

ICANN BOARD PAPER NO. 2014.04.30.2a

TITLE: GNSO PDP Recommendations on Protection of
IGO-INGO Identifiers in All gTLDs

PROPOSED ACTION: For Resolution

EXECUTIVE SUMMARY

In November 2013 the GNSO Council unanimously approved 25 consensus recommendations made by its Policy Development Process (PDP) Working Group on the Protection for International Governmental Organizations (IGOs) and International Non-Governmental Organizations (INGOs) Identifiers in All Generic Top-Level Domains, in a PDP that commenced in late 2012. Pursuant to ICANN's Bylaws, the GNSO Council referred the adopted recommendations to the ICANN Board for consideration following publication of the recommendations for public comment. The GAC has also issued advice to the Board on protections for IGOs in the context of the New gTLD Program in the form of a number of GAC Communiques. Because the GAC's advice relates to the New gTLD Program, the ICANN Board New gTLD Program Committee (NGPC) is considering the GAC advice. The NGPC has not yet finalized its proposal to address the GAC's advice relating to protections for IGOs but is actively working on the issue.¹

In general, the GNSO policy recommendations are largely consistent with the advice submitted by the GAC to the ICANN Board. However, there are specific GNSO policy recommendations that differ from the GAC's advice.

As a result, on 7 February 2014, the Board acknowledged receipt of the GNSO's recommendations and directed the NGPC to develop a proposal for subsequent Board

¹ Note: the NGPC sent a draft proposal to the GAC immediately prior to ICANN's 49th Public Meeting in Singapore in response to the ongoing dialogue between the GAC and the NGPC concerning protections for IGO acronyms at the second level. The draft proposal presented a potential path forward to address the GAC's advice. The GNSO Council received notification of the NGPC's draft proposal on 20 March 2014.

consideration that would take into account both the GNSO recommendations and GAC advice.

Following community discussions in Singapore, the Board set out a series of possible next steps in its consideration of the GNSO's recommendations. This paper describes the background to this topic and includes staff recommendations for possible Board action in relation, first, to those GNSO recommendations that are not inconsistent with GAC advice received by the Board on the topic of IGO protections; and, secondly, to those GNSO recommendations that may be different from the GAC's advice and as a result requiring further analysis.

In short, the first category (i.e. the GNSO recommendations that are not inconsistent with the GAC's advice) consists of those GNSO recommendations pertaining to: (1) top-level protection for the Full Names of each of the protected organizations in certain languages, with an Exception Procedure to be developed; (2) second-level protection for the Full Names of each of the protected organizations in the Registry Agreement in certain languages, with an Exception Procedure to be developed; and (3) entry into the Trademark Clearinghouse for 90-days Claims Notification protection for the names of the International Non-Governmental Organizations (INGOs) on the ECOSOC's list of such organizations with General and Consultative Status. The second category (i.e. the GNSO recommendations that differ from the GAC's advice) consists of those GNSO recommendations pertaining to the form and scope of name and acronym protections for the Red Cross societies and acronym protections for International Governmental Organizations (IGOs)².

STAFF RECOMMENDATION:

In relation to those GNSO consensus recommendations not inconsistent with GAC advice on the same topic (see [Attachment A](#)), staff recommends that the ICANN Board adopts these as soon as is feasible.

² Note that the International Olympic Committee and the INGOs did not seek protection for their organizational acronyms in the PDP WG.

In relation to those GNSO consensus recommendations that differ from the GAC’s advice received to date (see Attachment B), staff recommends that the ICANN Board:

- Identify these specific recommendations and consider them separately from the GNSO recommendations that differ from the GAC’s advice on the same topic;
- Facilitate discussion among the relevant parties to reconcile differences between the advice and policy recommendations on the topics specifically identified³;
- If appropriate, consider convening a meeting with the relevant parties to understand the different perspectives on the topic;
- Inform the community, including the GAC, GNSO and other affected parties of the Board’s progress and proposed timeline to address the issues.

It should be noted that, unlike for IGOs, the GAC did not initially provide an exhaustive or definitive list of the Red Cross entities (international or national) that in its view required enhanced protections at the top and/or second level. Instead, an “illustrative list” had been provided to the GNSO Council in September 2011. Further, in implementing the Board’s granting of certain interim protections for IGOs, the IOC and the Red Cross in the New gTLD Program ICANN had [published](#) a list of those identifiers (and associated languages) to which such temporary protections would extend. Should the Board adopt the GNSO recommendations that are not inconsistent with the GAC’s advice, a preliminary implementation analysis is advised as to which of the existing identifiers and languages currently protected temporarily by the Board’s action will continue to be so protected, and which will no longer receive the form of protection currently provided.

