

2 June 2017

Submission of Adopted GNSO Council Response to the Copenhagen GAC Communiqué

From:

James Bladel, GNSO Chair
Donna Austin, GNSO Council Vice-Chair
Heather Forrest, GNSO Council Vice-Chair

To:

Steve Crocker, ICANN Board

Dear Members of the ICANN Board,

On behalf of the GNSO Council, we are hereby transmitting to you the adopted GNSO Council's response to the GAC Copenhagen Communiqué. As you may recall, the GNSO Council submitted a draft version on 27 April 2017 (see <https://gnso.icann.org/en/correspondence/crocker-to-bladel-hyderabad-27apr17-en.pdf>) to help inform your meeting with the GAC to discuss the GAC Copenhagen Communiqué. The Council formally adopted this version during its meeting on 18 May 2017.

As noted previously, the GNSO Council's response to each GAC Communiqué is an effort to provide feedback to you, in your capacity as members of the ICANN Board, as you consider issues referenced in the Communiqué that we believe relate to policies governing generic top-level domains. Our intent is to inform you and the broader community of gTLD policy activities, either existing or planned, that may directly or indirectly relate to advice provided by the GAC.

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

We understand that the Board, as a result of the GAC advice on 2-Character Country and Territory Codes at the second level, has engaged in discussions with affected GAC members. We would like to be kept apprised of these discussions along with any decisions taken with individual GAC members that is contrary to the Board's resolution on this matter in Hyderabad. We would gratefully appreciate an expeditious response from the ICANN Board on this particular point.

The GNSO Council hopes that the input provided through its review of the GAC Communiqué will enhance co-ordination and promote the sharing of information on gTLD related policy activities between the GAC, Board and the GNSO.

James Bladel
Chair, GNSO

Donna Austin
Vice-Chair, GNSO Council

Heather Forrest
Vice-Chair, GNSO Council

Cc: Thomas Schneider, Chair, GAC

GNSO COUNCIL REVIEW OF THE [COPENHAGEN GAC COMMUNIQUE](#)¹

GAC Advice - Topic	GAC Advice Details	Does the advice concern an issue that can be considered within the remit ² of the GNSO (yes/no)	<i>If yes, is it subject to existing policy recommendations, implementation action or ongoing GNSO policy development work?</i>	<i>How has this issue been/is being/will be dealt with by the GNSO</i>
1. Protection of the Red Cross and Red Crescent designations and identifiers	Re-affirming previous GAC Advice for a permanent reservation of the Red Cross and Red Crescent designations and identifiers, the GAC acknowledges the conclusions of the facilitated dialogue held during ICANN 58 on resolving outstanding differences between the GAC’s previous advice and the GNSO’s past recommendations to the Board on the protections of the names and identifiers of the respective Red Cross and Red Crescent organizations. Consistent with the conclusions of the abovementioned dialogue, a. The GAC advises the ICANN	Yes	Yes	The GNSO Council discussed the Board’s request to consider possible modifications to the GNSO policy relating to a limited list of Red Cross National Society and international movement names, in accordance with the GNSO’s process as outlined in the GNSO Policy Development Process Manual, at its meeting on 20 April 2017. A motion to invoke this extraordinary process is currently under consideration.

¹ Only of “Section VI of the Communiqué: GAC Advice to the ICANN Board”

² As per the ICANN Bylaws: ‘There shall be a policy-development body known as the Generic Names Supporting Organization (GNSO), which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains.

GAC Advice - Topic	GAC Advice Details	Does the advice concern an issue that can be considered within the remit ² of the GNSO (yes/no)	<i>If yes, is it subject to existing policy recommendations, implementation action or ongoing GNSO policy development work?</i>	<i>How has this issue been/is being/will be dealt with by the GNSO</i>
	<p>Board to: I. request the GNSO without delay to re-examine its 2013 recommendations pertaining to the protections of Red Cross and Red Crescent names and identifiers (defined as "Scope 2" names in the GNSO process) which were inconsistent with GAC Advice.</p> <p>RATIONALE The GAC acknowledges the outputs of the facilitated dialogue on this topic and requests the Board to proceed accordingly without delay</p>			
2. IGO Protections	The GAC notes that a dialogue facilitated by the Board on this topic has begun between the GAC and the GNSO (including its relevant Working Groups). The GAC expects that these discussions would resolve the long-outstanding issue of IGO	Yes	Yes	The GNSO Council refers to its previous response to the Board on this topic, which notes the ongoing work of the IGO-INGO Access to Curative Rights Protection Mechanisms Policy Development Process (PDP) Working Group. The GNSO Council appreciates the

