

Hyderabad, 8th November 2016

GAC Communiqué – Hyderabad, India ¹

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Hyderabad, India from 3 to 10 November 2016.

Sixty-six (66) GAC Members and six (6) Observers attended the meeting.

The GAC meeting was conducted as part of ICANN 57. All GAC plenary and Working Group sessions were conducted as open meetings.

II. Inter-Constituency Activities & Community Engagement

Meeting with the ICANN Board

The GAC met with the ICANN Board and discussed:

- The timing of the Board’s response to advice contained in the GAC Helsinki Communiqué.
- The need to work towards a common understanding of the respective roles of the GAC and the Board.
- 2-character country codes at the second level.
- IGO Protections.
- Protections for Red Cross/Red Crescent/Red Crystal.
- Measures to encourage diversity of participation across ICANN policy development work.
- The report commissioned by the Council of Europe on community applications for gTLDs.

¹ To access previous GAC advice, whether on the same or other topics, past GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Meetings> and older GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Meetings+Archive>.

Meeting with the Generic Name Supporting Organisation (GNSO)

The GAC met with members of the GNSO Council and discussed:

- The final status report of the GAC-GNSO Consultation Group on GAC Early Engagement in Policy Development. The GAC noted the report's recommendations and will work with the GNSO on their implementation.
- Current policy development processes with potential public policy implications.
- The need to resolve the long-standing issues of permanent protections for names and acronyms of Inter-Governmental Organisations and Red Cross/Red Crescent/Red Crystal identifiers. It was agreed that a solution requires the involvement of the GAC, the GNSO and the ICANN Board.

Meeting with the Country Code Name Supporting Organisation (ccNSO)

The GAC met with the ccNSO Council and discussed:

- A proposed ccNSO Policy Development Process on retirement and review of ccTLDs.
- The final report of the Cross-Community Working Group on Use of Country and Territory Names as TLDs.
- The latest report regarding the Extended Process Similarity Review Panel.

Meeting with At Large Advisory Committee (ALAC)

The GAC met with the ALAC and discussed:

- Policy development for future new gTLDs, including community applications and the CCT Review.
- Diversity issues.
- Implementation of new ICANN Bylaws with regard to the Empowered Community.
- The ICANN Academy leadership training program.

High Interest Topics

GAC Members engaged actively in the range of cross-community sessions on High Interest Topics held as part of ICANN 57. The Public Safety and Underserved Regions Working Groups hosted well-attended sessions on Mitigating Abuse in gTLDs, WHOIS-Related Activities and Underserved Regions. The GAC will engage with relevant follow-up processes as appropriate.

Outreach

The GAC thanks the Governments of India and of the State of Telangana for providing valuable outreach opportunities for GAC Members at this meeting.

GAC-Community Engagement

The GAC very much welcomes opportunities to meet with any stakeholders at and between ICANN meetings. However, GAC face-to-face meetings are scheduled well in advance, and it would be greatly appreciated if requests for meetings could be provided to the GAC Chair and Secretariat as early as possible to enable a GAC schedule that meets all interests.

III. Internal Matters

1. New Members

The GAC welcomed Nepal as a new Member. This brings GAC membership to 170 Members, and 35 Observers.

2. GAC Elections

The GAC re-elected as Chair, by acclamation, Mr Thomas Schneider (Switzerland).

The GAC elected the following Vice-Chairs:

Mr Guo Feng (China)

Ms Manal Ismail (Egypt)

Mr Ghislain De Salins (France)

Ms Milagros Castañón Seoane (Peru)

Mr Mark Carvell (United Kingdom)

The new Vice Chairs will assume their mandate at the end of the Copenhagen meeting.

3. Board-GAC Recommendation Implementation Working Group (BGRI-WG)

The BGRI met and discussed further work on:

- What constitutes GAC advice.
- Clarity of GAC advice.
- A regular post-Communiqué discussion between the Board and the GAC.

4. GAC Working Groups: Updates as reported to the GAC

Public Safety Working Group: The Public Safety Working Group (PSWG) continued its engagement with the Community and various ICANN initiatives.

