

3. Charter

GAC-GNSO CG Charter - 18-March.doc

Charter

GAC-GNSO Consultation Group on GAC Early Engagement in GNSO Policy Development Processes

Problem Statement

As a practical matter, the development of policy proposals by the GNSO and the development of GAC public policy advice have followed separate processes, occasionally yielding different (and potentially inconsistent) results for the ICANN Board to consider. The GAC is structured under the ICANN Bylaws to provide advice to the Board. A timing difficulty arises because the GNSO PDP reaches the Board at the final stage of the GNSO policy-deliberation process and it may only be at that time that the GAC turns its attention to the GNSO's work. Only then does the Board request GAC advice, which is an example of a process that appears to need review and improvement.

The amount of time available for the GAC to provide advice varies depending on the issue. The period of review and deliberations by the GAC often necessarily requires public policy consultations within the over 130 national administrations currently participating in the GAC. Furthermore, the GAC's process for taking consensus-based decisions takes place during its three face to face meetings a year, consults primarily with the ICANN Board, and often during the concluding stages of a GNSO policy development process.

These processes significantly extend the period for policy approval and implementation and it is quite possible for the GAC ultimately to take a different position from the GNSO and advise the Board against implementing the results of often long and detailed policy-making processes. Resolving those conflicting positions further delays the process and may be seen as undermining past efforts that have been ongoing for quite some time.

This issue has been identified by, the GAC-Board Joint Working Group (JWG), Accountability and Transparency Review Team 1 (ATRT), Board-GAC Recommendation Implementation Working Group (BGRI-WG) and most recently is within the draft recommendations of ATRT2.

In all cases the recommendations were to Engage the GAC Early within the GNSO PDP. Thus, the need is agreed, the means is not yet agreed, hence the implementation is delayed.

How does not solving this problem get in the way of achieving ICANN's objectives?

Not solving the problem means that we/ICANN have not addressed an ATRT1 Recommendation, which we/ICANN have endorsed as having merit.

The larger or longer term implication is that ICANN's PDPs fail to take government public policy concerns into sufficient account at an early stage so they can be incorporated into the proposals that are forwarded to the Board for approval.

Specifically, not solving the problem implies:

- Delay in approving GNSO proposals
 - trying to resolve conflicting views within a pressing timeframe,
 - getting into Board-GAC consultation as mandated by ICANN bylaws should the Board decides not to follow the GAC advice, ...etc
- The Board is put at a difficult situation when GAC advice is not in agreement with GNSO's proposal,
 - trying to find some common ground,
 - following GNSO proposal, which implies ignoring GAC advice and mandates going through a Board-GAC consultation period, and meanwhile delaying further progress
 - following GAC advice, which implies ignoring time, effort and proposal put forward by the GNSO
- Not utilizing the multi-stakeholder nature of the organization and benefiting from cross-constituencies discussions
- Not fully implementing ATRT recommendations

Value to be gained

ICANN's PDPs would benefit from being more cohesive and/or coherent, versus the current situation where the GAC provides advice directly to the ICANN Board, as per the Bylaws. The Board is then put in a situation of choosing between advice from the GAC and the GNSO.

Specifically, solving this problem would result in:

- More efficient PDPs
- Easier decisions at the Board level, as this gives better chance and more probability for the GAC and the GNSO to find an agreed way forward
- Benefiting from the multi-stakeholder nature of the organization as early as possible and directly between the GNSO and the GAC rather than through the Board
- Implementing ATRT recommendations, also widely supported by the community

Chronology

In part, the situation is due to the Bylaws and in part due to the very different working methods of the GAC and the GNSO

We're now at a point where there is broader awareness that some GNSO proposals that have been approved by the Board contained concepts that may have been inconsistent with existing laws, treaties, etc. A good example of this is the Public Order and Morality proposals contained in the original GNSO new gTLD recommendations, which were unworkable

Stakeholders who are impacted by this issue and proposals resulting from this consultation group

- **Employees**

GAC Secretariat and ICANN Policy staff (Note: GAC and GNSO secretariat and policy-support functions are structured differently, this section intends to include both those groups)

- **Stakeholders**

Anyone interested in gTLD policies (especially participants in, and representatives of, the GAC and the GNSO)

- **Others**

The Board and the larger internet-governance community

Engagement

Historical interest and engagement has been primarily focused in the GAC, Board and several GNSO members. The level of engagement is increasing.

