

## ICANN BOARD PAPER NO. 2014.02.07.2a.REV1

**TITLE:** Acknowledgment of GNSO Policy Development Process – Protection of IGO-INGO Identifiers in All gTLDs

**PROPOSED ACTION:** For Resolution

### EXECUTIVE SUMMARY:

At its meeting on 20 November 2013, the Generic Names Supporting Organization (GNSO) unanimously approved a number of recommendations concerning the Protection of IGO and INGO Identifiers in All gTLDs Policy Development Process (PDP), namely:

- 25 consensus recommendations, which are intended to protect organizational identifiers (full names and limited acronyms) of International Governmental Organizations (IGO) and International Non-Governmental Organizations (INGO), including the Red Cross Red Crescent Movement (RCRC) and the International Olympic Committee (IOC). The full set of policy recommendations are included in the Final Report:
- Of the 25 consensus recommendations, specific recommendations were adopted to protect certain organizational identifiers by reserving them at the top and second levels. These recommendations also include an exception procedure where reserved identifiers can be removed from the reserved list in certain circumstances. In some cases where an identifier is not reserved at the second level, the recommendations suggest that the identifier be protected through use of the Trademark Clearinghouse (or a clearinghouse model) and be afforded claims notice protection.

The GNSO Council's unanimous vote in favor of these policy recommendations exceeds the voting threshold required by Article X, Section 3.9.f of the ICANN Bylaws regarding the formation of consensus policies. Under the ICANN Bylaws, the Council's unanimous (supermajority) support for the motion obligates the Board to adopt the recommendation unless by a vote of more than two-thirds, the Board determines that

the policy is not in the best interests of the ICANN community or ICANN. The policy recommendations, if approved by the Board, may impose new Consensus Policies on certain contracted parties. The Bylaws require the Board to “meet to discuss” the GNSO policy recommendations “as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager.”

The issues covered by the GNSO’s PDP have also been the subject of advice to the Board from the GAC. A chart noting the differences between the GNSO policy recommendations and the GAC advice is included in the Reference Materials to this paper. Staff notes the following key points in relation to the WG’s recommendations and those of the GAC:

- RCRC and IOC: The GNSO recommendations for the RCRC and IOC largely correspond with the advice submitted by the GAC to the ICANN Board. Specifically, the GNSO recommendations call for reservation of a list of full name identifiers for these organizations in the New gTLD Registry Agreement (i.e. Specification 5). The full name identifiers listed as Scope 1 Identifiers by the GNSO correspond to the list provided by the GAC. The GNSO does not, however, recommend protection for RCRC acronyms other than through entry into the TMCH and protection through the TMCH 90-day claims notification process<sup>1</sup>.
- IGOs: The NGPC adopted Resolutions 2014.01.09.NG03 – 2014.01.09.NG04 to continue to temporarily protect a precise list of IGO names and acronyms (provided by the GAC on 22 March 2013) while the NGPC finalizes the modalities for permanent protection of IGO acronyms at the second level in response to GAC advice issued for New gTLDs. The GNSO’s recommendations for IGOs are for those IGOs named in the GAC list of 22 March 2013, although the specific recommendations approved by the GNSO Council differs from the GAC advice as follows:
  - the GNSO Council’s unanimous recommendation for IGOs is to provide protection, via reservation in Specification 5 of the New gTLD Registry Agreement only for IGO full names, with IGO acronyms to be added to

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<sup>1</sup> Note that the IOC did not seek protection for its acronyms and as such the GNSO’s recommendations relating to the IOC concerned only IOC names.

the TMCH and protected through the TMCH 90 days claims notification process.

- for both IGOs and INGOs, the GNSO Council also unanimously approved a request for an Issue Report concerning IGO and INGO access to curative rights protection mechanisms, namely, the Uniform Dispute Resolution Policy (UDRP) and Uniform Rapid Suspension procedure (URS), as a precedent step to a possible PDP on this specific issue. The Issue Report is currently in process.

Before resolving the substantive issues concerning the GAC's advice and the GNSO policy recommendations, it is recommended that the Board decide how it would like to proceed on this topic as a procedural matter given that there are policy recommendations from the GNSO and advice to the Board from the GAC on the same topic.

**STAFF RECOMMENDATION:**

Staff recommends that the Board acknowledges receipt of the GNSO policy recommendations on the Protection of IGO-INGO Identifiers in All gTLDs, and request additional time to consider the recommendations. Given that the NGPC is actively working on the issues that are the subject of the PDP as it considers the GAC advice, staff also recommends that the Board direct the NGPC to (1) consider the policy recommendations from the GNSO as it continues to actively develop an approach to respond to the GAC advice on protections for IGOs, and (2) develop a comprehensive proposal to address the GAC advice and the GNSO policy recommendations for consideration by the Board at a subsequent meeting.

