

## **Comments by the Center for Democracy & Technology (CDT) on the Proposed Bylaws Changes Regarding Consideration of GAC Advice**

CDT is pleased to submit these comments during the reply phase of this consultation.

CDT is deeply concerned with this proposed change to the bylaws, which would empower the Governmental Advisory Committee (GAC) vis-à-vis other ICANN advisory committees and supporting organizations. We believe the proposed change would undermine the delicate multistakeholder balance within ICANN. Coming at precisely the time that the United States is planning to cut its last remaining control over the domain name system, the bylaws change suggests that ICANN could come under the control of other governments less friendly to the open Internet. Perversely, it could degrade the consultative policy-making processes within ICANN, likely resulting in more confrontational interactions between the GAC and the ICANN Board. We elaborate on these concerns below and highlight some important contributions by other respondents to the proposed bylaws change.

### Unclear purpose and lack of rationale

There is a dearth of information on why this proposed change is deemed to be necessary: the background section on the [website](#) is left blank; the explanation section is far from adequate; and the purpose of the change is not at all addressed (which would imply that the purpose is unclear or worse unjustifiable and that there is no need for such a change in the first place). This lack of information about the proposed bylaws change is also inconsistent with ICANN's stated commitment to greater transparency and openness.

It has been suggested that the proposed change would merely formalize what may have been an informal voting practice. This, however, is far from an adequate rationale, particularly because the change could have profound implications for the roles and influence of the advisory councils and supporting organizations. The submission by the Registries Stakeholder Group (RySG) suggests that this change "would for all practical purposes convert the GAC from an advisory body into a policy making body." The RySG goes on to state that the change would "only increase the existing tension between the Board's obligation with respect to consensus GNSO recommendations and its obligation with respect to GAC Advice..." A full and credible accounting of the need for – and the consequences of – such a proposed change should have been provided.

### Inconsistency with ATRT recommendations

One of the most important recommendations of the ATRT reviews was to encourage the GAC to participate more fully and at an earlier stage in the policy development processes. This was to ensure that the views of the GAC were known prior to consensus-based policies being put to the Board for adoption and to minimize and militate against GAC-Board confrontation. As other respondents have noted, the proposal to require greater deference to governments after a policy is placed before the

Board means it will be harder for the Board to reject GAC advice. This would therefore lessen the likelihood (and need) that the GAC will involve itself in the policy development processes at an earlier stage. Tucows note that the proposal incentivizes “the GAC to avoid engaging in policy development, and instead to rely on what amounts to a community alienating, last minute veto.” Google is similarly concerned, suggesting that the “proposed change disincentivizes governments from contributing to policy development via the Policy Development Process by strengthening their ability to veto the end result of that process.” We agree with these concerns and find it hard to see how the likely impact of raising the voting threshold could be consistent with, and supportive of, the ATRT recommendations on the importance of involving the GAC earlier in the policy development work.

#### Impact on Internet governance

CDT also believes that this is an inopportune time for such a proposal. As other respondents have noted, ICANN has initiated two processes of global import, the first on the IANA transition (which concerns the question of government influence over the DNS) and the second on enhancing ICANN accountability. Changing the voting threshold is directly related both to the role of governments in the DNS and to the issue accountability. Changes to the role of the GAC should not be considered in isolation; instead they should be considered as part of the interdependent processes on ending the U.S. government’s role and enhancing ICANN accountability.

And finally, as other respondents have noted, there are considerations related to the evolution of the broader ecosystem for Internet governance. This proposal is coming at a time when the scrutiny of the global Internet community is on ICANN and the multistakeholder model. Not only are intergovernmental approaches on the rise – such as the WSIS+10 “summit” modalities – but there are also recurring calls for international Internet policy to be undertaken in the ITU. Increasing the voting threshold reinforces the notion that governments should have new primacy in Internet governance matters and weakens the multistakeholder model at a time when open and inclusive governance processes are under siege. As the ALAC notes in their submission, there is “a trend in the Internet Governance ecosystem that tends to push towards giving increased power to governments. The proposed Bylaws changes regarding consideration of GAC advice would add to this trend that we consider undesirable.”

For the reasons stated above CDT believes that this change to the ICANN bylaws is both unwarranted and unwise, and should, therefore, be withdrawn.