

22 August 2016

Dear GNSO Councilors,

I'm writing to follow up on the discussion over the issue of IGO acronym protections that you had with Board members in Helsinki. The Board is planning to send a written response to your letter of 31 May 2016, but in the meantime I thought I would write to update you on the discussions that have been taking place among some Board, GAC and IGO representatives, facilitated by ICANN staff.

As you know, a small group of GAC, IGO and Board representatives was convened around the time of the Los Angeles meeting in October 2014. The purpose of the group was to carry forward discussions that had begun in the wake of the Board's February 2014 resolution, in which the Board requested the then-NGPC to develop an approach for subsequent Board consideration that would respond to the GAC advice, as required by the ICANN Bylaws, and address the conflicting GAC advice and GNSO policy recommendations (see <https://www.icann.org/resources/board-material/resolutions-2014-02-07-en#2.a>.) The rationale for that resolution noted that the Board wished to proceed procedurally, prior to considering the substantive GNSO policy recommendations. The NGPC's initial proposed approach was delivered to the GAC and the GNSO Council before the Singapore meeting in March 2014, and has formed the basis for subsequent discussions in the small group.

These discussions took place in the context of GAC advice issued in several Communiqués, including in Buenos Aires (November 2013), Singapore (March 2014), London (2014) and, following the establishment of the small group, in Los Angeles (October 2014), where the GAC reaffirmed its previous advice that implementation of protections for IGO names and acronyms is in the public interest, given that IGOs, as created by governments under international law, are objectively different right holders. Around that time, I participated in discussions with the previous GNSO Council following the NGPC's June 2014 request that the GNSO consider the possibility of amending its policy recommendations pursuant to the process outlined in the GNSO's PDP Manual (see <https://gns0.icann.org/en/correspondence/chalaby-to-robinson-16jun14-en.pdf>). As you know, the letter and those discussions led to further correspondence between the GNSO Council and the NGPC between October 2014 and January 2015, when the NGPC confirmed that discussions were continuing with the GAC and IGOs. In the interim, the GNSO Council chartered a new PDP Working Group to evaluate possible solutions to challenges faced by IGOs (and INGOs) in accessing the existing curative rights dispute resolution processes, which are based on trademark rights. In this context, I note that the NGPC's June 2014 letter had indicated that no action would be taken with respect to GAC advice on curative rights protections for IGOs and INGOs prior to the conclusion of the GNSO's PDP.

In Helsinki, an informal meeting of the small group took place at which Mason Cole (the GNSO-GAC liaison) and Donna Austin (GNSO Council vice-chair) was also present. I saw this as an opportunity to clarify certain aspects of the proposal, including potential implementation challenges, and to emphasize that any consensus among the small group would nevertheless

need to be sent back to the GAC and the GNSO. In brief, the discussion focused on two main topics: first, the implications of providing to an IGO notice of a registered name when a registrant registers a domain name matching the IGO's acronym. The current proposal does not include the issuance of a notice to a potential registrant, as a notice would go only to the affected IGO if someone actually registers a domain name matching their acronym. Second, we discussed corresponding dispute resolution mechanisms that would arguably be needed to provide curative rights protection in the limited situation where a registrant is passing itself off as (i.e. pretending to be) an IGO or which otherwise constitutes fraud or deception.

As noted in previous discussions with your predecessor Council, provision of a notice to an IGO for a period exceeding the 90 days already recommended by the GNSO might require the GNSO to consider possibly amending its previous PDP recommendations, while suggestions relating to dispute resolution will most likely have to be referred to the ongoing IGO-INGO Curative Rights PDP. Our aim was therefore to come to consensus on a proposal that can be submitted to the GNSO (and the GAC) at the earliest opportunity, so that these suggestions can be considered by the GNSO. This remains my hope and our objective.

I agree with the sentiment some of you expressed in Helsinki that it is unfortunate that this process, which as I noted began as what the Board believed to be a procedurally sound way to approach resolution of the issue, has taken a longer time than any of us had anticipated. As a result, the Board has not yet been able to consider the substantive nature of the GNSO policy recommendations that remain outstanding. Given where things stand in the small group, my sense is that we will be in a position to refer the substantive proposals to you shortly for your consideration. As we noted in Helsinki, this would be the appropriate next step since the GNSO is responsible for gTLD policy development. The outcome of the GNSO's deliberations will then be considered by the Board in its determination of whether it will accept the GNSO's recommendations as consistent with GAC advice or not.

I hope this update is useful.

Best regards,
Chris