

08 December 2020

Ms. Manal Ismail
Chair, ICANN Governmental Advisory Committee (GAC)

RE: Board Notice of Bylaws Consultation on GAC Advice in relation to Protections for International Governmental Organizations (IGOs) at the Second Level of the Domain Name System (DNS)

Dear Manal:

On behalf of the ICANN Board, I write to follow up on the Board's [resolution](#) of 22 October 2020, which described the Board's intention to take an action that is not or may not be consistent with the GAC's advice on the scope of a permanent notification mechanism concerning third party registrations of second level domain names matching the acronyms of the IGOs on the [GAC's list](#) dating from April 2013. The Board resolution also initiated the required Board-GAC [Bylaws Consultation Process](#) that is required in such an event.

As mandated by the second step of the Bylaws Consultation Process, the Board must *"provide written notice to the GAC stating, in reasonable detail, the GAC advice the Board determines not to follow, and the reasons why such GAC advice may not be followed."* In this regard, the Board notes its 8 June 2020 [communication](#) to the GAC regarding the current status of GAC advice, as inventoried in the Action Request Register (ARR) maintained for this purpose. Between November 2013 (ICANN48, Buenos Aires) and June 2018 (ICANN62, Panama), the GAC provided advice to the Board on the topic of IGO protections in nine Communiqués, which remain open for further Board consideration. In view of the Board's 22 October 2020 resolution that deferred action on the remaining recommendations from the Generic Names Supporting Organization's (GNSO) 2013 Policy Development Process (PDP) that are not consistent with GAC advice as well as on the four PDP recommendations approved by the GNSO Council in 2019 concerning curative rights protections for IGOs, the Board has prepared a scorecard (attached) to reflect the current status of Board action regarding IGO protections.

The Board stands ready to hear from the GAC whether there are additional elements of GAC advice that it believes have been rejected by the Board, as well as coordinating an appropriate time and agenda for the required Bylaws Consultation meeting between the GAC and the Board.

The Board looks forward to continued discussion with the GAC on this important matter.

Sincerely,



Maarten Botterman
Chair, ICANN Board of Directors

BOARD-GAC SCORECARD: STATUS OF BOARD ACTION ON IGO

PROTECTIONS Date: 8 December 2020

	Communique Reference	GAC Advice	Board Preliminary Position	Additional Details
1.	ICANN48 (Buenos Aires , November 2013)	The GAC advises the ICANN Board that the GAC, together with IGOs, remains committed to continuing the dialogue with NGPC on finalising 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 an IGO and a potential registrant; and 4. be at no cost or of a nominal cost only to the IGO.	The Board may only partially accept the GAC advice concerning a permanent system of notification when a registrant registers a domain name matching an IGO acronym,	As outlined in the Board’s 22 October 2020 resolution , the Board believes at this time that the most appropriate solution (not including any curative rights mechanisms) regarding second level protections for IGO acronyms that is in the best interests of the ICANN community and ICANN will be for the ICANN organization to implement, as an operational matter, an ongoing (i.e. permanent) post-registration notification mechanism that will notify an affected IGO when a third party registers a second level domain matching that organization's acronym.
2.	ICANN49 (Singapore , March 2014)	The GAC recalls its previous public policy advice from the Toronto, Beijing, Durban and Buenos Aires Communiqués regarding protection for IGO names and acronyms at the top and second levels and awaits the Board’s response regarding implementation of the GAC advice.	The Board may only partially accept the GAC advice concerning a permanent system of notification when a registrant registers a domain name matching an IGO acronym.	As outlined in the Board’s 22 October 2020 resolution , the Board believes at this time that the most appropriate solution (not including any curative rights mechanisms) regarding second level protections for IGO acronyms that is in the best interests of the ICANN community and ICANN will be for the ICANN organization to implement, as an operational matter, an ongoing (i.e. permanent) post-registration notification mechanism that will notify an affected IGO when a third party registers a second level domain matching that organization's acronym.