Members of the PSWG participated in meetings of the Competition, Consumer Trust and Consumer Choice (CCT) Review, Registration Directory Services PDP Working Group, Privacy & Proxy Services Accreditation (PPSAI) Implementation Review Team, and the Security Framework Drafting Team.

The PSWG will develop recommendations to the GAC in the area of sensitive strings and child protection online; continue discussing the Working Group's operating guidelines; continue to engage in outreach and capacity building activities; and hold bi-weekly meetings to facilitate intersessional work.

Working Group on Human Rights and International Law: The Human Rights International Law Working Group (HRILWG) was updated by the Rapporteur of the CCWG Subgroup for the development of a Framework of Interpretation of the Human Rights Core Value included in the Bylaws that entered into force on 1 October 2016. The HRILWG plans to prepare a GAC input to the public consultation on the draft FoI planned for next February. The HRILWG calls for increased participation by GAC Members and Observers in this cross-community effort. Finally, the HRILWG agreed to endorse the efforts by the HRILWG co-chairs to help the CCWG Subgroup Rapporteur in liaising with the UN Working Group on the issue of human rights and with transnational corporations and other business enterprises, in order to seek their informed opinion on the application to ICANN of the UN Guiding Principles on Business and Human Rights. Information was

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provided by the United Kingdom on the Council of Europe report "Applications to ICANN for Community-based New Generic Top Level Domains (gTLDs): Opportunities and challenges from a Human Rights Perspective" (see <http://www.coe.int/en/web/freedom-expression/coe-icann>).

The Council of Europe will submit the report to the New gTLDs Subsequent Procedures PDP Working Group and to the CCT Review Team for their active consideration.

The HRILWG was updated on the work of the Cross Community Working Party on Corporate and Social Responsibility to Respect Human Rights.

Working Group on Underserved Regions: The GAC Underserved Regions Working Group (USR) held an Asia-Pacific Capacity Building session at ICANN57 with the kind participation of the ICANN Board, CEO, ICANN GE, GSE, GAC Chair and GAC Members.

The Co-Chairs of the Working Group welcomed the suggestions made by the community regarding the work plan and in particular the need to understand challenges and capacity needs of members from underserved regions. Community members agreed that there is a need to allocate necessary resources to enable diversity and meaningful participation of underserved region stakeholders.

Geographic Names Working Group: The Working Group on Protection of Geographic Names in New Rounds of gTLDs met during ICANN 57. The WG discussed a new text for "Best practices", which includes the proposal of creating a repository of names, reference to a due diligence process and associated procedures for applicants and other parties involved in the process. The Working Group received comments and welcomes additional comments, with the objective of sharing a new version with the Working Group prior to going to the full GAC before the next ICANN meeting.

GAC Participation in the NomCom Working Group: The WG on GAC participation in NomCom met during the ICANN 57 meeting. The WG presented a new text for the "GAC Criteria" for the Nomcom to be considered when selecting candidates for ICANN leadership positions. GAC members suggested changes to the text. The WG received comments and welcomes additional comments, with the objective of sharing a new version with the Working Group prior to going to the full GAC before the next ICANN meeting.

5. GAC Participation in the NomCom

Argentina, Brazil, Burundi, Chile, Colombia, Costa Rica, Iran, France, Nigeria, Paraguay, Perú and Venezuela made a statement requesting that the GAC appoints a representative to be the non-voting liaison with the NomCom, which can be accommodate within the present NomCom structure. It was agreed that this request will be considered within the GAC.

6. Independent Secretariat

The GAC re-affirmed its view that a sustainable, independent, accountable and transparent secretariat is essential for the GAC to perform its functions. Sources of funding will be explored with the aim of continuing to fund an independent secretariat after the current contract with ACIG expires in July 2017.

IV. Transition of IANA Stewardship Transition and Enhancing ICANN Accountability

The GAC takes note of the completion of the process to transition stewardship of the IANA function to the multistakeholder community, and expresses its appreciation to all parties involved for their efforts.

The GAC is working on a series of measures to implement the ICANN Bylaws that came into effect on 1 October 2016. These include the provision of GAC advice to the Board; GAC appointments to external bodies; and procedures and conditions for GAC participation in the Empowered Community.

