

10 April 2023

DRAFT GNSO Council Review of Cancún GAC Communiqué

To:
Tripti Sinha

CC:
Nicolas Caballero

Dear Tripti,

On behalf of the GNSO Council, we are hereby transmitting to you a draft of the review by the GNSO Council of the Cancún GAC Communiqué. Due to time constraints, the GNSO Council was not able to formally adopt this response during a conference call since our next meeting is scheduled for 20 April 2023. To date, no opposition has been expressed on the Council list and recognizing that the Board has a call scheduled with the GAC shortly, we wanted to take the opportunity to share the draft with you now.

The GNSO Council's review of each GAC Communiqué is an effort to provide feedback to you, in your capacity as members of the ICANN Board, as you consider issues referenced in the Communiqué that we believe relate to policies governing generic Top-Level Domains. Our intent is to inform you and the broader community of gTLD policy activities, either existing or planned, that may directly or indirectly relate to advice provided by the GAC. 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. We expect to share the formally adopted version with you shortly after our upcoming meeting.

Kindly,

Sebastien Ducos, GNSO Chair

GNSO COUNCIL REVIEW OF GAC ADVICE CONTAINED IN THE [ICANN76 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>
1. IGO Protections	<p>a. The GAC advises the Board:</p> <p>i. To proceed with the approval of the recommendations of the EPDP on Specific Curative Rights Protections for implementation;</p> <p>ii. To maintain the current moratorium on the registration of IGO acronyms as domain names in New gTLDs presently in place until the full implementation of the recommendations of the EPDP on Specific Curative Rights Protections.</p> <p><u>RATIONALE</u> The GAC affirms that IGOs perform important global public missions with public funds, that they are the unique treaty-based creations of</p>	Yes	<p>Refer to existing policy recommendations, pending adoption by the Board, of the EPDP on Specific Curative Rights Protections which were adopted by GNSO Council on 15 June 2022. The Recommendations Report was transmitted to the Board 21 July 2022 and has undergone the Board’s public comment period.</p> <p>Also of relevance are the wider set of policy</p>	<p>The GNSO trusts that the Board will approve the recommendations of the Curative Rights PDPs and initiate an IRT.</p> <p>While the next steps on this are a matter for the Board, the final resolution of this work on IGO protections was identified as a strategic priority for the GNSO during the Council SPS in December 2022.</p> <p>The GNSO refers to its question to the Board and our discussion during ICANN 76: “Can the Board give us a clear statement of: * What if any steps are still</p>

¹ Focused only the following sections of the Communiqué: Section V: GAC Advice to the ICANN Board and Section VI: Follow-up on Previous Advice

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>governments under international law, and that their names and acronyms warrant appropriate tailored protection in the DNS in the global public interest to prevent consumer harm. It is also recalled that the EPDP Recommendations strike a balance between rights and concerns of both IGOs and legitimate third parties.</p> <p>In considering approving the Recommendations of the EPDP on Specific Curative Rights Protections for implementation, the GAC notes that the EPDP Recommendations received Full Consensus, and that the corresponding GNSO Council vote to approve said Recommendations was unanimous.</p> <p>Insofar as the above-noted EPDP Recommendations propose targeted amendments to the UDRP Rules to accommodate IGOs in addressing the abuse of IGO identifiers in the DNS, this Advice supersedes those aspects of GAC Advice in the following Communiqués, as follows:</p> <ul style="list-style-type: none"> ● In the GAC Los Angeles Communiqué (ICANN51), Section IV.5.b.i, in implementing any such 		<p>recommendations, of which the EPDP on Specific Curative Rights Protections was the final piece, including:</p> <p>Protection of IGO and INGO Identifiers in all gTLDs PDP</p> <p>Recommendations 1-4 from the PDP IGO-INGO Access to Curative Rights Protection Mechanisms Final Report</p>	<p>required to finally resolve the issue of IGO names, including, e.g.:</p> <ul style="list-style-type: none"> * Timeline to approve the IGO curative rights recommendations; and then for implementation * What is the status of the notification system for second-level IGO names * What is the status of the Board-GAC consultation * What are the timelines for these steps * When the handful of 2-letter second level names which match IGO acronyms (such as au) can finally be released.”
--	--	--	--	---

	<p>curative mechanism, “the UDRP should not be amended”;</p> <ul style="list-style-type: none"> ● In the GAC Hyderabad Communiqué (ICANN57), Section VI.4.II: “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”; ● In the GAC Johannesburg Communiqué (ICANN59), Section VI.1.a: “The GAC reiterates its Advice that IGO access to curative dispute resolution mechanism should: <ul style="list-style-type: none"> I. be modeled on, but separate from, the existing [UDRP], II. provide standing based on IGOs’ status as public intergovernmental institutions, and, III. respect IGOs’ jurisdictional status by facilitating appeals exclusively through arbitration.” <p>In terms of the continuation of the moratorium, in the ICANN71 Communiqué, in advising the Board to maintain the current moratorium on the registration of IGO acronyms as domain names in New gTLDs pending the conclusion, and implementation,</p>			
--	--	--	--	--

