

GAC Advice – Abu Dhabi Communiqué: Actions and Updates (04 February 2018)

Updated 2 February 2018

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
<p>§1.a.I Intergovernmental Organization (IGO) Protections</p>	<p>The GAC recalls its longstanding advice on the topic of IGO protections and is closely monitoring the ongoing PDP on IGO-INGO Access to Curative Rights Protection Mechanisms. The GAC remains open to working with the GNSO to try to find a mutually-agreeable resolution to this issue. The GAC also recalls the values of openness, transparency and inclusion, and representativeness and process integrity, that are respectively enshrined in ICANN’s Bylaws and GNSO Operating Procedures.</p> <p>a. The GAC advises the ICANN Board to:</p> <p>I. review closely the decisions on this issue in order to ensure that they are compatible with these values and reflect the full factual record.</p> <p><u>RATIONALE</u> Although the ICANN Community is still awaiting the final report for the PDP on IGO-INGO Access to Curative Rights Protection Mechanisms, preliminary communications indicate that the Working Group’s proposal will conflict with GAC advice on the issue and GAC input to the PDP as well as the comments of over 20 IGOs who submitted comments to the Working Group’s draft report. The Board plays an important role in ensuring the proper application of the ICANN Bylaws and GNSO Operating Procedures, and the GAC expects that a basic safeguard would be a close Board review of GNSO policy recommendations, especially where such recommendations directly contradict GAC advice.</p>	<p>The Board understands that the GAC wishes for the ICANN Board to:</p> <ol style="list-style-type: none"> 1. Review the decisions on the issue of IGO Protections to ensure that the decisions are compatible with these values and reflect the full factual record. <p>The Board understands that the GAC is concerned that the GNSO PDP Working Group on IGO-INGO Curative Rights Protection Mechanisms may issue recommendations that differ from GAC Advice. The Board understands that the GAC wishes that ICANN Board conduct a close review of GNSO Policy recommendations, including those that may differ from GAC advice.</p>	<p>The Board accepts the GAC advice to review closely the policy recommendations, including those that may differ from GAC advice and the associated public comments before taking action. The Board acknowledges the GAC’s longstanding advice on the need to protect IGO acronyms in the domain name system, and appreciates the GAC’s interest in the outcome of the GNSO PDP on IGO-INGO Access to Curative Rights Mechanisms.</p> <p>While the direct management of a GNSO PDP is a role for the GNSO Council, the Board does maintain strong interest in the progress of this PDP. The Board looks forward to receiving the final policy recommendations from the GNSO as well as any further GAC advice on this topic.</p> <p>The Board remains committed to facilitating discussions between all affected parties that may resolve any conflicts that may arise, and acknowledges its role under the ICANN Bylaws to act in the best interests of ICANN and the community, in furtherance of ICANN’s Mission, consistent with the organization’s Commitments and Core Values, and in accordance with the specific requirements of the Bylaws for receiving, considering, and acting on GNSO policy recommendations and GAC Advice.</p>

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<p>§2.a.I - §2.a.II Enabling inclusive, informed and meaningful participation in ICANN</p>	<p>a. The GAC advises the ICANN Board to instruct ICANN Org to:</p> <p>I. Develop a simple and efficient document management system that allows non-experts to easily and quickly access and identify documents, starting with defining minimal requirements that ensure that every document has a title and a date or reference number, identifies the author and indicates intended recipients, makes reference to the process it belongs to and explains the acronyms used in the document;</p>	<p>The Board understands that the GAC wishes for the ICANN Board to instruct the ICANN Org to:</p> <p>1. Develop a document management system that allows non-experts to easily and quickly access and identify documents, starting with defining minimal requirements that ensure that every document has a title and a date or reference number, identifies the author and indicates intended recipients, makes reference to the process it belongs to and explains the acronyms used in the document.</p>	<p>The Board accepts this advice and is committed to accountability and transparency and pursuing easily understandable and relevant information on matters of concern to all stakeholders. The Board’s commitment to these values aligns with the recently started Information Transparency Initiative (https://www.icann.org/news/blog/creating-content-governance-and-rebuilding-the-infrastructure-of-icann-s-public-sites). The Board acknowledges and agrees with the need to ensure effective and equal participation in the policy process by all stakeholders, which is in line with the Mission, Commitments, and Core Values, as expressed in the Bylaws.</p>
<p>§2.a.I - §2.a.II Enabling inclusive, informed and meaningful participation in ICANN</p>	<p>II. Produce easily understandable executive summaries, key points and synopses (using e.g. infographs, videos and other innovative ways of presenting information) for all relevant issues, processes and activities, so that also non-expert stakeholders will be able to (a) quickly determine if a particular issue is of concern to them and (b) if yes, to participate in the policy process easily and effectively, on equal footing with other stakeholders. This should be done at least, but not only, before putting issues up for public comment. Attention should be paid to using plain English (and if possible translations into other languages) in order to allow non-English native speakers to understand the issues;</p> <p><u>RATIONALE</u></p>	<p>The Board understands that the GAC wishes for the ICANN Board to instruct the ICANN Org to:</p> <p>1. Produce executive summaries, key points and synopses for all relevant issues, processes and activities, so that non-expert stakeholders will be able to determine if an issue is of concern to them, and if so, how to participate in the process. This should be done at least, but not only, before putting issues up for public comment. Attention should be paid to using plain English (and if possible translations into other languages) in order to allow non-English native speakers to understand the issues.</p> <p>The Board understands that the GAC and ALAC believe it is critical to ICANN’s legitimacy and part of ICANN’s core values to encourage meaningful participation in ICANN’s processes by non-expert stakeholders, and part of ICANN’s responsibility to make their voices, their needs and interests heard.</p>	<p>The Board also understands that the ICANN org currently produces monthly one-pager PDP updates, regular pre-and post-ICANN Meeting Reports and newsletters highlighting specific public comment dates, policy development milestones and participation opportunities, which are all produced in plain English and with a view toward conciseness. In addition, brief video interviews with community leaders are produced at each ICANN meeting to showcase key achievements.</p> <p>New courses on the ICANN Learn Online platform have been developed on various policy processes, and updated slide decks and infographics depicting the community’s work processes are available on ICANN’s website.</p> <p>Executive summaries of all PDP reports and other major documents are routinely translated for publication in the six official United Nations languages, and live captioning and other translation services are being used for an increasing number of community group calls.</p>

