
BARCELONA – GAC: Informal Board-GAC Dialogue on 2-Character Codes Issues
Sunday, October 21, 2018 – 14:00 to 15:00 CEST
ICANN63 | Barcelona, Spain

MANAL ISMAIL (GAC CHAIR): The two-character code has been a longstanding issue and in preparation for this meeting, Thiago has very helpfully led the efforts to compile the brief that was shared with you yesterday and apologizes for the late sharing, but we needed to have clearance here at the GAC plenary. So the analysis that was shared also included digging previous GAC advice and Board responses so that we can know where the disconnect came from. I have to say that the history of this dates back to times before we started having our joint clarification calls, so this may have helped to complicate things, and the GAC leadership tried to compile the slide on the screen now just to structure our discussion.

So we have two tracks here. One on substance, which I believe is quite clear in terms of what the problem is, though not yet clear how we can address it, and this is that many GAC members are concerned that they are not automatically notified of the releases anymore, and do not have a say in this process. And the other track is the process or the procedure thing, which is of a wider GAC concern, as by going through the analysis prepared here, we have the sense that despite the acceptance of GAC advice, the implementation didn't really follow GAC advice.

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So as we have identified yesterday, we have three points here to make. First of all, make sure that we have the same interpretation, and we are on the same page, and we here I mean the GAC on the Board. Second point is how to address this issue, if at all possible. And the third point is how to make sure we do not run again into a similar situation which we have agreed that it may be a topic for the BGRI.

So, with this introduction, if there are no immediate reactions, I can hand over to Thiago just to take us through the analysis and then we can have the discussion started. So Thiago, please. I'm sorry, Maarten.

MAARTEN BOTTERMAN:

Just to thank you for this opportunity from the Board side. We discussed it during the last call we had, and indeed I think it's also on the Board side clear that we want to get clarity on what the issues really are. Make sure there's no more misunderstanding on what is there and the full appreciation that there are some people in the GAC who are concerned about not being able to get prior permission before the release, but that's not a common GAC opinion as we understand, as has been expressed in the GAC advice so far.

Also very much realizing that there's many country codes, or two-letter codes already used in front of the dot; both ccTLDs and gTLD have done that and that's just a matter of reality, and also to inform you that yes, a process has been put in place, to in particular offer those countries who wanted to know what the situation was with the

two-letter codes, and that have requested an update on that, they have been provided with an update in about 25 cases as I understand, normally within a week, and so far there's been nobody coming back with complaints about a specific on this.

So that's the situation where we are right now; we are providing access to the data on which are used, we are working on an automated system which would allow you as GAC members yourself to see where your two-letter codes are used, and we expect that system to be there towards the end of the year to be implemented in the GAC section, and as I understand, it will also include a button in which you say, "Hey, I have a problem here." So you can very easily raise it. Admitted that after it has been released but this is what has been put in place so far.

So with that, yes, obviously we have seen the file that you've shared in the public session, appreciated that, and we started preparations on responding to it, as some of you may have seen a preliminary response but that's the best what we know at the moment. As you will understand, we tried to prepare well for these meetings, and you have been made privy of that. With that, yeah, Goran.

GORAN MARBY:

Thank you, Maarten. I just want to add, we offer it to any country that we will go and check which country code operators has delegated two letters. And just to give you a sort of way of proving that, from our good friend, Kavouss, we did check for IR which has been delegated 63 times by country code operators around the world, and we can do those checks for any individual countries for the CCs.

The reason why we bring this up is to show that if this is a problem, this problem has existed sort of for a very long time, and nothing ICANN can do would ever take away the already delegated ones, and there are several countries here who have several already delegated CCs. I can provide you with a list, Kavouss, if you want to. It was just for helping you, Kavouss. Nothing else.

MANAL ISMAIL (GAC CHAIR): Kavouss, please go ahead.

KAVOUSS ARASTEH: Thank you very much, Goran. You don't need to provide me. It's already provided by Akram, 191 in one case and 63 or whatever in another case. I fully understand you. I understand Maarten and I understand all the Board. Past is past. But we don't want you continuing to do that. Whatever you have given before 16 December 2017, at least we agree with the reality. You can't do anything. It's released, that's all. But we don't want to continue to do that. That's why you do not kindly understand our positions.

We sent you several letters from the ministry and several times official statements. We do not agree anymore that any two-character letters be released for use for the second level authorization without our specific agreement, and we told that in many many many cases. We agree with the release. In few cases, which have some difficulty with our identity, with our belief, with our traditions, with our religious taught, we may need to discuss. Please kindly consider.

From the time that I appreciated your advice to provide that list by Akram up to now, no discussion has taken place between the distinguished president of ICANN and Iran. Please let me know where, with whom you have talked. We have not seen anything. Two years, no action has been taken. We don't want that you continue to release that. Please kindly understand our difficulties. As far as this is what's written here, this is the transcript, a letter from the deputy minister and myself, we don't agree you continue to release that without our specific agreements.

