

GAC Advice – ICANN71 Virtual Policy Forum Communiqué: Board Action (12 September 2021)

GAC Consensus Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
<p>§1.a.1 - IGO Protections</p>	<p>While continuing to welcome work being undertaken by the GNSO in terms of a curative rights protection mechanism for IGOs, the GAC wishes to clarify that the current moratorium on the registration of IGO acronyms should remain in place pending a conclusion to this curative work track.</p> <p>a. The GAC advises the Board to:</p> <p>i. to maintain the current moratorium on the registration of IGO acronyms pending the conclusion of the IGO curative work track currently underway (noting that it is expected to conclude within the calendar year).</p> <p><u>RATIONALE:</u></p> <p>In the context of the above-mentioned curative rights work track, in the ICANN70 Communiqué, the GAC had recalled “<i>ICANN agreement on a moratorium for new registrations of IGO acronyms ahead of a final resolution of this [curative rights protection] issue.</i>” The GAC does not share the Board’s view in its 2 June 2021 email that “<i>the GAC’s concern about the need to protect IGOs on a permanent basis is addressed by the Board’s determination to provide IGOs with a post-registration notification service on a permanent, ongoing basis.</i>” The GAC does not share the Board’s assessment that such notification would “<i>allow[] an IGO to take appropriate action to protect related acronyms.</i>” In the absence of access to a curative rights protection mechanism, a notification is of no real utility, because an IGO has no current ability to arbitrate a domain name dispute. The GAC previously has advised the Board to maintain current temporary protections of IGO acronyms in the ICANN61 San Juan and ICANN62 Panama Communiqués, noting in the San Juan Communiqué that the “<i>removal of interim protections before a permanent decision on IGO acronym protection [(i.e., a curative mechanism)] is taken could result in irreparable harm to IGOs.</i>”</p>	<p>The Board understands that the GAC would like the Board to maintain the current interim reservations for IGO acronyms until the IGO Work Track that is currently underway in the GNSO completes its work.</p>	<p>The Board acknowledges the GAC advice to maintain the current moratorium on second-level registrations of domain names matching the acronyms of IGOs currently on the GAC List (dated March 2013), pending the conclusion of the IGO Work Track that is currently expected to complete its work by the end of 2021. In this regard, the Board notes the GNSO Council’s initiation of an Expedited Policy Development Process on 19 August 2021 as a procedural matter, to maintain the IGO Work Track’s momentum without any material negative impact, including to its scope or anticipated timeline for completion.</p> <p>The Board reiterates its position that “<i>the GAC’s concern about the need to protect IGOs on a permanent basis is addressed by the Board’s determination to provide IGOs with a post-registration notification service on a permanent, ongoing basis</i>”. In this regard, the Board notes that this statement relates specifically to the need to provide IGOs with protections that comply with, but do not exceed, the scope of international law. The Board has consistently maintained that the proposed post-registration notification service for IGOs “<i>will form part of the totality of IGO protections when combined with the existing Consensus Policy that protects IGO full names and the final outcomes of the GNSO’s IGO Work Track</i>” (see, e.g., the Board scorecard in response to the GAC’s ICANN70 Communiqué: https://www.icann.org/en/system/files/files/resolutions-icann70-gac-advice-scorecard-12may21-en.pdf.) It follows that the Board has not taken the position that the only permanent protections that can be provided for IGO acronyms are limited to the post-registration notification service. However, the Board emphasizes that the final scope of total protections for IGO acronyms is a matter to be determined through ICANN’s policy processes, including the outcomes of the ongoing IGO Work Track (now an EPDP team). To the extent that these outcomes are the product of community consensus and approved by the GNSO Council, the Board will consider them in accordance with the Bylaws to ensure that the Board’s action on such recommendations are in the best interests of ICANN and the ICANN community.</p> <p><u>Other Impacts:</u></p> <p>The Board wishes to note that its decision whether to maintain the moratorium, as the GAC requests, is likely to be informed by the GAC’s ability to address the question pending before the GAC as to how the GAC proposes to manage additions, removals and other</p>

