GNSO COUNCIL REVIEW OF THE MONTREAL 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. CCT Review and Subsequent Rounds of New gTLDs	a. The GAC advises the Board: 　i. not to proceed with a new round of gTLDs until after the complete implementation of the recommendations in the Competition, Consumer Trust and Consumer Choice Review that were identified as "prerequisites" or as "high priority". RATIONALE The Competition, Consumer Trust and Consumer Choice Review is the first completed Bylaw-mandated review after the IANA Stewardship Transition and serves as a vital accountability mechanism. The review identified a	Yes. The policies surrounding gTLD domain names fall firmly within the GNSO's remit	Subject to ongoing GNSO policy development work: New gTLD Subsequent Procedures PDP.	The New gTLD Subsequent Procedures PDP was previously in contact with the CCT-RT leadership team and did some analysis to ensure that all recommendations directed at the PDP are being considered during the course of deliberations. Since Board resolutions 2019.03.01.01 - 2019.03.01.05, it has done further analysis to see if the Board's actions require anything different of the PDP. The answer at this point appears to be no - the recommendations aimed at the PDP, and the scope of those recommendations, appear to be the same. However, the PDP is anticipating reviewing the CCT-RT

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[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.

	number of issues that should be addressed, in areas such as the necessity and availability of data, including on costs and benefits, the effectiveness of safeguards, the promotion of consumer trust, the mitigation of DNS abuse and improved geographic representation of applicants. The review produced 35 consensus recommendations. It said that 14 of the recommendations must be implemented prior to the launch of subsequent procedures for new gTLDs ("prerequisites") and a further 10 recommendations ("high priority") should be implemented by 8th March 2020 (eighteen months after the issuance of the report). It is particularly important that a new round of gTLDs should not be launched until after the successful implementation of those recommendations that were identified by the Review Team as necessary prior to any subsequent rounds of new gTLDs. It has been suggested that although some of the recommendations are for the Board to implement, other recommendations are for other parts		recommendations again, from a more holistic perspective to make sure that all have been appropriately considered. Previously, the WG had mostly considered the recommendations in the context of the particular subject (e.g., Applicant Support). The Rights Protection Mechanisms (RPM) PDP Working Group will also consider the relevant recommendations passed through to the group in due course. The GNSO Council has duly considered the more general CCT-RT recommendations that were passed through to the GNSO by the ICANN Board and the relevant recommendations that were placed in "Pending" status, when appropriate. You can find the GNSO Council response to the Board here: https://www.icann.org/en/system/files/correspondence/drazek-et-al-to-icann-board-27sep19-en.pdf

	of the community to implement. It would be helpful for the Board to monitor progress on all of the recommendations and support other parts of the community to implement the recommendations that are addressed to them.			
2. Domain Name Registration Directory Service and Data Protection	With regard to Phase 1 of the EPDP, a. The GAC advises the Board to: i. Take all possible steps to ensure that the ICANN org and the EPDP Phase 1 Implementation Review team generate a detailed work plan identifying an updated realistic schedule to complete its work and provide and inform the GAC on the status of its progress by January 3, 2020; With regard to Phase 2 and the conclusion of the EPDP,	Yes	Subject to ongoing implementation of the EPDP Phase 1 policy recommendations and GNSO policy development work: EPDP Phase 2	The GNSO Council continues to closely monitor the work of both the EPDP Phase 2 team and implementation of the Phase 1 policy recommendations to ensure progress. The Council trusts that the EPDP Phase 2 team members are taking all possible steps to finalise the policy recommendations within the scheduled deadlines, but will continue to closely monitor monthly reporting and rely on the GNSO Council liaison to the EPDP Team to surface issues in a timely manner. The GNSO Council is also closely monitoring the implementation of the EPDP Phase 1 policy recommendations to ensure that

	The GAC recognizes the considerable efforts undertaken by all participants within the EPDP. Nevertheless, there will likely be a significant time between finalization of the Phase 2 policy recommendations, implementation of Phase 1 and Phase 2, and the construction and deployment of any new Domain Name Registration System and Unified Access Model. Consequently,
	
	    b. The GAC advises the Board to:
	        i. Instruct the ICANN organization to ensure that the current system that requires "reasonable access" to non-public domain name registration is operating effectively. This should include:
	            – educating key stakeholder groups, including governments,
				the Implementation Review Team (IRT) can complete its work in a timely manner.
				
				Any steps ICANN organization takes to ensure effective operation of the current system of "reasonable access" to non-public domain name registration data should be consistent with the Temporary Specification requirements and should not interfere with or influence the work of the EPDP Phase 2 Team or the ongoing implementation of the EPDP Phase 1 policy recommendations.

		that there is a process to request non-public data; – actively making available a standard request form that can be used by stakeholders to request access based upon the current consensus policy; and – actively making available links to registrar and registry information and points of contact on this topic. ii. Instruct ICANN Compliance to create a specific process to			

	address complaints regarding failure to respond to, and unreasonable denial of requests for non-public domain name registration data, and monitor and publish reports on compliance with the current policy as part of their regular monthly reporting. RATIONALE Consistent with our prior advice, we take this opportunity to issue further guidance as the progress of the development and implementation of the EPDP activities have raised concerns. The GAC has consistently advised on the necessity of finding a swift solution to ensuring timely access to non-public registration data for legitimate third party purposes that complies with the requirements of the GDPR and other data protection and privacy laws, in view of the significant negative impact of the		

| | changes in WHOIS accessibility on users with legitimate purposes. The GAC has previously noted that such legitimate purposes include civil, administrative and criminal law enforcement, cybersecurity, consumer protection and IP rights protection. The GAC also notes that the European Data Protection Board, in its guidance, has expressly encouraged ICANN and the community to develop a comprehensive model covering the entirety of the data processing cycle, from collection to access.

As already highlighted in the GAC's San Juan and Kobe Communiqués, the GDPR provides for mechanisms to balance the various legitimate public and private interests at stake, including privacy and accountability. We note that the legitimate interests reflected in ICANN's Bylaws are consistent with the recitals to the GDPR, which provide examples such as "preventing fraud"; "ensuring network and information security," including the ability to resist "unlawful or malicious actions" and reporting possible "criminal acts or threats to | | | |
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	public security" to authorities (see GDPR Recitals 47, 49 and 50).		