

ICANN BOARD PAPER NO. 2017.06.12.1a

TITLE: GAC Advice: Copenhagen Communiqué (March 2017)

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The Governmental Advisory Committee (GAC) delivered advice to the ICANN Board in its [Copenhagen Communiqué](#) issued 15 March 2017. The advice concerns: (1) protection of identifiers of the Red Cross/Red Crescent in gTLDs; (2) protection of names and acronyms of Intergovernmental Organizations (IGOs) in gTLDs; (3) mitigation of domain name abuse; and (4) two-character domain names at the second level that correspond to country/territory codes.

The Copenhagen Communiqué was the subject of such an exchange between the Board and the GAC on 27 April 2017. The purpose of the exchange was to ensure common understanding of GAC advice provided in the communiqué. A transcript of the call is available here: <https://participate.icann.org/p34pzh2hdws/>

The Board is being asked to approve an iteration of the GAC-Board Scorecard to address the GAC's advice in the Copenhagen Communiqué. The draft Scorecard is attached to this briefing paper. The Scorecard includes: the text of the GAC advice; the Board's understanding of the GAC advice following the April 2017 dialogue with the GAC; the GNSO Council's review of the advice in the Copenhagen Communiqué as presented in a 2 June 2017 [letter](#) to the Board; and the Board's proposed response to the GAC advice.

STAFF RECOMMENDATION:

Staff recommends that the Board adopt the attached scorecard to address the GAC's advice in the March 2017 Copenhagen Communiqué.

PROPOSED RESOLUTION:

Whereas, the Governmental Advisory Committee (GAC) met during the ICANN58 meeting in Copenhagen, Denmark and issued advice to the ICANN Board in a [communiqué](#) on 15 March 2017 (“Copenhagen Communiqué”).

Whereas, the Copenhagen Communiqué was the subject of an [exchange](#) between the Board and the GAC on 27 April 2017.

Whereas, in a 25 April 2017 [letter](#), the GNSO Council provided its draft feedback to the Board concerning advice in the Copenhagen Communiqué relevant to generic top-level domains to inform the Board and the community of gTLD policy activities that may relate to advice provided by the GAC. The comments were formally adopted by the GNSO on 18 May 2017 and provided to the Board in a 2 June 2017 [letter](#).

Whereas, the Board developed an iteration of the scorecard to respond to the GAC’s advice in the Copenhagen Communiqué, taking into account the exchange between the Board and the GAC and the information provided by the GNSO Council.

Resolved (2017.06.12.01), the Board adopts the scorecard titled “GAC Advice – Copenhagen Communiqué: Actions and Updates (12 June 2017)” **[INSERT LINK TO FINAL GAC ADVICE SCORECARD ADOPTED BY BOARD]** in response to items of GAC advice in the Copenhagen Communiqué.

PROPOSED RATIONALE:

Article 12, Section 12.2(a)(ix) of the ICANN Bylaws permits the GAC to “put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.” In its Copenhagen Communiqué (15 March 2017), the GAC issued advice to the Board on various matters including: (1) protection of identifiers of the Red Cross/Red Crescent in gTLDs; (2) protection of names and acronyms of Intergovernmental Organizations (IGOs) in gTLDs; (3) mitigation of domain name abuse; and (4) two-character domain names at the second level that correspond to country/territory codes. The ICANN Bylaws require the Board to take into account the GAC’s advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not

consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. Any GAC advice approved by a full consensus of the GAC (as defined in the Bylaws) may only be rejected by a vote of no less than 60% of the Board, and the GAC and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

At this time, the Board is taking action to address the advice from the GAC in the Copenhagen Communiqué. The Board's actions are described in scorecard dated 12 June 2017 **[INSERT LINK TO FINAL GAC ADVICE SCORECARD ADOPTED BY THE BOARD]**.

In adopting its response to the GAC advice in the Copenhagen Communiqué, the Board reviewed various materials, including, but not limited to, the following materials and documents:

- Copenhagen Communiqué (15 March 2017):
<https://www.icann.org/en/system/files/correspondence/gac-to-icann-15mar17-en.pdf>
- The GNSO Council's review of the advice in the Copenhagen Communiqué as presented in 15 April 2017 and 2 June 2017 letters to the Board:
<https://www.icann.org/en/system/files/correspondence/bladel-et-al-to-crocker-25apr17-en.pdf>
<https://www.icann.org/en/system/files/correspondence/bladel-et-al-to-crocker-02jun17-en.pdf>

The adoption of the GAC advice as provided in the scorecard will have a positive impact on the community because it will assist with resolving the advice from the GAC concerning gTLDs and other matters. There are no foreseen fiscal impacts associated with the adoption of this resolution. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS. This is an Organizational Administrative function that does not require public comment.

