27 July 2018

Submission of GNSO Council Review of the Panama City GAC Communiqué

From:
Heather Forrest, GNSO Chair
Donna Austin, GNSO Council Vice-Chair
Rafik Dammak, GNSO Council Vice-Chair

To:
Cherine Chalaby, Chair
ICANN Board

Dear Members of the ICANN Board,

On behalf of the GNSO Council, we are hereby transmitting to you a draft of the GNSO Council's response to the GAC Panama City Communiqué. Due to time constraints, the GNSO Council was not able to formally adopt this response during a conference call. To date only support (and no opposition) has been expressed on the Council list and recognizing that the Board has a call with the GAC on Tuesday 31 July to discuss the Panama City Communiqué, we wanted to take the opportunity to share this draft with you now.

The GNSO Council's response 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 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 the coordination and promote the sharing of information on gTLD related policy activities between the GAC, Board and the GNSO.

Best regards,

Heather Forrest, GNSO Chair
Donna Austin, GNSO Council Vice-Chair
Rafik Dammak, GNSO Council Vice-Chair

GNSO COUNCIL REVIEW OF THE PANAMA 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)	*If yes, is it subject to existing policy recommendations, implementation action or ongoing GNSO policy development work?*	*How has this issue been/is being/will be dealt with by the GNSO*

[1] Only of "Section V of the Communiqué: GAC Advice to the ICANN 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.

1. GDPR and WHOIS	The GAC considers that a unified access model is central to providing access to non-public WHOIS data for users with a legitimate purpose and this should continue to be addressed as a matter of urgency. Therefore, **a. the GAC advises the ICANN Board to:** i. Take all steps necessary to ensure the development and implementation of a unified access model that addresses accreditation, authentication, access and accountability, and applies to all contracted parties, as quickly as possible; and ii. Publish a status report, four weeks prior to ICANN 63. RATIONALE The GAC notes that access to WHOIS information is critical for the furtherance of legitimate purposes associated with protecting the public interest including law enforcement; cybersecurity; consumer protection and the protection of intellectual property. To this effect, the	yes	Yes, the GNSO Council has recently finished drafting the charter for the EPDP on reviewing the Temporary Specification to produce a WHOIS policy that is compliant with the GDPR. The Council voted to initiate the EPDP and adopt the charter at its July 2018 meeting.	Yes, the GNSO Council, in discussing and preparing the charter of the EPDP, has sought to create adequate processes to address the issue. As part of the EPDP group's charter, the GNSO Council is including places for GAC members to engage in this policy process.

	development of stable, predictable, and workable access mechanisms for non-public WHOIS information is necessary. The GAC finds the existing requirements in the Temporary Specification for contracted parties to provide reasonable access to non-public information as insufficient to protect the public interest. In order to protect the public interest, as well as the secure, stable, and resilient operation of the DNS, the development and implementation of a unified access model is of utmost importance. The GAC considers that direct involvement and action is required by ICANN Org to facilitate and support this.			
2. Protection of IGO Identifiers	**a. The GAC advises the ICANN Board to:** i. Maintain current temporary protections of IGO acronyms until a permanent means of protecting these identifiers is put into place; ii. Work with the GNSO and the GAC following the completion of the ongoing PDP on IGO-INGO access to	yes	Yes, the PDP on IGO-INGO Access to Curative Rights Protection Mechanisms completed and delivered its Final Report to the GNSO Council on 9 July 2018.	The GNSO Council acknowledges the effort of the Access to Curative Rights Protection Mechanisms PDP Working Group since ICANN60 to reach consensus on its final recommendations, and having accepted the Final Report of the working group at the Council meeting on July 19, will review the report between now and the August 2018 Council

	curative rights protection mechanisms to ensure that GAC advice on protection of IGO acronyms, which includes the available "small group" proposal, is adequately taken into account also in any related Board decision; and iii. Continue working with the GAC in order to ensure accuracy and completeness of IGO contacts on the current list of IGO identifiers. RATIONALE The GAC continues to await the long-delayed completion of the PDP on IGO-INGO access to curative rights protection mechanisms. As to (i), this PDP will have a direct impact on a permanent means of protecting IGO identifiers, which has been the subject of longstanding and consistent GAC advice. As to (ii), the GAC provided input to the PDP's draft report in 2017, notably on the issue of IGO immunities, as did individual members and observers. The final report should reflect that substantial input; noting that current indications are that the PDP recommendations will not adequality			meeting, with the goal of developing a possible path forward to also resolve the inconsistencies between GAC Advice and prior GNSO policy recommendations on the overall scope of IGO protections.