We understand that there is no consensus in GAC, we have no problem, people are free, but this has nothing to do with the GAC advice consensus. This is a specific situation of the country due to the difference between traditions, between beliefs, between history, between identity, between policies, between laws and so on and so forth. You cannot have a GAC advice on the policy of the country.

We have 193 countries. 206 all together countries geographically, all of them they have different policies. You cannot have a consensus, so please come to each individual country and understand us, you are most welcome. If you want, I can send you an invitation, come to our country; two days, three days, you or your representative, and we discuss and please provide us what you do. Maybe another country is different, but you have not gotten into any discussion with us since two years. Thank you.

MANAL ISMAIL (GAC CHAIR): Thank you, Kavouss. I have one more request for the floor, two requests, and then maybe we can go to the process part of it. So Alan, Palestine, please go ahead.

PALESTINE: Thank you, Manal. We have discussed the two-letter code in Marrakech two years ago, and as my colleague said, we have not been notified of any information or any updates. And my question is to the ICANN Board of Directors. The two-character second level domains, is it something that important to this level? I feel that there is a persistence on the part of ICANN to issue them. As we know, all of us in the last two years, more than 1000 new gTLDs have been issued and more than four years ago the IDNs have been updated and geographical names as well.

The end users right now, we have a loop, we have a problem, and we do not understand the technical details and the other details. So I'd like to ask again; is the two-character issue something that important that we have to deal with it right now? I share my colleague's opinion that the two-character codes is a national issue for countries. It cannot be decided by ICANN or GAC. Every country and every region has its particularities and they decide what letters, two-letter codes or three-letter codes in the future, and my opinion is that's what we need to take into consideration. Thank you.

MANAL ISMAIL (GAC CHAIR): I have Argentina next, and then Thiago. Argentina.

ARGENTINA:

Thank you, Manal, and thanks to the Board for coming and giving these explanations for us which are very valuable and it's very much appreciated that we can consult the situation of each code and each delegation, which is always useful. What we had before was kind of an interesting process that we agreed within ICANN and within the GAC, which was consultation previous to the delegation. In our case, we got that information, we checked with our colleagues and the ccTLD and other authorities at the country level and we never had any complaints, but we had the chance to check before it was delegated.

And there may be some countries that are not interested in doing that, which is perfectly fine, and there may be others that are interested in checking that. This is what we are requesting, is having a process that allows us to have some time, not a long time but some opportunity to check before the TLD is delegated, so this is our point. Thank you.

MANAL ISMAIL (GAC CHAIR): Thank you, Argentina. So yeah, Brazil, go ahead.

BRAZIL:

Thank you very much, Manal. Thiago speaking for the record. Thank you, Argentina, for your comments. I have the feeling that when Argentina was speaking, all the Board members or almost all of them were doing something else other than listening, but there might be a reason for that; perhaps because we are repeating the same things we've been saying since Hyderabad and perhaps the Board members

are also restating the same things that they have been saying since Hyderabad. If I can...

MANAL ISMAIL (GAC CHAIR): I'm sorry to interrupt, Thiago, but just to clarify what the discussion is about, because I mean, there was a feeling that anybody can be notified of the releases if they log into the system, so what I was clarifying is that we used to receive or concerned countries used to receive automatic notifications prior to this release, so it was automatically sent, and not for the government to follow up and have to log into a system. So apologizes for this side talks but it was important, and sorry to Argentina. So back to you, Thiago.

MAARTEN BOTTERMAN : Just to understand your remarks better. Not that we were thinking about the moppets or something.

BRAZIL: Thank you very much, and I do think we should make the most of our time here and I don't think we are doing the best use of time that we can. And so let me remind everyone here that the reason why we are convening this meeting today is because the Board member requested for an informal session, an informal discussion with GAC members so he could help them understand the meaning of our GAC advice on the issue. I would expect the Board to be asking questions to us so we could answer and then perhaps help you understand where we stand.

And another word of clarification is that there is currently as part of the situation where we stand, there is GAC consensus advice to the ICANN Board in which the GAC by consensus advised the Board to work with concerned members to resolve their concerns. This piece of advice basically restates advice the GAC has been issuing to the ICANN Board since Hyderabad, which was the first time the GAC convened after the change in the authorization process.

The authorization process for the release of country codes was changed in November, 2016. Ever since the GAC once it convened adopted GAC consensus advice in which it's directed the Board to try to resolve those concerns. Ever since, the GAC has also been indicating that despite some attempts by the ICANN Board to address and resolve those concerns, the concerns remained. So the question we should be facing obviously is how to resolve these concerns, and if there is any question that we need to answer in order to help you make a decision on whether or not to reject GAC advice, we will be happy to do.

We have already provided to you with I think somewhat a comprehensive document summarizing the findings we have arrived at yesterday. Apologize it was a somewhat late sharing, but we will be happy to continue this conversation after this meeting as well. And if there is anything you would like to ask us, we will be happy to try and answer. Thank you.