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	<p>This advice is consistent with a joint statement developed by the GAC and the At Large Advisory Committee (ALAC) which will be published separately.</p> <p>One of ICANN’s core values is to seek and support <i>“broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent”</i> (Bylaws Section 1.2.c.ii)</p> <p>In the view of the GAC and the ALAC it is not only among ICANN’s core values but also critical to ICANN’s legitimacy to act in the global public interest to allow non-expert stakeholders to meaningfully participate in ICANN’s processes and make their voices, their needs and interests heard, and duly take them into account in order to act and take decisions that are in fact, in the global public interest. These proposed measures will go some way to address this.</p>		<p>The Board will continue to encourage the ICANN organization to produce materials for community use that will facilitate broad and meaningful participation from all stakeholders globally and is open to suggestions on further improvement, and will balance this against the availability of resources.</p>
<p>§3.a.i.1 - §3.a.i.4 General Data Protection Regulation (GDPR)/WHOIS</p>	<p>a. The GAC advises the ICANN Board that:</p> <ol style="list-style-type: none"> <li data-bbox="513 1068 1166 1398">i. the 2007 GAC WHOIS Principles (attached) continue to reflect the important public policy issues associated with WHOIS services. Accordingly, ICANN should take these issues into account as it moves forward with its planning to comply with the European Union’s General Data Protection Regulation (GDPR). In these principles, the GAC has notably recognized that WHOIS data (also known as Registration 	<p>The Board understands that the GAC wishes for the ICANN Board to:</p> <ol style="list-style-type: none"> <li data-bbox="1231 1101 1849 1239">1. Take the GAC WHOIS Principles into account as it moves forward with planning to comply with the European Union’s General Data Protection Regulation (GDPR). <p>The Board understands that the GAC has recognized that the WHOIS data is used for a number of legitimate activities, including:</p>	<p>The Board accepts this advice and directs the ICANN org to continue to seek to maintain the existing WHOIS services to the maximum extent consistent with GDPR compliance. The Board also acknowledges that the WHOIS/RDS data is used for many legitimate activities, such as those described by the community in the user stories posted on the Data Protection and Privacy webpage.</p> <p>The Board welcomes the GAC’s full engagement with the community on the GDPR-related discussions and is committed to continuing to facilitate this discussion in a transparent way. The Board appreciates the GAC’s articulation of the important public policy interests served</p>