GAC Members will continue to participate in the activities of the CCWG-Accountability Work Stream 2, and the GAC looks forward to timely completion of this work.

V. Other Issues

1. Competition, Consumer Trust and Consumer Choice (CCT) Review Team

The GAC was briefed on the work of the Competition, Consumer Trust and Consumer Choice (CCT) Review Team by its Chair and its GAC members.

The GAC will review the research to date and look forward to the opportunity to respond to a draft report in due course.

2. New gTLDs: Substantive Policy Issues

The GAC discussed specific policy issues relevant to possible future release of new gTLDs, including:

- a. Community-based gTLD applications. The GAC noted the release of a report commissioned by the Council of Europe on: “Applications to ICANN for Community-Based New Generic Top Level Domains (gTLDs): Opportunities and challenges from a human rights perspective.” The GAC will consider the report with a view to its use within the community as an input to new gTLD policy development work.
- b. Support for applicants from developing countries.
- c. Categories for new gTLDs.
- d. Reserved names, including geographic names.
- e. Internationalised Domain Names.

3. Review of the Trademark Clearing House

The GAC was briefed by Analysis Group on their report on the Trademark Clearing House. The GAC will give further consideration to the report, and the outcome of the public comment process, in the context of development of future gTLD policies.

4. Dot Web Auction

The GAC is aware of concerns relating to the dot web TLD. The GAC would like the Community to be kept fully informed of developments in this case in the interest of transparency.

5. Protection of IGO Names and Acronyms

The GAC takes note of the letter from the Secretary General of the United Nations to Ministers regarding policy development at ICANN related to the potential unauthorized use of IGO names and acronyms in the Internet Domain Name System. In this respect, the GAC reiterates its concern regarding the issue set forth by the UN Secretary General.

6. Use of Three-letter ISO Country Codes as TLDs

Further to the GAC Helsinki Communiqué, the GAC continued its discussion concerning 3-letter country codes as potential TLDs. Discussions will continue in the GAC.

IV. GAC Advice to the Board²

The following items of advice from the GAC to the Board have been reached on the basis of consensus as defined in the ICANN Bylaws.

1. Future gTLDs Policies and Procedures: Process and Timing

a. The GAC advises the ICANN Board:

- I. The GAC reiterates its advice contained in the Helsinki Communiqué concerning process and timing with regard to development of future gTLD policies and procedures.

RATIONALE

The rationale for this advice is the same as that contained in the GAC Helsinki Communiqué, to which the GAC has not yet received any response from the Board.

2. Mitigation of Domain Name Abuse

a. The GAC advises the ICANN Board that:

- I. To provide written responses to the questions listed in Annex 1 to this Communiqué no later than five weeks before the ICANN 58 meeting in Copenhagen.

RATIONALE

The GAC has previously endorsed Law Enforcement Due Diligence Recommendations³.

² To track the history and progress of GAC Advice to the Board, please visit the GAC Advice Online Register available at: <https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>

³ The [Law Enforcement Due Diligence Recommendations](#) were referenced in several GAC Communiqués: Nairobi (2010), Brussels (2010), Singapore (2011) and Dakar (2011)

While the 2013 RAA⁴ addressed most of these Recommendations pertaining to Registrars, the GAC is now seeking more information on implementation of some of these RAA provisions.

The GAC wishes to better understand how ICANN is using publicly available DNS abuse reporting resources and seeks specific information on ICANN's efforts in setting standards for abuse reporting and performance.

3. Two-letter country/territory codes at the second level

a. The GAC advises the ICANN Board to:

- I. Clearly indicate whether the actions taken by the Board as referred to in the resolution adopted on 8 November 2016 are fully consistent with the GAC advice given in the Helsinki Communiqué.
- II. Always communicate in future the position of the Board regarding GAC advice on any matter in due time before adopting any measure directly related to that advice.

RATIONALE

The Board approved a resolution on this matter at its meeting of 8 November 2016. In this connection, the GAC expresses serious concern that the Board has proceeded to take a decision on this matter without responding to the GAC's advice provided in the Helsinki Communiqué, and thus impeded the GAC from having the opportunity to react. In the view of the GAC, this is not in accordance with established GAC-Board procedures.

