

ICANN | GAC

Governmental Advisory Committee

7 October 2021

Mr. Maarten Botterman
Chairman, ICANN Board of Directors

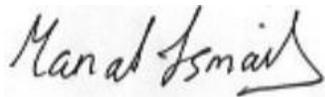
Subject: ICANN Board Clarifying Questions on ICANN71 GAC Communiqué Advice regarding IGO Protections

Dear Maarten,

In response to the ICANN Board's [Clarifying Questions](#)¹ regarding the [GAC ICANN71 Communiqué](#) Advice shared in the context of the [GAC Communiqué Clarification Call](#) (29 July 2021), please find enclosed the GAC's response.

This response covers the three questions submitted by the ICANN Board relative to GAC Advice on IGO protections, discussed during the 29 July 2021 call.

Best regards,



Manal Ismail
Chair, Governmental Advisory Committee (GAC)
ICANN

¹ See <https://gac.icann.org/activity-inputs/public/FINALIZED+ICANN71-Virtual-Communique-CQ-Scorecard.pdf>

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GAC Response to [ICANN Board Clarifying Questions](#) on ICANN71 GAC Communiqué Advice Regarding IGO Protections

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ICANN Board's Introduction to its Clarifying Questions:

The Board determined that the current moratorium should remain in place until the post-notification system was deployed. In order to understand why and whether or not the Board should change that determination, we need to ask the following questions:

Board Clarifying Question 1:

The Board wishes to clarify that the GAC Advice is to maintain the current moratorium pending the conclusion of the IGO curative rights work track. Is the GAC advising the Board to maintain the moratorium until the working group submits its final recommendations to the GNSO Council or until some other point in time?

GAC Response:

Noting in particular the statement regarding the “post-registration notification system that the Board intends to direct ICANN org to develop for IGOs” (see the Board scorecard in response to the GAC’s ICANN70 Communiqué), the GAC notes that any such notification system is separate from, and serves a limited purpose without a curative Rights Protection Mechanism and therefore considers that the moratorium should remain in place until the relevant curative recommendations (following a GNSO Council vote/decision) are fully implemented.

The GAC also seeks clarity from the Board, especially in light of the GAC’s public policy-based Advice and moreover the ICANN-created/sponsored TMCH (including Sunrise and Claims Notice processes) and various and expansive registry block lists, what is meant by the statement in the [Board’s response to the GAC’s ICANN70 Communiqué](#)² that: “*The Board notes, additionally, that ICANN org is currently doing further analysis on the potential implications for trademark law should specific protections be developed and approved that are based on a defined list of IGO names and acronyms.*”

² See <https://www.icann.org/en/system/files/files/resolutions-icann70-gac-advice-scorecard-12may21-en.pdf>

Board Clarifying Question 2:

In a related matter, and in light of the GAC’s stated intention (as noted in its letter to the Board in March 2013) to review the GAC’s list of protected IGOs “prior to delegation of any new top level domains in a subsequent new gTLD round or every three years, whichever comes earlier”, how does the GAC plan to carry out these updates over time? Does the GAC intend to create a regular (e.g. yearly) timetable for reviewing the list in the future?

GAC Response:

The GAC intends to regularly review the list every three years and also carry out occasional reviews prior to delegation of any new gTLDs. Regarding the potential issue of removal from such list, as was stated in a [letter of May 15, 2018](#)³:

“(4) What mechanism does the GAC believe should be utilized to remove a name or identifier from the List i.e., for adding or deleting a name or identifier from the list ?

An IGO wishing to remove its identifiers from the IGO List could inform ICANN (by email) via the GAC Secretariat, provided that the notification comes from a duly authorised official at the IGO who confirms that s/he has the authority to do so (and if not the designated individual, copying the listed GAC Observer for that particular IGO, for assurance purposes). [The IGO will then be requested to acknowledge the consequences of the requested action in writing].

(4b) Can the GAC confirm that it is possible to have a scenario where an IGO’s name (but not acronym) is deleted such that the deleted name becomes available for third parties while the acronym remains under protection, and vice versa (i.e., where the acronym is deleted but not the name)?

The matter of IGOs potentially opting out from either one of the protections afforded to their names or acronyms is seen as a separate matter from the maintenance of the IGO List and not within the scope of this advice.)”

³ See <https://www.icann.org/en/system/files/correspondence/ismail-to-chalaby-15may18-en.pdf>

Board Clarifying Question 3:

Can the GAC confirm that the list of protected IGOs does not conflict with any existing national legislation protecting intellectual property rights, such that the potential creation of an ICANN policy to protect IGO acronyms in gTLDs will not affect the ability to comply with national legislation or international agreements on intellectual property protection? Can the GAC provide an update about its consideration of the possible public policy implications should ICANN's policies provide more expansive protections to IGOs than what is provided for by international treaties and national legislation?

GAC Response:

The GAC, which represents governments, has for over 10 years provided consistent public policy-based advice concerning the protection of IGO identifiers in the DNS; such advice is based on national legislation and international agreements on intellectual property – which it is noted in the case of the Paris Convention, significantly precedes the advent of the DNS. The GAC does not accept the suggestion by ICANN that requested levels of IGO identifier protection would “provide more expansive protections to IGOs than what is provided for by international treaties and national legislation.”