GORAN MARBY:

So I think what we are struggling with, all the country representatives who have been now talking have in their own countries country code operators that have delegated other countries' two letters, all of them. And so we have done statistical analysis of all country code operators and we are not doing this to blame anyone. We are not saying that this is something that is wrong or right. But most of the Internet users of the world are actually using CCs. If you go to a country -- the country I come from is .se, and we, as you know, do policies for our program, and I think by the way, the CCs are a very good and important partner to ICANN, but the policies are set differently.

So I think that apart from all the mechanical discussions about this, you know, about GAC advice, non GAC advice, we don't really understand from the Internet users, to be honest, which problem are we trying to solve because everybody who's been speaking here has actually delegated in their CCs their representative countries where other countries' two-letter codes are used. And that has been from the beginning, and we're not talking about the procedures or anything else, that's where I have a problem of understanding, because even if we for some magical reasons would come up with a policy, we are only talking about a very small portion of the Internet market itself, because your CCs are continuing and already have delegated or sold, whatever you want to call it, two letters.

I mean, I took the example of Iran, but I can also give from all other countries, so if someone could explain to me because I'm new this, which problem are we trying to solve for the Internet users of the world? Because it's already out, including Iran.

MANAL ISMAIL (GAC CHAIR): So I have Chris, I have Iran. I have U.K. I have Argentina. So Chris, you go first.

CHRIS DISSPAIN: Thank you. I just wanted to respond to Thiago, I think, who said it would be useful to ask some questions, so I think I have two questions. If I could first say that I'm not Christopher Lewis Evans. I don't know who that is, but I apologize to him for the fact that I am apparently talking in his stead. I have two things really; one is a simple question for clarification, which is, what is the status of the document that we were sent this morning? Is that a document that is endorsed by the GAC or is that a document that has come from some members of the GAC? And I ask because the document contains sentences such as 'the GAC believes' and 'the GAC suggests', so I wanted to see whether that was actually a GAC document.

And my second one is a question that goes to the very heart of this issue. I do not understand the basis upon which countries or territories claim to have rights in the two letters. There is no legal basis upon which the U.K. can say the two letters U and K, or Italy can say the two letters I and T, which happens to be a word, and India I and N, which also happens to be a word, that they have the rights to those and have the right to say whether they can or cannot be used.

ccTLD's exist because ISO puts a two-letter designation on the ISO 3166 list, and as an automatic process, once that two letters has been

placed on the ISO list, you don't choose them. You can lobby for two particular letters but ISO chooses them, and once they are on that list automatically through a process ICANN designates a country code, and this happens all the time; new countries appear and so on. But none of that means that a country then has the right to say, "I now own these two letters, and no one else can use them." Many of them are words, and quite clearly can be used.

AT for example is obviously the word 'at', so the concept that you would not allow someone to have at.shop doesn't make sense. So if you can explain to us the legal basis upon which you believe that you are entitled to a veto, if you will, over the use of the two-letters that ISO have designated as a country code, then that would be extremely helpful, thank you.

MANAL ISMAIL (GAC CHAIR): Thank you, Chris. So okay, Iran go ahead.

KAVOUSS ARASTEH: Thank you, Chris. Thank you, you're repeating what you said two years ago, that there is no legal basis. Because we have heard that from some constituency or stakeholder from the gTLD, but we did not expect to listen or receive that from the Board, which is totally neutral. Leave it to the GNSO to say that there is no legal basis, but I do not [inaudible] legality of working for that? If that I-R, the two letters I-R used as a second level accompanied by the top level which has

sensitively for Iran, what legal bases are you looking for? It relates to our customs, tradition, beliefs, history, identity.

Why the board entered into this business with us? Leave it to the demander of that I-R to talk with us, and saying, show us the legal basis, but why we take that one? I think I had a risk because the last time I raised that, one one TLD registry wrote an article against me. They said -- Chris, Chris, listen to me. One TLD registry wrote a nasty article against me. I don't agree with that. I oppose to that and I totally reject that somebody does not allow us to express our views. I don't think that the Board should decide the legality. We have no convention in the world but we have customary law distinguish, Chris, which is more than any other law, and our customary is our 5,000 years of history. And I don't think that we can get into that. I don't expect any distinguished Board member enter into this business that we don't have the right to talk about custom, traditions, belief and so on and so forth.

And now coming to Goran, he says he wants to understand. The problem is not the release. The problem is you ignore the consent of us. We don't want that. You can release that but with our consent, so I hope this time it clear. Once again, for Maarten. We don't want to go back to what you have done before, but we want to [inaudible] it from 16 of December, or Thiago said November, I don't know. It needs the consent of the country. Maybe 80% doesn't want that. Okay, no problem. But some people they want that. Those people they want that, maybe 98% they have no problem. Maybe there are too little. Let us have those discussions.

Distinguished Chris, all these what you're saying we have discussed in the second round for hours and hours and hours under the track 5; there is no consensus. Some people like you and the people having the same views as you are saying that there is no legal basis. Some other people they say there are legal basis which is customary law. The right and sovereign the sovereignty of the country.

