

**GAC Advice – Kobe Communiqué: Board Action (15 May 2019)**

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
<p><b>§1.a.I WHOIS and Data Protection Legislation</b></p>	<p><b>a. The GAC advises the Board to:</b></p> <p>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</p> <p><u>RATIONALE:</u></p> <p>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 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 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</p>	<p>The Board understands that the GAC wishes for the ICANN Board to 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 for activities in Phase 2 of the EPDP.</p> <p>The Board acknowledges the GAC’s previous advice 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. The Board also acknowledges that the GAC has previously noted that such legitimate purposes include, for example, civil, administrative and criminal law enforcement, cybersecurity, consumer protection and IP rights protection.</p> <p>The Board acknowledges that the European Data Protection Board has encouraged ICANN and the community to develop a comprehensive model covering the entirety of the data processing cycle. The Board also notes that the GAC has stated that the legitimate interests reflected in ICANN’s Bylaws are consistent with the recitals to the GDPR.</p> <p>The Board understands that the GAC will closely monitor and assess the progress reports prepared by the GNSO EPDP, and that the GAC reserves the possibility of providing further guidance if the pace of progress so requires.</p> <p>The Board notes the GAC’s statement 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 Board understands that the GAC encourages a judicious definition of the scope of the Phase 2 efforts, with 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 Board understands that the GAC received a briefing on the work of the Technical Study Group and that the GAC considers that the development of options for technical implementation demonstrates how a future system for RDS access could be implemented, also with</p>	<p>The Board acknowledges this advice and while it cannot guarantee the end result, because the EPDP is a community procedure that determines its own processes, the Board does support the request that the second phase of this policy development institute concrete milestones and progress reports. The Board shall convey the request via its Liaisons to the EPDP and via its communications with the GNSO Council. The Board notes that ICANN org is also providing support to the EPDP Phase 2 to support its work.</p>

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
	<p>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. 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>a view to data security and privacy considerations. The Board understands that the GAC believes Phase 2 considerations could benefit from further exploration of technical implementation options and that engaging in such considerations in parallel can help ensure that policies are swiftly put into practice.</p> <p>The Board understands that 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 and do not need to be deferred until the completion of the EPDP.</p>	
<p><b>§1.a.II WHOIS and Data Protection Legislation</b></p>	<p><b>a. The GAC advises the Board to:</b></p> <p>ii. Take necessary steps to ensure that the scope of phase 2 activities is clearly defined with a view to expeditious conclusion and implementation;</p> <p><u>RATIONALE:</u></p> <p>See rationale in §1.a.I.</p>	<p>The Board understands that the GAC wishes for the ICANN Board to ensure that the scope of the EPDP Phase 2 activities is clearly defined, with a view to expeditious conclusion and implementation.</p>	<p>The Board acknowledges this advice and while it cannot guarantee the end result, because the EPDP is a community procedure that determines its own processes, the Board does support the request that the second phase of this policy development institute concrete milestones and progress reports. The Board shall convey the request via its Liaisons to the EPDP and via its communications with the GNSO Council. The Board notes that ICANN org is also providing support to the EPDP Phase 2 to support its work.</p>
<p><b>§1.a.III WHOIS and Data Protection Legislation</b></p>	<p><b>a. The GAC advises the Board to:</b></p> <p>iii. Make available the necessary resources for Phase 2 to expeditiously advance on the complex legal issues deferred from Phase 1;</p> <p><u>RATIONALE:</u></p> <p>See rationale in §1.a.I.</p>	<p>The Board understands that the GAC wishes for the ICANN Board to make available the necessary resources for the EPDP Phase 2 to expeditiously advance on the complex legal issues deferred from Phase 1.</p>	<p>The Board acknowledges this advice and appreciates the need to ensure that necessary resources are available for the EPDP Phase 2, including expert legal resources. While it is ultimately up to the EPDP to “expeditiously advance on the complex legal issues deferred from Phase 1”, the Board will ensure, subject to normal budgetary prudence, that there is support for the work of the EPDP in sorting through these legal issues.</p>
<p><b>§1.a.IV WHOIS and Data Protection Legislation</b></p>	<p><b>a. The GAC advises the Board to:</b></p> <p>iv. Consider instituting additional parallel work efforts on technical implementations, such as that carried out by the</p>	<p>The Board understands that the GAC wishes for the ICANN Board to consider instituting additional parallel work efforts on technical implementations for purposes of informing and complementing the EPDP’s Phase 2 activities. The Board acknowledges the GAC’s advice and notes that the Technical Study Group was formed by the CEO and</p>	<p>The Board acknowledges this advice and understands that the GAC is requesting the ICANN Board to do all that it can, within its authority and remit and subject to budgetary constraints, to facilitate the work of the EPDP, including through “parallel efforts” such as the Technical Study Group (TSG). The Board notes that the TSG presented a <a href="#">Draft</a></p>

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
	<p>Technical Study Group, for purposes of informing and complementing the EPDP’s Phase 2 activities;</p> <p><u>RATIONALE:</u></p> <p>See rationale in §1.a.I.</p>	<p>not the Board. The Board is following the work of the Technical Study Group, which is intended to inform the work of the EPDP and not to replace it.</p>	<p><a href="#">Technical Model</a> at ICANN64 and received community feedback. The TSG has since completed its work and published <a href="#">TSG01, Technical Model for Access to Non-Public Registration Data</a>. ICANN <a href="#">will</a> share the model with the European Data Protection Board (EDPB) and solicit the EDPB’s feedback on specific questions related to the model. ICANN will also present the model to the European Commission before that.</p> <p>In regard to any other “parallel efforts”, the Board will consider those as necessary but reiterates that it will take actions only within its authority and subject to budgetary considerations; the Board will not take any action that would undermine or replace the work of the EPDP.</p>
<p><b>§1.a.V WHOIS and Data Protection Legislation</b></p>	<p><b>a. The GAC advises the Board to:</b></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><u>RATIONALE:</u></p> <p>See rationale in §1.a.I.</p>	<p>The Board understands that the GAC wishes for the ICANN Board to instruct the ICANN org to facilitate swift implementation of the new Registration Directory Service policies as they are developed and agreed. The Board understands this includes sending distinct parts to implementation when they are agreed, such as questions deferred from Phase 1.</p>	<p>The Board accepts this advice and will do what it can, within its authority and remit, and in light of other relevant considerations, to facilitate swift implementation of new registration data directory services policies, and if possible, send distinct parts to implementation as and when they are agreed.</p>
<p><b>§1.a.VI WHOIS and Data Protection Legislation</b></p>	<p><b>a. The GAC advises the Board to:</b></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></p> <p>See rationale in §1.a.I.</p>	<p>The Board understands that the GAC wishes for the ICANN Board to consider re-starting implementation processes for relevant existing policies, such as the Privacy Proxy Services Accreditation Issues Policy.</p>	<p>The Board accepts this advice. The Board believes that waiting to proceed with implementation of Privacy Proxy Services Accreditation Issues (PPSAI) Policy until the completion of the RDS EPDP is a prudent course of action. This is because the same issues that need to be resolved to finalize PPSAI implementation are under active discussion, such as controller/joint controller/independent controller issues and providing access to non-public personal contact details consistent with GDPR. This course of action will allow ICANN org and the broader community to focus resources on ensuring that GDPR-compliant requirements are finalized for existing contracted parties before proceeding to implement similar requirements for a new category of contracted parties.</p> <p>During the implementation phase of the EPDP ICANN org will be reviewing all ICANN policies and services which may be impacted by the new Consensus Policy and will work with the GNSO and the community to identify the appropriate course of action.</p>

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
<p><b>§2.a.I 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><b>a. The GAC advises the Board to:</b></p> <p>i. Promptly meet with the CCT Review Team leadership to discuss the Board’s resolution and</p> <p><u>RATIONALE:</u></p> <p>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>The Board acknowledges the GAC’s concern with the recent Board resolution response to the Final Recommendations of the Competition, Consumer Trust and Consumer Choice Review Team. The Board notes the CCT review is a vital accountability mechanism. The Board understands that the GAC urges 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>The Board acknowledges the GAC’s concerns regarding the recent Board resolution in response to the Final Recommendations of the Competition, Consumer Trust and Consumer Choice Review Team and accepts the advice.</p> <p>The Board has initiated communications with the CCT Review Team implementation shepherds (designated by the CCT Review Team) to address the areas related to CCT recommendations, having held a call on 23 April. The Board also understands the importance of working with the community to develop a process to prioritize and establish a sustainable cadence of implementations, with a defined protocol for handling specific review recommendations differently as compared to the past reviews. The Board has publicly committed to meet with the leaders of other specific review teams and to hold a public session at ICANN65 with the ICANN community, to address the broader issues around reviews and recommendations.</p> <p>The Board stands by its decisions with respect to the CCT recommendations, for the reasons set forth in the letter issued in Kobe; however, the Board is reviewing the timing and communication of its responses to specific review teams to avoid surprises in the future.</p> <p>The Board would also like to provide further clarification of its action. As noted in the communication to the CCT review team, the “intention was and remains to fully consider and thoughtfully act on each of the recommendations in the Final Report. To be clear, the Board has not rejected any of the recommendations in the Final Report. After careful consideration of the 35 recommendations, the Board determined to address each, in one of three ways:</p> <ul style="list-style-type: none"> <li>• The Board accepted six recommendations and directed the ICANN org to develop a costing and implementation plan, to be shared with the community within six months from the Board action. We acknowledge that some members of the community believe that this timeline is unnecessarily extended; and we will review these recommendations with ICANN org to determine whether this timeline can be accelerated.</li> <li>• Fourteen of the recommendations directed to the Board were actions that were not directly within the Board's remit at this stage in the bottom up multistakeholder process. The Board felt that some of these recommendations were excellent. We also had questions about</li> </ul>