	<p>of the Recommendations of the IGO Curative Work Track, the GAC noted that in the absence of access to a curative rights protection mechanism, a mere notification of the registration of a domain name corresponding to its identifier is of no real utility to an IGO, because an IGO has no current ability to arbitrate a domain name dispute.</p> <p>In that same light, the GAC previously has advised the Board to maintain the current moratorium in the ICANN61 San Juan, ICANN62 Panama and ICANN71 Communiqués, noting that the removal of interim protections before a permanent decision is taken on a curative mechanism to protect IGO acronyms could result in irreparable harm to IGOs.</p>			
<p>2. WHOIS Disclosure System</p>	<p>a. The GAC advises the Board: i. To direct ICANN org to promptly engage with the PSWG to identify and advance solutions for confidentiality of law enforcement requests so as not to preclude participation by law enforcement requesters when</p>	<p>Yes</p>	<p>The EPDP Phase 2 Small Team under the GNSO Council delivered the Addendum to its Preliminary Report to the GNSO Council in November 2022. The</p>	<p>The EPDP Phase 2 Small Team under the GNSO Council is tasked to liaise with ICANN org on questions regarding the Whois Disclosure System (now renamed the “Registration Data Request Service”).</p>

	<p>measuring usage of the WHOIS Disclosure System.</p> <p><u>RATIONALE</u> The GAC welcomes the Board’s February 27, 2023 resolution approving the launch of a proof-of-concept approach for a WHOIS Disclosure System intended to gather demand and usage data to inform community discussions and Board consideration of the Phase 2 Recommendations of the Expedited Policy Development Process. In the GAC Kuala Lumpur Communiqué, under Issues of Importance, the GAC stressed “the importance of including a mechanism to allow for confidential law enforcement requests” and recommended that ICANN org engage “with the GAC PSWG to further discuss the issue of how confidentiality of law enforcement requests will be ensured and how the (meta) data of all the requests of law enforcement agencies will be handled.”⁶ To date, this engagement has not taken place. Nevertheless, during the GAC Meeting with the ICANN Board, ICANN org indicated that the proposed system design</p>		<p>small team, which includes members of the GAC, has noted this topic as an additional item for consideration in the Addendum.</p>	<p>There are GAC representatives who also serve on the PSWG in the Small Team. The GAC representatives have brought the Small Team’s attention to this topic, and the topic is currently under discussion.</p> <p>Council stands ready to support any work beyond the Small Team’s mandate if necessary. Council also notes that the current GAC representatives on the EPDP Phase 2 Small team, or the Council liaison to the GAC, could assist in liaising such efforts as appropriate.</p>
--	--	--	---	---

	<p>would not provide functionality for maintaining confidentiality for law enforcement requests.</p> <p>Law enforcement agencies investigations may be compromised if requests for domain registration data are not kept confidential. A lack of functionality in the proposed WHOIS Disclosure System to provide for such confidentiality will almost certainly deter usage of the system by law enforcement agencies which will in turn decrease the amount of data that the pilot program will be able to collect. The GAC highlights that further engagement between ICANN org and the PSWG is necessary to resolve this issue. A satisfactory approach to this concern is also consistent with the Board’s resolution “to encourage comprehensive System usage by data requestors.”</p>			
<p>3. Privacy and Proxy Services</p>	<p>a. The GAC advises the Board: i. To prioritize the assessment related to the pending RDS-WHOIS2 Review Recommendation R10.1 which called for the Board to monitor the implementation of the PPSAI policy recommendations, and all necessary</p>	<p>Yes</p>	<p>This is a GNSO Policy approved by the Board which was in the midst of implementation when ICANN org (not the GNSO) stopped the implementation.</p>	<p>A Letter sent by the GNSO Council on July 7, 2021 concluded that the Council saw no reason for the delay of the implementation of this policy.</p>

	<p>steps to resume this implementation, consistent with the intent of the GAC’s previous advice.</p> <p>ii. To regularly update the GAC on the status of activities related to privacy and proxy services.</p> <p><u>RATIONALE</u></p> <p>The GAC notes in the recent Quarterly Report on ICANN Specific Reviews (21 February 2023) that “it is anticipated that ICANN org may begin to work on the impact assessment of the outcomes of ongoing community work in Q1 2023 to inform Board action of Recommendation 10.1” of the Second Registration Directory Service Review (RDS-WHOIS2).</p> <p>Recommendation R10.1 provides for the ICANN Board to monitor the implementation of the Privacy Proxy Services Accreditation (PPSAI) policy recommendations and thus implicates the previous GAC Advice in the Kobe Communiqué7 and the GAC’s Follow-Up on Previous Advice within the Montreal Communiqué.</p>			
--	--	--	--	--