4. Protection of IGO Names and Acronyms

a. The GAC advises the ICANN Board:

- I. To take action and engage with all parties in order to facilitate, through a transparent and good faith dialogue, the resolution of outstanding inconsistencies between GAC advice and GNSO recommendations with regard to

⁴ <https://www.icann.org/resources/board-material/resolutions-2013-06-27-en#2.b>

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the protection of IGO acronyms in the DNS and to report on progress at ICANN 58.

- II. That a starting basis for resolution of differences between GAC Advice and existing GNSO Recommendations would be the small group compromise proposal set out in the October 4, 2016 letter from the ICANN Board Chair to the GNSO, namely that ICANN would establish all of the following, with respect to IGO acronyms at the second level:
 - a procedure to notify IGOs of third-party registration of their acronyms;
 - a dispute resolution mechanism modeled on but separate from the UDRP, which provides in particular for appeal to an arbitral tribunal instead of national courts, in conformity with relevant principles of international law; and
 - an emergency relief (e.g., 24-48 hours) domain name suspension mechanism to combat risk of imminent harm.
- III. That, to facilitate the implementation of the above advice, the GAC invites the GNSO Working Group on Curative Rights Protection Mechanisms to take the small group proposal into account.
- IV. That, until such measures are implemented, IGO acronyms on the GAC-provided list remain reserved in two languages.

RATIONALE

IGOs undertake global public service missions, and protecting their names and acronyms in the DNS is in the global public interest.

IGOs are unique treaty-based institutions created by governments under international law.

The small group compromise strikes a reasonable balance between rights and concerns of both IGOs and legitimate third parties.

ICANN's Bylaws and Core Values indicate that the concerns and interests of entities most affected, here IGOs, should be taken into account in policy development processes.

5. Protection of Red Cross/ Red Crescent/ Red Crystal Identifiers and names of national committees

Referring to the GAC's previous advice to secure and confirm the permanent protection of the Red Cross and Red Crescent designations and names based on public international law and on the national laws in force in multiple jurisdictions, the GAC recognizes and welcomes the goodwill and renewed understanding both within the Board and within the Community that the protections due to the Red Cross, Red Crescent and Red Crystal identifiers require distinct treatment and resolution.

a. The GAC hence advises the ICANN Board to, without further delay:

- I. Request the GNSO Council, as a matter of urgency, to re-examine and revise its PDP recommendations pertaining to the protection of the names and identifiers of the respective international and national Red Cross and Red Crescent organizations which are not consistent with GAC advice; and in due course
- II. Confirm the protections of the Red Cross and Red Crescent names and identifiers as permanent.

RATIONALE

The GAC's consistent advice in this matter is based in the distinct legal protections accorded to the words and identifiers of the Red Cross and Red Crescent under universally agreed norms of public international law and the laws in force in multiple jurisdictions. It is also founded in the global public interest in preserving the names of the respective Red Cross and Red Crescent organizations from abuse and fraud. The above grounds constitute the motivation for the GAC's request that the recommendations of the past GNSO PDP that are not consistent with past GAC advice be revised.

The GAC wishes to emphasize that this course of action will offer a clear signal, to the ICANN Community and to the States represented on the Government Advisory Committee, of ICANN's commitment to resolve difference arising among its constituencies and to do so with all due consideration and attention to public international law and to global public policy interests in

accordance with the aforementioned legal regimes.

6. Underserved Regions

a. The GAC advises the ICANN Board to:

- I. Take required action to enable implementation of GAC Underserved Regions activities, including but not limited to capacity building and participation in ICANN policy processes.

RATIONALE

The multistakeholder approach that is fundamental to ICANN has contributed to impressive collective efforts, towards developing complex policy and technical processes. However, it is imperative that we acknowledge and remain mindful that while the approach is meant to enable inclusiveness and diversity providing all stakeholders full voice and influence in ICANN decision-making, developing regions still face a multitude of challenges that constrain their participation.

The GAC has developed a work plan that aims to address some of these challenges and provide recommendations.

7. String similarity Review

a. The GAC advises the ICANN Board that:

- I. The Board should apply the views expressed by the GAC in the letter from the GAC Chair of 28 September 2016 to the ccNSO Chair concerning the Extended Process Similarity Review Panel Working Group proposed guidelines on the second string similarity review process.

