

23 April 2019

Submission of GNSO Council Review of Kobe GAC Communiqué

Keith Drazek, GNSO Chair

Pam Little, GNSO Council vice-chair

Rafik Dammak, GNSO Council vice-chair

To:

Cherine Chalaby, Chair of ICANN Board

CC:

Manal Ismail, Chair of the GAC

Dear Cherine and members of the ICANN Board,

On behalf of the GNSO Council, we are hereby transmitting to you the review by the GNSO Council of the Kobe GAC Communiqué, which was unanimously adopted by the Council during its meeting on 18 April 2019.

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

Keith Drazek

Pam Little

Rafik Dammak

GNSO COUNCIL REVIEW OF [THE KOBE 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>
1. WHOIS and Data Protection Legislation	a. The GAC advises the Board to: <ul style="list-style-type: none"> i. Take necessary steps to ensure that the GNSO EPDP on the Temporary Specification for gTLD Registration Data institutes concrete milestones, progress reports and an expeditious timeline, similar to Phase 1, for concluding Phase 2 activities; ii. Take necessary steps to ensure that the scope of phase 2 activities is clearly defined with a view to expeditious conclusion and implementation; iii. Make available the necessary resources for Phase 2 to expeditiously advance on the complex legal issues deferred from Phase 1; iv. Consider instituting additional 	Yes	Yes	As manager of the PDP process the GNSO Council is very aware of the work being conducted within the ePDP. <ul style="list-style-type: none"> (i) We are conscious of the workload involved with phase 1 and our respective groups have committed to working through phase 2 in a timely fashion. (ii) The GNSO Council has discussed and reconfirmed the scope of the Phase 2, as provided in the EPDP Charter. (iii) The GNSO Council has received some specific requests for resources in relation to phase 2 and broadly supports the requests. (iv) One of the expected outputs

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.

	<p>parallel work efforts on technical implementations, such as that carried out by the Technical Study Group, for purposes of informing and complementing the EPDP’s Phase 2 activities;</p> <p>v. Facilitate swift implementation of the new Registration Directory Services policies as they are developed and agreed, including by sending distinct parts to implementation as and when they are agreed, such as the questions deferred from Phase 1;</p> <p>vi. Consider re-starting implementation processes for relevant existing policies, such as the Privacy Proxy Services Accreditation Issues Policy.</p> <p><u>Rationale:</u> 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</p>			<p>of Phase 2 of the EPDP is a recommendation to incorporate privacy by design into any system used. The Council trusts that it will be fully informed of, and involved where appropriate, in the scoping and execution of any parallel technical efforts related to such policies.</p> <p>(v) Assuming this is referring to RDAP this work is already in hand</p> <p>(vi) The GNSO Council is currently discussing how to respond to various communications on these topics.</p>
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	<p>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.</p> <p>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 Puerto Rico Communiqué, 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 public security” to authorities (see GDPR Recitals 47, 49 and 50).</p>			
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	<p>The GAC will closely monitor and assess the progress reports prepared by the GNSO EPDP, and reserves the possibility of providing further guidance if the pace of progress so requires.</p> <p>The GAC notes that the time and resources necessary to complete Phase 2 are considerable and require focused scoping of the activity to ensure the expeditious conclusion of the activity. The GAC would therefore encourage a judicious definition of the scope of the Phase 2 efforts, giving consideration to elements that could be provided by Community efforts in parallel and may not need to be included in the scope, such as accreditation models.</p> <p>The GAC received a briefing on the work of the Technical Study Group. The GAC considers that the development of options for technical implementation demonstrates how a future system for RDS access could be implemented, also with a view to data security and privacy considerations. The Phase 2 considerations could</p>			
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	<p>benefit from further exploration of technical implementation options.</p> <p>In addition, engaging in such considerations in parallel can help ensure that policies - once agreed - are swiftly put into practice.</p> <p>The GAC is of the opinion that the Privacy Proxy Services Accreditation Issues Policy (PPSAI) remains highly relevant and implementation efforts should continue as appropriate, in parallel with the ongoing policy development work. The implementation of the PPSAI need not be deferred until the completion of the EPDP.</p>			
<p>2. ICANN Board Consideration of the CCT Review Recommendations</p>	<p>The GAC notes with concern the recent Board resolution in response to the Final Recommendations of the Competition, Consumer Trust and Consumer Choice Review Team, which approved only 6 of 35 consensus recommendations.</p> <p>a. The GAC advises the Board to:</p> <p>i. Promptly meet with the CCT Review Team leadership to discuss the Board’s resolution and</p>	Yes	Yes	<p>The New gTLD Subsequent Procedures PDP has been in contact with the CCT-RT leadership team for quite some time and has done some analysis to ensure that all recommendations that were directed at the PDP are being considered during the course of deliberations. Since the Board resolution, it has done some further analysis to see if the</p>

	<p>ii. Possibly reconsider certain decisions on recommendations if appropriate.</p> <p>RATIONALE The GAC is concerned that the recent Board resolution response to the Final Recommendations of the Competition, Consumer Trust and Consumer Choice Review Team approved only 6 of 35 consensus recommendations related to important competition and consumer protection issues. The CCT review is the first completed Bylaw-mandated review after the IANA Stewardship Transition and serves as a vital accountability mechanism. We urge the Board to promptly meet with the CCT Review Team leadership to discuss the Board’s resolution and consider the possibility of revisiting certain decisions if agreed appropriate.</p>			<p>Board's actions require anything different of the PDP. Based on preliminary findings, the answer appears to be no - the recommendations aimed at the PDP, and the scope of those recommendations, appear to be the same.</p> <p>The Rights Protection Mechanisms (RPM) PDP Working Group will also consider the relevant recommendations passed through to the group in due course.</p> <p>The GNSO Council will duly consider 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.</p>
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