Please, let us work together formally. I hope that no one writes anything against me on the website and so on and so forth [inaudible] or Kavouss has threatened. No, I am not threatening anything, I am requesting, I am asking you, respectfully and humbly, please kindly understand our position. I do not expect, distinguished Chris, that you as the vice-chair of the Board saying that there is no legal basis. Leave it to the demander of that TLD. You just implement that. This is the request; you may degree or you may not agree, but what we have from you it is what GNSO says. You are not GNSO, you are a distinguished Board member defending the interest of all countries, whether GNSO, ccNSO, GAC and so on and so forth. So I have serious difficulty hearing from our distinguished Board member saying that there is no legal basis.

MANAL ISMAIL (GAC CHAIR): Thank you, Kavouss. Point is made. There is a quick response from Goran here and then I have five more requests for the floor.

GORAN MARBY: First of all I would be very happy if no one wrote letters about me and comments, so I will share your opinion with that, but can I humbly ask you which process did you go through when you in your CC in your country delegated other countries' two letters? It would be very helpful for us to see which process you used when you asked other countries before you delegated [inaudible]. Because [CROSSTALK].

KAVOUSS ARASTEH: When you come to our country or when we have a two meeting together. I don't want to disclose everything here. This is an internal business. Once you'll have a meeting with us, I will provide you that information. Thank you.

UNIDENTIFIED SPEAKER: So to be able to get that information, I have to go to Iran?

MANAL ISMAIL (GAC CHAIR): So, thank you. I have U.K. I have Argentina. I have Indonesia. I have -- is it --

OTHER SPEAKER: Vietnam.

MANAL ISMAIL (GAC CHAIR): Vietnam yes, I'm sorry. Palestine and China. So, U.S. Okay. And Brazil. U.K. please, go ahead.

UNITED KINGDOM:

Thank you, Manal. It's Paul Blaker for the U.K. for the record. I think we are in danger of mixing different issues together here, and it's not very helpful. It is true that there are different views in the GAC on the treatment of two-letter country codes at the second level. And the U.K. for example does not share the concerns of some GAC members, and we don't believe that individual countries should have a veto over these two-letters, but there is GAC consensus advice from Singapore which says governments should be alerted and their comments should be considered, and it appears that the Board has made a decision which goes against that consensus advice.

So the question for us is whether the Board followed proper procedures in rejecting that GAC advice? And that for us is a much bigger issue of principle and we would like to hear the Board's response to that question. Thank you.

MAARTEN BOTTERMAN:

Okay. So the advice from the Singapore Board, well it starts all in California already, right? Is really responded that the Board accepted the advice indeed, and that comments would be fully considered, and subsequently more advice has been given and we've moved on to November 2016. And India and Hyderabad also clearly followed up on that. Noted that although the Board authorized the organization to authorize the release of two-character labels, two-character domains have been existing through many ccTLDs and gTLDs for years without apparent confusion.

So we've moved over the years towards this procedure that is really to inform people at their request; that's why you didn't get proactively a notification because what was offered was to have the information given to you upon your request, and we've been complying with that. These requests have come from 25 countries, we've been fulfilling those requests, but the prior authorization is just not been feasible in that. There was a process in place on that, Cyrus; how did that work again?

CYRUS NAMAZI: Hello, Maarten, this is Cyrus Namazi with ICANN Organization, I'm actually trying to find that piece of information. If you give me a moment I will locate that for you.

MAARTEN BOTTERMAN: Thank you, so we will get back on that.

MANAL ISMAIL (GAC CHAIR): So can we move on with the rest of the requests for the floor? And yeah, we can definitely get back to this. I have Argentina next.

ARGENTINA: Thank you, Manal. Responding to Chris' comments about having rights, honestly, Argentina now is not in the position to say if countries have rights or not. I should investigate it a little bit more and I'm an engineer, so I'm not so much able to do that. But apart from the fact having a legal basis, the thing is that some countries would like to be

informed as we were in the previous procedure established before 2016, and in any way means that it is a veto power. Being informed doesn't necessarily mean that we will say no. In fact, from all the information that we received at that time, that was very useful, we never complained. We just were informed. And then that was the delegation.

And responding to Goran's question about the second level delegation of the ccTLDs, new gTLDs are diverse. Some are brands, registered brands at the national level. Some are generic terms, and so in that case we would like to know which new gTLD are having delegations at the second level. So that's the point. It's not the same as ccTLD. We know our two letter codes, but a new TLD it's a new name, it's a new string and we would like to be informed, so I don't see the relationship between .ir delegating at the second level and a new gTLD allowed to delegate at the second level. So if you can clarify that to me.

GORAN MARBY:

Can I do the follow up on that? This is new information for us because it's never been stated, at least my understanding, that you see that particular difference between the generic domain names and the CCs, so I will take that, thank you very much, because it's interesting how this discussion evolves, but thank you.

