

GAC Advice - Topic	GAC Advice Details	Does the advice concern an issue that can be considered within the remit <sup>1</sup> 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>
<b>1. WHOIS and Data Protection Legislation</b>	<p>a. The GAC advises the Board to:</p> <ul style="list-style-type: none"> <li>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;</li> <li>ii. Take necessary steps to ensure that the scope of phase 2 activities is clearly defined with a view to expeditious conclusion and implementation;</li> <li>iii. Make available the necessary resources for Phase 2 to expeditiously advance on the complex legal issues deferred from Phase 1;</li> <li>iv. Consider instituting additional 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;</li> <li>v. Facilitate swift implementation of</li> </ul>	Yes	Yes	<p>As manager of the PDP process the GNSO Council is very aware of the work being conducted within the ePDP.</p> <p>(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.</p> <p>(iii) The GNSO Council has received some specific requests for resources in relation to phase 2 and broadly supports the requests.</p> <p>(iv) Any technical solutions need to be designed so that they take into consideration the policies they need to handle. While some may argue that systems are “flexible” enough to allow for a broad variety of policies that is not the same as “privacy by</p>

	<p>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 legitimate purposes. The GAC has previously noted that such legitimate purposes include civil, administrative</p>			<p>design” which is probably what is called for. Due to the nature of ICANN’s PDP processes, it may be premature to attempt to launch parallel work on this.</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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<sup>1</sup> 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>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> <p>The GAC will closely monitor and assess the progress reports prepared</p>			
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	<p>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 benefit from further exploration of technical implementation options.</p>			
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	<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><b>2. ICANN Board Consideration of the CCT Review Recommendations</b></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> <ul style="list-style-type: none"> <li>i. Promptly meet with the CCT Review Team leadership to discuss the Board's resolution and</li> <li>ii. Possibly reconsider certain decisions on recommendations if appropriate.</li> </ul>	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 Board's actions require anything</p>

	<p><b>RATIONALE</b>  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>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. The GNSO Council will duly consider the more general CCT-RT recommendations that were passed through to the GNSO by the ICANN Board.</p>
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**GNSO COUNCIL REVIEW OF [THE KOBE GAC COMMUNIQUE](#)<sup>2</sup>**

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<sup>2</sup> Only of “Section V of the Communiqué: GAC Advice to the ICANN Board”