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
			<p>others. We ultimately concluded that expressing an opinion on policy recommendations outside the Board’s remit at this stage may be interpreted as the Board’s interfering with policy development authority allocated to the community under the ICANN Bylaws. The Board is also mindful of the relative role of the Board and ICANN org. Accordingly, we referred recommendations in this category to either the appropriate policy development body or to ICANN org to handle. Please keep in mind that the community is obligated to fully consider all input into PDPs and CCWGs, and that the Board is ultimately responsible for ensuring that such input is duly considered and appropriately addressed.</p> <ul style="list-style-type: none"> <li>• Seventeen of the remaining recommendations were categorized as pending. The Board felt that recommendations in this category raised substantive questions or required more information. The Board directed ICANN org to take specific actions to resolve the pending status as soon as possible. We acknowledge that some members of the community believe that this amounts to rejecting the recommendations. This is not the case, and we will review these recommendations with ICANN org to determine whether a specific timeline can be established.</li> </ul>
<p><b>§2.a.II 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><b>a. The GAC advises the Board to:</b></p> <ul style="list-style-type: none"> <li>ii. Possibly reconsider certain decisions on recommendations if appropriate.</li> </ul> <p><u>RATIONALE:</u></p> <p>See rationale in §2.a.i.</p>	<p>The Board also acknowledges the GAC’s concern with the recent Board resolution response to the Final Recommendations of the Competition, Consumer Trust and Consumer Choice Review Team. The Board notes the CCT review is a vital accountability mechanism. The Board understands that the GAC urges 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>See response on §2.a.i.</p>

**GAC Advice – Kobe Communiqué: Follow-up on Deferred Advice (15 May 2019)**

GAC Deferred Advice Item	Advice Text	Board Understanding on Previous Scorecard	Board Response on Previous Scorecard	Board Response
<p align="center"><b>San Juan Communiqué §1.a.IV GDPR and WHOIS</b></p>	<p><b>a. the GAC advises the ICANN Board to instruct the ICANN Organization to:</b></p> <p>iv. Distinguish between legal and natural persons, allowing for public access to WHOIS data of legal entities, which are not in the remit of the GDPR;</p>	<p>The Board understands that the GAC wishes for the ICANN Board to instruct the ICANN org to:</p> <p>iv. Distinguish between legal and natural persons, allowing for public access to WHOIS data of legal entities, which are not in the remit of the GDPR;</p>	<p><b>San Juan Scorecard:</b> As requested by the GAC in its <a href="#">17 May 2018</a> letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC.</p> <p><b>Barcelona Scorecard:</b> Previously, the Board stated in response to this item that, as requested by the GAC in its <a href="#">17 May 2018</a> letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC. The Board is currently monitoring progress of the EPDP and community work on a unified access model and plans to address this advice following the outcome of those processes.</p>	<p>The Board continues to defer action on this advice. As noted in the Barcelona scorecard, the Board monitored the progress of the EPDP, which has now concluded its Phase 1 work. The public comment on the EPDP Team Final Report closed on 17 April 2019, and ICANN org has published a report of public comments.</p> <p>Because the GAC <a href="#">stated</a> that it “would welcome the ICANN Board’s adoption the EPDP Phase 1 policy recommendations as soon as possible” and the EPDP Team has said that it “will determine and resolve the Legal vs. Natural issue in Phase 2”, the Board continues to defer action on this advice.</p>
<p align="center"><b>San Juan Communiqué §1.a.V GDPR and WHOIS</b></p>	<p><b>a. the GAC advises the ICANN Board to instruct the ICANN Organization to:</b></p> <p>v. Ensure continued access to the WHOIS, including non-public data, for users with a legitimate purpose, until the time when the interim WHOIS model is fully operational, on a mandatory basis for all contracted parties;</p>	<p>The Board understands that the GAC wishes for the ICANN Board to instruct the ICANN org to:</p> <p>v. Ensure continued access to the WHOIS, including non-public data, for users with a legitimate purpose, until the time when the interim WHOIS model is fully operational, on a mandatory basis for all contracted parties;</p>	<p><b>San Juan Scorecard:</b> As requested by the GAC in its 17 May 2018 letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC.</p> <p><b>Barcelona Scorecard:</b> Previously, the Board stated in response to this item that, as requested by the GAC in its <a href="#">17 May 2018</a> letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC. The Board is currently monitoring the progress of the EPDP and community work on a unified access model and plans to address this advice following the outcome of those processes.</p>	<p>The Board accepts this advice. The Board notes that EPDP Recommendation 18 provides a mechanism for third-parties with legitimate interests to access to non-public gTLD registration data, and obligates the contracted parties to disclose the requested non-public data if the request passes the balancing test. The Board anticipates that this recommended model for requests for lawful disclosure of non-public registration data will be expanded upon in Phase 2, in light of Recommendation 3, which states that the EPDP Team undertakes to make a recommendation pertaining to a standardised model for lawful disclosure of non-public Registration Data now that the gating questions in the charter have been answered. This will include addressing questions such as:</p> <ul style="list-style-type: none"> <li>• Whether such a system should be adopted</li> <li>• What are the legitimate purposes for third parties to access registration data?</li> <li>• What are the eligibility criteria for access to non-public Registration data?</li> <li>• Do those parties/groups consist of different types of third-party requestors?</li> </ul>

GAC Deferred Advice Item	Advice Text	Board Understanding on Previous Scorecard	Board Response on Previous Scorecard	Board Response
				<ul style="list-style-type: none"> <li>• What data elements should each user/party have access to?</li> </ul>
<p><b>San Juan Communiqué §1.a.VI GDPR and WHOIS</b></p>	<p>a. <b>the GAC advises the ICANN Board to instruct the ICANN Organization to:</b></p> <p>vi. Ensure that limitations in terms of query volume envisaged under an accreditation program balance realistic investigatory crossreferencing needs;</p>	<p>The Board understands that the GAC wishes for the ICANN Board to instruct the ICANN org to:</p> <p>vi. Ensure that limitations in terms of query volume envisaged under an accreditation program balance realistic investigatory crossreferencing needs; and</p>	<p><b>San Juan Scorecard:</b> As requested by the GAC in its 17 May 2018 letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC.</p> <p><b>Barcelona Scorecard:</b> Previously, the Board stated in response to this item that, as requested by the GAC in its <a href="#">17 May 2018</a> letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC. The Board is currently monitoring the progress of the EPDP and community work on a unified access model and plans to address this advice following the outcome of those processes.</p>	<p>The Board continues to defer action on this advice. Recommendation 3 of the EPDP Final Report states that the EPDP Team undertakes to make a recommendation pertaining to a standardised model for lawful disclosure of non-public Registration Data now that the gating questions in the charter have been answered. This will include addressing questions such as:</p> <ul style="list-style-type: none"> <li>• Whether such a system should be adopted</li> <li>• What are the legitimate purposes for third parties to access registration data?</li> <li>• What are the eligibility criteria for access to non-public Registration data?</li> <li>• Do those parties/groups consist of different types of third-party requestors?</li> <li>• What data elements should each user/party have access to?</li> </ul>
<p><b>San Juan Communiqué §1.a.VII GDPR and WHOIS</b></p>	<p>a. <b>the GAC advises the ICANN Board to instruct the ICANN Organization to:</b></p> <p>vii. Ensure confidentiality of WHOIS queries by law enforcement agencies.</p>	<p>The Board understands that the GAC wishes for the ICANN Board to instruct the ICANN org to:</p> <p>vii. Ensure confidentiality of WHOIS queries by law enforcement agencies.</p>	<p><b>San Juan Scorecard:</b> As requested by the GAC in its 17 May 2018 letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC.</p> <p><b>Barcelona Scorecard:</b> Previously, the Board stated in response to this item that, as requested by the GAC in its <a href="#">17 May 2018</a> letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC. The Board is currently monitoring the progress of the EPDP and community work on a unified access model and plans to address this advice following the outcome of those processes.</p>	<p>The Board continues to defer action on this advice. Recommendation 3 of the EPDP Final Report states that the EPDP Team undertakes to make a recommendation pertaining to a standardised model for lawful disclosure of non-public Registration Data now that the gating questions in the charter have been answered. This will include addressing questions such as:</p> <ul style="list-style-type: none"> <li>• Whether such a system should be adopted</li> <li>• What are the legitimate purposes for third parties to access registration data?</li> <li>• What are the eligibility criteria for access to non-public Registration data?</li> <li>• Do those parties/groups consist of different types of third-party requestors?</li> <li>• What data elements should each user/party have access to?</li> </ul>
<p><b>San Juan Communiqué §2.a.I IGO Reserved Acronyms</b></p>	<p>Noting ongoing developments in the PDP on IGO access to curative rights protection mechanisms, which the GAC is monitoring closely, the GAC affirms its advice from previous Communiqués concerning preventative protection of IGO</p>	<p>The Board sent a <a href="#">letter</a> to the GAC requesting clarification regarding this advice. The GAC provided a <a href="#">response</a> on 15 May 2018. Based on the GAC's response, the Board understands that the GAC wishes for the ICANN Board to:</p>	<p><b>San Juan Scorecard:</b> The Board thanks the GAC for the clarifications provided on <a href="#">15 May 2018</a>. The Board has asked the ICANN Organization to review the advice in light of these responses and to assess the feasibility of the request. The Board will defer</p>	<p>Following from the Board's response to the GAC's Panama Communiqué, the Board is aware that a feasibility study has been initiated by ICANN Org with the support of the GAC, WIPO, and OECD to ensure that the list of IGOs is as accurate and</p>

