAC members, may be rejected by a majority vote of the Board.</u></b></p> <p><b><u>In both instances,</u></b> the Governmental Advisory Committee and the ICANN Board will try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.</p>	<p>j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies.</p> <p>In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice.</p> <p>Governmental Advisory Committee advice <b><u>which enjoys broad support of Governmental Advisory Committee members in the absence of significant objection</u></b> may be rejected by a majority vote of the Board.</p> <p>In this case, the Governmental Advisory Committee and the ICANN Board will try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.</p>