

21 December 2016

GNSO Council Review of the Hyderabad GAC Communiqué

From: James Bladel, GNSO Chair

To: Steve Crocker, ICANN Board

Dear Members of the ICANN Board,

On behalf of the GNSO Council, I am hereby transmitting to you the GNSO Council's [review](#) of the GAC Hyderabad Communiqué. This review is an effort to provide feedback to you, in your capacity as members of the ICANN Board, as you consider issues referenced in the GAC Communiqué that we believe relate to generic top-level domains. Our intent is to inform you, as well as the broader community, of gTLD policy activities, either existing or planned, that may directly or indirectly relate to advice provided by the GAC.

As we noted in our response following the Buenos Aires meeting, the GNSO Council's review of the GAC Communiqué is part of our continuing dialogue with the GAC to facilitate early engagement in GNSO policy development activities. To this end, I am also sharing this communication with the GAC Chair for distribution to the GAC membership.

The GNSO Council hopes that the input provided through its review of the GAC Communiqué will enhance co-ordination and promote the sharing of information on gTLD related policy activities between the GAC, Board and the GNSO.

James Bladel
Chair, GNSO

Cc: Thomas Schneider, Chair, GAC

GNSO REVIEW OF THE [HYDERABAD GAC COMMUNIQUE](#)¹

GAC Advice – Topic & GAC Advice Details	Does the advice concern an issue that can be considered within the remit ² of the GNSO (yes/no)	<i>If yes, is it subject to existing policy recommendations, implementation action or ongoing GNSO policy development work?</i>	<i>How has this issue been/is being/will be dealt with by the GNSO</i>
<p>1. Future gTLDs Policies and Procedures: Process and Timing</p> <p>a. The GAC advises the ICANN Board:</p> <p>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.</p> <p>RATIONALE</p> <p>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.</p>	Yes	Yes	<p>As the Hyderabad Communique simply references the Helsinki Communique without offering further advice, we refer the Board to our response to the Helsinki Communique which can be found here which should be read in conjunction with our correspondence to Dr. Crocker of 25 October 2016, which can be found here. We stand ready to discuss our prior correspondence. Further, we reiterate our request for the GAC and its members to enhance their engagement in the ongoing policy development processes in order to avoid discord over future outcomes.</p>
<p>2. Mitigation of Domain Name Abuse</p> <p>a. The GAC advises the ICANN Board that:</p>			<p>The GNSO Council would like to express concern that the list of questions set out in</p>

¹ Only of “Section VI of the Communiqué: GAC Advice to the Board”

² As per the ICANN Bylaws: “There shall be a policy-development body known as the Generic Names Supporting Organization (GNSO), which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains.

<p>I. To provide written responses to the questions listed in Annex 1 to this Communique no later than five weeks before the ICANN 58 meeting in Copenhagen.</p> <p>RATIONALE</p> <p>The GAC has previously endorsed Law Enforcement Due Diligence Recommendations. 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.</p> <p>The GAC wishes to better understand how ICANN is using publicly available DNS abuse reporting resources and seeks specific information on ICANN's information on standards for abuse reporting and performance.</p>			<p>Annex 1 has been categorised as “advice”. In this context, the term “advice” ought to be given its ordinary dictionary meaning, and a request to the Board to provide various data and information does not constitute “GAC Advice”, as this term is used in the ICANN Bylaws. Since GAC Advice has a specific status and treatment under the under the ICANN Bylaws, precision of terminology is crucial to avoid any perception that there is an attempt to direct the Board, rather than making a request for information and attempting to impose a reasonable deadline for its provision. That said, the GNSO Council looks forward to reviewing ICANN's responses to the questions listed in Annex 1 to the Communique. The GNSO Council observes that ICANN is only one party to its contracts; the others are registries or registrars. It is inappropriate for one party to a contract to unilaterally define enforcement standards for abuse reporting. Contracted parties voluntarily have developed, and continue to develop, various operational practices that proactively address abuse in various forms. The issue of DNS Abuse Mitigation raised by the GAC may also be dealt with by the GNSO in GNSO PDP Working Groups, producing relevant Consensus Policy recommendations then duly adopted by the Board. Further, the issue of DNS Abuse</p>
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			Mitigation raised by the GAC is dealt with by the GNSO as the issue arises, whether it be various active and/or open projects on the Projects List , or as part of GNSO Policy Activities .
<p>3. Two-letter country/territory codes at the second level</p> <p>a. The GAC advises the ICANN Board to:</p> <p>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.</p> <p>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.</p> <p>RATIONALE</p> <p>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.</p>	Yes	Yes	<p>As a preliminary matter, we thank the Board for resolving this issue by motion in Hyderabad.</p> <p>While the substance of this issue is now settled by the Board, we do have concerns about 3.a.II of the Hyderabad Communiqué which, while labeled as “advice” boils down as a directive to the Board, and attempts to write into the Bylaws a new requirement that the Board communicate in advance any plans to reject GAC advice (it is undefined but presumable the GAC’s use of the term “advice” in this case would include both advice and Consensus Advice, as those terms are used in the Bylaws). We believe that the Board should make it clear to the GAC that if the GAC wish to change the Bylaws by adding new requirements on how the Board deals with GAC advice, the GAC must follow the same process as any other member of the community to introduce Bylaw changes for consideration and vote.</p>