We now have a small, focused group whose purpose is to tackle the immediate issues identified above. This group could be considered the "champions" of the effort to take those issues on. On the GAC's side, we also have our partners on the Board who populate the Board-GAC Recommendation Implementation Working Group (BGRI-WG) and to whom we'll be sharing updates.

Scope, Size and Perspective

This exercise has elements of both a broad-focused strategic effort and a project to achieve specific outcomes. We are pursuing a vision of improving the interactions between the GAC and GNSO vis a vis policy development.

We are also working toward two specific outcomes;

- Testing the idea of a GNSO Liaison to the GAC, and
- Developing different methods of interaction between the GAC and the GNSO PDP process.

Out of scope:

Other facets of the GAC Early-Engagement initiative such as

- Early engagement between the GAC and other AC/SOs
- One-page monthly public policy updates

Goals & Objectives

Goal :

GAC early engagement in GNSO PDP projects and closer functional coordination between the GAC and the GNSO organizations

Objectives:

- An agreed process for ongoing smooth and timely information exchange between the GAC and the GNSO
- An agreed process for ongoing smooth early engagement of GAC in GNSO PDP projects
- An agreed procedure for how to proceed in cases where GAC early input is in conflict with a GNSO proposal and a mutual agreement could not be reached
- Proposals for accommodating the different working methods between the GAC (which tends toward an intense, “episodic” norm) and the GNSO (which is geared toward constant ongoing level of effort).

Deliverables:

- A documented process (table, flow chart, ... etc.) for ongoing smooth and timely information exchange between the GAC and the GNSO organizations (GNSO Liaison to the GAC , permanent liaison/consultative group, ... etc.)
- An agreed documented process (table, flow chart, ... etc.) for ongoing smooth early engagement of GAC in GNSO PDP projects; along with an agreed documented procedure to be followed where GAC early input is in conflict with a GNSO proposal and a mutual agreement could not be reached

Critical Success Factors

- Ongoing consultations and consideration of received comments to ensure everyone is on board at each milestone
- Have a feasible ambitious time plan with concrete milestones as this is an outstanding recommendation of ATRT1, widely supported by the community which is looking forward to its implementation.
- The final agreed process should:
 - Be comprehensive and widely-supported, taking into consideration all possible scenarios (i.e. GAC and GNSO views are aligned at the start, GAC and GNSO come to agreement, GAC and GNSO diverge and are unable to reconcile their positions, etc.)
 - Be written in simple clear explicit language
 - Include clear guidance regarding expectations as to timeframe for each step, yet be flexible to accommodate exceptional cases if need arises
- Agree on a follow-up mechanism and success measures
- Maintain a channel to provide feedback to further enhance the process and document those changes whenever applicable

Preferred Problem-Solving Approach

Organization

There will be 2 tracks of work:

- A mechanism for day-to-day ongoing cooperation (co-led by Manal Ismail and Jonathan Robinson)
 - Initial proposal
 - Issues arising from this proposal
 - How those issues could be addressed
 - An agreed documented process

- A mechanism for GAC early engagement in GNSO PDP (co-led by Suzanne Radell and Mikey O'Connor)
 - Description of status quo
 - Initial proposal
 - Issues arising from this proposal
 - How those issues could be addressed
 - An agreed documented process

Both tracks will work in parallel, with 2 different leads and with the involvement of all members.

Review and Approval

Both agreed processes will have to be approved by the GAC and the GNSO.

Both agreed processes will have to be tested and reviewed, in order to measure their success, provide any necessary feedback, enhance them where possible and document the changes where applicable.

Timeline

Singapore meeting – Charter and early drafts of proposals for review by GAC and GNSO

London meeting – Polished drafts of proposals for review, comment and possibly final approval by GAC, GNSO and other stakeholders

Los Angeles meeting – Final proposals; reviewed and approved by GAC and GNSO

The working group will conclude when final proposals are accepted by the GAC and GNSO

This timeline should not be taken to preclude experimentation or interim solutions that may be identified

Readiness

There is wide agreement on the need to engage the GAC Early within the GNSO PDP. The issue has been identified by the GAC-Board Joint Working Group (JWG), the Accountability and Transparency Review Team 1 (ATRT), the Board-GAC Recommendation Implementation Working Group (BGRI-WG) and most recently within the draft recommendations of ATRT2.

This issue has also gained wide support from the community. So the need is agreed but the means has not yet been agreed. It's an outstanding recommendation that one can claim that the community is eager and looking forward to its implementation.

Resource Requirements

There is wide support across the organization and willingness to commit people, time and access-to-decision-makers.

The GNSO will provide secretariat and logistical support for this initiative.