At-Large Proposed Bylaws Changes Regarding Consideration of GAC Advice Workspace

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- Comments Forum

Brief Overview
ICANN is posting for public comment proposed Bylaws revisions that would incorporate a higher voting threshold for the Board to determine not to follow the advice of the Governmental Advisory Committee. Currently, the Bylaws require a simple majority of the Board (50% + 1) to vote to not follow a piece of advice from the GAC. The proposed amendments to the Bylaws would require 2/3 of the voting members of the Board to vote to act inconsistently with a piece of GAC advice.


Section I: Description, Explanation, and Purpose
The Governmental Advisory Committee (GAC) considers and provides advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues. The ICANN Bylaws require formal determination by the Board that it is taking action inconsistent with GAC advice, if that were to ever occur. Pursuant to the Bylaws, a simple majority of the Board (50%+1) is required to make this determination.

The Bylaws also specify that the Board and the GAC must have a consultation regarding the Board’s intention to act inconsistently with GAC advice. The first ICANN Accountability and Transparency Review Team (ATRT1), recommended the formalization of that consultation process. Members of the ICANN Board, together with the GAC, formed a Board-GACRecommendations Implementation Working Group (BGRI), which developed a formalized process that included the raising of the voting threshold to 2/3 of the voting members. Though a Bylaws change is required to give full effect to this formalized process, the ICANN Board previously indicated that the higher voting threshold would be applied in the event ICANN determined act inconsistently with GAC advice prior to the posting for and consideration of public comments on the required Bylaws revisions. The second Accountability and Review Team (ATRT2) recommended for the completion of the Bylaws revision process. At its meeting in June 2014, the BGRI determined that it was timely to send these proposed revisions to the Board for consideration, and on 30 July 2014 the Board approved this public comment posting.

The proposed Bylaws revisions posted here for comment give effect to the higher voting threshold set out in the formalized process.

Section II: Background

Section III: Relevant Resources
The proposed revisions to the ICANN Bylaws are available here [PDF, 487 KB].

The formalized Process for Consultation between the ICANN Board of Directors (“Board”) and the Governmental Advisory Committee (“GAC”), including those required pursuant to Article XI Section 2.1.j of the ICANN Bylaws [WORD, 41 KB] sets out the full consultation process as accepted by the BGRI in April 2013.

Section IV: Additional Information

Staff Contact
Samantha Eisner, Senior Counsel
samantha.eisner@icann.org

FINAL VERSION TO BE SUBMITTED IF RATIFIED
Please click here to download a copy of the PDF document below.
FINAL DRAFT VERSION TO BE VOTED UPON BY THE ALAC

The At-Large Advisory Committee (ALAC) welcomes the opportunity to comment on the proposed Bylaws changes regarding consideration of Governmental Advisory Committee (GAC) advice, and hereby submits the following as a formal statement to the Board:

1. The ALAC salutes the Board’s continued effort on the implementation of the ATRT1 and ATRT2 recommendations, specifically recommendation 11 of the ATRT1 and 6.5 of the ATRT2, which read as follows:

   **ATRT1 Recommendation 11**
   
   The Board and the GAC should work together to have the GAC advice provided and considered on a more timely basis. The Board, acting through the GAC-Board joint working group, should establish by March 2011 a formal, documented process by which the Board responds to GAC advice. This process should set forth how and when the Board will inform the GAC, on a timely basis, whether it agrees or disagrees with the advice and will specify what details the Board will provide to the GAC in circumstances where it disagrees with the advice. This process should also set forth the procedures by which the GAC and the Board will then “try in good faith and in a timely efficient manner to find a mutually acceptable solution.” This process must take into account the fact that the GAC meets face-to-face only three times a year and should consider establishing other mechanisms by which the Board and the GAC can satisfy the Bylaw provisions relating to GAC advice.

   **ATRT2 Recommendation 6.5**
   
   The Board should propose and vote on appropriate bylaw changes to formally implement the documented process for Board-GAC bylaws consultation as developed by the BGRI working group as soon as practicable (see ATRT1 Recommendation 11).

2. Notwithstanding the aforementioned positive sign of the Board’s commitment with the ICANN community, the ALAC is concerned that the proposed Bylaws changes regarding consideration of GAC advice by the Board may pose a threat to equal footing between the different groups that conform the ICANN community and derive in an unbalanced weight to the GAC’s advice compared to that of the other ACs or the policies proposed by each of the SOs.