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	<p>Directory Services) is used for a number of legitimate activities, including:</p> <ol style="list-style-type: none"> 1. Assisting law enforcement authorities in investigations and in enforcing national and international laws, assisting in combatting against abusive use of internet communication technologies; 2. Assisting businesses, other organizations, and users in combatting fraud, complying with relevant laws, and safeguarding the interests of the public; 3. Combatting infringement and misuse of intellectual property; and 4. Contributing to user confidence in the Internet as a reliable and efficient means of information and communication by helping users identify persons or entities responsible for content and services online. 	<p>1. Assisting law enforcement authorities in investigations and in enforcing national and international laws, assisting in combatting against abusive use of internet communication technologies;</p> <p>2. Assisting businesses, other organizations, and users in combatting fraud, complying with relevant laws, and safeguarding the interests of the public;</p> <p>3. Combatting infringement and misuse of intellectual property; and</p> <p>4. Contributing to user confidence in the Internet as a reliable and efficient means of information and communication by helping users identify persons or entities responsible for content and services online.</p>	<p>by legitimate and proportionate use of WHOIS/RDS data, including this Advice and the GAC’s contribution to ICANN’s ongoing public consultation.</p> <p>The Board is aware of the independence of data protection authorities in the European Union, and the Board particularly seeks and appreciates GAC and individual GAC member assistance to secure the full participation of European data protection agencies in ICANN efforts to identify and agree on a GDPR compliance model that facilitates continued access to registrant information by those with a legitimate and proportionate interest in processing WHOIS/RDS data. This kind of participation is critical in maintaining a common approach to access to WHOIS/RDS data across the gTLD ecosystem that strikes the right balance among important public interests, including fundamental individual liberties.</p>
<p>§3.b.I.1 - §3.b.I.2 General Data Protection Regulation (GDPR)/WHOIS</p>	<p>b. The GAC advises the ICANN Board that:</p> <ol style="list-style-type: none"> I. As it considers how to comply with the GDPR with regard to WHOIS, it should use its best efforts to create a system that continues to facilitate the legitimate activities recognized in the 2007 Principles, including by: <ol style="list-style-type: none"> 1. Keeping WHOIS quickly accessible for security and stability purposes, for consumer 	<p>The Board understands that the GAC wishes for the ICANN Board to:</p> <ol style="list-style-type: none"> 1. As it considers how to comply with GDPR with regard to WHOIS, use its best efforts to create a system that continues to facilitate the legitimate activities recognized in the 2007 GAC WHOIS Principles. 	<p>The Board accepts this advice and welcomes the GAC’s full engagement with the community on the GDPR-related discussions and is committed to continuing to facilitate this discussion in a transparent way. In a 21 December 2017 blog from the ICANN org President and CEO, as well as in other fora, Göran Marby has emphasized that the organization has made it a high priority to find, to the greatest extent possible, a path forward to ensure compliance with the GDPR while maintaining proportionate access to WHOIS/RDS data for legitimate</p>

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	<p>protection and law enforcement investigations, and for crime prevention efforts, through user-friendly and easy access to comprehensive information to facilitate timely action.</p> <p>2. Keeping WHOIS quickly accessible to the public (including businesses and other organizations) for legitimate purposes, including to combat fraud and deceptive conduct, to combat infringement and misuse of intellectual property, and to engage in due diligence for online transactions and communications.</p>	<p>The Board understands that the GAC has recognized that these legitimate activities include:</p> <ol style="list-style-type: none"> 1. Keeping WHOIS quickly accessible for security and stability purposes, for consumer protection and law enforcement investigations, and for crime prevention efforts, through user-friendly and easy access to comprehensive information to facilitate timely action. 2. Keeping WHOIS quickly accessible to the public (including businesses and other organizations) for legitimate purposes, including to combat fraud and deceptive conduct, to combat infringement and misuse of intellectual property, and to engage in due diligence for online transactions and communications. 	<p>purposes. This remains a critical point on the path to find workable solutions to ensure both compliance with the law and ICANN’s contracts.</p>
<p>§3.c.i.1 - §3.c.i.2 General Data Protection Regulation (GDPR)/WHOIS</p>	<p>c. The GAC advises the ICANN Board to:</p> <ol style="list-style-type: none"> I. seek information from its outside counsel tasked with providing guidance on GDPR issues that addresses the following issues: <ol style="list-style-type: none"> 1. What are the options under the GDPR to ensure the lawful availability of WHOIS/RDS data for consumer protection and law enforcement activities? In particular, are there changes to policy or the legal framework that should be considered with a view to preserving the functionality of the WHOIS to the greatest extent possible for 	<p>The Board understands that the GAC wishes for the ICANN Board to:</p> <ol style="list-style-type: none"> 1. Seek information from its outside counsel that addresses the following issues: <p>What are the options under the GDPR to ensure the lawful availability of WHOIS/RDS data for consumer protection and law enforcement activities and for the public, including businesses and other organizations? In particular, are there changes to policy or the legal framework that should be considered with a view to</p> 	<p>The Board accepts the advice and notes that the ICANN Org has submitted these questions to the Hamilton firm and received a response.</p> <p>The GAC’s questions regarding GDPR were shared with the Hamilton firm to consider as part of its next legal analysis. See: https://www.icann.org/en/system/files/files/gdpr-legal-analysis-part2-draft-questions-15nov17-en.pdf.</p> <p>Hamilton replied to the questions in its second analysis, available here: https://www.icann.org/en/system/files/files/gdpr-memorandum-part2-18dec17-en.pdf.</p>