Staff also notes that an Issue Report was requested by the GNSO Council pursuant to a consensus recommendation of the PDP Working Group regarding possible amendments

³ Note that the most recent GAC Advice received for the RC was in the GAC Communique from the Singapore meeting last month.

to the Uniform Dispute Resolution Policy and Uniform Rapid Suspension procedure to enable their use by IGOs and INGOs. The Preliminary Issue Report was published for public comment on 10 March 2014, for which the Reply Period will close on 6 May 2014. In this regard, staff recommends that the Board engage the GNSO in further discussions concerning the scope of a possible PDP on this issue and how curative rights for IGOs (as described in the 20 March 2014 proposal sent to the GAC on behalf of the NGPC) should be factored into the discussions the Board intends to facilitate.

PROPOSED RESOLUTION:

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

Whereas, the PDP followed the prescribed PDP steps as stated in the ICANN Bylaws and the GNSO PDP Manual, and resulted in a Final Report delivered to the GNSO Council on 10 November 2013 (see <http://gns0.icann.org/issues/igo-ingo-final-10nov13-en.pdf>);

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

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

Whereas, the GNSO Council vote met and exceeded the required voting threshold established in the ICANN Bylaws to impose new obligations on certain ICANN contracted parties;

Whereas, after the requisite public comment period (<http://www.icann.org/en/news/public-comment/igo-ingo-recommendations-27nov13->

[en.htm](#)), the GNSO Council sent the consensus recommendations to the ICANN Board in accordance with the ICANN Bylaws;

Whereas, on 7 February 2014, the Board (i) acknowledged receipt of the GNSO recommendations, (ii) requested additional time to consider the GNSO recommendations along with GAC advice on the same topic, and (iii) directed the ICANN Board New gTLD Program Committee (NGPC) to develop a proposal for subsequent Board consideration that would take into account both the GNSO recommendations and GAC advice (see <http://www.icann.org/en/groups/board/documents/resolutions-07feb14-en.htm#2.a>);

Whereas, the Board has engaged in dialogue with the ICANN community during the 49th ICANN Public Meeting in Singapore in March 2014;

Whereas, [Annex A, Section 10](#) of the ICANN Bylaws provides that “[u]pon a final decision of the Board adopting the policy, the Board shall, as appropriate, give authorization or direction to ICANN staff to work with the GNSO Council to create an implementation plan based upon the implementation recommendations identified in the Final Report, and to implement the policy.”

Resolved (2014.04.30.xx), the Board hereby adopts the GNSO Council’s unanimous recommendations on the Protection of IGO-INGO Identifiers in All gTLDs set forth in [Annex A](#) attached hereto (which includes the GNSO recommendations that are not inconsistent with the GAC’s advice).

Resolved (2014.04.30.xx), the Board requests additional time to consider the GNSO Council’s remaining unanimous recommendations on the Protection of IGO-INGO Identifiers in All gTLDs, as set forth in [Annex B](#) attached hereto, and will facilitate discussions among the relevant parties to reconcile any remaining differences between the policy recommendations and the GAC advice on the topic.

Resolved (2014.04.30.xx) the President and CEO, or his designee, is to develop an implementation plan for the recommendations adopted herein pursuant to the ICANN

Bylaws Annex A, Section 10 in consultation with the GNSO, and continue communication with the GAC and the community on such implementation.

PROPOSED RATIONALE:

Why is the Board addressing this issue now?

On 20 November the GNSO Council unanimously [approved](#) twenty-five consensus recommendations from the PDP Working Group on Protections for IGO-INGO Identifiers in All gTLDs, which had been [chartered](#) by the GNSO Council in October 2012 to develop recommendations regarding this topic.

On 7 February 2014 the Board [approved](#) a Resolution, after receiving the GNSO Council's [Recommendations Report](#), acknowledging receipt of the GNSO Council's recommendations and requesting additional time to consider them in order to take into account GAC advice addressing the same topic. The Board also directed the NGPC to consider the GNSO's policy recommendations as it continued to actively develop an approach to respond to the GAC advice on IGO protections, and to also develop a comprehensive proposal to address the GAC advice and the GNSO recommendations for consideration by the Board at a subsequent meeting.