3. Moreover, the ALAC observes a trend in the Internet Governance ecosystem that tends to push towards giving increased power to governments. This would not only go against the multi-stakeholder model but wouldn’t comply with what the NTIA has stated as principles for the transition of the stewardship of the IANA functions. The proposed Bylaws changes regarding consideration of GAC advice would add to this trend that we consider undesirable.
4. Considering that the BGRI has already designed a “Process for consultations between the ICANN Board of Directors ("Board") and the Governmental Advisory Committee ("GAC"), including those required pursuant to Article XI, Section 2.1.j, of the ICANN Bylaws” and said process establishes a transparent, efficient and expedite method to either clarify the GAC advice to the Board; oblige the Board to provide reasonable detail on why it would take action not consistent with GAC advice; reverse the intended Board action or take mitigating action, the ALAC calls the Board to reconsider the proposed bylaws changes regarding consideration of GAC advice and continue to foster equal footing among all participants of the ICANN community.

5. The ALAC supports an improved role for all Advisory committees. In support of this principle, if the Board is to implement this Bylaw change, the ALAC advises the Board to fully implement recommendation 9.1 of ATRT2 in the same round of Bylaw changes. It reads:

**ATRT2 Recommendation 9.1**

*ICANN Bylaws Article XI should be amended to include the following language to mandate Board Response to Advisory Committee Formal Advice:*

The ICANN Board will respond in a timely manner to formal advice from all Advisory Committees, explaining what action it took and the rationale for doing so.

This would preserve the delicate balance of advice coming from the ALAC, SSAC and RSSAC alongside the GAC. The ALAC is confident that the Board will continue to implement the recommendations of the ATRT1 and ATRT2 in a way that safeguards the principles of the multi-stakeholder model, more specifically those that help bring balance among participants.

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**PENULTIMATE FINAL DRAFT VERSION TO BE VOTED UPON BY THE ALAC**

The At-Large Advisory Committee (ALAC) welcomes the opportunity to comment on the proposed Bylaws changes regarding consideration of Governmental Advisory Committee (GAC) advice, and hereby submits the following as a formal statement to the Board:

1. The ALAC salutes the Board’s continued effort on the implementation of the ATRT1 and ATRT2 recommendations, specifically recommendation 11 of the ATRT1 and 6.5 of the ATRT2, which read as follows:

**ATRT1 Recommendation 11**

*The Board and the GAC should work together to have the GAC advice provided and considered on a more timely basis. The Board, acting through the GAC-Board joint working group, should establish by March 2011 a formal, documented process by which the Board responds to GAC advice. This process should set forth how and when the Board will inform the GAC, on a timely basis, whether it agrees or disagrees with the advice and will specify what details the Board will provide to the GAC in circumstances where it disagrees with the advice. This process should also set forth the procedures by which the GAC and the Board will then “try in good faith and in a timely efficient manner to find a mutually acceptable solution.” This process must take into account the fact that the GAC meets face-to-face only three times a year and should consider establishing other mechanisms by which the Board and the GAC can satisfy the Bylaw provisions relating to GAC advice.*

**ATRT2 Recommendation 6.5**

*The Board should propose and vote on appropriate bylaw changes to formally implement the documented process for Board-GAC bylaws consultation as developed by the BGRI working group as soon as practicable (see ATRT1 Recommendation 11).*

2. Notwithstanding the aforementioned positive sign of the Board’s commitment with the ICANN community, the ALAC is concerned that the proposed bylaws changes regarding consideration of GAC advice by the Board may pose a threat to equal footing between the different groups that conform the ICANN community and derive in an unbalanced weight to the GAC’s advice compared to that of the other ACs or the policies proposed by each of the SOs.
3. Moreover, the ALAC observes a trend in the Internet Governance ecosystem that tends to push towards giving increased power to governments. This would not only go against the multi-stakeholder model but wouldn’t comply with what the NTIA has stated as principles for the transition of the stewardship of the IANA functions. The proposed bylaws changes regarding consideration of GAC advice would add to this trend that we consider undesirable.