MANAL ISMAIL (GAC CHAIR): Okay. Go ahead, Thiago.

BRAZIL: Thank you very much, Manal. Following up briefly on what Gorran just said, let me remind a principle that is perhaps present in everyone's mind here is that decisions regarding ccTLDs are a sovereign matter for the state concerned. The same thing cannot be said in relation to generic top level domain names.

And also, I think another piece of information that might be useful for you to consider is that for example I believe that many CC's allow nowadays the registration of country names, and we are not speaking here of country code names at second level. But still under the applicant guidebook rules, if I'm not mistaken, there are reservations that apply to those country names. So as you can see, different rules apply to different sets of top level domain names and there's a reason for that. It's been there for quite a while. Thank you.

MAARTEN BOTTERMAN: Vyrus, this relates to the question that was asked before.

CYRUS NAMAZI: Yes, the question from the U.K.

MANAL ISMAIL (GAC CHAIR): Just to clarify, we're taking Cyrus regarding the previous issue and then we will continue with the order of speech, thank you. Go ahead, Cyrus.

CYRUS NAMAZI:

Thank you very much, and thank you U.K. for your question. I think it really hits to the heart of the issue. Apologizes it took me a moment to locate the information related to that advice. I think for clarity, I will go ahead and read the advice from the Singapore communique so that everyone actually is on the same page.

So the advice from Singapore communique ICANN52 reads as follows: “Amend the current process for request to release two-letter codes to establish an effective notification mechanism so that relevant governments can be alerted as requests are initiated. Comments from relevant governments should be fully considered. The GAC further advises the Board to: one) extend the comment period to 60 days. These changes should be implemented before proceeding with pending and future requests. A list of GAC members who intend to agree to all requests and do not require notification will be published on the GAC website.

In considering the advice, the Board resolved to direct the organization to do the following: the Board accepts the advice of the GAC from 11 February 2015 GAC communique regarding the release of two-letter codes at the second level in gTLDs. The Board directs the president and CEO or his designee to revise the authorization program for release of two-character ASCII labels and proceed immediately as follows. Implement improvements to the process to alert relevant governments when requests are initiated. Comments from relevant governments will be fully considered. For a new requests the comment period will be for 60 days. For requests with pending or

completed comment periods, extend or reopen the comment period so that each request will undergo 60 days of comment period in total.

The organization took the following actions as a result of the Board's direction. The Board directed the ICANN organization to make process and system improvements and to fully consider the comments from governments. The organization approved a notification mechanism by instituting a mailing list for governments solely for new two-character requests, and providing tutorials to governments and subscribing to automatic notifications for new two-character requests. The organization also extended the comment period for registry operator requests to 60 days.

In August 2015 the organization shared with the community the next phase of the procedure for the authorization for release of two-character labels. This phase included outreach to governments to clarify their confusion and concerns, to allow the organization to more fully consider government comments, and a community consultation process to develop the standardized measures registry operators can adopt to avoid confusion between two-character domains and the corresponding country codes. Thank you.

MANAL ISMAIL (GAC CHAIR): Thank you, Cyrus. So I'm back to the order of speech. I have Indonesia next.

INDONESIA:

Thank you, Manal. I just want to mention again several things that I have mentioned in previous meetings. Number one is that .id for Indonesia for example, the ISO3166, it's agreed in the ISO meetings where Indonesia is also a member of the ISO organizations, although the membership is carried out by other government organization in this [inaudible] agency, but then it is spread through other government agencies. Being agreed that .id, for example, is standard for Indonesia it becomes something like an identity rather than just a two word for a country.

For some countries it may happen that the identity of the country can be used by anybody, while for other countries it may be fairly useful and they do not want it to be used by others, so why select that because one country is different than another one so that is an important thing to be understood. And because of that, the advice of the GAC is such that using the word like that. It reflects the majority idea of those countries.

Lastly it's about the legal basis as Chris mentioned. It is important to stress here that while most of us are regulators here, I think Goran is also a regulator previously. And as regulators, we always make regulations, and before we make regulations we have to find out what is the public policy, what people want, and based on that then we make a regulation and the regulation is maybe changed every time if there is a different public policy, different requests from the people and so on. So regulation is just a tool. Legal basis is just a tool. The most important is what the public policy is, and the [inaudible] made

by what the top management of the government wants, and what the people want. Thank you.

MANAL ISMAIL (GAC CHAIR): Thank you, Indonesia. Vietnam, please go ahead.

VIETNAM: Thank you, Manal. Thank you. I think Vietnam and Indonesia and Iran are among several dozens of countries who have the same concern about the releasing of two-character under the second level. Actually the approaching recalls by the colleague Cyrus is something we needed about two years ago. We don't want to completely disagree with the releasing of two-character codes, but you need to inform us, to requests notification from the Board when you want to release the character codes under some specific character [Inaudible] things because as you may know we need you to share with us the difficulties in protecting our Internet user because as you may know, the Internet users all over the world in different level of understanding and vulnerable to many many kind of things, and we also have many many kinds of sensitiveness in histories, in religions and other things, so please help us with that thing. Thank you.

