

7 May 2021

Submission of GNSO Council Review of ICANN70 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, we are hereby transmitting to you a draft of the review by the GNSO Council of the ICANN70 GAC Communiqué. Due to time constraints, the GNSO Council was not able to formally adopt this response during a conference call, which we expect will take place during the Council's 20 May 2021 meeting. No opposition has been expressed on the Council list and recognizing that the Board will be responding to the GAC communique in the upcoming days, 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.

On behalf of the GNSO Council,

Philippe Fouquart

GNSO COUNCIL REVIEW OF [ICANN70 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. EPDP Phase 2 Final Report</p>	<p>Phase 2 EPDP is a step forward but the GAC has serious concerns relating to certain Recommendations and gaps in the Final Report of Phase 2 of the EPDP on gTLD Registration Data, as set forth in the GAC Minority Statement of 24 August 2020 (in Annex).</p> <p>a. The GAC advises the Board:</p> <p>i. to consider the GAC Minority Statement and available options to address the public policy concerns expressed therein, and take necessary action, as appropriate.</p>	<p>Yes.</p>	<p>Yes.</p>	<p>The EPDP Phase 2 Team developed a number of policy recommendations related to a System for Standardized Access/Disclosure to non-public gTLD registration data ("SSAD"). These recommendations were approved by the Council with a GNSO Supermajority on 24 September 2020.</p> <p>Council also took into consideration the following statement in the EPDP Phase 2</p>

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><u>RATIONALE</u></p> <p>In its GAC Minority Statement, the GAC provides input on its public policy concerns regarding the ways that the Recommendations contained in the Final Report of Phase 2 of the EPDP on gTLD Registration Data:</p> <ul style="list-style-type: none"> 1) currently conclude with a fragmented rather than centralized disclosure system; 2) do not currently contain enforceable standards to review disclosure decisions; 3) do not sufficiently address consumer protection and consumer trust concerns; 4) do not currently contain reliable mechanisms for the System for Standardized Access/Disclosure (SSAD) to evolve in response to increased legal clarity; and 5) may impose financial conditions that risk an SSAD that calls for disproportionate costs for its users including those that detect and act on cyber security threats. 			<p>Final Report and guided by the relevant GNSO processes:</p> <p>Page 11 of EPDP Phase 2 Final Report:</p> <p>“Only in relation to the SSAD related recommendations, the EPDP Team considers these interdependent and as a result, these must be considered as one package by the GNSO Council and subsequently the ICANN Board.”</p> <p>Section 13 of GNSO PDP Manual:</p> <p>“In the event that the Final Report includes recommendations that did not achieve the consensus within the PDP Team, ... it is recommended that the GNSO Council take into account whether the PDP Team has indicated that any recommendations contained in the Final Report are interdependent. The GNSO Council is strongly discouraged from itemizing recommendations that the PDP Team has identified interdependent or modifying</p>
--	--	--	--	--

	<p>The GAC is of the view that certain key recommendations and unaddressed topics in the Final Report of Phase 2 of the EPDP on gTLD Registration Data require further work and that the Board should assess how best to address them.</p> <p>The GAC is also of the opinion that the Operational Design Phase (ODP) can focus the Board on some of the practical implementation challenges especially those involving cost apportionment.</p> <p>The GAC looks forward to continued engagement with the Board and the community on these important issues.</p>		<p>recommendations wherever possible.” (emphasis added)</p> <p>Council was aware of the concerns raised in the minority statements in the Final Report, including the one filed by the GAC. As a result of the Minority Statements, the Council requested a consultation with the ICANN Board to discuss these concerns and issues, including whether a further cost-benefit analysis should be conducted before the ICANN Board considers all SSAD-related recommendations for adoption.</p> <p>Subsequently, Council has had very constructive dialogues with the Board and the Board has initiated an Operational Design Phase (ODP) on the SSAD during ICANN70. The Council is in the process of appointing a liaison to the SSAD ODP and is looking forward to another opportunity for further discussion with the Board after the ODP assessment is completed.</p>
--	---	--	---