On 13 March 2014 the Chair of the ICANN Board [sent](#) a draft proposal from the NGPC to the GAC Chair, and on 20 March 2014 the NGPC Chair [sent](#) the same draft proposal to the GNSO Council Chair. During ICANN's 49th Public Meeting in Singapore, the Vice-Chair of the ICANN Board [informed](#)⁴ the community of the Board's plans for next steps in relation to IGO and INGO protections, including the possibility that the Board may proceed to adopt those of the GNSO's recommendations that are not inconsistent with GAC advice. In general, the GNSO policy recommendations are largely consistent with the advice submitted by the GAC to the ICANN Board. However, there are

⁴ At pp. 101-104 of the transcript for the ICANN Public Forum.

specific GNSO policy recommendations that differ from the GAC’s advice. For those recommendations that differ from the GAC’s advice, the Board would be open to the possibility of facilitating discussions with the relevant parties, including the ALAC, the GAC and the GNSO, to understand the various perspectives before evaluating and acting on one of the several options open to it under the ICANN Bylaws.

The GAC provided consensus advice to the ICANN Board on the topic of IGO protections on several occasions, including specifically in the GAC’s [Beijing Communique](#) (April 2013); [Durban Communique](#) (July 2013); and [Buenos Aires Communique](#) (November 2013)⁵.

By taking action to adopt some of the GNSO’s recommendations now and involving the community in further discussions regarding the remaining recommendations, the Board will be facilitating continuing community dialogue over possible ways of reconciling differing advice and recommendations in the lead-up to ICANN’s 50th Public Meeting in London in June.

What is the proposal being considered?

The Board proposes to adopt those GNSO policy recommendations that are not inconsistent with GAC advice received by the Board on the topic of IGO protections; these policy recommendations are included as **Annex A to this resolution**. Those GNSO policy recommendations that differ from the GAC Advice received by the Board are attached to this resolution as **Annex B**. With respect to the recommendations contained in **Annex B**, the Board requests additional time to consider them so that the Board may facilitate discussion among the relevant parties to reconcile any remaining differences between the policy recommendations and the GAC advice on the topic. Following these

⁵ The GAC’s early communications relating to IGO protections consisted of an April 2012 [Letter](#) to the ICANN Board stating that treaty and national laws protection could be criteria for GAC advice on IGO protections in future gTLD rounds, and the October 2012 [Toronto Communique](#) noting that the “.int” criteria could be a starting point for IGO protections.

discussions, which should involve the affected parties (including the GAC, GNSO and the ALAC⁶), the Board will be prepared to consider a revised proposal that takes into account the GAC’s advice and the GNSO’s policy recommendations, as refined or amended (if any).

Which stakeholders or others were consulted?

The NGPC’s draft proposal for addressing the GAC’s advice was sent to the GAC for discussion and feedback, as well as notified to the GNSO Council. During the ICANN Public Meeting in Singapore in March 2014, the Board conducted discussions on the topic of IGO protections with the community through the Councils, Advisory Committees, Supporting Organizations, Stakeholder Groups and Constituencies. At the Public Forum in Singapore on 27 March 2014, the Board heard from individual community members and laid out possible next steps in its review of the GAC advice it has received and the GNSO PDP recommendations.

What concerns or issues were raised by the community?

The following sections summarize the GAC advice that was provided to the Board. In addition, the ALAC submitted a number of statements on the topic of IGO and INGO protections; it also participated in the GNSO PDP WG. The IGOs who were represented on the PDP WG and the Red Cross movement also submitted [Minority Positions](#) to the PDP WG’s Final Report, as did the ALAC.

GAC Advice on IGOs:

A. From the GAC’s Beijing Communique (emphasis added):

“ ... IGOs are in an objectively different category to other rights holders, warranting special protection by ICANN in the DNS, while also preserving

⁶ Note that the ALAC has also issued Statements on the issue, including a [Statement](#) on the PDP WG’s chartered issues in January 2013, a [Statement](#) on the PDP WG’s Initial Report in July 2013, and a [Statement](#) on the PDP WG’s Draft Final Report in November 2013. The ALAC also submitted [public comments](#) on the PDP WG’s Final Report in January 2014.

sufficient flexibility for workable implementation ... Pending the resolution of these implementation issues, the GAC reiterates its advice to the ICANN Board that ... appropriate ***preventative initial protection for the IGO names and acronyms on the provided list*** be in place before any new gTLDs would launch.”