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			<p>proposed changes to the list. This includes the handling of requests such as the outstanding request from the African Union (AU) to have the acronym corresponding to the African Union removed from the list.</p> <p>In addition, the Board remains of the view that protections for IGO names and acronyms cannot result in a broader scope of protection than is available under international treaties and national laws, including intellectual property laws (see https://www.icann.org/en/system/files/correspondence/botterman-to-ismail-23feb21-en.pdf.)</p> <p>In setting up protective mechanisms for trademark owners in the last gTLD expansion round, ICANN worked with intellectual property experts and various community stakeholders to enable trademark holders to protect their legal rights. For example, the Trademark Clearinghouse mechanism functions by authenticating trademark information from rights holders and providing this information to registries and registrars that in turn support access to Sunrise registrations with new gTLD registries and notification from the Clearinghouse when a domain matching a validated trademark has been registered.</p> <p>One of the key principles in setting up the Trademark Clearinghouse was to protect existing legal rights without expanding protections beyond those conferred by trademark law. This is in line with the GNSO’s policy recommendations for the last expansion round that gTLD strings “<i>must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.</i>” As such, the Board believes that it will be helpful if the GAC can confirm that the list of protected IGOs does not conflict with any treaty or national legislation protecting intellectual property rights, such that the potential creation of an ICANN policy to protect acronyms corresponding to protected IGO names in gTLDs will not affect the ability to comply with national legislation or international agreements on intellectual property protection.</p>

GAC ICANN71 Virtual Policy Forum Communiqué: Actions and Updates (12 September 2021)

GAC Follow-up on Previous Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
<p>1. CCT Review Recommendations</p>	<p>The GAC wishes to recall its ICANN66 Montreal Consensus Advice on CCT Review and Subsequent Rounds of New gTLDs (section V. 1. a), and in light of the constructive discussions which took place with the Board, and the wider ICANN Community at ICANN71, as well as the GAC follow-up advice from ICANN70 (namely in paragraph 1. of Section VI) and considering the Board Scorecard thereon (dated 12th May 2021)⁸, draws the attention of the Board to the related suggestions referred to under section “Issues of Importance to the GAC” of this Communiqué.</p>	<p>The Board understands that there remain pending GAC Advice items that relate both to the CCT Recommendations and to the future of the New gTLD Subsequent Procedures round. The Board also understands that the GAC has expressed difficulty understanding the status of the community work where certain CCT Recommendations were communicated to community groups relevant to the recommendations.</p>	<p>Per its resolution of 01 March 2019, regarding the Competition, Consumer Trust and Consumer Choice (CCT) Final Report and Recommendations, the Board noted fourteen recommendations (9, 10, 12, 16, 19, 20, 25, 27, 28, 29, 32, 33, 34, 35) that were neither accepted nor rejected, but communicated, in whole or in part, to the community groups identified in the CCT Final Report for their consideration. Below is an overview to summarize the developments in these recommendations.</p> <p>In its actions on these recommendations, the Board neither accepted, nor rejected the recommendations, as such recommendations related to matters that can only be addressed through community action, notably as the Board does not direct policy work. In practice, this means that the Board, through its decision, stated that consideration of these recommendations is to be made by the community and any potential action initiated by community organizations. For each of these recommendations, while the Board or ICANN org was among the identified groups to which the CCT Review Team directed the recommendation, the Board was careful to respect the remit and roles of the different part of the ICANN community and did not direct ICANN org action that would usurp another group's remit. Therefore, once the Board has taken action of offering the recommendations for community consideration, no further action is to be taken on these recommendations which are considered completed and closed.</p> <p>The Board noted in its rationale accompanying its action on the CCT Final Report:</p> <p><i>“Passing recommendations through to community groups is not a directive that the groups identified should formally address any of the issues within those recommendations. It is within the purview of each group to identify whether work will be taken on and the topics that the group will address. For transparency, however, it would be helpful to have records or reporting made available to the ICANN community on how the community group considered the items coming out of the CCT-RT. The Board encourages any level of reporting that the groups are able to provide as the ICANN org and Board track action on the CCT-RT’s recommendations.”</i></p> <p>The Board thanks the GAC for its follow up on previous GAC advice concerning the CCT Review and subsequent rounds of New gTLDs. As the GAC noted in its 22 January 2020 response letter to the ICANN Board on issues of clarification of GAC Advice, the portions of GAC</p>