<p>2. CCT Review and Subsequent Rounds of New gTLDs (Follow-up on Previous Advice)</p>	<p>The GAC is seeking a coordinated approach on the implementation of the specified Recommendations from the CCT Review ahead of the potential launch of a new round of gTLDs.</p> <p>Pursuant to GAC advice issued in Montréal (ICANN66), related correspondence with the ICANN Board and subsequent discussions, the latest on 23rd March during ICANN70, the GAC looks forward to be periodically updated on the ongoing consideration of the above mentioned advice, and, in particular, the Recommendations marked as "prerequisite" or "high priority", namely: 1, 5, 7, 9, 11, 12, 14, 15, 16, 17, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35; for example through a tracking tool that identifies the status of each Recommendation in terms of who is taking it forward, how it will be implemented and when it is expected to be completed, particularly in regard to Recommendations attributed to the Organisation and the ICANN Community (in addition to the Board).</p>	<p>Yes.</p>	<p>Yes.</p>	<p>At its meeting of 18 February 2021 Council adopted a motion that, inter alia, approved, and recommended that the ICANN Board adopt the Affirmations, Recommendations and Implementation Guidance (collectively referred to as "Outputs") that were determined to have received either Full Consensus or Consensus designations as documented in the SubPro PDP Working Group's Final Report. A Recommendations Report was submitted to the Board on 24 March 2021.</p> <p>In accordance with its Charter requirements, the Working Group took into account the outputs of the CCT Review in reaching its recommendations.</p> <p>Council notes that at ICANN70, in its meeting with the GAC, the Board provided an update on the status of CCT-RT recommendations and referred the issue of tracking progress to ICANN Org.</p>
---	---	-------------	-------------	--

	<p>The GAC also recalls its advice to the Board in the Helsinki Communiqué that "An objective and independent analysis of costs and benefits should be conducted beforehand, drawing on experience with and outcomes from the recent round." Such analysis has yet to take place. In this regard, the GAC notes that the Operational Design Phase may provide the opportunity for this analysis to assist the Board as it considers whether a second round of New gTLDs is in the interest of the community as a whole.</p>		<p>With regard to the cited advice to the Board in the GAC Helsinki Communiqué, the Council review of that Communiqué stated that: "The comment period on the gTLD Marketplace Health Index (Beta) is open. The CCT-RT is also underway and comprises the analysis of the Nielsen Surveys and the Analysis Group Study, but a truly "independent analysis" would need to be requested by the PDP WG, and approved by the Council."</p> <p>In the same motion adopting the SubPro Final Report, Council also resolved in that same motion: "Recognizing that nearly a decade has passed since the opening of the 2012 round of new gTLDs, the GNSO Council requests that the ICANN Board consider and direct the implementation of the Outputs adopted by the GNSO Council without waiting for any other proposed or ongoing policy work unspecific to New gTLD Subsequent Procedures to conclude, while acknowledging the importance of such work."</p>
--	---	--	---

				Although the GNSO Council does not take a position at this time on the need for a cost benefit analysis, the Council’s resolution is clear that any such work must not delay implementation of the Outputs.
3. IGO Identifiers <i>(Follow-up on Previous Advice)</i>	While the GAC welcomes the new GNSO Work Track on Curative Rights, the GAC recalls prior GAC Advice (e.g., from Johannesburg and Panama) and ICANN agreement on a moratorium for new registrations of IGO acronyms ahead of a final resolution of this issue.	Yes	Yes	After a series of exchanges and dialogue with the GAC, the GNSO Council decided to initiate a separate IGO Work Track under the Review of All Rights Protections in All gTLDs PDP to consider options to resolve one recommendation of the former IGO-INGO Access to Curative Rights PDP Working Group that was not accepted by Council. The Work Track is tasked with determining whether there is an appropriate policy solution, generally consistent with Recommendations 1-4 of the Curative Rights PDP, that: a. accounts for the possibility that an IGO not being required to to waive jurisdictional immunity in

				<p>certain circumstances;</p> <p>b. does not affect the right and ability of registrants to file judicial proceedings in a court of competent jurisdiction;</p> <p>c. preserves registrants' rights to judicial review of an initial [Uniform Domain Name Dispute Resolution Policy] (UDRP) or [Uniform Rapid Suspension] (URS) decision; and</p> <p>d. recognizes that the existence and scope of IGO jurisdictional immunity in any particular situation is a legal issue to be determined by a court of competent jurisdiction.</p> <p>Further information can be found in a briefing prepared for the Work Track here.</p> <p>Council notes and welcomes the participation of GAC members in the Work Track.</p> <p>At the GNSO Council meeting held on 22 April 2021, Council received a progress update and a work plan, which indicates that the Work Track has sought to make</p>
--	--	--	--	---

				meaningful progress within the bounds of the Addendum and is aiming to deliver its initial report by the end of August 2021 and its final report by the end of November 2021.
--	--	--	--	---