GAC Deferred Advice Item	Advice Text	Board Understanding on Previous Scorecard	Board Response on Previous Scorecard	Board Response
	<p>identifiers, recalls the importance of maintaining temporary protections until a permanent resolution on IGO identifiers is reached in order prevent irreparable harm to IGOs and</p> <p><b>a. advises the ICANN Board to:</b></p> <p>i. Ensure that the list of IGOs eligible for preventative protection is as accurate and complete as possible.</p> <p><u>RATIONALE</u> Despite indications to the contrary, the GNSO has still not concluded its PDP on curative rights protection mechanisms. The GAC and IGOs remain fully engaged on this issue and emphasize that a removal of interim protections before a permanent decision on IGO acronym protection is taken could result in irreparable harm to IGOs. In the interim, ICANN has moved forward to implement GAC advice related to protection of IGO full names at the second level. These protections will be based on a list of IGOs that fulfil previously agreed-upon criteria. To ensure this advice is effectively implemented, following significant work undertaken by IGOs resulting in significant progress on compiling this list, a focused effort is needed to contact remaining IGOs, so their names are protected accurately in the chosen two languages. ICANN has been in contact with the OECD and WIPO on this initiative, which the GAC supports.</p>	<p>i.Ensure that the list of IGOs eligible for preventative protection is as accurate and complete as possible.</p> <p>The Board understands that the GAC and IGOs remain engaged on this issue and that the GAC is concerned that a removal of interim protections before a permanent decision on IGO acronym protection is taken could result in irreparable harm to IGOs.</p> <p>The Board also understands that the GAC emphasizes that to ensure this advice is effectively implemented, a focused effort is needed to contact remaining IGOs so their names are protected accurately in the chosen two languages.</p>	<p>action on this item at this time, and in due course will engage with the GAC should further clarification be necessary before taking action on this advice.</p> <p><b>Barcelona Scorecard:</b> The Board continues to defer action on this item as the ICANN org continues to assess the feasibility of the GAC’s request. The Board is aware that a dialogue has been initiated between ICANN Org and the GAC to ensure that the list of IGOs eligible for preventative protection is as accurate and complete as possible. The Board will monitor the progress of this dialogue and will engage with the GAC as necessary before taking any further action on this advice.</p>	<p>complete as possible. The Board intends to monitor the progress of this study and will engage with the GAC as necessary concerning ICANN Org’s implementation of this advice.</p>



**GAC Advice – Kobe Communiqué: Follow-up on Previous Advice (15 May 2019)**

<b>GAC Follow-up on Previous Advice Item</b>	<b>Text</b>	<b>Board Understanding Following Board-GAC Call</b>	<b>Board Response</b>
<p><b>1. Subsequent Rounds of New gTLDs</b></p>	<p>The GAC recalls its advice in the ICANN56 Helsinki Communiqué, which states that the development of policy on further releases of new gTLDs needs to fully consider all the results of the relevant reviews and analyses to determine which aspects and elements need adjustment. The GAC advised the Board to address and consider these results and concerns before proceeding with new rounds.</p>	<p>The Board understands the GAC’s previous advice to address and consider all the results of the relevant reviews and analyses before proceeding with new rounds of the New gTLD program.</p>	<p>As noted in the <a href="#">Helsinki Scorecard</a>, the Board accepted the advice and monitored the work of the community regarding reviews of the current round of the New gTLD Program and the policy development work for subsequent rounds of the New gTLD Program. All of the Bylaws- and Board-committed reviews related to the 2012 round of new gTLDs have been completed. The Subsequent Procedures PDP Working Group anticipates delivering its Final Report in the second half of calendar year 2019. The Board will consider the policy recommendations when the community completes its work and the recommendations are brought to the Board.</p>

**GAC Advice – Kobe Communiqué: Board Action (15 May 2019)**

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
<p><b>§1.a.I</b> <b>WHOIS and Data</b> <b>Protection</b> <b>Legislation</b></p>	<p><b>a. The GAC advises the Board to:</b></p> <p>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</p> <p><u>RATIONALE:</u></p> <p>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 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 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</p>	<p>The Board understands that the GAC wishes for the ICANN Board to 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 for activities in Phase 2 of the EPDP.</p> <p>The Board acknowledges the GAC’s previous advice 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. The Board also acknowledges that the GAC has previously noted that such legitimate purposes include, for example, civil, administrative and criminal law enforcement, cybersecurity, consumer protection and IP rights protection.</p> <p>The Board acknowledges that the European Data Protection Board has encouraged ICANN and the community to develop a comprehensive model covering the entirety of the data processing cycle. The Board also notes that the GAC has stated that the legitimate interests reflected in ICANN’s Bylaws are consistent with the recitals to the GDPR.</p> <p>The Board understands that the GAC will closely monitor and assess the progress reports prepared by the GNSO EPDP, and that the GAC reserves the possibility of providing further guidance if the pace of progress so requires.</p> <p>The Board notes the GAC’s statement 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 Board understands that the GAC encourages a judicious definition of the scope of the Phase 2 efforts, with 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 Board understands that the GAC received a briefing on the work of the Technical Study Group and that the GAC considers that the development of options for technical implementation demonstrates how a future system for RDS access could be implemented, also with</p>	<p>The Board acknowledges this advice and while it cannot guarantee the end result, because the EPDP is a community procedure that determines its own processes, the Board does support the request that the second phase of this policy development institute concrete milestones and progress reports. The Board shall convey the request via its Liaisons to the EPDP and via its communications with the GNSO Council. The Board notes that ICANN org is also providing support to the EPDP Phase 2 to support its work.</p>

