

25 April 2017

GNSO Council Draft Response of the Copenhagen GAC Communiqué

From:

James Bladel, GNSO Chair

Donna Austin, GNSO Council Vice-Chair

Heather Forrest, GNSO Council Vice-Chair

To:

Steve Crocker, ICANN Board

Dear Members of the ICANN Board,

On behalf of the GNSO Council, we are hereby transmitting to you a draft of the GNSO Council's response to the GAC Copenhagen Communiqué.

Due to time constraints, the GNSO Council was not able to formally adopt this response during our meeting on 20 April 2017, however approval is scheduled for our meeting on 18 May. To date only support (and no opposition) has been expressed on the Council list and recognizing that the Board has a call with the GAC later this week to discuss the Copenhagen Communiqué, we wanted to take the opportunity to share this draft with you now.

A recurring theme of many of our recent comments is to identify areas in which the GAC Advice appears to stray beyond the role of the GAC, or indeed, the mission and remit of ICANN. While these issues may not have immediate and direct implications for policy development, as representatives of the diverse community of GNSO stakeholders and constituents, the GNSO Council feels compelled to include these concerns in our response to each Communiqué. In particular, we note our concern with any Advice that conflicts with existing gTLD Consensus Policy or previous Board decisions, or creates new rights or obligations for GNSO stakeholders outside of the defined Policy Development Process (PDP). We would welcome a broader discussion with the Board and GAC on this topic in the future.

That said, the GNSO Council's response is an effort to provide feedback to you, in your capacity as members of the ICANN Board, as you consider issues referenced in the GAC Communiqué that we believe relate to 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.

As we noted in our response following the 2015 Buenos Aires meeting, the GNSO Council's review of the GAC Communiqué is part of our continuing dialogue with the GAC to facilitate early engagement in GNSO policy development activities. To this end, we will also share this communication with the GAC Chair for distribution to the GAC membership.

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.

James Bladel
Chair, GNSO

Donna Austin
Vice-Chair, GNSO Council

Heather Forrest
Vice-Chair, GNSO Council

Cc: Thomas Schneider, Chair, GAC

GNSO COUNCIL REVIEW OF THE [COPENHAGEN 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. Protection of the Red Cross and Red Crescent designations and identifiers	<p>Re-affirming previous GAC Advice for a permanent reservation of the Red Cross and Red Crescent designations and identifiers, the GAC acknowledges the conclusions of the facilitated dialogue held during ICANN 58 on resolving outstanding differences between the GAC’s previous advice and the GNSO’s past recommendations to the Board on the protections of the names and identifiers of the respective Red Cross and Red Crescent organizations. Consistent with the conclusions of the abovementioned dialogue,</p> <p>a. The GAC advises the ICANN</p>	<p>Yes</p>	<p>Yes</p>	<p>The GNSO Council discussed the Board’s request to consider possible modifications to the GNSO policy relating to a limited list of Red Cross National Society and international movement names, in accordance with the GNSO’s process as outlined in the GNSO Policy Development Process Manual, at its meeting on 20 April 2017. A motion to invoke this extraordinary process is currently under consideration.</p>

¹ Only of “Section VI 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.

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	<p>Board to: I. request the GNSO without delay to re-examine its 2013 recommendations pertaining to the protections of Red Cross and Red Crescent names and identifiers (defined as "Scope 2" names in the GNSO process) which were inconsistent with GAC Advice.</p> <p>RATIONALE The GAC acknowledges the outputs of the facilitated dialogue on this topic and requests the Board to proceed accordingly without delay</p>			
<p>2. IGO Protections</p>	<p>The GAC notes that a dialogue facilitated by the Board on this topic has begun between the GAC and the GNSO (including its relevant Working Groups). The GAC expects that these discussions would resolve the long-outstanding issue of IGO</p>	<p>Yes</p>	<p>Yes</p>	<p>The GNSO Council refers to its previous response to the Board on this topic, which notes the ongoing work of the IGO-INGO Access to Curative Rights Protection Mechanisms Policy Development Process (PDP) Working Group. The GNSO Council appreciates the</p>

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	<p>acronym protections and understands that temporary protections will continue to remain in place until such time as a permanent agreed solution is found. Based upon the facilitated discussions up to this stage,</p> <p>a. The GAC advises the ICANN Board to:</p> <p>I. pursue implementation of (i) a permanent system of notification to IGOs regarding second-level registration of strings that match their acronyms in up to two languages and (ii) a parallel system of notification to registrants for a more limited time period, in line with both previous GAC advice and GNSO recommendations;</p> <p>II. facilitate continued discussions in order to develop a resolution that will reflect (i) the fact that IGOs are in an</p>			<p>opportunity to participate in the facilitated discussion with the GAC at ICANN58, and the good faith dialogue that took place.</p> <p>In relation to the GAC’s advice to the Board to pursue implementation of:</p> <p>(i) a permanent system of notification to IGOs regarding second-level registration of strings that match their acronyms in up to two languages; and</p> <p>(ii) a parallel system of notification to registrants for a more limited time period, in line with both previous GAC advice and GNSO recommendations.</p> <p>The GNSO Council understands that the agreed outcome of the facilitated dialogue session at ICANN 58 was that further input from ICANN on the feasibility of permanent notification to IGOs is required; and that a</p>