GAC Advice - Topic	GAC Advice Details	Does the advice concern an issue that can be considered within the remit ² of the GNSO (yes/no)	If yes, is it subject to existing policy recommendations, implementation action or ongoing GNSO policy development work?	How has this issue been/is being/will be dealt with by the GNSO
	<p>acronym protections and understands that temporary protections will continue to remain in place until such time as a permanent agreed solution is found. Based upon the facilitated discussions up to this stage,</p> <p>a. The GAC advises the ICANN Board to:</p> <p>I. pursue implementation of (i) a permanent system of notification to IGOs regarding second-level registration of strings that match their acronyms in up to two languages and (ii) a parallel system of notification to registrants for a more limited time period, in line with both previous GAC advice and GNSO recommendations;</p> <p>II. facilitate continued discussions in order to develop a resolution that will reflect (i) the fact that IGOs are in an</p>			<p>opportunity to participate in the facilitated discussion with the GAC at ICANN58, and the good faith dialogue that took place.</p> <p>In relation to the GAC’s advice to the Board to pursue implementation of:</p> <p>(i) a permanent system of notification to IGOs regarding second-level registration of strings that match their acronyms in up to two languages; and</p> <p>(ii) a parallel system of notification to registrants for a more limited time period, in line with both previous GAC advice and GNSO recommendations.</p> <p>The GNSO Council understands that the agreed outcome of the facilitated dialogue session at ICANN 58 was that further input from ICANN on the feasibility of permanent notification to IGOs is required; and that a</p>

GAC Advice - Topic	GAC Advice Details	Does the advice concern an issue that can be considered within the remit ² of the GNSO (yes/no)	<i>If yes, is it subject to existing policy recommendations, implementation action or ongoing GNSO policy development work?</i>	<i>How has this issue been/is being/will be dealt with by the GNSO</i>
	<p>objectively unique category of rights holders and (ii) a better understanding of relevant GAC Advice, particularly as it relates to IGO immunities recognized under international law as noted by IGO Legal Counsels; and</p> <p>III. urge the Working Group for the ongoing PDP on IGO-INGO Access to Curative Rights Protection Mechanisms to take into account the GAC's comments on the Initial Report.</p> <p>RATIONALE This Advice captures achievements made to date in the facilitated discussions, in the hope that this will be instrumental in resolving this long-standing issue at the earliest opportunity.</p>			<p>parallel system of notification to registrants for a more limited time period, is in line with both previous GAC advice and GNSO recommendations.</p> <p>In relation to the GAC's advice to the Board to facilitate continued discussions in order to develop a resolution that will reflect (i) the fact that IGOs are in an objectively unique category of rights holders and (ii) a better understanding of relevant GAC Advice, particularly as it relates to IGO immunities recognized under international law as noted by IGO Legal Counsels. The GNSO Council looks forward to continuing, in good faith, the discussions with the GAC and the Board on appropriate next steps, but is concerned that the GAC advice in this instance seems to suggest a predetermined outcome, which the Council believes is premature.</p>

GAC Advice - Topic	GAC Advice Details	Does the advice concern an issue that can be considered within the remit ² of the GNSO (yes/no)	<i>If yes, is it subject to existing policy recommendations, implementation action or ongoing GNSO policy development work?</i>	<i>How has this issue been/is being/will be dealt with by the GNSO</i>
				As previously communicated to the Board, the ongoing PDP on IGO-INGO Access to Curative Rights Protection Mechanisms will take into account the GAC's comments on the Initial Report. The GNSO Council notes that the Working Group is actively reviewing all comments received on its Initial Report, including the comments submitted by the GAC and a number of IGOs.
3. Mitigation of Domain Name Abuse	a. The GAC advises the ICANN Board to: I. provide written responses to the questions listed in the Follow-up Scorecard attached to this Communique, no later than 5 May 2017 for appropriate consideration by the GAC before the ICANN 59 meeting in Johannesburg, taking into account that the ICANN President and CEO will act as contact point for the GAC in this matter.	Yes	Yes	The GNSO Council refers to its input to the Board regarding the GAC's Hyderabad Communique on this topic, and reiterates the concerns it stated in that response: https://gns0.icann.org/en/drafts/revi-ew-gac-communique-15dec16-en.pdf .

GAC Advice - Topic	GAC Advice Details	Does the advice concern an issue that can be considered within the remit ² of the GNSO (yes/no)	<i>If yes, is it subject to existing policy recommendations, implementation action or ongoing GNSO policy development work?</i>	<i>How has this issue been/is being/will be dealt with by the GNSO</i>
	<p>RATIONALE</p> <p>The GAC is seeking to assess the effectiveness of its Advice to the ICANN Board.</p> <p>Annex 1 of the GAC Hyderabad Communiqué listed a number of questions to conduct such assessment in relation to Advice implemented as part of the 2013 Registrar Accreditation Agreement and the New gTLD Registry Agreement.</p> <p>The GAC is also interested in assessing the contribution of the SSR and Contractual Compliance departments of ICANN to the prevention and mitigation of domain name abuse.</p> <p>While ICANN responded to Annex 1 of the GAC Hyderabad Communiqué, the information provided was not sufficient to conduct the necessary assessments.</p>			