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
	<p>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. 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>a view to data security and privacy considerations. The Board understands that the GAC believes Phase 2 considerations could benefit from further exploration of technical implementation options and that engaging in such considerations in parallel can help ensure that policies are swiftly put into practice.</p> <p>The Board understands that 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 and do not need to be deferred until the completion of the EPDP.</p>	
<p><b>§1.a.II WHOIS and Data Protection Legislation</b></p>	<p><b>a. The GAC advises the Board to:</b></p> <p>ii. Take necessary steps to ensure that the scope of phase 2 activities is clearly defined with a view to expeditious conclusion and implementation;</p> <p><u>RATIONALE:</u></p> <p>See rationale in §1.a.I.</p>	<p>The Board understands that the GAC wishes for the ICANN Board to ensure that the scope of the EPDP Phase 2 activities is clearly defined, with a view to expeditious conclusion and implementation.</p>	<p>The Board acknowledges this advice and while it cannot guarantee the end result, because the EPDP is a community procedure that determines its own processes, the Board does support the request that the second phase of this policy development institute concrete milestones and progress reports. The Board shall convey the request via its Liaisons to the EPDP and via its communications with the GNSO Council. The Board notes that ICANN org is also providing support to the EPDP Phase 2 to support its work.</p>
<p><b>§1.a.III WHOIS and Data Protection Legislation</b></p>	<p><b>a. The GAC advises the Board to:</b></p> <p>iii. Make available the necessary resources for Phase 2 to expeditiously advance on the complex legal issues deferred from Phase 1;</p> <p><u>RATIONALE:</u></p> <p>See rationale in §1.a.I.</p>	<p>The Board understands that the GAC wishes for the ICANN Board to make available the necessary resources for the EPDP Phase 2 to expeditiously advance on the complex legal issues deferred from Phase 1.</p>	<p>The Board acknowledges this advice and appreciates the need to ensure that necessary resources are available for the EPDP Phase 2, including expert legal resources. While it is ultimately up to the EPDP to “expeditiously advance on the complex legal issues deferred from Phase 1”, the Board will ensure, subject to normal budgetary prudence, that there is support for the work of the EPDP in sorting through these legal issues.</p>
<p><b>§1.a.IV WHOIS and Data Protection Legislation</b></p>	<p><b>a. The GAC advises the Board to:</b></p> <p>iv. Consider instituting additional parallel work efforts on technical implementations, such as that carried out by the</p>	<p>The Board understands that the GAC wishes for the ICANN Board to consider instituting additional parallel work efforts on technical implementations for purposes of informing and complementing the EPDP’s Phase 2 activities. The Board acknowledges the GAC’s advice and notes that the Technical Study Group was formed by the CEO and</p>	<p>The Board acknowledges this advice and understands that the GAC is requesting the ICANN Board to do all that it can, within its authority and remit and subject to budgetary constraints, to facilitate the work of the EPDP, including through “parallel efforts” such as the Technical Study Group (TSG). The Board notes that the TSG presented a <a href="#">Draft</a></p>

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
	<p>Technical Study Group, for purposes of informing and complementing the EPDP’s Phase 2 activities;</p> <p><u>RATIONALE:</u></p> <p>See rationale in §1.a.I.</p>	<p>not the Board. The Board is following the work of the Technical Study Group, which is intended to inform the work of the EPDP and not to replace it.</p>	<p><a href="#">Technical Model</a> at ICANN64 and received community feedback. The TSG has since completed its work and published <a href="#">TSG01, Technical Model for Access to Non-Public Registration Data</a>. ICANN <u>will</u> share the model with the European Data Protection Board (EDPB) and solicit the EDPB’s feedback on specific questions related to the model. ICANN will also present the model to the European Commission before that.</p> <p>In regard to any other “parallel efforts”, the Board will consider those as necessary but reiterates that it will take actions only within its authority and subject to budgetary considerations; the Board will not take any action that would undermine or replace the work of the EPDP.</p>
<p><b>§1.a.V WHOIS and Data Protection Legislation</b></p>	<p><b>a. The GAC advises the Board to:</b></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><u>RATIONALE:</u></p> <p>See rationale in §1.a.I.</p>	<p>The Board understands that the GAC wishes for the ICANN Board to instruct the ICANN org to facilitate swift implementation of the new Registration Directory Service policies as they are developed and agreed. The Board understands this includes sending distinct parts to implementation when they are agreed, such as questions deferred from Phase 1.</p>	<p>The Board accepts this advice and will do what it can, within its authority and remit, and in light of other relevant considerations, to facilitate swift implementation of new registration data directory services policies, and if possible, send distinct parts to implementation as and when they are agreed.</p>
<p><b>§1.a.VI WHOIS and Data Protection Legislation</b></p>	<p><b>a. The GAC advises the Board to:</b></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></p> <p>See rationale in §1.a.I.</p>	<p>The Board understands that the GAC wishes for the ICANN Board to consider re-starting implementation processes for relevant existing policies, such as the Privacy Proxy Services Accreditation Issues Policy.</p>	<p>The Board accepts this advice. The Board believes that waiting to proceed with implementation of Privacy Proxy Services Accreditation Issues (PPSAI) Policy until the completion of the RDS EPDP is a prudent course of action. This is because the same issues that need to be resolved to finalize PPSAI implementation are under active discussion, such as controller/joint controller/independent controller issues and providing access to non-public personal contact details consistent with GDPR. This course of action will allow ICANN org and the broader community to focus resources on ensuring that GDPR-compliant requirements are finalized for existing contracted parties before proceeding to implement similar requirements for a new category of contracted parties.</p> <p>During the implementation phase of the EPDP ICANN org will be reviewing all ICANN policies and services which may be impacted by the new Consensus Policy and will work with the GNSO and the community to identify the appropriate course of action.</p>

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
<p><b>§2.a.I 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><b>a. The GAC advises the Board to:</b></p> <p>i. Promptly meet with the CCT Review Team leadership to discuss the Board’s resolution and</p> <p><u>RATIONALE:</u></p> <p>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>The Board acknowledges the GAC’s concern with the recent Board resolution response to the Final Recommendations of the Competition, Consumer Trust and Consumer Choice Review Team. The Board notes the CCT review is a vital accountability mechanism. The Board understands that the GAC urges 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>The Board acknowledges the GAC’s concerns regarding the recent Board resolution in response to the Final Recommendations of the Competition, Consumer Trust and Consumer Choice Review Team and accepts the advice.</p> <p>The Board has initiated communications with the CCT Review Team implementation shepherds (designated by the CCT Review Team) to address the areas related to CCT recommendations, having held a call on 23 April. The Board also understands the importance of working with the community to develop a process to prioritize and establish a sustainable cadence of implementations, with a defined protocol for handling specific review recommendations differently as compared to the past reviews. The Board has publicly committed to meet with the leaders of other specific review teams and to hold a public session at ICANN65 with the ICANN community, to address the broader issues around reviews and recommendations.</p> <p>The Board stands by its decisions with respect to the CCT recommendations, for the reasons set forth in the letter issued in Kobe; however, the Board is reviewing the timing and communication of its responses to specific review teams to avoid surprises in the future.</p> <p>The Board would also like to provide further clarification of its action. As noted in the communication to the CCT review team, the “intention was and remains to fully consider and thoughtfully act on each of the recommendations in the Final Report. To be clear, the Board has not rejected any of the recommendations in the Final Report. After careful consideration of the 35 recommendations, the Board determined to address each, in one of three ways:</p> <ul style="list-style-type: none"> <li>• The Board accepted six recommendations and directed the ICANN org to develop a costing and implementation plan, to be shared with the community within six months from the Board action. We acknowledge that some members of the community believe that this timeline is unnecessarily extended; and we will review these recommendations with ICANN org to determine whether this timeline can be accelerated.</li> <li>• Fourteen of the recommendations directed to the Board were actions that were not directly within the Board's remit at this stage in the bottom up multistakeholder process. The Board felt that some of these recommendations were excellent. We also had questions about</li> </ul>

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
			<p>others. We ultimately concluded that expressing an opinion on policy recommendations outside the Board’s remit at this stage may be interpreted as the Board’s interfering with policy development authority allocated to the community under the ICANN Bylaws. The Board is also mindful of the relative role of the Board and ICANN org. Accordingly, we referred recommendations in this category to either the appropriate policy development body or to ICANN org to handle. Please keep in mind that the community is obligated to fully consider all input into PDPs and CCWGs, and that the Board is ultimately responsible for ensuring that such input is duly considered and appropriately addressed.</p> <ul style="list-style-type: none"> <li>• Seventeen of the remaining recommendations were categorized as pending. The Board felt that recommendations in this category raised substantive questions or required more information. The Board directed ICANN org to take specific actions to resolve the pending status as soon as possible. We acknowledge that some members of the community believe that this amounts to rejecting the recommendations. This is not the case, and we will review these recommendations with ICANN org to determine whether a specific timeline can be established.</li> </ul>
<p><b>§2.a.II 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><b>a. The GAC advises the Board to:</b></p> <ul style="list-style-type: none"> <li>ii. Possibly reconsider certain decisions on recommendations if appropriate.</li> </ul> <p><u>RATIONALE:</u></p> <p>See rationale in §2.a.i.</p>	<p>The Board also acknowledges the GAC’s concern with the recent Board resolution response to the Final Recommendations of the Competition, Consumer Trust and Consumer Choice Review Team. The Board notes the CCT review is a vital accountability mechanism. The Board understands that the GAC urges 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>See response on §2.a.i.</p>