Signature Block:

Submitted by: Christine Willett/ David Olive

Position: Vice President, gTLD Operations

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GAC Advice – Copenhagen Communiqué: Actions and Updates (12 June 2017)

DRAFT Version 5.2

Updated 8 June 2017

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	GNSO Review of Copenhagen Communiqué <i>NOTE: These are draft comments submitted by the GNSO on 25 April 2017. (Scorecard development use only)</i>	DRAFT Board Response
§1.a.i, Protection of the Red Cross and Red Crescent designations and identifiers	<p>The GAC advises the ICANN Board to:</p> <p>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>The Board understands that the GAC wishes that the Board request that the GNSO reexamine its 2013 recommendations relating to the protections of the Red Cross and Red Crescent names and identifiers identified as “Scope 2 Identifiers” within the GNSO “Final Report on Protection of IGO and INGO Identifiers in All gTLDs Policy Development Process.”¹</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 was subsequently passed via electronic ballot.</p>	<p>The Board accepts this advice and has requested that the GNSO Council consider possible modifications to its 2013 recommendations relating to the protections of Red Cross and Red Crescent names and identifiers identified as “Scope 2 Identifiers” within the GNSO “Final Report on Protection of IGO and INGO Identifiers in All gTLDs Policy Development Process.”² The Board will continue to engage with the GAC and the GNSO on this topic, and provide any guidance that it believes appropriate while</p>

¹ ICANN Generic Names Support Organization. 10 November 2013. “Final Report on Protection of IGO and INGO Identifiers in All gTLDs Policy Development Process.” Retrieved from: <https://gnso.icann.org/en/issues/igo-ingo-final-10nov13-en.pdf>

² ICANN. 16 March 2017. Adopted Board Resolutions | Regular Meeting of the ICANN Board. “Protections for Red Cross/Red Crescent Movement Identifiers in gTLDs.” Retrieved from: <https://www.icann.org/resources/board-material/resolutions-2017-03-16-en#2.e.i>

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				respecting the community's processes and the parties' good faith attempts to reach a resolution of the issue.
§2.a.i, IGO Protections	<p>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>The Board understands that the GAC wishes ICANN to implement a permanent system of notifications to IGOs regarding second-level registration of strings that match their acronyms in up to two languages. The Board understands that the GAC also wishes ICANN to implement a parallel system of notification to registrants for a limited time period in line with the GNSO's policy recommendations for such a notification system.</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 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</p>	<p>The Board takes note of this advice and has directed the ICANN organization to investigate the feasibility of implementing a system of notification to IGOs regarding second-level registration of strings that match their acronyms. The Board also notes that the IGO-INGO Access to Curative Rights Protection Mechanisms Policy Development Process (PDP) is ongoing. The Board awaits the results of the PDP, and will consider the PDP results and the findings of the ICANN organization regarding feasibility of IGO notifications as it considers whether implementation of such a mechanism will be appropriate in all circumstances.</p>

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			<p>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 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</p>	

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			<p>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> <p>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.</p>	
§2.a.II, IGO Protections	II. 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	The Board understands that the GAC requests that the Board continue to facilitate discussions between the GAC and the GNSO on this subject. The Board understands that the GAC wishes that the resolution to the issue of IGO acronym protections	See above.	The Board accepts this advice and will continue to facilitate discussions between the GAC and GNSO on the subject of appropriate protections for IGO acronyms.

