

11 February 2020

Manal Ismail
Chair, Governmental Advisory Committee (GAC)

RE: GAC Response to ICANN Board Clarification Questions on the GAC Montréal Communiqué Advice

Dear Manal,

Thank you for the [GAC response](#) to the ICANN Board clarification questions on the [GAC Montréal Communiqué](#). The Board appreciates the open communication with the GAC and continues to find the clarification calls and exchange of letters both productive and conducive to achieving a mutual understanding of the GAC's advice. The Board looks forward to continuing such open dialogue with the GAC.

As you are aware, the Board sought clarification¹ on two of the topics contained in the Montréal Communiqué:

1. CCT Review and Subsequent Rounds of New gTLDs (Advice §1.a.i)
2. Domain Name Registration Directory Service and Data Protection (Advice §2.b.ii)

The Board has reviewed the GAC's responses to the Board's questions and thanks the GAC for the detailed information and rationale behind the advice.

On 26 January 2020, the Board [adopted](#) a [scorecard](#) for the advice contained in the Montréal Communiqué. With regard to the above advice, the Board took the following actions:

1. CCT Review and Subsequent Rounds of New gTLDs (Advice §1.a.i)

"The Board is unable to accept or reject this advice at this time and proposes to defer action until such time as the Board has concluded its consideration of the CCT recommendations and the Subsequent Procedures PDP Working Group and the All Rights Protection Mechanisms PDP Working Group have delivered their policy recommendations to the GNSO Council.

On 16 December 2019, ICANN org sent a [letter](#) to the GAC Chair providing some additional background and considerations relating to implementation of the Competition, Consumer Trust, and Consumer Choice Review Team (CCTRT) recommendations. The CEO noted that the Board had referred policy-dependent recommendations contained in the CCT report to the community policy development process. The CEO also noted that the Board has put several such recommendations in pending status due to significant dependencies as well as various stated implementation and public interest concerns.

On 17 December 2019, the Board discussed its questions on this advice on a [call](#) with the GAC regarding the Montréal Communiqué. As discussed on this call, accepting the GAC's advice at this time appears to be in tension with the delegation of policy development authority under the ICANN Bylaws to the community through the bottom-up multistakeholder policy development process. In addition, until community-developed policy recommendations applicable to a subsequent round are developed, the Board has no basis to determine whether the GAC's concerns have been adequately addressed and, if not, no basis for entering into discussion with the GAC in an effort to identify a mutually acceptable solution as required by the Bylaws.

The Board understands that the GAC provided additional clarifications to this advice in a [letter](#) on 22 January 2020. The Board will consider when and if further action is needed on this item after review of the GAC clarifications and after continued discussion with the GAC."

2. Domain Name Registration Directory Service and Data Protection (Advice §2.b.ii)

"The Board notes that, currently, ICANN Contractual Compliance does not offer specific complaint forms for complaints related to obligations created under the Temporary Specification. ICANN Contractual Compliance is in the process of migrating to a new ticketing system ("NSp Compliance") that will allow it to easily create "smart forms" tailored to individual complaint types and to track and report granular data associated with each complaint type. NSp Compliance will include smart forms for Temp Spec-related complaints, including those concerning third-party access requests. Migration to NSp is expected to occur in 3Q2020.

Accordingly, and in light of the above, the Board accepts the GAC's advice and instructs ICANN org as part of the roll out of NSp Compliance to publish clear instructions on the ICANN Compliance web page describing how to submit a complaint concerning a third-party access request. Additionally, the Board instructs ICANN org to compile and publish monthly metrics data related to third-party access complaints once such forms are available in the new ticketing system.

The Board understands that the GAC provided additional clarifications to this advice in a [letter](#) on 22 January 2020. The Board will consider when and if further action is needed on this item after review of the GAC clarifications and after continued discussion with the GAC."

Additionally, the Board notes that, in its response to the Board's clarification questions, the GAC has asked for additional clarification regarding the pending CCT recommendations: "We would welcome clarification from the Board on how the Board intends to proceed [with recommendations in a pending status] and an understanding of when the Board will make its decision."

Most recently, on 26 January 2020, the Board took [action](#) on the implementation plan for the six accepted CCT recommendations. Regarding items in pending status, ICANN org continues to

conduct analysis on these recommendations to identify gaps in a particular area of work and/or to provide a report on work done to date. In some cases, a third party might be engaged to analyze the type of data required. As noted in the Board [resolution](#), the Board has committed to resolving the pending status and taking appropriate action on the pending recommendations once additional information is available and ICANN org has addressed the Board's questions.

The Board thanks the GAC again for the information it has provided, which the Board will use as it continues to deliberate on the GAC's advice and reviews the CCT recommendations. The Board looks forward to further fruitful discussions with the GAC on this and other topics at ICANN67 in Cancún.

Sincerely,



Maarten Botterman
Chair, ICANN Board of Directors