**GAC Advice – Kobe Communiqué: Follow-up on Deferred Advice (15 May 2019)**

GAC Deferred Advice Item	Advice Text	Board Understanding on Previous Scorecard	Board Response on Previous Scorecard	Board Response
<p align="center"><b>San Juan Communiqué §1.a.IV GDPR and WHOIS</b></p>	<p><b>a. the GAC advises the ICANN Board to instruct the ICANN Organization to:</b></p> <p>iv. Distinguish between legal and natural persons, allowing for public access to WHOIS data of legal entities, which are not in the remit of the GDPR;</p>	<p>The Board understands that the GAC wishes for the ICANN Board to instruct the ICANN org to:</p> <p>iv. Distinguish between legal and natural persons, allowing for public access to WHOIS data of legal entities, which are not in the remit of the GDPR;</p>	<p><b>San Juan Scorecard:</b> As requested by the GAC in its <a href="#">17 May 2018</a> letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC.</p> <p><b>Barcelona Scorecard:</b> Previously, the Board stated in response to this item that, as requested by the GAC in its <a href="#">17 May 2018</a> letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC. The Board is currently monitoring progress of the EPDP and community work on a unified access model and plans to address this advice following the outcome of those processes.</p>	<p>The Board continues to defer action on this advice. As noted in the Barcelona scorecard, the Board monitored the progress of the EPDP, which has now concluded its Phase 1 work. The public comment on the EPDP Team Final Report closed on 17 April 2019, and ICANN org has published a report of public comments.</p> <p>Because the GAC <a href="#">stated</a> that it “would welcome the ICANN Board’s adoption the EPDP Phase 1 policy recommendations as soon as possible” and the EPDP Team has said that it “will determine and resolve the Legal vs. Natural issue in Phase 2”, the Board continues to defer action on this advice.</p>
<p align="center"><b>San Juan Communiqué §1.a.V GDPR and WHOIS</b></p>	<p><b>a. the GAC advises the ICANN Board to instruct the ICANN Organization to:</b></p> <p>v. Ensure continued access to the WHOIS, including non-public data, for users with a legitimate purpose, until the time when the interim WHOIS model is fully operational, on a mandatory basis for all contracted parties;</p>	<p>The Board understands that the GAC wishes for the ICANN Board to instruct the ICANN org to:</p> <p>v. Ensure continued access to the WHOIS, including non-public data, for users with a legitimate purpose, until the time when the interim WHOIS model is fully operational, on a mandatory basis for all contracted parties;</p>	<p><b>San Juan Scorecard:</b> As requested by the GAC in its 17 May 2018 letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC.</p> <p><b>Barcelona Scorecard:</b> Previously, the Board stated in response to this item that, as requested by the GAC in its <a href="#">17 May 2018</a> letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC. The Board is currently monitoring the progress of the EPDP and community work on a unified access model and plans to address this advice following the outcome of those processes.</p>	<p>The Board accepts this advice. The Board notes that EPDP Recommendation 18 provides a mechanism for third-parties with legitimate interests to access to non-public gTLD registration data, and obligates the contracted parties to disclose the requested non-public data if the request passes the balancing test. The Board anticipates that this recommended model for requests for lawful disclosure of non-public registration data will be expanded upon in Phase 2, in light of Recommendation 3, which states that the EPDP Team undertakes to make a recommendation pertaining to a standardised model for lawful disclosure of non-public Registration Data now that the gating questions in the charter have been answered. This will include addressing questions such as:</p> <ul style="list-style-type: none"> <li>• Whether such a system should be adopted</li> <li>• What are the legitimate purposes for third parties to access registration data?</li> <li>• What are the eligibility criteria for access to non-public Registration data?</li> <li>• Do those parties/groups consist of different types of third-party requestors?</li> </ul>

GAC Deferred Advice Item	Advice Text	Board Understanding on Previous Scorecard	Board Response on Previous Scorecard	Board Response
				<ul style="list-style-type: none"> <li>• What data elements should each user/party have access to?</li> </ul>
<p><b>San Juan Communiqué §1.a.VI GDPR and WHOIS</b></p>	<p>a. <b>the GAC advises the ICANN Board to instruct the ICANN Organization to:</b></p> <p>vi. Ensure that limitations in terms of query volume envisaged under an accreditation program balance realistic investigatory crossreferencing needs;</p>	<p>The Board understands that the GAC wishes for the ICANN Board to instruct the ICANN org to:</p> <p>vi. Ensure that limitations in terms of query volume envisaged under an accreditation program balance realistic investigatory crossreferencing needs; and</p>	<p><b>San Juan Scorecard:</b> As requested by the GAC in its 17 May 2018 letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC.</p> <p><b>Barcelona Scorecard:</b> Previously, the Board stated in response to this item that, as requested by the GAC in its <a href="#">17 May 2018</a> letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC. The Board is currently monitoring the progress of the EPDP and community work on a unified access model and plans to address this advice following the outcome of those processes.</p>	<p>The Board continues to defer action on this advice. Recommendation 3 of the EPDP Final Report states that the EPDP Team undertakes to make a recommendation pertaining to a standardised model for lawful disclosure of non-public Registration Data now that the gating questions in the charter have been answered. This will include addressing questions such as:</p> <ul style="list-style-type: none"> <li>• Whether such a system should be adopted</li> <li>• What are the legitimate purposes for third parties to access registration data?</li> <li>• What are the eligibility criteria for access to non-public Registration data?</li> <li>• Do those parties/groups consist of different types of third-party requestors?</li> <li>• What data elements should each user/party have access to?</li> </ul>
<p><b>San Juan Communiqué §1.a.VII GDPR and WHOIS</b></p>	<p>a. <b>the GAC advises the ICANN Board to instruct the ICANN Organization to:</b></p> <p>vii. Ensure confidentiality of WHOIS queries by law enforcement agencies.</p>	<p>The Board understands that the GAC wishes for the ICANN Board to instruct the ICANN org to:</p> <p>vii. Ensure confidentiality of WHOIS queries by law enforcement agencies.</p>	<p><b>San Juan Scorecard:</b> As requested by the GAC in its 17 May 2018 letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC.</p> <p><b>Barcelona Scorecard:</b> Previously, the Board stated in response to this item that, as requested by the GAC in its <a href="#">17 May 2018</a> letter to the ICANN Board Chair, the Board defers consideration of this advice pending further discussion with the GAC. The Board is currently monitoring the progress of the EPDP and community work on a unified access model and plans to address this advice following the outcome of those processes.</p>	<p>The Board continues to defer action on this advice. Recommendation 3 of the EPDP Final Report states that the EPDP Team undertakes to make a recommendation pertaining to a standardised model for lawful disclosure of non-public Registration Data now that the gating questions in the charter have been answered. This will include addressing questions such as:</p> <ul style="list-style-type: none"> <li>• Whether such a system should be adopted</li> <li>• What are the legitimate purposes for third parties to access registration data?</li> <li>• What are the eligibility criteria for access to non-public Registration data?</li> <li>• Do those parties/groups consist of different types of third-party requestors?</li> <li>• What data elements should each user/party have access to?</li> </ul>
<p><b>San Juan Communiqué §2.a.I IGO Reserved Acronyms</b></p>	<p>Noting ongoing developments in the PDP on IGO access to curative rights protection mechanisms, which the GAC is monitoring closely, the GAC affirms its advice from previous Communiqués concerning preventative protection of IGO</p>	<p>The Board sent a <a href="#">letter</a> to the GAC requesting clarification regarding this advice. The GAC provided a <a href="#">response</a> on 15 May 2018. Based on the GAC's response, the Board understands that the GAC wishes for the ICANN Board to:</p>	<p><b>San Juan Scorecard:</b> The Board thanks the GAC for the clarifications provided on <a href="#">15 May 2018</a>. The Board has asked the ICANN Organization to review the advice in light of these responses and to assess the feasibility of the request. The Board will defer</p>	<p>Following from the Board's response to the GAC's Panama Communiqué, the Board is aware that a feasibility study has been initiated by ICANN Org with the support of the GAC, WIPO, and OECD to ensure that the list of IGOs is as accurate and</p>