MANAL ISMAIL (GAC CHAIR): Thank you, Vietnam. Palestine.

PALESTINE:

Thank you. And the outside [inaudible] I did not get the answer to my question. My question I would like to clarify about what Chris has said, maybe there is or there isn't any legal framework to give the right to a country to own a two-letter code but we are going to go back to the Internet governance and the participation and the sharing of opinion among the stakeholder system, and so I wonder why Chris gave the answer that he gave. That there is no legal, or there's no law and that's it. He said also that there is another reason, as our colleague said a while ago, the ICANN works on the continuity on the Internet.

In my opinion the new gTLD and the two-character second level domain is going to confuse the DNS industry market, and my question to my colleague: most of the countries that are discussing this refuse this principle. They told us that for example if there is a request of the two-letter code that concerns me, what do I do?

MANAL ISMAIL (GAC CHAIR):

Brazil, U.S. Switzerland, and Iran. So China, please.

CHINA:

Thank you, chair. Thanks for this opportunity for interacting with the Board on the issue of tw--characters. From the previous intervention made by several GAC members and also made by Chris, in my view it is obvious that some GAC members and Chris have different opinions about the legal basis of the two-characters. But from what I look, at least it is a continuous problem, continuous issue. However, I want to focus on action in terms of what can be done now at this stage? And

we can spend more time to continue the discussion on where the legal basis is.

So in my observation, the issue of two-characters at the second level is relating to the sovereignty and public interest as many GAC members have expressed their serious concern about the issue, about the situation. To echo the point made by Iran and several other GAC members, China also kindly requests the Board not to further release any two-characters at the second level, which is related to the concerned GAC members. This is my brief point. Thank you.

MANAL ISMAIL (GAC CHAIR): Thank you, China. I have Brazil next.

BRAZIL: Thank you, Manal. I fear we may in the course of the discussion lose sight maybe of the main important points surrounding this discussion. And I think part of the confusion or of the excess of information relates to some confusions that are taking place in my view. First of all, I think we should never try to equate not differentiate the situation of the ccTLDs and gTLDs, for one single reason; the ccTLDs are without the scope of the policies, of the disciplines established by ICANN, as I understand.

The gTLD operator signs a contract and has to abide by the policies established by ICANN, and I think this is a very important issue and an issue that in my understanding should leave the ccTLD situation outside of this discussion, as I understand; I stand to be corrected. We

are talking about what takes place in regard to policies designed for gTLDs to apply. In that regard I think the main aspect of concern for us is that the policy that was in place for many many years, that was embraced by countries, there was a procedure to deal with those and there are advice in that regard, was changed by the ICANN Board by a unilateral decision.

I take on Board explanations trying to explain that the due process was followed in that regard, but I think this is something we have gone through, and at minimum, there was some miscommunication because it's not feasible that something that is so well explained at so many stages would be interpreted by so many participants as something that was flawed ,so at least there was some miscommunication there that should be looked into.

If we think about from this angle that there was policy that was changed, it is not justified in our opinion to try to bring reasons for why that was done beyond the reasons that addressed the procedure, the right procedure for this. For example you cannot justify having changed the policy saying, "There was no legal basis, that's why we changed it." Because if there was no legal basis, this should have been fed into process, should have been explained, and should have been endorsed and accepted by everyone. I think it's strange because the previous modus operandi took on Board that assumption, so if it an assumption that is wrong, why did it guide through a process and why it was changed?

So basically what I want to say is that we should look from the angle of policy that was in place, that was changed, and restricted to the right object and the right target for the policy. The ccTLDs are not supposed to abide by those policies. It's something outside the scope of this discussion.

And one thing that for me is also a problem is to say that because this decision entailed things that can't be changed, the fait accompli, there is nothing to do about it anymore. I don't think it's a good argument. I think something wrong was done, there is no reason why it should not be corrected. If not, we have some effects that would go back. Maybe it's not possible but it can be corrected for the future, so I don't think it's a good argument to say, "Well because this has effects that cannot be overturned we should live with this and leave it as it is."

So I don't think it's good from the perspective of what we are trying to do together. So those are more than statements some questions and some assumptions, and I apologize if I do not have maybe the proper understanding, and if some of those assumptions are not correct, I stand to be corrected. Thank you.

MANAL ISMAIL (GAC CHAIR): Thank you, Brazil. There is a quick response from Maarten here but I then have U.S., Switzerland, Iran, South Africa, eSwatini, Netherlands and I can see --

MAARTEN BOTTERMAN: I just want to take you back to 2014 where an interim process was established. Our new gTLD registry operator submitted requests for the ICANN organization to approve the release of two-character ASCII labels. At that point, GAC members were involved in every RSEP transaction and it became quite burdensome. I wasn't there at that moment but some of you will have been, so you may remember that that was the case. It's a high volume requests, and there's limited capacity of governments, as was noted in the GAC advice at that time.