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	as it relates to IGO immunities recognized under international law as noted by IGO Legal Counsels; and	should reflect that IGOs are in an objectively unique category of rights holders. The GAC also wishes that the resolution reflect a better understanding of relevant GAC Advice, particularly as it relates to IGO immunities recognized under international law.		
§2.a.III, IGO Protections	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.	The Board understands that the GAC requests that the Board urge the GNSO PDP Working Group on IGO-INGO Access to Curative Rights Protection Mechanisms to consider the GAC's comments on the PDP Working Group's Initial Report (https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00023.html).	See above.	The Board notes that the GNSO PDP Working Group on IGO-INGO Access to Curative Rights Protection Mechanisms is considering the comments on its Initial Report which were submitted by the GAC and a number of IGOs on this subject.
§3.a.I, Mitigation of Domain Name Abuse	The GAC advises the ICANN Board to: I. provide written responses to the questions listed in the	The Board understands that the GAC requests responses to the questions listed in the follow-up scorecard attached to the ICANN Copenhagen	The GNSO Council refers to its input to the Board regarding the GAC's Hyderabad Communiqué on this topic, and reiterates the concerns it stated in that response:	The Board has directed the ICANN CEO to respond to the additional questions and engage in a separate dialogue with interested GAC members including the GAC

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	Follow-up Scorecard attached to this Communiqué, 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.	Communiqué. However, based on the conversations during the Board-GAC call on 27 April 2017, the Board understands that the GAC would be agreeable to the ICANN CEO engaging in a separate dialogue with interested members of the GAC including the GAC Public Safety Working Group to address the GAC's questions on DNS abuse and ICANN's processes.	https://gns0.icann.org/en/drafts/review-gac-communique-15dec16-en.pdf .	Public Safety Working Group. The ICANN organization's draft response was sent to the GAC Chair on 30 May 2017 (https://www.icann.org/en/system/files/correspondence/marby-to-schneider-30may17-en.pdf). The ICANN organization will discuss the draft response with interested members of the GAC before finalizing the response.
§4.a.I - §4.a.IV, 2-Character Country/Territory Codes at the Second Level	<p>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</p>	<p>I. The Board understands that some GAC members have expressed serious concern relating to ICANN's implementation of advice relating to 2-character country/territory codes at the second level.</p> <p>II. The Board understands that the GAC wishes that the Board engage with the specific governments that expressed concerns relating to ICANN's implementation of advice</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</p>	The GAC, in its Helsinki Communiqué, reiterated the need to minimize the risk of confusion between country codes and 2-letter registrations at the second level in new gTLDs, but also conveyed the absence of consensus within the GAC on specific measures needed to address the potential for confusion. The GAC advised the Board to "urge the relevant Registry or the Registrar to engage with the relevant GAC members when

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	<p>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 2016 resolution, particularly in regard to consideration of the GAC advice, timing and level of support for this resolution.</p>	<p>relating to 2-character country/territory codes at the second level, and that this engagement should occur before ICANN59 Johannesburg. The Board understands that the GAC will provide a comprehensive list of countries that wish to be included in this consultation. The Board notes that scheduling these consultations to occur before ICANN59 will be challenging, but the ICANN org will attempt to meet this timeline to the extent possible.</p> <p>III. The Board understands that the GAC wishes that once ICANN has engaged with the specific countries that have expressed concerns (referred to in §4.a.II of the Copenhagen Communiqué), the Board should immediately explore ways to address</p>	<p>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-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</p>	<p>a risk is identified in order to come to an agreement on how to manage it or to have a third-party assessment of the situation if the name is already registered.” In response, ICANN affirmatively required Registries/Registry Operators to take specific mandatory steps to avoid confusion with respect to the 2-character labels, and also identified several voluntary measures that Registry/Registry Operators could consider. Finally, in keeping with the GAC Advice, ICANN urged Registries/Registry Operators to the relevant Registry or the Registrar to engage with the relevant GAC members when a risk is identified in order to come to an agreement on how to manage it or to have a third-party assessment of the situation if the name is already registered.</p>

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		<p>the concerns of the governments.</p> <p>IV. The Board understands that the GAC wishes that the Board provide clarification surrounding the decision-making process and rationale of the November 2016 resolution relating to release of 2-character country/territory codes at the second level. The Board understands that the clarification provided should address the Board’s consideration of GAC Advice in the decision-making process, the timing of the Board’s resolution, and the level of support for the resolution.</p>	<p>would not end up with more power in a post-transition ICANN.</p>	<p>Although ICANN has fully implemented the GAC’s Advice on this matter, the Board understands that some GAC members continue to feel that their concerns have not been addressed. Accordingly, the Board has directed the CEO to engage with concerned governments to listen to their views and concerns and further explain the Board’s decision-making process.</p>