This Communique contained fairly general advice regarding the need for “preventative” (e.g. reservations or blocking) as opposed to “curative” (e.g. UDRP or URS) protections for IGOs. The GAC provided its [Protected IGOs List](#) to the Board on 22 March 2013. This list was used by the GNSO’s PDP WG to develop its consensus recommendations for IGOs. Specifically, the WG designated the Full Names of the listed IGOs as “Scope 1 identifiers” for which certain preventative protections were to be granted, and the Acronyms of the listed IGOs were designated as “Scope 2 Identifiers” for which only Trademark Clearinghouse bulk entry for the purpose of a 90-days Claims Notification was recommended.

B. From the GAC’s Durban Communique (emphasis added):

“The GAC is interested to work with the IGOs and the NGPC on a ***complementary cost-neutral*** mechanism that would:

- a. Provide ***notification*** to an IGO if a potential registrant seeks to register a domain name matching the acronym of an IGO at the second level, giving the IGO a reasonable opportunity to express concerns, if any; and
- b. Allow for an ***independent third party to review*** any such registration request, in the event of a disagreement between an IGO and potential registrant.”

This Communique focused on the need for a Claims Notification process for IGOs that would include an independent third party review of any attempt to register a second-level domain name matching an IGO’s acronym. While the Communique spoke to such a mechanism being “complementary” (presumably to the top-level reservations and

protections sought), it did not expressly request that the Claims Notification process be permanent (i.e. longer than the Applicant Guidebook’s 90-day period).

C. From the GAC’s Buenos Aires Communique (emphasis added):

“The GAC, together with IGOs, remains committed to continuing the dialogue with NGPC on finalizing the modalities for permanent protection of IGO acronyms at the second level, by putting in place a mechanism which would:

1. Provide for a ***permanent system of notifications*** to both the potential registrant and the relevant IGO as to a possible conflict if a potential registrant seeks to register a domain name matching the acronym of that IGO;
2. Allow the IGO a timely opportunity to effectively prevent potential misuse and confusion;
3. Allow for a ***final and binding determination by an independent third party*** in order to resolve any disagreement between and IGO and a potential registrant; and
4. Be at ***no cost or of a nominal cost*** only to the IGO.”

This Communique explicitly states that the Claims Notification process should be permanent, and where the Durban Communique referred to a “cost neutral” mechanism the GAC now specifies that this should be at either no or minimal cost to the IGO in question. The GAC also added to the independent third party review the need for it to be “final and binding”.

In summary, the GAC’s most recent advice on second level IGO protections essentially focused on a no (or low) cost system of permanent Claims Notification to IGOs, accompanied by final and binding third party review should there be a dispute between an IGO and a potential registrant of a second level domain name matching that IGO’s acronym (presumably where that acronym is on the GAC’s Protected IGOs List).

GAC Advice on the Red Cross Movement:

While the GAC has not issued any advice regarding protections – either preventative or

curative – for INGOs in general, it has on several occasions done so in relation to the International Olympic Committee and the Red Cross movement (and its related national societies) (collectively, “RC”). These included:

- (1) A May 2011 [Statement](#) supporting the IOC’s and RC’s request to reserve the key words “most directly associated” with their respective Charters;
- (2) A September 2011 [Letter](#) to the GNSO Council with an “illustrative list” of IOC and RC names suggested for reservation at the second level;
- (3) The March 2012 GAC [Communique](#) from the Costa Rica meeting confirming the GAC’s consensus and rationale for protecting these two organizations;
- (4) Its June 2012 [Prague Communique](#) requesting a status update from the ICANN Board;
- (5) Its October 2012 [Toronto Communique](#) questioning the need for the GNSO to initiate a PDP on the matter;
- (6) Its April 2013 [Beijing Communique](#) requesting confirmation of permanent top-level protections;
- (7) Its July 2013 [Durban Communique](#) requesting the same cost neutral Claims Notification mechanism for the international Red Cross movement as for IGOs; and
- (8) Its November 2013 [Buenos Aires Communique](#) stating that it was considering providing further advice to the ICANN Board specifically on protections for the designations of national Red Cross entities.