In July 2016, and taking into consideration the government comments and proposed measures, ICANN organization created and published for public comment the framework of standard measures that could be implemented across any new gTLD registry, and these proposed measures included to urge the relevant registry or registrar to engage with the relatively GAC members and then the risk is identified in order to come to an agreement on how to manage that risk or to have an assessment of the situation if the name is already registered as we know which was already then the case and which is still the case.

If adopted this procedure, all currently reserved two-letter second level domains would be released from new TLD registries that implemented the measures, and also GAC members commented on the public comment. The premise of the new process was to address in particular security and confusability issues, not sovereign rights as Kavouss was pointing out earlier.

In November 2016, the Board took a resolution to authorize [inaudible] to reserve two-character labels subject to the updated

measures that were made available in the public comment. So based on the Board resolution, org implement a new process and this is what the GAC refers to as the removal of the authorization process. Since that time, there has been frustration because of the removal of the authorization process, but this was a switch from an interim process which has been seen as burdensome by many of you to a new simplified process which had been made available to GAC members via the public comments and where dcomments have been taken into account.

Because of the frustration and continued GAC advice on the matter it's really that we also provided in response to that a mechanism for countries to continue to monitor second level registration ,and this is that part that was already discussed earlier as well. So far as long as the automated system is not in place, you could ask the organization to provide you with that overview, and you will get it. And we will work with you to get that on your desk, and normally within a week.

And as said, also in response to that, and to keep it available and as good as possible for those countries who are concerned and want to keep track, the automated system will be in place as we hope by the end of the year. Just to highlight how we came from this; this was really in response to concerns [inaudible], and it has been subject to public common process that has led to explicit decisions that have been taken some time ago. If there's anything I missed on that, dear colleagues or org support, please let me know, but let's understand that context.

MANAL ISMAIL (GAC CHAIR): Okay. There's a quick response from Thiago and then I have seven more requests from the floor, so is it okay to go slightly after time?

GORAN MARBY: Ten more minutes, I need to leave soon.

MANAL ISMAIL (GAC CHAIR): Ten more minutes? Thank you. I understand. Thank you, Goran. So Thiago, really quick.

GORAN MARBY: I need to leave the room. Thank you very much for this conversation.

THIAGO JARDIM: I will try to be very brief, so perhaps Goran can hear as he walks out the room, responding very briefly to a few of the comments mentioned by Maarten. The public comment process was, in fact, the first time ICANN organization gave some indication that the authorization process could be withdrawn, and at the moment the process was launched that that indication was given and the public process was open for comments for, if I'm not mistaken, 45 days.

The 20 governments that participated and provided comments to that process, almost all of them, if not all of them, indicated concerns and that most likely the implementation of the measures that were subject to public comments would run against standing GAC advice. So I think

the basic question, the essential question was asked by the representative from the U.K. before; how does ICANN organization move away from a process that has been shaped and recommended by the GAC through consensus advice as indicated as well their acceptance in Board resolutions without following the procedure that applies in case of action inconsistent with GAC advice. Thank you.

MAARTEN BOTTERMAN: Just on that, one of the triggers for that was that the process in place triggered also GAC advice that it was considered burdensome due to the high volume and limited capacity of governments. The process was in place beforehand. Chris, please.

CHRIS DISSPAIN: Thiago, I acknowledge your question and also the intervention from the U.K., and I think it would be useful for us to come back to you with a sort of flowchart if you like or an explanation of the steps by which we believe we got to where we got to, and the basis upon which we believe that we have implemented and not not accepted, if you will excuse the double negative, GAC advice. I think that would be useful exercise and I'm getting a nod from over there, so I think we will do that and we'll come back to you and explain the pathway and the process, and then we can discuss that and figure out if it's wrong or you don't understand it and so on. Thank you.

MANAL ISMAIL (GAC CHAIR): Thank you, Chris. I have U.S. next.

UNITED STATES:

Thank you, Ashley Heineman with the U.S. I just wanted to state that there is no legal rights to two-character codes at the left, and I just wanted to say that I did not perceive Chris's comments to be in any way, shape or form to be an argument for why the GAC advice wasn't taken into account. I saw it more as, you know, the basis of a veto or anything on grounds of there being legal rights is not valid, and if there's anything that indicates otherwise, I would be happy to see it, but there are no legal rights and these two codes, they're codes, they're not country codes at this point. They happen to also represent country codes but they're two-characters and that's what they are.

But in addition to that, while there may not be any legal rights, there are clearly very strong interests in these two-characters. And even though the United States doesn't have the same concerns and interests, we have recognized that our colleagues have concerns and interests, and that's why you've seen the consensus advice as it's been reflected even though we don't share them.

To answer a question, I believe it was Goran, unfortunately he's gone; he asked whether or not the GAC paper that was circulated to the Board was GAC consensus views, and I just wanted to state that no, it was not. And I hope that was made clear. And the reason why it was not is at least for the United States, there were some areas that we didn't think were represented correctly in the sense that at least in the view of the United States we think the ICANN Board actually did at least what they thought take into consideration GAC advice, which

was taking steps to ensure that confusability, so that these two-characters would not be confused as country codes wouldn't happen.