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	<p>these purposes and others also recognized as legitimate? This question includes tasks carried out in the public interest and tasks carried out for a legitimate purpose, including preventing fraud and deceptive activities, investigating and combatting crime, promoting and safeguarding public safety, consumer protection, cyber-security etc.</p> <p>2. What are the options under the GDPR to ensure the lawful availability of WHOIS/RDS data for the public, including businesses and other organizations? This question includes tasks carried out in the public interest and tasks carried out for a legitimate purpose, including preventing fraud and deceptive activities, investigating and combatting crime as well as infringement and misuse of intellectual property, promoting and safeguarding public safety, consumer protection, cyber-security etc.</p>	<p>preserving the functionality of the WHOIS to the greatest extent possible for these purposes and others also recognized as legitimate? This question includes tasks carried out in the public interest and tasks carried out for a legitimate purpose, including preventing fraud and deceptive activities, investigating and combatting crime, promoting and safeguarding public safety, consumer protection, cyber-security etc.</p>	<p>The Board also acknowledges that the community has had access to legal input from a variety of qualified experts in EU data protection law. Because GDPR is principles-based rather than prescriptive, the Board also notes that differences of opinion and approach are reflected in these various inputs. These differences underscore the importance of direct participation by the GAC as well as relevant data protection authorities in ICANN's dialogue with the community regarding GDPR compliance in the context of WHOIS/RDS data.</p>
<p>§3.d.i. General Data Protection Regulation (GDPR)/WHOIS</p>	<p>d. The GAC advises the ICANN Board that:</p> <p>i. it is urgent to address these issues and that the GAC should be fully involved in the design and implementation of any (including interim) solution and requests that ICANN practice transparency vis-à-vis the multistakeholder community in its GDPR activities.</p> <p><u>RATIONALE</u></p>	<p>The Board understands that the GAC wishes for the ICANN Board to:</p> <p>1. Address these issues and to involve the GAC in the design and implementation of any (including interim) solution and to practice transparency with regard to the multistakeholder community in GDPR activities</p>	<p>The Board accepts this advice and welcomes the GAC's full engagement with the community on the GDPR-related discussions and is committed to continuing to facilitate this discussion in a transparent way. The Board is aware and receiving updates from the organization on the ongoing facilitation, under the guidance of Göran and GAC leadership, on a variety of topics that are of interest to the GAC. The organization is grateful for the opportunity to hold these ongoing dialogues. One example of this is the regular calls between the ICANN org and the GAC about</p>

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	<p>This advice reflects the view of governments that the continued and lawful availability of WHOIS/RDS data for consumer protection, intellectual property rights protection and law enforcement activities is a vital public concern and that ICANN should strive to explore all possible mechanisms under the GDPR to ensure that this data remains available for legitimate activities that protect the public and promote a safe, secure, and trustworthy online environment.</p>	<p>The Board understands that the GAC views the continued and lawful availability of WHOIS/RDS data for consumer protection, intellectual property rights protection and law enforcement activities as a vital public concern. The Board also understands that the GAC wishes the Board to strive to explore all possible mechanisms under the GDPR to ensure this data remains available for legitimate activities that protect the public and promote a safe, secure, and trustworthy online environment.</p>	<p>GDPR. These calls provide the opportunity to discuss the context of different issues.</p>
<p>§4.a.I. Applications for .amazon and related strings</p>	<p>a. The GAC advises the ICANN Board to:</p> <ol style="list-style-type: none"> I. Continue facilitating negotiations between the Amazon Cooperation Treaty Organization’s (ACTO) member states and the Amazon corporation with a view to reaching a mutually acceptable solution to allow for the use of .amazon as a top level domain name. <p><u>RATIONALE</u> The GAC recognizes the need to find a mutually acceptable solution for the countries affected and the Amazon corporation to allow for the use of .amazon as a top level domain name. The GAC considers that the Board could continue to assist in facilitating the negotiations between the parties.</p>	<p>The Board understands that the GAC wishes for the ICANN Board to:</p> <ol style="list-style-type: none"> 1. Continue facilitating negotiations between the Amazon Cooperation Treaty Organization’s (ACTO) member states and the Amazon corporation with the view of reaching a mutually acceptable solution to allow for the use of .amazon as a top level domain name. <p>The Board understands that the GAC recognizes the need to find a mutually acceptable solution for the affected countries and the Amazon corporation. The Board also understands that the GAC considers that the Board could continue to assist in facilitating the negotiations.</p>	<p>The ICANN Board accepts the GAC advice and has asked the ICANN org President and CEO to facilitate negotiations between the Amazon Cooperation Treaty Organization’s (ACTO) member states and the Amazon corporation.</p>