	reflect the GAC's advice on this topic, the GAC remains open to discussions with the GNSO and the Board to ensure that this is the case. The GAC notes that the work on this PDP began by at least mid-2014 and has yet to satisfactorily reach a positive resolution. The GAC moreover notes that a 2007 GNSO Issue Report provided a blueprint for a means for handling domain name disputes concerning IGO identifiers which substantially matches the "small group" proposal. The temporary protections currently in place for IGO acronyms must remain in place until such time as the Board makes a decision regarding the most appropriate means to provide a permanent means for protecting these identifiers, given the irreparable harm that could result if these acronyms are released from the temporary reserve list before a permanent mechanism is established. As to (iii), the GAC has previously advised the ICANN Board to allocate sufficient resources to ensure the accuracy and completeness of IGO contacts on the reserve list and awaits progress on this issue.			

3. Two-character Country Codes at the Second Level	**a. The GAC advises the ICANN Board to:** i. Work, as soon as possible, with those GAC members who have expressed serious concerns with respect to the release of their 2-character country/territory codes at the second level in order to establish an effective mechanism to resolve their concerns in a satisfactory manner, bearing in mind that previous GAC advice on the matter stands. ii. Immediately take necessary steps to prevent further negative consequences for the concerned GAC members arising from the November 2016 Board Resolution. RATIONALE The GAC notes the range of actions taken by the Board in response to concerns previously expressed with regard to release of 2-character codes at the second level. However, these actions have not been sufficient from the perspective of the concerned countries. On 15 March 2017, through the Copenhagen Communiqué, the GAC	yes	yes	The GNSO repeats its concerns in the matter in the Adopted GNSO Council Response to the Copenhagen GAC Communiqué submitted on the 2 June 2017, namely that the Consensus Advice contained in Section VI. 4. of the Communique that essentially requires the ICANN Board to negotiate directly, and reach resolution, with individual governments on two letter domain names at the second level is, in our view, inconsistent with the Consensus Advice mechanism found in the ICANN bylaws and as such should not be considered "Consensus Advice". The GNSO Council regards this as an unhelpful attempt to sidestep requirements contained in the Bylaws to delegate GAC-equivalent consensus advice to individual GAC members, rather than the GAC as a whole. We note that this was discussed extensively during the CCWG-ACCT Workstream 1 process and was ultimately rejected.

	communicated its understanding to the ICANN community, and in particular to the ICANN Board, that there were "changes created by the 8 November 2016 Resolution" relating to the release procedure of 2-Character Country/Territory Codes at the Second Level. As stated in the 15 March 2017 Copenhagen Communiqué, the changes introduced by the 8 November 2016 Resolution meant that, contrary to the then prevailing practice, "it is no longer mandatory for the registries to notify governments of the plans for their use of 2-letter codes, nor are registries required to seek agreement of governments when releasing two-letter country codes at the second level". Accordingly, in the 15 March 2017 Copenhagen Communiqué, the GAC provided full consensus advice to the ICANN Board, which included requests that the Board "[t]ake into account the serious concerns expressed by some GAC Members as contained in previous GAC Advice"; "[i]mmediately explore measures to find a satisfactory solution of the matter to meet the concerns of these countries before			Bilateralism between the Board and individual GAC members also has the potential to undermine the utility of the GAC itself and is also inconsistent with ICANN's commitment to the United States Government and other parts of the ICANN Community that the GAC or individual governments would not end up with more power in a post-transition ICANN

	being further aggravated"; and "[p]rovide clarification of the decision-making process and of the rationale for the November 2016 resolution, particularly in regard to consideration of the GAC advice, timing and level of support for this resolution." Under the 8 November 2016 Resolution, ICANN's "President and CEO, or his designee(s), is authorized to take such actions as appropriate to authorize registry operators to release at the second level the reserved letter/letter two-character ASCII labels, not otherwise reserved pursuant to Specification 5, Section 6 of the Registry Agreement, subject to these measures.			