Another thing that was in the paper that we didn't think was a correct interpretation was that there was no ability for GAC members to be notified; that is also not correct. It was noted in the resolution that the TLDs that requested the release of these two-characters, that they have the option of contacting countries who have concerns. So there is the ability to do it. I recognize it's not a requirement, but to say that there's no ability for concerned countries to be contacted is not a correct statement.

So I think to sum things up, what I would like to say is that there are some members of the GAC who strongly believe that the GAC advice was not taken into account. I believe the ICANN Board thinks they did take the GAC advice into account. So we are in a situation where I think both sides are right. So how do we proceed? Because we are in a situation where people aren't satisfied and they're not happy.

So I think that's where we're at now. The U.S. is a strong supporter of the multistakeholder process and how it's reflected in ICANN, so at least for the view of the United States I think it's appropriate for the GAC to unilaterally try and repeal the resolution and the policy. So what does that leave us with? I think having a conversation, how to address what's happened, is there any way to rectify that, but also how to make sure this doesn't happen in the future. Thank you.

MANAL ISMAIL (GAC CHAIR): Thank you, U.S. We are really running out of time so if you feel your comments have been reflected by someone else, just indicate this would be helpful to keep it short. So Switzerland, Iran, South Africa, eSwatini, Netherlands and a request from --

OTHER SPEAKER: Jamaica.

MANAL ISMAIL (GAC CHAIR): So Switzerland, please.

SWITZERLAND: Thank you so much, Manal. Jorge Cancio, Switzerland for the record. It's to add something to all that has been mentioned, but I guess that I would at least recall the idea of there's clearly a miscommunication happening here. There is a disconnect between what happened between Helsinki and the Hyderabad meetings. I think that in terms of procedure, we were coming from a line of GAC advice that was really dealing with a prenotification procedure, and in Hyderabad we were more or less confronted with a decision from the Board that passed away with that prenotification procedure.

And if you read the Hyderabad communique and the advice piece of it, it's clear that it was a consensus perception in the GAC that something was missing, that something had happened between Helsinki and Hyderabad, so just looking to the rationale and the full GAC advice to the Board, GAC consensus advice to the Board from Hyderabad,

because that really reflects what happened, what was the perception in the GAC, and I think we have not really made too much progress on that.

So I would urge that in terms of procedure in the BG interactive or interaction group, we really look into this and drill down to the facts, and improve what we have been improving over the last two years in order to avoid this happening again, and to get this conversation in a much less adversarial tone or self justification tone, and get to more win/win solutions, efforts, and in terms of substance, I think that we also have very important GAC consensus advice of the Copenhagen meeting.

So I would urge the Board to really look into the spirit of that advice and not to stick to who is right, who is wrong, but to really address those concerns which are very legitimate and which have their origin in this miscommunication, this clear miscommunication which happened between Helsinki and Hyderabad. So, sorry. Hope it is helpful for you.

MANAL ISMAIL (GAC CHAIR): Thank you, Jorge. I do apologize to the rest of the queue. I think we have run out of the extra time as well. And Board members need to leave, so if there are any final remarks, Maarten.

MAARTEN BOTTERMAN: Yes, thank you for this discussion. And I think we couldn't agree more. It's about getting a good understanding together and what's here, and

to move as well as possible. We've seen the paper that has been shared there, and by you in public, Thiago, prepared by you in collaboration with a good part of the GAC, and I think we will follow up on what Chris suggested as well to come back with a very clear response and timeline on how things have moved, and to get a very good understanding and mapping based on the material we've seen from you, and the discussion we had here to get clarity on that process. That's on the substance part.

On the process part, for sure we have been putting processes in place over the last time, as you also highlighted, supported by BGRI which really have improved communication over all, and I think one of the conclusions is that we can do an extra step and make sure that we are very conscious during those processes, that the interaction really leads to clarity and not only to formality. I think we are on that way too, and I agree that there are maybe more to win.

So with those two things, coming back in writing on the document that has been shared by the GAC with the wider public, including us, and to look further into possible improvements of the process of interaction and preparation of the response to the GAC communique. I think these are the TWO takeaways that we want to take with us from this meeting. So thanking you for your time, and being aware that we could probably go on much longer, but I think this will also help to inform any future communications on this. Manal.

MANAL ISMAIL (GAC CHAIR): Thank you very much, Maarten, and thanks to all Board members, and again, I reiterate my apologies to Iran, South Africa eSwatini, Netherlands and Jamaica. I hope your views have been already reflected and I very much apologize for not being able to give you the floor.

So this session has been concluded, and I think we have also lost the coffee break. It's now the preparatory session for our meeting with the Board. But if you want to stretch for a couple of minutes and then we will get started, thank you.

[END OF TRANSCRIPTION]