				<p>The Board’s 22 October 2020 resolution also deferred Board action on the remaining recommendations from the GNSO’s 2013 PDP on IGO-INGO Protections in All gTLDs and on the four recommendations approved by the GNSO Council and sent to the Board from the GNSO’s 2019 PDP on IGO-INGO Access to Curative Rights Mechanisms.</p>
3.	<p>ICANN50 (London, June 2014)</p>	<p>The GAC reaffirms its advice from the Toronto, Beijing, Durban, Buenos Aires and Singapore Communiqués regarding protection for IGO names and acronyms at the top and second levels, as implementation of such protection is in the public interest given that IGOs, as created by governments under international law are objectively different rights holders; notes the NGPC’s letter of 16 June 2014 to the GNSO concerning further steps under the GNSO Policy Development Process while expressing concerns that the process of implementing GAC advice has been so protracted; welcomes the NGPC’s assurance that interim protections remain in place pending any such process; and confirms its willingness to work with the GNSO on outcomes that meet the GAC’s concerns.</p>	<p>The Board may only partially accept the GAC advice concerning a permanent system of notification when a registrant registers a domain name matching an IGO acronym.</p>	<p>As outlined in the Board’s 22 October 2020 resolution, the Board believes at this time that the most appropriate solution (not including any curative rights mechanisms) regarding second level protections for IGO acronyms that is in the best interests of the ICANN community and ICANN will be for the ICANN organization to implement, as an operational matter, an ongoing (i.e. permanent) post-registration notification mechanism that will notify an affected IGO when a third party registers a second level domain matching that organization’s acronym.</p> <p>The Board’s 22 October 2020 resolution also deferred Board action on the remaining recommendations from the GNSO’s 2013 PDP on IGO-INGO Protections in All gTLDs and on the four recommendations approved by the GNSO Council and sent to the Board from the GNSO’s 2019 PDP on IGO-INGO Access to Curative Rights Mechanisms.</p> <p>The Board’s 27 January 2019 scorecard in response to the GAC’s Barcelona Communique confirmed that the interim protections afforded to IGO acronyms at the second level of the domain name system will remain in place pending the GNSO’s final</p>

				recommendations and the Board's consideration of those recommendations.
4.	ICANN51 (Los Angeles , October 2014)	<p>(a) The GAC reaffirms its advice from the Toronto, Beijing, Durban, Buenos Aires, Singapore and London Communiqués regarding protection of IGO names and acronyms at the top and second levels, as implementation of such protection is in the public interest given that IGOs, as created by governments under international law, are objectively different right holders; namely, i. Concerning preventative protection at the second level, the GAC reminds the ICANN Board that notice of a match to an IGO name or acronym to prospective registrants, as well as to the concerned IGO, should apply in perpetuity for the concerned name and acronym in two languages, and at no cost to IGOs; ii. Concerning curative protection at the second level, and noting the ongoing GNSO PDP on access to curative Rights Protection Mechanisms, the GAC reminds the ICANN Board that any such mechanism should be at no or nominal cost to IGOs; and further, in implementing any such curative mechanism,</p> <p>(b) The GAC advises the ICANN Board: i. That the UDRP should not be amended; welcomes the NGPC's continued assurance that interim protections remain in place pending the resolution of discussions concerning preventative protection of IGO names and acronyms; and supports continued dialogue between the GAC (including IGOs), the ICANN Board (NGPC) and the GNSO to develop concrete solutions to implement long-standing GAC advice.</p>	The Board may only partially accept Part (a)(i) of this advice; and has deferred further action on Parts (a)(ii) and (b).	<p>As outlined in the Board's 22 October 2020 resolution, the Board believes at this time that the most appropriate solution (not including any curative rights mechanisms) regarding second level protections for IGO acronyms that is in the best interests of the ICANN community and ICANN will be for the ICANN organization to implement, as an operational matter, an ongoing (i.e. permanent) post-registration notification mechanism that will notify an affected IGO when a third party registers a second level domain matching that organization's acronym.</p> <p>The Board's 22 October 2020 resolution also deferred Board action on the remaining recommendations from the GNSO's 2013 PDP on IGO-INGO Protections in All gTLDs and on the four recommendations approved by the GNSO Council and sent to the Board from the GNSO's 2019 PDP on IGO-INGO Access to Curative Rights Mechanisms.</p> <p>The Board's 27 January 2019 scorecard in response to the GAC's Barcelona Communique confirmed that the interim protections afforded to IGO acronyms at the second level of the domain name system will remain in place pending the GNSO's final recommendations and the Board's consideration of those recommendations.</p> <p>The Board acknowledges the GAC's willingness (as expressed in the GAC's letter to the Board of 20 August 2019) to participate in the GNSO's chartering effort relating to</p>

				<p>Recommendation #5 of the GNSO’s PDP on IGO-INGO Access to Curative Rights Protection Mechanisms. The Board understands that, after ICANN69 in October 2020, the GNSO Council launched a call for Expressions of Interest for a Chair and membership of the new IGO Work Track.</p>
5.	<p>ICANN52 (Singapore, February 2015)</p>	<p>The GAC will continue to work with interested parties to reach agreement on appropriate permanent protections for names and acronyms for Inter-Governmental Organisations. This will include working with the GNSO PDP Working Group on IGO-INGO Access to Curative Rights Protection Mechanisms; and with IGOs and the NGPC.</p>	<p>The Board has deferred further action on the GNSO PDP recommendations concerning curative rights protections for IGOs.</p>	<p>The Board acknowledges the GAC’s willingness (as expressed in the GAC’s letter to the Board of 20 August 2019) to participate in the GNSO’s chartering effort relating to Recommendation #5 of the GNSO’s PDP on IGO-INGO Access to Curative Rights Protection Mechanisms. The Board understands that, after ICANN69 in October 2020, the GNSO Council launched a call for Expressions of Interest for a Chair and membership of the new IGO Work Track.</p>
6.	<p>ICANN58 (Copenhagen, March 2017)</p>	<p>(a) 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>(b) 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; and Urge the Working Group for the ongoing PDP on IGO-INGO Access to Curative Rights Protection</p>	<p>The Board may not accept Part (a)(ii) of this advice. The Board has deferred further action on the GNSO PDP recommendations concerning curative rights protections for IGOs.</p>	<p>As outlined in the Board’s 22 October 2020 resolution, the Board believes at this time that the most appropriate solution (not including any curative rights mechanisms) regarding second level protections for IGO acronyms that is in the best interests of the ICANN community and ICANN will be for the ICANN organization to implement, as an operational matter, an ongoing (i.e. permanent) post-registration notification mechanism that will notify an affected IGO when a third party registers a second level domain matching that organization's acronym.</p> <p>The Board’s 22 October 2020 resolution also deferred Board action on the remaining recommendations from the GNSO’s 2013 PDP on IGO-INGO Protections in All gTLDs and on the four recommendations</p>