In its most recent [Singapore Communique](#) (March 2014)⁷, the GAC clarified that its previous advice on providing permanent protection to terms associated with the Red Cross movement includes protection not just for the terms used by the International Red Cross entities but also those of the 189 national Red Cross and Red Crescent Societies, both in English as well as their respective national languages. It further clarified that for the international entities, permanent protection for the Full Names of both the

⁷ The Singapore Communique also referenced IGOs, noting that the GAC is awaiting the Board’s response on implementing GAC Advice on this topic.

International Committee of the Red Cross and the International Federation of the Red Cross and Red Crescent Societies should be in all 6 official United Nations languages.

ALAC Statements on IGO & INGO Protections:

The ALAC had submitted a [Statement](#) on the PDP WG's chartered issues in January 2013, a [Statement](#) on the PDP WG's Initial Report in July 2013, a [Statement](#) on the PDP WG's Draft Final Report in November 2013 and [public comments](#) on the PDP WG's Final Report in January 2014. It participated on the PDP WG and submitted a [Minority Position](#) to the WG's Final Report that referred to its previous Statements, noting that the ALAC did not consider any top-level protections to be necessary, and its concern that blocking-type protections could inhibit other reasonable uses of the protected strings.

Other Community Comments:

Following the GNSO Council's unanimous adoption of the PDP WG's consensus recommendations in November 2013, a [Public Comment Forum](#) was opened on the adopted recommendations. All comments received were [analyzed](#) and considered by the GNSO Council in its preparation of its [Recommendations Report](#), which was submitted to the ICANN Board on 23 January 2014.

The GAC and the GNSO each also held discussions on the topic of IGO protections with specific reference to the NGPC's March 2014 proposal during their respective community sessions in Singapore in March 2014.

What significant materials did the Board review?

The Board reviewed the GNSO Council Recommendations Report to the Board, the GAC's advice on IGO and RC protections, the ALAC Statements and the PDP WG Final Report (including the Minority Positions attached thereto).

What factors the Board found to be significant?

The Board noted that the GNSO's consensus recommendations were developed following the GNSO Policy Development Process as outlined in [Annex A](#) of the ICANN Bylaws and received the unanimous support of the GNSO Council. The Board also noted that the PDP WG participants included representatives from the RC, IOC, IGOs and other INGOs, whose positions are reflected in the WG Final Report (including Minority Positions, where applicable). The WG also considered GAC advice and created several public comment forums for community feedback throughout its deliberations. Further, the Board noted that the ALAC and the GAC had each provided statements and advice on various occasions, indicating the high level of interest across the community on the topic.

Under the ICANN Bylaws, in relation to GNSO PDP recommendations:

“[A]ny PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN ... In the event that the Board determines [that the policy recommended] is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement ...

At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than

a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.”

Under the ICANN Bylaws, in relation to GAC advice:

“The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

... If no such solution can be found, the ICANN Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.”

The Board remains mindful of the ICANN Bylaws governing the Board’s actions relating to GNSO PDP recommendations and GAC advice, the policy development role of the GNSO in relation to gTLDs and the role of the GAC in relation to government concerns and public policy issues.

Are there positive or negative community impacts?

In adopting those of the GNSO’s recommendations that are not inconsistent with advice from the GAC, implementation issues – including the impact on gTLD registries – will need to be analyzed, as noted in the GNSO Council’s Recommendations Report. These implementation issues will also need to include an examination of the current list of IGO, IOC and RC names and acronyms that have been granted temporary protection pending the outcome of the GNSO’s PDP and the Board’s decision.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

As more fully described in the GNSO Council's January 2014 [Recommendations Report](#) to the ICANN Board, implementation of the GNSO recommendations will likely have substantial impact on registry operators and to some extent also on potential registrants. In addition, differences between the identifiers to be protected on a permanent basis with those already protected on an interim basis will need to be scoped out immediately. Staff and technical resources will be needed to support these efforts as well as any changes to the Trademark Clearinghouse structure or procedures that may be needed in order to fully implement the relevant adopted recommendations.

In accordance with recent practice, the use of a GNSO Implementation Review Team may be very helpful, particularly as the PDP WG has in its Final Report already identified a number of implementation issues and suggested several possible mechanisms for addressing them. The GNSO Council has [recommended](#) the formation of an IRT to implement the recommendations of the PDP WG. The formation of an IRT will necessarily incur community time and volunteer resources.

Are there any security, stability or resiliency issues relating to the DNS?

There are no security, stability, or resiliency issues related to the DNS if the Board adopts the GNSO recommendations identified as not in conflict with GAC Advice.