RATIONALE

Facilitation of IDN ccTLDs, through the relevant local Internet community, has always been supported by the GAC as a way of making the domain name system more inclusive and accessible. Issues of potential confusability can and should be addressed on a practical and workable basis.

8. Enhancement of mutual cooperation and understanding

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a. The GAC advises the ICANN Board to:

- I. Engage in enhanced and more regular communication with the GAC and Supporting Organisations with a view to fostering better mutual understanding of each other and of procedures in the ICANN framework.
- II. Engage in enhanced and more regular communication with the GAC with a view to foster mutual understanding of the nature and purposes of the GAC's advice on issues of public policy and related to international and national law, and also with a view to better understand the GAC's expectations and the Board's deliberations related to the implementation of GAC advice.
- III. Make it a regular practice to schedule a post-Communiqué Board-GAC meeting to ensure mutual understanding of its provisions, either at the relevant ICANN meeting or in a call four weeks of a Communiqué being issued.
- IV. Consider publicly posting draft resolutions in advance of Board Meetings.

RATIONALE

At the first post-Communiqué conference call between the Board and the GAC on 20 July 2016, the GAC realized that such interaction contributes to a shared understanding of the provisions of the advice issued. Such enhanced interaction seemed to assist the Board to better understand the GAC's intentions and expectations when issuing advice, and helped the GAC to better understand the Board's deliberations when analysing and processing GAC advice.

In addition, and in the interest of transparency, the GAC has the view that it may be useful for effective interaction between stakeholders if the content of the Board's draft resolutions was made available before their adoption.

VIII. Next Meeting

The GAC will meet during ICANN 58 in Copenhagen, Denmark, scheduled for 11-16 March 2017.

ANNEX 1 TO GAC HYDERABAD COMMUNIQUE

Questions to the ICANN Board on DNS Abuse Mitigation by ICANN and Contracted Parties

I. Implementation of 2013 RAA provisions and Registrars Accreditation

1. WHOIS Accuracy Program Specification - Cross Validation Requirement

What is the implementation status of the 2013 RAA, WHOIS Accuracy Program Specification⁵, Section 1 (e) which provides that Registrar will “*Validate that all postal address fields are consistent across fields (for example: street exists in city, city exists in state/province, city matches postal code) where such information is technically and commercially feasible for the applicable country or territory*”?

Specifically, ICANN should provide:

- a. Detailed information on what registrars and ICANN have done to fulfil this RAA requirement to date;
- b. A timeline with specific milestones & dates, including a projected closure date for complete implementation of this requirement;
- c. Detailed information on cross-field validation software, approaches, etc. that have been considered, including supporting data and research;
- d. Detailed information regarding registrars' concerns about why specific options are not technically and commercially feasible, including supporting data and research; and
- e. Current proposals for cross-field validation (published at the time they are shared with any registrar).

2. Enforcement by ICANN of WHOIS Verification, Validation and Accuracy Requirements

Per the 2013 RAA WHOIS Specification, how does ICANN enforce all registrar WHOIS verification, validation and accuracy contractual obligations? Please provide examples that demonstrate how ICANN is enforcing each of these contractual obligations?

3. Diligence by ICANN in Relation to Registrars' Duty to Investigate Reports of Abuse

What is the standard of diligence that ICANN applies to registrars in the registrar's duty to respond to reports of abuse according to Section 3.18 of the 2013 RAA?

4. Awareness Efforts by ICANN on Registrars' Obligations:

What efforts does ICANN undertake to ensure registrars, are educated and aware of their contractual obligations? Per 2013 RAA, Section 3.13, can ICANN provide details of required training, for instance:

- a. Is there an ICANN training program with corresponding links and information?
- b. How often is this training provided?

⁵ <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#whois-accuracy>

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- c. Other details of the training program?
- 5. Vetting Registrar Accreditation Applications
ICANN has listed criteria for registrar accreditation⁶. Please explain how these criteria have been put into practice and enforced?
Specifically:
 - a. How does ICANN verify information provided in registrar accreditation applications? What databases, record checks, etc. are used?
 - b. How many applications has ICANN received since the new process began? Of those, how many applications have been rejected, why?
 - c. How long does it take ICANN to evaluate each application?
 - d. What are the financial costs associated with processing each application, including verification costs?