GAC Deferred Advice Item	Advice Text	Board Understanding on Previous Scorecard	Board Response on Previous Scorecard	Board Response
	<p>identifiers, recalls the importance of maintaining temporary protections until a permanent resolution on IGO identifiers is reached in order prevent irreparable harm to IGOs and</p> <p><b>a. advises the ICANN Board to:</b></p> <p>i. Ensure that the list of IGOs eligible for preventative protection is as accurate and complete as possible.</p> <p><u>RATIONALE</u> Despite indications to the contrary, the GNSO has still not concluded its PDP on curative rights protection mechanisms. The GAC and IGOs remain fully engaged on this issue and emphasize that a removal of interim protections before a permanent decision on IGO acronym protection is taken could result in irreparable harm to IGOs. In the interim, ICANN has moved forward to implement GAC advice related to protection of IGO full names at the second level. These protections will be based on a list of IGOs that fulfil previously agreed-upon criteria. To ensure this advice is effectively implemented, following significant work undertaken by IGOs resulting in significant progress on compiling this list, a focused effort is needed to contact remaining IGOs, so their names are protected accurately in the chosen two languages. ICANN has been in contact with the OECD and WIPO on this initiative, which the GAC supports.</p>	<p>i.Ensure that the list of IGOs eligible for preventative protection is as accurate and complete as possible.</p> <p>The Board understands that the GAC and IGOs remain engaged on this issue and that the GAC is concerned that a removal of interim protections before a permanent decision on IGO acronym protection is taken could result in irreparable harm to IGOs.</p> <p>The Board also understands that the GAC emphasizes that to ensure this advice is effectively implemented, a focused effort is needed to contact remaining IGOs so their names are protected accurately in the chosen two languages.</p>	<p>action on this item at this time, and in due course will engage with the GAC should further clarification be necessary before taking action on this advice.</p> <p><b>Barcelona Scorecard:</b> The Board continues to defer action on this item as the ICANN org continues to assess the feasibility of the GAC’s request. The Board is aware that a dialogue has been initiated between ICANN Org and the GAC to ensure that the list of IGOs eligible for preventative protection is as accurate and complete as possible. The Board will monitor the progress of this dialogue and will engage with the GAC as necessary before taking any further action on this advice.</p>	<p>complete as possible. The Board intends to monitor the progress of this study and will engage with the GAC as necessary concerning ICANN Org’s implementation of this advice.</p>

**GAC Advice – Kobe Communiqué: Follow-up on Previous Advice (15 May 2019)**

<b>GAC Follow-up on Previous Advice Item</b>	<b>Text</b>	<b>Board Understanding Following Board-GAC Call</b>	<b>Board Response</b>
<p><b>1. Subsequent Rounds of New gTLDs</b></p>	<p>The GAC recalls its advice in the ICANN56 Helsinki Communiqué, which states that the development of policy on further releases of new gTLDs needs to fully consider all the results of the relevant reviews and analyses to determine which aspects and elements need adjustment. The GAC advised the Board to address and consider these results and concerns before proceeding with new rounds.</p>	<p>The Board understands the GAC’s previous advice to address and consider all the results of the relevant reviews and analyses before proceeding with new rounds of the New gTLD program.</p>	<p>As noted in the <a href="#">Helsinki Scorecard</a>, the Board accepted the advice and monitored the work of the community regarding reviews of the current round of the New gTLD Program and the policy development work for subsequent rounds of the New gTLD Program. All of the Bylaws- and Board-committed reviews related to the 2012 round of new gTLDs have been completed. The Subsequent Procedures PDP Working Group anticipates delivering its Final Report in the second half of calendar year 2019. The Board will consider the policy recommendations when the community completes its work and the recommendations are brought to the Board.</p>

Pages 19-33 Redacted - Privileged & Confidential Information

Pages 34-42 Removed - Superseded by <https://www.icann.org/en/system/files/files/epdp-scorecard-15may19-en.pdf>.

**ICANN REFERENCE MATERIALS TO PAPER NO. 2019-05-15-1c**

**TITLE: New gTLD Applications for .AMAZON**

1. Attachment A is the Background Information on Amazon Corporation Applications.
2. Attachment B is a Summary of Communications and Interactions between ACTO, Amazon Corporation, the Governmental Advisory Committee, and ICANN

Submitted by: John Jeffrey; Cyrus Namazi

Position: ICANN General Counsel Secretary;  
Senior Vice President, Global Domains Division

Date Noted: 15 May 2019

Email: [john.jeffrey@icann.org](mailto:john.jeffrey@icann.org);

[cyrus.namazi@icann.org](mailto:cyrus.namazi@icann.org)

Draft – Privileged & Confidential

**Reference Materials Attachment A**

Privileged and Confidential

Draft – Privileged & Confidential

Privileged and Confidential

deliberations of the GAC Advice, the NGPC also considered other factors including the GAC Early Warning, Amazon’s response(s) to the GAC Advice, correspondence received from various parties on the matter, and an expert analysis commissioned by ICANN.<sup>10</sup> Following the resolution by the Board, the ICANN org updated the .AMAZON applications to a “Will Not Proceed” status.<sup>11</sup> As such, the .AMAZON applications have not moved forward within the New gTLD Program.

### **The Independent Review Process (IRP)**

On 1 March 2016, Amazon filed its request for an IRP regarding the NGPC’s decision to not allow the .AMAZON applications to proceed.<sup>12</sup> On 11 July 2017, the IRP Panel issued its Final Declaration.<sup>13</sup>

The IRP Panel declared Amazon the prevailing party, stating that the NGPC acted in a manner inconsistent with the ICANN Bylaws. Additionally, the Panel declared that “...the GAC, as a constituent body of ICANN, failed to allow the applicant to submit any information to the GAC and thus deprived the applicant of the minimal degree of procedural fairness before issuance of its advice, as required by the Bylaws.”

The Panel recommended that the ICANN Board promptly re-evaluate the .AMAZON applications. The Panel states that if the Board decides that the applications should not proceed, the Board provide rationale for that decision; the GAC advice alone “cannot supplant the Board’s independent and objective decision with a reasoned analysis.” Finally, the Panel states that if the Board determines that the .AMAZON applications may indeed proceed, the ICANN Bylaws require the Board to meet with the GAC to discuss this decision.<sup>14</sup>

### **ICANN Board Response to IRP Panel Final Declaration**

---

<sup>10</sup> See the resolution for more information on the NGPC’s deliberations: <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b>. See here for the Expert Analysis: <https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-07apr14-en.pdf>.

<sup>11</sup> See: <https://gtldresult.icann.org/applicationstatus/viewstatus>.

<sup>12</sup> See: <https://www.icann.org/en/system/files/files/irp-amazon-request-redacted-02mar16-en.pdf>.

<sup>13</sup> See: <https://www.icann.org/en/system/files/files/irp-amazon-final-declaration-11jul17-en.pdf>.

<sup>14</sup> *Ibid.* See pages 52-53 of the Final Declaration.



In September 2017, the ICANN Board requested the Board Accountability Mechanisms Committee (BAMC) to consider the IRP Panel’s final declaration and to “promptly re-evaluate Amazon applications”.<sup>15</sup> Following this direction, in October 2017, the BAMC asked the GAC if it has “(i) any information to provide to the Board as it relates to the “merits-based public policy reasons,” regarding the GAC’s advice that the Amazon applications should not proceed; or (ii) any other new or additional information to provide to the Board regarding the GAC’s advice that the Amazon applications should not proceed.”<sup>16</sup>

The GAC provided a response to the Board’s request in the form of a letter attached to the GAC San Juan Communiqué.<sup>17</sup> In its response, the GAC stated that it did not have any additional information to provide to the Board beyond its advice in the GAC Abu Dhabi Communiqué which was to “continue facilitating negotiations between the [ACTO] member states and the Amazon corporation.”<sup>18</sup>

### **Public Interest Commitments (PICs)**

In its Beijing Communiqué, the GAC issued Category 1 and 2 safeguard advice. Category 1 advice related to regulated or professional sectors, and the GAC proposed safeguards to ensure a registry operators’ adherence with applicable laws in an effort to protect consumers. The NGPC established an implementation framework for these safeguards, which are to be included in the Registry Agreement as Public Interest Commitments (PICs) in Specification 11.<sup>19</sup>

### **PICDRP**

The PICDRP was developed to address reports that a Registry Operator may not be complying with the PICs in Specification 11 of their Registry Agreement. Upon receipt of a PIC report, ICANN conducts a preliminary review and provides the Registry Operator the opportunity to directly engage with the reporter. If the parties are unable to

---

<sup>15</sup> See: <https://www.icann.org/resources/board-material/resolutions-2017-09-23-en#2.e>.

<sup>16</sup> See: <https://www.icann.org/resources/board-material/resolutions-2017-10-29-en#2.a>.

<sup>17</sup> See: <https://www.icann.org/en/system/files/correspondence/gac-to-icann-15mar18-en.pdf>.

<sup>18</sup> See: <https://www.icann.org/en/system/files/correspondence/ismail-to-chalaby-15mar18-en.pdf>.

<sup>19</sup> See: <https://newgtlds.icann.org/en/applicants/advisories/gac-cat1-advice-19mar14-en>; Implementation framework: <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf>.

resolve the issue, ICANN may conduct further review, including calling upon a Standing Panel to evaluate compliance by the Registry Operator. The Standing Panel has 15 days to make a determination and submit a report to ICANN. If it is found that a Registry Operator is in fact not in compliance with the PIC, the Registry Operator would have 30 days to resolve the issue and notify ICANN of the steps taken to remediate.