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			<p>Advice that were related to the “passed through” CCT Recommendations have neither been accepted nor rejected. As we have previously committed, the fact that these CCT Recommendations were passed through to the community does not alter the Board’s obligations to consider any advice from the GAC that impacts the Board’s consideration of the policy recommendations on Subsequent Procedures.</p> <p>The Board’s commitment on this issue was made most recently in May 2021 in a Scorecard responding to the ICANN70 GAC Communique.</p> <p>If the GAC has any remaining questions about topics addressed by recommendations in the CCT Final Report that were not included in the list of recommendations that the Board approved, the GAC may consider posing its own questions to the Board on these subjects (without reference to the CCT recommendations), and the Board stands ready to discuss further with the GAC.</p> <p>While the Board always welcomes and encourages any level of reporting that the groups are able to provide with regard to these recommendations, the Board would also encourage the GAC to continue to take advantage of the GNSO liaison to the GAC, who is primarily responsible for providing timely updates to the GAC on GNSO policy development activities in order to complement the existing notification processes as well answering questions in relation to these (GNSO) activities that GAC members may have.</p> <p>With regards to tracking and implementation of recommendations, as noted in its webinar on 2 June 2021, during the prep week session of ICANN71, ICANN org provided an update on the status of all reviews, including CCT, and noted that it is working to develop a robust and comprehensive reporting mechanism on the recommendations accepted by the Board. In addition, there is also a dedicated webpage on ICANN.org that provides latest information on the status of the CCT Recommendations accepted by the Board: https://www.icann.org/resources/reviews/specific-reviews/cct</p> <p>As the Board noted in its resolution of May 2021 in a Scorecard, responding to the ICANN71 GAC Communique:</p> <ul style="list-style-type: none"> • The Board understands that ICANN org is continuing with preparatory implementation planning for #5 along with other data collection recommendations. • For #14 & #15, the Board had directed ICANN org to facilitate community efforts to develop a definition of “abuse” to inform further action on this recommendation. The Board has continued to follow the community’s discussions on this and

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			<p>other aspects of DNS abuse mitigation, including the recommendations from the SSR2 Review Team and the recently issued advice from the SSAC.</p> <ul style="list-style-type: none"> • The Board understands that ICANN org has since completed implementation of #17 and that implementation is in progress for the other accepted recommendations as feasible with existing resources and budget. For those which require additional resourcing to implement, these will be subject to the prioritization and planning process under development for the community to consider the numerous recommendations from review teams and other efforts such as Work Stream 2, and how to organize and resource the work. • #9 and #12 were communicated to the GNSO as they concern gTLD policy development within the GNSO's remit. The Board has received the GNSO Council's Recommendations Report on RPMs and SubPro and will consider the final report and recommendations.
<p>2. EPDP Phase 1 Policy Implementation</p>	<p>The GAC notes its previous advice within the ICANN66 Montréal Communiqué and the ICANN70 Communiqué with regard to Phase 1 of the EPDP on gTLD Registration Data and the request for "a detailed work plan identifying an updated realistic schedule to complete its work." The GAC observes with continued concern that the Phase 1 Implementation Review Team (IRT) lacks a current published implementation timeline.</p>	<p>The Board understands that the GAC is requesting a detailed work plan identifying an updated realistic schedule to complete its work, and is concerned that the current Implementation Review Team lacks a current schedule.</p>	<p>The Board appreciates the GAC's continued interest and support for the Phase 1 implementation work in the community. The IRT is only one element of the Phase 1 implementation work, which also includes data protection agreement negotiations, completion of studies and reports, and developing the required updates to other impacted policies and procedures. Based on the GAC's ICANN70 communique, the org is investigating possible reporting mechanisms to show more detailed status and timing for the different areas of implementation work.</p>
<p>3. Privacy Proxy Services Accreditation Implementation</p>	<p>The GAC previously advised the ICANN Board regarding the need to resume implementation (e.g., in the ICANN65 Marrakech and ICANN66 Montréal Communiqués) in light of the importance of implementing procedures that govern these services. The GAC notes the ongoing work between ICANN and the GNSO on restarting this work and highlights the need to prioritize this implementation.</p>	<p>The Board understands that the GAC supports resuming the implementation of the 2015 policy recommendations, which was paused in light of the Expedited Policy Development Process (EPDP) on the Temporary Specification.</p>	<p>As part of the Expedited Policy Development Process (EPDP) Phase 1 implementation, ICANN org and the IRT reviewed the potential impacts of the Phase 1 recommendations on other existing policies and procedures. This effort included analysis of the impact on the 2015 Privacy Proxy Services Accreditation Issues (PPSAI) policy recommendations, which was shared with the GNSO Council following review by the Phase 1 Implementation Review Team (IRT). The GNSO Council provided a letter to the org on this topic on 7 July, to be considered.</p>