II. Implementation of New gTLD Applicant Guidebook and Registry Agreement

- 1. Vetting Registry Accreditation Applications
The New gTLD Applicant Guidebook⁷ (v. 2012-06-04), Module 1, Section 1.2.1, Eligibility states that *“ICANN will perform background screening in only two areas: (1) General business diligence and criminal history; and (2) History of cybersquatting behavior.”* How is ICANN monitoring, enforcing and/or verifying continued compliance with Section 1.2.1?
- 2. Security Checks, Specification 11, Section 3(b)
 - a. Does ICANN collect and/or review these statistical reports or otherwise verify that the Public Interest Commitment is being met?
 - b. Is ICANN conducting any type of independent research that allows it to obtain metrics and generate statistics related to concentration of malicious domain names per registrar/registry and how this trends over a determined period of time?
 - c. If ICANN is conducting this research, please provide a brief explanation of how the analysis is performed and what specific actions ICANN takes in response to the results indicated by the data.
 - d. If ICANN is NOT conducting this research, please explain why not. In the interests of transparency, the GAC requests a report containing these statistics and summaries of actions taken in response to the security threats identified above.
 - e. The GAC would like to remind ICANN that the list of Security Threats in the New gTLD Safeguards is not meant to be exhaustive. In fact, the Security checks Safeguard

⁶ <https://www.icann.org/resources/pages/application-2012-02-25-en>

⁷ <https://newgtlds.icann.org/en/applicants/agb>

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applicable to all New gTLDs refers to “security threats such as phishing, pharming, malware, and botnets” (emphasis added), which does not exclude other relevant threats. Please describe what analysis and reporting is conducted regarding other relevant threats not listed above, including spam?

3. Awareness Efforts by ICANN on Registries’ Obligations:

What efforts does ICANN undertake to ensure registries, are educated and aware of their contractual obligations? Is there an ICANN training program with corresponding links and information?

III. DNS Abuse Investigation, reporting and mitigation performance

1. Abuse Investigations, Research, Reports

ICANN’s ISSSR programs are an internal resource that could be utilized for contract enforcement purposes. In addition to ICANN’s IS-SSR programs, there are several publically available anti-abuse reports that can be used to assist ICANN in enforcing contractual obligations with gTLD registries and registrars⁸.

a) Is ICANN contract compliance staff aware of such publically available abuse reports?

i. If so, does ICANN utilize these to assist in contract enforcement?

ii. If ICANN utilizes such publicly available abuse reports for contract enforcement purposes, how does it utilize such reports?

iii. Identify what reports or sources ICANN utilizes?

iv. If ICANN does *not* utilize these reports for contract enforcement purposes, is there any reason why not to? Are there any plans or a willingness to do so in the future?

b) Does ICANN have any intention to utilize its IS-SSR programs for contract enforcement purposes?

i. If so, how?

ii. If not, why not?

iii. Has ICANN's IS-SSR considered establishing a baseline for good registry and registrar behavior? If so, please provide details.

2. Multi-Jurisdictional Abuse Reporting

ICANN’s former Chief Contract Compliance Officer, Allan Grogan, published a blog post on 1 October 2015 entitled “*Update on Steps to Combat Abuse and Illegal Activity*”⁹. In this blog post, Mr. Grogan indicates the complainant must identify the law/regulation violated and the applicable jurisdiction. Many cyber/malware/botnet attacks affect many TLDs spread across many international jurisdictions.

⁸ http://www.domaintools.com/content/The_DomainTools_Report_Distribution_Malicious_Domain.pdf and <https://www.spamhaus.org/statistics/registrars/>

⁹ <https://www.icann.org/news/blog/update-on-steps-to-combat-abuse-and-illegal-activity>

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- a) Please clarify what procedures should be followed when a complainant seeks to submit valid reports of abuse to registrars involving incidents in multiple jurisdictions?
- b) In particular, what does ICANN require from complainants to identify those laws/regulations in the jurisdictions of each affected registrar?