## **Reference Materials Attachment B**

### **Summary of Communications and Interactions between ACTO, Amazon Corporation, the Governmental Advisory Committee, and ICANN**

On 3 May 2013, the ACTO Member States Foreign Affairs Ministers issued a declaration through which ICANN was informed of the role of ACTO and its member states in consideration of the Amazon Applications.

In July 2013, in the Durban Communiqué, the Amazon Applications were the subject of consensus GAC Advice that stated that the Amazon Applications should not proceed. On 14 May 2014, the Board (via the New gTLD Program Committee) accepted that advice and directed ICANN organization to not proceed with the Amazon Applications. Following that resolution, ICANN org updated the Amazon Applications to a “Will Not Proceed” status.

In October 2015, the Amazon corporation submitted a proposal to the Amazon Cooperation Treaty Organization (ACTO) member states in an attempt to come to a solution that could benefit both the Amazon corporation and concerned ACTO member states. However, this proposal was rejected by the ACTO member states.

Subsequently, in March 2016, the Amazon corporation began an Independent Review Process (IRP) against ICANN. The IRP ended in July 2017 with the IRP Panel finding the Amazon corporation to be the prevailing party. The IRP declaration recommended that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications."

Following the outcome of the IRP, the Board asked the GAC for additional information as it relates to the merits-based public policy reason regarding the GAC’s advice that the Amazon Applications should not proceed.

In its November 2017 Abu Dhabi Communiqué, the GAC advised the Board to “[c]ontinue facilitating negotiations between the Amazon Cooperation Treaty Organization’s (ACTO) member states and the Amazon corporation with a view to reaching a mutually acceptable solution to allow for the use of .amazon as a top level domain name.”

Subsequently, acting on the GAC advice in the Abu Dhabi Communiqué, the ICANN Board stated in its Abu Dhabi GAC Advice Scorecard that it “asked the ICANN org President and CEO to facilitate negotiations between the Amazon Cooperation Treaty Organization’s (ACTO) member states and the Amazon corporation.”<sup>20</sup>

On 4 February 2018, the ICANN Board accepted the GAC advice from the Abu Dhabi Communiqué and directed the President and CEO “to facilitate negotiations between the Amazon Cooperation Treaty Organization’s (ACTO) member states and the Amazon corporation.”

Shortly thereafter, on 15 March 2018, with its Puerto Rico Communiqué, and in response to the Board’s inquiry following the IRP, the GAC noted that it “does not have any additional information to provide to the Board on this matter, beyond referring to the GAC Abu Dhabi Communiqué” wherein it advised the Board to continue facilitating additional negotiations.

On 16 September 2018, the ICANN Board directed the President and CEO “to support the development of a solution for delegation of the strings represented in the Amazon Applications that includes sharing the use of those top-level domains with the ACTO member states to support the cultural heritage of the countries in the Amazonian region” and “if possible, to provide a proposal to the Board, on the .AMAZON applications to allow the Board to take a decision on the delegation of the strings represented in the .AMAZON applications.”<sup>21</sup>

In response, in a 19 October 2018 letter, ACTO welcomed the Board’s 16 September 2018 Resolution and invited the President and CEO to meet the Amazon countries representatives in Bolivia, which the President and CEO accepted.

On 25 October 2018, the Board directed the President and CEO, or his designee(s), to remove the “Will Not Proceed” status and resume processing of the Amazon Applications according to the policies and procedures governing the 2012 round of the

---

<sup>20</sup> See: <https://www.icann.org/en/system/files/files/resolutions-abudhabi60-gac-advice-scorecard-04feb18-en.pdf>.

<sup>21</sup> See: <https://www.icann.org/resources/board-material/resolutions-2018-09-16-en#2.d>.

New gTLD Program. At the same time, the Board also directed the President and CEO to provide regular updates to the Board on the status of the Amazon Applications.

Following Board resolution 2018.10.25.18, ACTO sent a letter to the Board on 5 November 2018, explaining that “the positions held by the Amazon countries appear to have been erroneously interpreted” and submitted Reconsideration Request 18-10, calling for “annulment of the 25 October 2018 resolution.”<sup>22</sup> In the letter, ACTO also called for “a process mediated by the ICANN President and CEO...to discuss a mutually acceptable solution.” ACTO also invited ICANN’s President and CEO to attend a meeting in Bolivia on 29 November 2018, which was subsequently postponed.

On 21 December 2018, after the BAMC carefully considered the merits of Request 18-10 and all relevant materials and recommended that Request 18-10 be denied because the Board adopted the Resolution based on accurate and complete information and because the Board’s adoption of the Resolution was consistent with ICANN’s commitments and core values.

On 16 January 2019, the Board considered the BAMC’s recommendation to deny Reconsideration Request 18-10 and accepted the recommendation. The Board also stated in its resolution 2019.01.16.03 that resolution 2018.10.25.18 “was taken with the clear intention to grant the President and CEO the authority to progress the facilitation process between the ACTO member states and the Amazon corporation with the goal of helping the involved parties reach a mutually agreed solution, but in the event they are unable to do so, the Board will make a decision at ICANN 64 on the next steps regarding the potential delegation of .AMAZON and related top-level domains.”<sup>23</sup>

Subsequent to resolution 2019.01.16.03, ACTO and the ICANN org President and CEO continued a dialogue in an effort to facilitate further discussions on the .AMAZON applications. On 28 February 2019, ACTO requested that the Board not take a final decision on the Amazon Applications in Kobe and welcomed the President and CEO’s willingness to engage in discussions, preferably before 9 March 2019, but ACTO did not suggest a time for such discussions.

---

<sup>22</sup> See: <https://www.icann.org/en/system/files/correspondence/mendoza-to-chalaby-marby-05nov18-en.pdf>.

<sup>23</sup> See: <https://www.icann.org/resources/board-material/resolutions-2019-01-16-en#2.a>.

On 3 March 2019, the President and CEO acknowledged ACTO's request that he "personally resume the mediation between the ACTO member countries and the Amazon corporation before 9 March 2019" and he invited them to join him "and the Amazon corporation on a conference call early next week to work at reaching a mutually agreeable solution between the interested parties." ACTO indicated that it was not available to participate.

On 10 March 2019, the Board took resolutions 2019.03.10.01-.07, in which it provided direction for ACTO and the Amazon corporation to continue engagement for an additional four weeks, in an effort to find a mutually acceptable solution. The resolutions also provided an outline for next steps, including the option for an extension of time, and the options for how the Board may proceed upon receipt of the Amazon corporation proposal.<sup>24</sup>

Following Board resolution 2019.03.10.01, the ICANN org President and CEO sent a letter to the GAC noting that the Board resolution marked the end of his facilitation efforts.<sup>25</sup>

#### *Previous Amazon Corporation Proposals*

Since October 2015, the Amazon corporation has submitted various proposals to the ACTO member states in an effort to reach a mutually agreeable solution with respect to the Amazon Applications. Amazon corporation's initial October 2015 proposal was rejected by the ACTO member states, which led the Amazon corporation to initiate and IRP against ICANN in March 2016. Following resolution of the IRP, in October 2017 at ICANN60 the Amazon corporation presented to the GAC a new proposal for a "practical compromise."

In February 2018, following dialogue facilitated by ICANN org between the Amazon corporation and ACTO member states, the Amazon corporation proposed four main courses of action that included: (i) helping with the global visibility of the Amazonia region and its peoples as well as to protect their cultural heritage; (ii) helping to prevent the misuse of domain names associated with the Amazonia region and its peoples; (iii)

---

<sup>24</sup> See: <https://www.icann.org/resources/board-material/resolutions-2019-03-10-en#1.a>.

<sup>25</sup> See: <https://www.icann.org/en/system/files/correspondence/marby-to-ismail-11mar19-en.pdf>.

creating a Steering Committee to oversee implementation of the agreement; and, (iv) engaging in goodwill efforts by providing the ACTO member states credits for use of Amazon corporation services and products up to US\$5,000,000. Additionally, the Amazon corporation proposed helping the ACTO member states create an informational program to help publicize the benefits of the agreement.