		Mechanisms to take into account the GAC's comments on the Initial Report.		approved by the GNSO Council and sent to the Board from the GNSO's 2019 PDP on IGO-INGO Access to Curative Rights Mechanisms .
7.	ICANN59 (Johannesburg , June 2017)	The GAC reiterates its Advice that IGO access to curative dispute resolution mechanism should: I. be modeled on, but separate from, the existing Uniform Dispute Resolution Policy (UDRP) II. provide standing based on IGOs' status as public intergovernmental institutions, and III. respect IGOs' jurisdictional status by facilitating appeals exclusively through arbitration. The GAC expresses concern that a GNSO working group has indicated that it may deliver recommendations which substantially differ from GAC Advice, and calls on the ICANN Board to ensure that such recommendations adequately reflect input and expertise provided by IGOs.	The Board has deferred further action on the GNSO PDP recommendations concerning curative rights protections for IGOs.	The Board's 22 October 2020 resolution deferred Board action on the remaining recommendations from the GNSO's 2013 PDP on IGO-INGO Protections in All gTLDs and on the four recommendations approved by the GNSO Council and sent to the Board from the GNSO's 2019 PDP on IGO-INGO Access to Curative Rights Mechanisms . The Board understands that, after ICANN69 in October 2020, the GNSO Council launched a call for Expressions of Interest for a Chair and membership of a new IGO Work Track to consider additional policy work on the topic of IGO curative rights.
8.	ICANN60 (Abu Dhabi , November 2017)	Review closely the decisions on this issue in order to ensure that they are compatible with these values and reflect the full factual record.	The Board has deferred further action on the GNSO PDP recommendations concerning curative rights protections for IGOs.	The Board's 14 October 2019 response to the GAC's 20 August letter noted the formation of a Board Caucus Group to review the community work on the topic of IGO curative rights. The Board's 22 October 2020 resolution deferred Board action on the remaining recommendations from the GNSO's 2013 PDP on IGO-INGO Protections in All gTLDs and on the four recommendations approved by the GNSO Council and sent to the Board from the GNSO's 2019 PDP on IGO-INGO Access to Curative Rights Mechanisms .
9.	ICANN62 (Panama , June 2018)	Work with the GNSO and the GAC following the completion of the ongoing PDP on IGOINGO access to curative rights protection mechanisms to ensure that GAC advice on protection of IGO acronyms, which includes	The Board has deferred further action on the GNSO PDP recommendations	The Board's 22 October 2020 resolution deferred Board action on the remaining recommendations from the GNSO's 2013 PDP on IGO-INGO Protections in All gTLDs and on the four recommendations

		the available “small group” proposal, is adequately taken into account also in any related Board decision.	concerning curative rights protections for IGOs.	<p>approved by the GNSO Council and sent to the Board from the GNSO's 2019 PDP on IGO-INGO Access to Curative Rights Mechanisms.</p> <p>The Board acknowledges the GAC’s willingness (as expressed in the GAC’s letter to the Board of 20 August 2019) to participate in the GNSO’s chartering effort relating to Recommendation #5 of the GNSO’s PDP on IGO-INGO Access to Curative Rights Protection Mechanisms. The Board understands that, after ICANN69 in October 2020, the GNSO Council launched a call for Expressions of Interest for a Chair and membership of the new IGO Work Track.</p>
10.	ICANN66 (Montreal , November 2019)	Follow up to previous GAC advice: “The GAC notes that the topic of re-chartering a specific PDP work track concerning a curative mechanism to address the issue of protection of IGO identifiers remains under discussion with the GNSO.”	No Board action is required.	The Board understands that the GNSO Council approved an Addendum to the Charter of the Review of All Rights Protection Mechanisms PDP in January 2020, thereby creating a new IGO Work Track that will consider additional policy work on IGO curative rights. The Board further understands that, after ICANN69 in October 2020, the GNSO Council launched a call for Expressions of Interest for a Chair and membership of the new IGO Work Track.