**PROPOSED RESOLUTION:**

Whereas, on 17 October 2012, the GNSO Council launched a Policy Development Process (PDP) on the Protection of IGO-INGO Identifiers in All gTLDs addressing the questions set forth in the PDP Working Group Charter at <http://gns0.icann.org/en/issues/igo-ingo-charter-15nov12-en.pdf>;

Whereas, the PDP followed the prescribed PDP steps as stated in the ICANN Bylaws and the GNSO PDP Manual, and resulted in a Final Report delivered to the GNSO Council on 10 November 2013;

Whereas, the Protection of IGO-INGO Identifiers in All gTLDs Working Group (IGO-INGO WG) reached consensus on twenty-five recommendations in relation to the issues outlined in its Charter;

Whereas, the GNSO Council reviewed, and discussed the recommendations of the IGO-INGO WG, and adopted the WG's consensus recommendations by a unanimous vote at its meeting on 20 November 2013 (see <http://gns0.icann.org/en/council/resolutions#20131120-2>);

Whereas after the GNSO Council vote, a public comment period was held on the approved recommendations, and the comments received have been summarized and published (<http://www.icann.org/en/news/public-comment/igo-ingo-recommendations-27nov13-en.htm>);

Whereas, the GAC advised the ICANN Board in the Buenos Aires Communiqué that it remained committed to continuing the dialogue with the NGPC on finalizing the modalities for permanent protection of IGO acronyms at the second level, and the NGPC is actively working on the issue.

Resolved (2014.02.07.xx), the Board acknowledges receipt of the GNSO Council's unanimous recommendations on the Protection of IGO-INGO Identifiers in All gTLDs as set forth in the IGO-INGO WG's Final Report (see <http://gns0.icann.org/en/issues/igo-ingo-final-10nov13-en.pdf>), and requests additional time to consider the recommendations so that it may take into account advice from the GAC addressing the same topic.

Resolved (2014.02.07.xx), the Board directs the ICANN Board New gTLD Program Committee to: (1) consider the policy recommendations from the GNSO as it continues to actively develop an approach to respond to the GAC advice on protections for IGOs, and (2) develop a comprehensive proposal to address the GAC advice and the GNSO policy recommendations for consideration by the Board at a subsequent meeting.

## **PROPOSED RATIONALE:**

### ***Why is the Board addressing this issue now?***

In response to the GAC advice on protecting the identifiers of the RCRC, IOC and IGOs in the New gTLD Program, the Board tasked the GNSO with developing policy in response to the GAC advice. In its deliberations, the GNSO Council determined that a Policy Development Process (PDP) was required to resolve the issue as to special protections of strings at the top and second levels for international organizations. In October 2012, the GNSO Council approved the initiation of a PDP on this issue. The PDP Working Group published its Initial Report for public comment on 14 June 2013, followed by its Final Report on 10 November 2013. The Final Report included over twenty consensus recommendations from the WG and Minority Statements from the RCRC, IGO and INGO representatives who participated in the WG, the GNSO's Non-Commercial Stakeholder Group and ICANN's At Large Advisory Committee. All the WG's consensus recommendations were approved unanimously by the GNSO Council.

Following the closing of the public comment period on these recommendations and adoption by the GNSO Council of a Recommendations Report to the ICANN Board, the next step as outlined in Annex A of the ICANN Bylaws is consideration by the ICANN Board of the GNSO recommendations. The Bylaws require the Board to "meet to discuss" the GNSO policy recommendations "as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager.

In addition, [Article XI, Section 2.1](#) 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." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013, its Durban Communiqué dated 18 July 2013, and its Buenos Aires Communiqué dated 20 November 2013. 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 policies. 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. The Board and the GAC will then try

in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

***What is the proposal being considered?***

Before considering the resolving the substantive issues concerning the GNSO policy recommendations, the Board is considering how it would like to proceed on this topic as a procedural matter.

The GNSO unanimously adopted the policy recommendations in the Final Report on the IGO-INGO PDP. The policy recommendations are being transmitted to the Board for review and consideration pursuant to the ICANN Bylaws. The GAC has also issued advice to the Board on protections for IGOs in the context of the New gTLD Program - most recently in its Buenos Aires Communiqué. Because the advice relates to the New gTLD Program, the ICANN Board New gTLD Program Committee (NGPC) is considering the GAC advice. The NGPC has not yet finalized its proposal to address the GAC's advice relating to protections for IGOs but is actively working on the issue.

In general, the GNSO recommendations are largely consistent with the advice submitted by the GAC to the ICANN Board. However, there are specific GNSO policy recommendations that differ from the GAC's advice. At this time, the Board is considering acknowledging the policy recommendations of the GNSO in the Final Report on the IGO-INGO PDP, but requesting additional time to consider the recommendations given that the NGPC is actively working on addressing the GAC's advice on the same topic. The Board is considering taking a holistic approach to considering the GNSO policy recommendations and the GAC's advice by directing the NGPC to (1) consider the policy recommendations from the GNSO as it continues to actively develop an approach to respond to the GAC advice on protections for IGOs, and (2) develop a comprehensive proposal to address the GAC advice and the GNSO policy recommendations for consideration by the Board at a subsequent meeting.

***What significant materials did the Board review?***

The Board reviewed the GNSO Council Recommendations Report to the Board, the

summary of public comments and the WG Final Report. The Board also reviewed the GAC's Beijing Communiqué, Durban Communiqué and Buenos Aires Communiqué.

The concerns and issues raised by the community and stakeholders on the GNSO policy recommendations and the GAC's advice will be discussed when the Board considers the substance of the GNSO policy recommendations and the GAC's advice. At that time, the Board will also consider the fiscal impacts or ramifications on ICANN and the community. There are no security, stability, or resiliency issues related to the DNS if the Board approves the proposed recommendations.

**Signature Block:**

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Date Noted: 30 January 2014

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