In November 2018, the Amazon corporation, in effort to show its appreciation for the concerns of the ACTO member states regarding the use and governance of the Amazon Applications, submitted proposed Public Interest Commitments (PICs) that could be inserted into Specification 11 of its Registry Agreements with ICANN. As part of the Registry Agreements, these PICs would be enforceable through standard contractual compliance mechanisms, as well as through the PIC Dispute Resolution Procedure (PICDRP).<sup>26</sup> Should an ACTO member state believe that the Amazon corporation (as Registry Operator) is not complying with one of the PICs in one of its Registry Agreements, the ACTO member state would be able submit a complaint via contractual compliance or the PICDRP. ICANN would then begin the review process, and, if found to be noncompliant, the Amazon corporation would need to take measures to remediate the issue.<sup>27</sup> The Amazon corporation developed this proposal through the facilitation process led by the ICANN org over the course of 2018. The Amazon corporation communicated this proposal to ACTO on 26 November 2018.<sup>28</sup>

*Correspondence between ICANN, ACTO, and the Amazon Corporation following Board Resolution 2019.03.10.01-.07*

Following the Board’s resolution of 10 March 2019, ICANN org President and CEO Göran Marby wrote to ACTO to inform them of the resolution and that—although ICANN org had been leading an effort to facilitate discussions between the Amazon corporation and ACTO for nearly 16 months—this resolution marked “the end of [his] attempt to lead the facilitation process”.<sup>29</sup> The resolution provided the two parties an additional four weeks, or until 7 April 2019, to come to a mutually acceptable solution for the use of the .AMAZON top-level domains.

---

<sup>26</sup> See: <https://www.icann.org/resources/pages/picdrp-2014-01-09-en>.

<sup>27</sup> See: <http://newgtlds.icann.org/en/applicants/agb/picdrp-19dec13-en.pdf>.

<sup>28</sup> As noted in the letter from ACTO to the ICANN Board on 7 December 2018 (see footnote 2):

<https://www.icann.org/en/system/files/correspondence/mendoza-to-icann-board-07dec18-en.pdf>.

<sup>29</sup> See: <https://www.icann.org/en/system/files/correspondence/marby-to-moreira-11mar19-en.pdf>.

On 8 April 2019, the Board wrote to ACTO to inform them that the deadline had passed and that neither a joint request for more time nor a joint proposal for a mutually acceptable solution had been received. Accordingly, the Board informed ACTO that the Amazon corporation would be given until 21 April 2019, per the 10 March 2019 resolution, to “submit a proposal on how it will address the ACTO member states continuing concerns regarding the Amazon Applications.”<sup>30</sup>

On 9 April 2019, the Amazon corporation sent a letter in response to the Board’s 8 April 2019 letter stating that “Amazon remains committed to working with ACTO and its member states to find a mutually acceptable solution in compliance with the deadlines stated in the ICANN Board’s March 10 Resolutions” but that “...time is of the essence as Amazon plans to file its proposal in accordance with the Board’s March 10 Resolutions.”<sup>31</sup>

On 11 April 2019, ACTO sent a letter to the Board noting a “firm belief that an agreement could still be reached if the parties were given more time to work together in good faith” and requesting the Board to “postpone any final decision on the matter until the ICANN65 meeting”.<sup>32</sup>

On 15 April 2019, the Board wrote in response to ACTO’s 11 April 2019 letter noting that both the Amazon corporation and ACTO had “expressed a continued desire to reach a mutually acceptable solution” but that the letter from ACTO requested an extension of time that was “a longer additional window than was contemplated in the ICANN Board’s resolutions.”<sup>33</sup> The Board then stated that “[i]f you are able to reach a mutual proposal for more time with the Amazon Corporation, this should, in practice, extend the date to no later than 7 June 2019, to afford the ICANN Board time to review such a proposal before ICANN65.”

Subsequently, on 17 April 2019, the Amazon corporation wrote to the Board stating that “[u]nfortunately, despite best efforts, Amazon and the Amazon Cooperation Treaty Organization (“ACTO”) member states have not reached a mutually acceptable solution regarding Amazon’s applications, but we have listened intently and heard their

---

<sup>30</sup> See: <https://www.icann.org/resources/board-material/resolutions-2019-03-10-en#1.a>.

<sup>31</sup> See: <https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-09apr19-en.pdf>.

<sup>32</sup> See: <https://www.icann.org/en/system/files/correspondence/moreira-to-chalaby-11apr19-en.pdf>.

<sup>33</sup> See: <https://www.icann.org/en/system/files/correspondence/chalaby-to-moreira-15apr19-en.pdf>.



concerns.”<sup>34</sup> The letter included the Amazon corporation’s modified proposal for addressing ACTO member states’ concerns and requested that the Board “accept our proposed PIC and move forward to contracting and delegating the .AMAZON TLDs to Amazon.”

On 18 April 2019, ACTO wrote to the Board in response to the 15 April 2019 letter, providing the position, including proposed PIC language, of the eight member states with regard to the .AMAZON top-level domains.<sup>35</sup> The letter also stated that “the need to continue with this dialogue is restated, and therefore the deadline set for April 21st should be reviewed and extended, and the request to Amazon Inc. to agree to this extension is also reiterated, suggesting a new deadline on June 7<sup>th</sup>.” ACTO also noted that it had filed a Documentary Information Disclosure Policy (DIDP) request to obtain “information [which] is relevant to make well-informed decisions.”<sup>36</sup>

On 19 April 2019, the Amazon corporation wrote to the Board in response to ACTO’s 18 April 2019 letter, stating that “Amazon takes this opportunity to formally and respectfully oppose ACTO’s request for an extension of time. Such an extension of time was not made in line with the Board’s March 10 resolution outlining a timeframe and process, nor is warranted now given the dispute has been pending for 7 years.”<sup>37</sup> The Amazon corporation reiterated its desire for the Board to move forward with reviewing its proposal.

On 22 April 2019, researchers from the Universities of Essex and Middlesex also wrote to the Board wishing “to ensure that the members of Board of Directors are aware of the international human rights law (‘IHRL’) issues, specifically the rights of indigenous peoples in the Amazon, raised by the Amazon corporation’s application for certain .AMAZON Top-Level Domains (‘TLDs’)” and included a report on the topic written in their personal capacities.<sup>38</sup> On 29 April, Jones Day provided ICANN with a legal advice memo addressing the IHRL issues raised in the Essex and Middlesex researcher

---

<sup>34</sup> See: <https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-17apr19-en.pdf>.

<sup>35</sup> See: [English Translation] <https://www.icann.org/en/system/files/correspondence/moreira-to-chalaby-18apr19-en.pdf>; [Original Spanish] <https://www.icann.org/es/system/files/correspondence/moreira-to-chalaby-18apr19-es.pdf>;

<sup>36</sup> See the DIDP request here: <https://www.icann.org/resources/pages/didp-20190402-1-castano-request-2019-04-24-en>.

<sup>37</sup> See: <https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-19apr19-en.pdf>.

<sup>38</sup> See: <https://www.icann.org/en/system/files/correspondence/van-ho-doyle-to-chalaby-22apr19-en.pdf>.

Memo. This advice identifies that the IHRL issues raised in the Essex and Middlesex researcher Memo have already been considered or addressed earlier in the process.

On 23 April 2019, the Brazilian government wrote on behalf of ACTO to the Board reiterating the desire of ACTO to find a mutually agreeable solution, focusing on four points:

- a. ACTO members have engaged with Amazon Inc. in good faith and in a timely manner;
- b. In several instances, ACTO members have collectively and individually requested the extension of the period for negotiations with Amazon Inc.;
- c. The alleged shortcomings, difficulties or legal inconsistencies identified by the company in the ACTO 18 April unified proposal are simply not so; and
- d. On the contrary, ACTO unified proposal is conceptually, legally and technically sound and acknowledges the commercial concerns of Amazon Inc., while upholding the legitimate public interests of ACTO members and its national societies.”<sup>39</sup>

Also on 23 April 2019, the Amazon corporation wrote to the Board responding to ACTO’s letters of 18 and 23 April 2019 requesting again for the Board to move forward with a decision at its Istanbul workshop.<sup>40</sup> The Amazon corporation also stated that it “cannot accept ACTO’s proposed PIC and no extension of time is warranted.”

On 29 April ACTO issued a press release opposing the delegation of the “.amazon” top-level domain without their authorization.

On 30 April the Brazilian Internet Steering Committee, CGI.br, issued a public note indicating that they oppose delegation of the top-level domain name “.AMAZON” exclusively to a private interest.

On 7 May 2019, the Brazilian Government wrote to the Board to reiterate ACTO’s stance on the .AMAZON applications and also stated that “some misunderstandings about the Amazon countries’ proposed solutions may have been conveyed to the ICANN Board” and that these need to be corrected.<sup>41</sup> Specifically, the Brazilian Government provided clarification on the role of the Steering Committee, which “should only have responsibilities over a limited number of issues” and “should allow

---

<sup>39</sup> See: <https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-23apr19-en.pdf>.

<sup>40</sup> See: <https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-23apr19-en.pdf>.

<sup>41</sup> See: <https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-07may19-en.pdf>.

equal representation of both sides”; the goal of “shared-used”, which is “to safeguard the natural and cultural heritage of the Amazon region and its peoples”; and, the “protected terms”, which “should only be broadened as to include names that can mislead or cause confusion in the public.”