

27 July 2021

Submission of GNSO Council Review of ICANN71 GAC Communiqué

Philippe Fouquart, GNSO Chair

To: Maarten Botterman, Chair of ICANN Board

Cc: Manal Ismail, Chair of the GAC

Dear Maarten and members of the ICANN Board,

On behalf of the GNSO Council, I am hereby transmitting to you the review by the GNSO Council of the ICANN71 GAC Communiqué, which was unanimously adopted by the Council during its meeting on 22 July 2021.

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.

On behalf of the GNSO Council,

Philippe Fouquart

GNSO COUNCIL REVIEW OF [ICANN71 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. IGO Protections</p>	<p>While continuing to welcome work being undertaken by the GNSO in terms of a curative rights protection mechanism for IGOs, the GAC wishes to clarify that the current moratorium on the registration of IGO acronyms should remain in place pending a conclusion to this curative work track.</p> <p>a. The GAC advises the Board:</p> <p>i. to maintain the current moratorium on the registration of IGO acronyms pending the conclusion of the IGO curative work track currently underway (noting that it is expected to</p>	<p>Yes</p>		<p>In November 2013, the GNSO Council unanimously adopted a resolution accepting the Final Report of the PDP on IGO/INGO Protections, including the following consensus recommendation:</p> <ul style="list-style-type: none"> • <i>At the Second level, Acronyms of the RCRC, IOC, IGOs and INGO under consideration in this PDP shall <u>not</u> be withheld from registration. For the current round of New gTLDs, the temporary protections extended to the acronyms subject to this recommendation shall be removed from the Reserved</i>

¹ Only of “Section V of the Communiqué: GAC Advice to the ICANN Board and for this Communiqué, 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>conclude within the calendar year).</p> <p><u>RATIONALE</u></p> <p>In the context of the above-mentioned curative rights work track, in the ICANN70 Communique, the GAC had recalled “ICANN agreement on a moratorium for new registrations of IGO acronyms ahead of a final resolution of this [curative rights protection] issue.” The GAC does not share the Board’s view in its 2 June 2021 email³ that “the GAC’s concern about the need to protect IGOs on a permanent basis is addressed by the Board’s determination to provide IGOs with a post-registration notification service on a permanent, ongoing basis.” The GAC does not share the Board’s assessment that such notification would “allow[] an IGO to take appropriate action to protect related acronyms.” In the absence of access to a curative rights protection mechanism, a notification is of no real</p>			<p><i>Names List in Specification 5 of the New gTLD Registry Agreement.</i></p> <p>With respect to IGO access to curative rights protection mechanisms, on 18 April 2019 the GNSO Council adopted the Final Report of the PDP Working Group and approved Recommendations 1-4. Although the GNSO Council did not approve Recommendation 5, it formed a new Work Track within the RPM PDP to “consider...whether an appropriate policy solution can be developed that is generally consistent with REcommendations 1, 2, 3 & 4 of the PDP Final Report” and (a) accounts for potential jurisdictional immunity, (b) does not affect the right and ability of registrants to file judicial proceedings in a court, (c) preserves registrants’ rights to judicial review of a UDRP or URS decision and (d) recognizes that</p>
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³ See GAC Chair and ICANN Board Chairman correspondence regarding “Follow-up on Process and Substantive Aspects of GAC/Board Consultation on IGO Protections” at: <https://gac.icann.org/advice/correspondence/>

	<p>utility, because an IGO has no current ability to arbitrate a domain name dispute. The GAC previously has advised the Board to maintain current temporary protections of IGO acronyms in the ICANN61 San Juan and ICANN62 Panama Communiqués, noting in the San Juan Communiqué that the “removal of interim protections before a permanent decision on IGO acronym protection [(i.e., a curative mechanism)] is taken could result in irreparable harm to IGOs.”</p>			<p>the scope of jurisdictional immunity is a legal issue best left to the court system. This Work Track is expected to deliver its Initial Report within the next couple of months.</p>
<p>2. CCT Review Recommendations <i>(Follow-up on Previous Advice)</i></p>	<p>The GAC wishes to recall its ICANN66 Montreal Consensus Advice on CCT Review and Subsequent Rounds of New gTLDs (section V. 1. a), and in light of the constructive discussions which took place with the Board, and the wider ICANN Community at ICANN71, as well as the GAC follow-up advice from ICANN70 (namely in paragraph 1. of Section VI) and considering the Board Scorecard thereon (dated 12th May 2021)⁴, draws the attention of the Board to the related</p>	<p>Yes</p>		<p>The GNSO Council notes that the Subsequent Procedures and RPM PDPs have addressed many of the issues raised in the CCT Review Team (CCT-RT) Final Report that were referred from the ICANN Board to the GNSO. For the DNS abuse recommendations contained within the CCT-RT Final Report, the GNSO Council is still in the process of determining whether any policy work is needed, and if so, how that work will be carried out.</p>