4. Considering that the BGRI has already designed a “Process for consultations between the ICANN Board of Directors (“Board”) and the Governmental Advisory Committee (“GAC”), including those required pursuant to Article XI, Section 2.1.j, of the ICANN Bylaws” and said process establishes a transparent, efficient and expedite method to either clarify the GAC advice to the Board; oblige the Board to provide reasonable detail on why it would take action not consistent with GAC advice; reverse the intended Board action or take mitigating action, the ALAC calls the Board to reconsider the proposed bylaws changes regarding consideration of GAC advice and continue to foster equal footing among all participants of the ICANN community.

5. In this sense, the ALAC recommends that the bylaws changes include a mechanism which considers the following:

   a. If after concluding the process stated by both the bylaws and the BGRI, the Board determines to take action that is inconsistent with the Governmental Advisory Committee advice, then a Public Comment Period on such determination should be open;

   b. After the end of the Public Comment Period, if there is consensus that the determination of the Board is supported by the community, then the Board will be able to take full action;

   c. If after the end of the Public Comment Period there is no consensus that the determination of the Board is supported by the community, then the Board must reconsider its actions and its final decision must be supported by a two-thirds vote of all members of the Board that are eligible to vote on the matter.

The ALAC is confident that the Board will continue to implement the recommendations of the ATRT1 and ATRT2 in a way that safeguards the principles of the multi-stakeholder model, more specifically that of equal footing among participants.

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**FIRST DRAFT SUBMITTED**

(Draft) ALAC statement on the Proposed Bylaws Changes Regarding Consideration of GAC Advice

The At-Large Advisory Committee (ALAC) welcomes the opportunity to comment on the proposed Bylaws changes regarding consideration of Governmental Advisory Committee (GAC) advice, and hereby submits the following as a formal statement to the Board:

1. The ALAC salutes the Board’s continued effort on the implementation of the ATRT1 and ATRT2 recommendations, specifically recommendation 11 of the ATRT1 and 6.5 of the ATRT2, which read as follows:

   **ATRT1 Recommendation 11**

   The Board and the GAC should work together to have the GAC advice provided and considered on a more timely basis. The Board, acting through the GAC-Board joint working group, should establish by March 2011 a formal, documented process by which the Board responds to GAC advice. This process should set forth how and when the Board will inform the GAC, on a timely basis, whether it agrees or disagrees with the advice and will specify what details the Board will provide to the GAC in circumstances where it disagrees with the advice. This process should also set forth the procedures by which the Board and the GAC will then “try in good faith and in a timely efficient manner to find a mutually acceptable solution.” This process must take into account the fact that the GAC meets face-to-face only three times a year and should consider establishing other mechanisms by which the Board and the GAC can satisfy the Bylaw provisions relating to GAC advice.

   **ATRT2 Recommendation 6.5**
2. Notwithstanding the aforementioned positive sign of the Board’s commitment to the ICANN community, the ALAC is concerned that the proposed bylaws changes regarding consideration of GAC advice by the Board may pose a threat to equal footing between the different groups that conform the ICANN community and derive in an unbalanced weight to the GAC’s advice compared to that of the other ACs or the policies proposed by each of the SOs.

3. Moreover, the ALAC finds a trend in the Internet Governance ecosystem that tends to push towards giving increased power to governments. This would not only go against the multi-stakeholder model but wouldn’t comply with what the NTIA has stated as principles for the transition of the stewardship of the IANA functions. The proposed bylaws changes regarding consideration of GAC advice would add to this trend that we consider undesirable.

4. Considering that the BGRI has already designed a “Process for consultations between the ICANN Board of Directors (“Board”) and the Governmental Advisory Committee (“GAC”), including those required pursuant to Article XI, Section 2.1.j, of the ICANN Bylaws” and said process establishes a transparent, efficient and expedite method to either clarify the GAC advice to the Board; oblige the Board to provide reasonable detail on why it would take action not consistent with GAC advice; reverse the intended Board action or take mitigating action, the ALAC calls the Board to withdraw the proposed bylaws changes regarding consideration of GAC advice and continue to foster equal footing among all participants of the ICANN community.

The ALAC is confident that the Board will continue to implement the recommendations of the ATRT1 and ATRT2 in a way that safeguards the principles of the multi-stakeholder model, more specifically that of equal footing among participants.