<p>4. Protection of IGO Names and Acronyms a. The GAC advises the ICANN Board:</p> <p>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 the protection of IGO acronyms in the DNS and to report on progress at ICANN 58.</p> <p>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:</p> <ul style="list-style-type: none"> • 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 	Yes	Yes	<p>In regard to permanent protections for IGO names and acronyms, Council reiterates its previously stated position that the Bylaws prevent it from taking any further actions in regard to the blocking and monitoring of IGO-related domain registrations until the Board officially acts on the divergent GNSO recommendations and GAC advice on these matters. While the Board should act in a transparent and good faith manner concerning the unresolved issues, and while Council is committed to maintaining an open dialogue with the GAC aiming to facilitate a mutually satisfactory resolution, we do not believe it is the proper role for the Board to actively engage as a mediator between the GNSO and GAC on this or any other policy matter.</p> <p>As regards the October 4, 2016 IGO small group “compromise” proposal for resolution of outstanding IGO issues, Council will give it full consideration as our attention to</p>

<p>instead of national courts, in conformity with relevant principles of international law; and</p> <ul style="list-style-type: none"> • an emergency relief (e.g., 24-48 hours) domain name suspension mechanism to combat risk of imminent harm. <p>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.</p> <p>IV. That, until such measures are implemented, IGO acronyms on the GAC-provided list remain reserved in two languages.</p> <p>RATIONALE</p> <p>IGOs undertake global public service missions, and protecting their names and acronyms in the DNS is in the global public interest.</p> <p>IGOs are unique treaty-based institutions created by governments under international law.</p> <p>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.</p>			<p>resolution of these matters continues. However, while the proposal is an important input and will receive full and fair consideration in continued GNSO deliberations, we cannot regard it as the “starting basis for resolution of differences” as according it such priority would run counter to the Bylaws prescribed policy development process.</p> <p>We also note that a significant portion of the small group proposal addresses curative rights processes matters that are the subject of an ongoing PDP which is in its final stage and approaching completion of a proposed draft report and recommendations to be circulated for public comment shortly. We urge GAC members and IGOs to carefully review that document upon publication and to participate in the public comment process.</p> <p>The Council further notes that it has been advised by the Co-chairs of the GNSO Working Group on Curative Rights Protection Mechanisms that the members of the Working Group devoted two working sessions to review of the small group proposal and that it has been fully taken into account. The Co-Chairs have further advised Council of their expectation that the Working Group’s draft recommendations will add substantial clarity regarding the ability of IGOs to utilize CRP mechanisms and to safeguard their claimed</p>
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			immunities while doing so, and if adopted will better ensure that IGOs have clear standing to access effective and low cost relief when their names or acronyms are abused in the domain name system.
<p>5. Protection of Red Cross/ Red Crescent/ Red Crystal Identifiers and names of national committees</p> <p>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.</p> <p>a. The GAC hence advises the ICANN Board to, without further delay:</p> <p>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</p> <p>II. Confirm the protections of the Red Cross and Red</p>		Yes	<p>The GNSO Council is committed to resolving this issue in accordance with GNSO processes and procedures as soon as possible.</p> <p>In order to do so, the Council will require instruction from the ICANN Board that includes reasons for why the PDP recommendations should be re-examined.</p>

<p>Crescent names and identifiers as permanent.</p> <p>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.</p>			
<p>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</p>			<p>The GNSO Council welcomes all efforts to expand participation in policy development processes (PDP), and broaden the pool of community volunteers from all regions.</p>

<p>ICANN policy processes.</p> <p>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</p>			
<p>7. String similarity Review a. The GAC advises the ICANN Board that:</p> <p>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.</p> <p>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</p>		No	The GNSO does not anticipate any gTLD policy implications from the views expressed in the letter, presuming that the IDN ccTLDs are simply a reflection of existing ccTLDs in the local language and alphabet, and do not collide with IDN strings that would otherwise be eligible for gTLD applications.

<p>potential confusability can and should be addressed on a practical and workable basis.</p>			
<p>8. Enhancement of mutual cooperation and understanding 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-Communique Board-GAC meeting to ensure mutual understanding of its provisions, either at the relevant ICANN meeting or in a call four weeks of a Communique being issued. IV. Consider publicly posting draft resolutions in advance of Board Meetings. RATIONALE At the first post-Communique 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</p>		<p>No</p>	<p>The GNSO Council supports the notion of more regular communication to foster better mutual understanding of each other and of procedures in the ICANN framework.</p>

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.