⁴ <https://www.icann.org/en/system/files/files/resolutions-icann70-gac-advice-scorecard-12may21-en.pdf>

	<p>suggestions referred to under section “Issues of Importance to the GAC” of this Communiqué.</p> <p><u>From “Issues of Importance to the GAC.</u></p> <p>The GAC observed challenges in tracking the implementation of those CCT recommendations that the Board had passed on to different parts of the community, including the GNSO, and welcomed the proposal from the GNSO Council Liaison to the GAC to request a briefing with GNSO to discuss exactly how they have addressed the CCT-RT recommendations.</p>			<p>The GNSO has been addressing these recommendations via its policy development processes. Although the CCT-RT made policy recommendations, it is only through the GNSO Policy Development Processes that such policy recommendations can be adopted. GNSO PDPs are the vehicle to address Review Team recommendations with potential policy implications that were passed through by the Board.</p>
<p>3. EPDP Phase 1 Policy Implementation <i>(Follow-up on Previous Advice)</i></p>	<p>The GAC notes its previous advice within the ICANN66 Montréal Communiqué and the ICANN70 Communiqué with regard to Phase 1 of the EPDP on gTLD Registration Data and the request for “a detailed work plan identifying an updated realistic schedule to complete its work.” The GAC observes with continued concern that the Phase 1 Implementation Review Team (IRT) lacks a current published implementation timeline.</p>	<p>Yes</p>		<p>Policy implementation activities are managed by ICANN org. According to the PDP Manual, the Implementation Review Team, as agent of the GNSO Council, is to ensure that implementation conforms to the intent of policy recommendations. However, the ICANN Board has sought clarification from the Council in relation to certain aspects of Recs 7 and 12. The Council has responded to those ICANN Board</p>

				<p>inquiries (see https://gns0.icann.org/sites/default/files/file/field-file-attach/fouquart-to-botterman-29jan21-en.pdf and https://gns0.icann.org/sites/default/files/file/field-file-attach/fouquart-to-botterman-04mar21-en.pdf).</p>
<p>4. Privacy Proxy Services Accreditation Implementation <i>(Follow-up on Previous Advice)</i></p>	<p>The GAC previously advised the ICANN Board regarding the need to resume implementation (e.g., in the ICANN65 Marrakech and ICANN66 Montréal Communiqués) in light of the importance of implementing procedures that govern these services. The GAC notes the ongoing work between ICANN and the GNSO on restarting this work and highlights the need to prioritize this implementation.</p>	<p>Yes</p>		<p>On 14 June 2021 the GNSO Council received an update from ICANN Org on the status of the PPSAI IRT (prior to being paused). According to the update, the IRT was in the final stages of preparation of an initial implementation plan to be published for public comment. ICANN org estimated that 60% of the work has already been completed and has proposed that the work to finish PPSAI implementation could “come under the umbrella of the org and IRT’s work on ePDP Phase 1”</p> <p>At the GNSO Council’s wrap up session on 17 June 2021, the GNSO Council noted the decision to restart the implementation</p>

				<p>activities is not within the remit of the GNSO Council to make, as this is ultimately a decision for ICANN org. The Council also noted the letter that was sent to the Council in September 2019 (see https://www.icann.org/en/system/files/correspondence/namazi-to-drazek-et-al-05sep19-en.pdf), in which it was noted that “following the completion of relevant EPDP work, ICANN org will reassess the existing draft PP materials in consultation with the PPSAI IRT and determine how to proceed with implementation of the Privacy and Proxy Services Accreditation Program”. From a Council’s perspective this still seems a relevant and timely next step, as reflected in the most recent correspondence from the GNSO Council to ICANN org https://gnso.icann.org/sites/default/files/file/field-file-attach/gnso-council-to-lentz-07jul21-en.pdf.</p>
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