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	<p>objectively unique category of rights holders and (ii) a better understanding of relevant GAC Advice, particularly as it relates to IGO immunities recognized under international law as noted by IGO Legal Counsels; and</p> <p>III. urge the Working Group for the ongoing PDP on IGO-INGO Access to Curative Rights Protection Mechanisms to take into account the GAC's comments on the Initial Report.</p> <p>RATIONALE This Advice captures achievements made to date in the facilitated discussions, in the hope that this will be instrumental in resolving this long-standing issue at the earliest opportunity.</p>			<p>parallel system of notification to registrants for a more limited time period, is in line with both previous GAC advice and GNSO recommendations.</p> <p>In relation to the GAC's advice to the Board to facilitate continued discussions in order to develop a resolution that will reflect (i) the fact that IGOs are in an objectively unique category of rights holders and (ii) a better understanding of relevant GAC Advice, particularly as it relates to IGO immunities recognized under international law as noted by IGO Legal Counsels. The GNSO Council looks forward to continuing, in good faith, the discussions with the GAC and the Board on appropriate next steps, but is concerned that the GAC advice in this instance seems to suggest a predetermined outcome, which the Council believes is premature.</p>

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				As previously communicated to the Board, the ongoing PDP on IGO-INGO Access to Curative Rights Protection Mechanisms will take into account the GAC's comments on the Initial Report. The GNSO Council notes that the Working Group is actively reviewing all comments received on its Initial Report, including the comments submitted by the GAC and a number of IGOs.
3. Mitigation of Domain Name Abuse	a. The GAC advises the ICANN Board to: I. provide written responses to the questions listed in the Follow-up Scorecard attached to this Communique, no later than 5 May 2017 for appropriate consideration by the GAC before the ICANN 59 meeting in Johannesburg, taking into account that the ICANN President and CEO will act as contact point for the GAC in this matter.	Yes	Yes	The GNSO Council refers to its input to the Board regarding the GAC's Hyderabad Communique on this topic, and reiterates the concerns it stated in that response: https://gns0.icann.org/en/drafts/revi-ew-gac-communique-15dec16-en.pdf .

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	<p>RATIONALE</p> <p>The GAC is seeking to assess the effectiveness of its Advice to the ICANN Board.</p> <p>Annex 1 of the GAC Hyderabad Communiqué listed a number of questions to conduct such assessment in relation to Advice implemented as part of the 2013 Registrar Accreditation Agreement and the New gTLD Registry Agreement.</p> <p>The GAC is also interested in assessing the contribution of the SSR and Contractual Compliance departments of ICANN to the prevention and mitigation of domain name abuse.</p> <p>While ICANN responded to Annex 1 of the GAC Hyderabad Communiqué, the information provided was not sufficient to conduct the necessary assessments.</p>			

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4. 2-Character Country/Territory Codes at the Second Level	<p>In light of the discussions with the ICANN Board in Copenhagen on the Board Resolution of 8 November 2016 and its implementation of 13 December 2016 regarding two-letter country codes as second level domains,</p> <p>a. The GAC advises the ICANN Board to:</p> <p>I. Take into account the serious concerns expressed by some GAC Members as contained in previous GAC Advice</p> <p>II. Engage with concerned governments by the next ICANN meeting to resolve those concerns.</p> <p>III. Immediately explore measures to find a satisfactory solution of the matter to meet the concerns of these countries before being further aggravated.</p> <p>IV. Provide clarification of the decision-making process and of the rationale for the November</p>	<p>Yes</p>	<p>Yes</p>	<p>There should be no opportunity for this Advice to cause the Board to re-open their decision on two letter codes at the second level, as contained in the Board’s resolution of 8 November 2016 and subsequent implementation, which came at the end of a long process that included community consultation and input.</p> <p>The Council is also concerned that the Consensus Advice contained in Section VI. 4. of the Communique that essentially requires the ICANN Board to negotiate directly, and reach resolution, with individual governments on two letter domain names at the second level is, in our view, inconsistent with the Consensus Advice mechanism found in the ICANN bylaws and as such should not be considered “Consensus Advice”. The GNSO Council regards this as an unhelpful attempt to sidestep requirements contained in the Bylaws to delegate GAC-</p>

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	<p>2016 resolution, particularly in regard to consideration of the GAC advice, timing and level of support for this resolution.</p> <p>RATIONALE The GAC noted serious concerns expressed by some governments about the consequences introduced by the changes created by the 8 November 2016 Resolution. In particular, according to the new procedure it is no longer mandatory for the registries to notify governments of the plans for their use of 2-letter codes, nor are registries required to seek agreement of governments when releasing two-letter country codes at the second level, which, for example, allows registries to charge governments substantial fees.</p>			<p>equivalent consensus advice to individual GAC members, rather than the GAC as a whole. We note that this was discussed extensively during the CCWG-ACCT Workstream 1 process and was ultimately rejected. Bilateralism between the Board and individual GAC members also has the potential to undermine the utility of the GAC itself and is also inconsistent with ICANN’s commitment to the United States Government and other parts of the ICANN Community that the GAC or individual governments would not end up with more power in a post-transition ICANN.</p>