

GAC Advice – Montréal Communiqué: Consensus Advice (26 January 2020)

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
<p>§1.a.I CCT Review and Subsequent Rounds of New gTLDs</p>	<p>a. The GAC advises the Board to:</p> <p>i. Not to proceed with a new round of gTLDs until after the complete implementation of the recommendations in the Competition, Consumer Trust and Consumer Choice Review that were identified as "prerequisites" or as "high priority".</p> <p><u>RATIONALE:</u></p> <p>The Competition, Consumer Trust and Consumer Choice Review is the first completed Bylaw-mandated review after the IANA Stewardship Transition and serves as a vital accountability mechanism. The review identified a number of issues that should be addressed, in areas such as the necessity and availability of data, including on costs and benefits, the effectiveness of safeguards, the promotion of consumer trust, the mitigation of DNS abuse and improved geographic representation of applicants. The review produced 35 consensus recommendations. It said that 14 of the recommendations must be implemented prior to the launch of subsequent procedures for new gTLDs ("prerequisites") and a further 10 recommendations ("high priority") should be implemented by 8th March 2020 (eighteen months after the issuance of the report).</p> <p>It is particularly important that a new round of gTLDs should not be launched until after the successful implementation of those recommendations that were identified by the Review Team as necessary prior to any subsequent rounds of new gTLDs. It has been suggested that although some of the recommendations are for the Board to implement, other recommendations are for other parts of the community to implement. It would be helpful for the Board to monitor progress on all of the recommendations and support other parts of the community to implement the recommendations that are addressed to them.</p>	<p>The Board understands that the GAC is advising the Board to not proceed with a subsequent round of gTLDs until after implementation of the recommendations in the Competition, Consumer Trust and Consumer Choice Review that were identified as "prerequisites" or as "high priority".</p>	<p>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.</p> <p>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.</p> <p>On 17 December 2019, the Board discussed its questions on this advice on a call with the GAC regarding the Montreal 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.</p> <p>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.</p>
<p>§2.a.I Domain Name Registration Directory Service and</p>	<p>With regard to Phase 1 of the EPDP,</p> <p>a. The GAC advises the Board to:</p> <p>i. Take all possible steps to ensure that the ICANN org and the EPDP Phase 1 Implementation Review team generate a detailed work</p>	<p>The Board understands the GAC's request for the ICANN org and EPDP Phase 1 Implementation Review team (IRT) to generate a detailed work plan identifying an updated realistic schedule to complete its work.</p>	<p>The Board accepts this advice. The Board agrees that a realistic schedule for the implementation of the EPDP Phase 1 work plan is a prudent component of the implementation plan. The Board notes the ICANN org sent a letter to the GAC chair on 6 January 2020 with a status update as requested by the GAC. In that letter the Org cites they are applying the Consensus Policy Implementation Framework (CPIF) and summarizes</p>

<p>Data Protection</p>	<p>plan identifying an updated realistic schedule to complete its work and provide and inform the GAC on the status of its progress by January 3, 2020.</p> <p><u>RATIONALE:</u> Consistent with our prior advice, we take this opportunity to issue further guidance as the progress of the development and implementation of the EPDP activities have raised concerns. The GAC has consistently advised on the necessity of finding a swift solution to ensuring timely access to non-public registration data for legitimate third party purposes that complies with the requirements of the GDPR and other data protection and privacy laws, in view of the significant negative impact of the changes in WHOIS accessibility on users with legitimate purposes. The GAC has previously noted that such legitimate purposes include civil, administrative and criminal law enforcement, cybersecurity, consumer protection and IP rights protection. The GAC also notes that the European Data Protection Board, in its guidance, has expressly encouraged ICANN and the community to develop a comprehensive model covering the entirety of the data processing cycle, from collection to access.</p> <p>As already highlighted in the GAC’s San Juan and Kobe Communiqués, the GDPR provides for mechanisms to balance the various legitimate public and private interests at stake, including privacy and accountability. We note that the legitimate interests reflected in ICANN’s Bylaws are consistent with the recitals to the GDPR, which provide examples such as “preventing fraud”; “ensuring network and information security,” including the ability to resist “unlawful or malicious actions” and reporting possible “criminal acts or threats to public security” to authorities (see GDPR Recitals 47, 49 and 50).</p>		<p>both this process and progress to date. Additionally the letter notes that the implementation plan that will be published for public comment will include an implementation timeline. The Board will continue to closely monitor the implementation of the EPDP Phase 1 work.</p>
<p>§2.b.I Domain Name Registration Directory Service and Data Protection</p>	<p>With regard to Phase 2 and the conclusion of the EPDP, The GAC recognizes the considerable efforts undertaken by all participants within the EPDP. Nevertheless, there will likely be a significant time between finalization of the Phase 2 policy recommendations, implementation of Phase 1 and Phase 2, and the construction and deployment of any new Domain Name Registration System and Unified Access Model. Consequently,</p> <p>b. The GAC advises the Board to:</p> <p>i. instruct the ICANN organization to ensure that the current system that requires “reasonable access” to non-public domain name registration is operating effectively. This should include:</p>	<p>The Board understands the GAC’s advice to request the Board to direct ICANN org to ensure that the current system that requires “reasonable access” to non-public domain name registration is operating effectively. This should include:</p> <ul style="list-style-type: none"> - educating key stakeholder groups, including governments, that there is a process to request non-public data; - actively making available a standard request form that can be used by stakeholders to request access based upon the current consensus policy; and - actively making available links to registrar and registry information and points of contact on this topic. 	<p>The Board notes that the GAC advice refers to a “current system” that requires “reasonable access” to non-public domain name registration. The Interim Registration Data Policy for gTLDs/Temporary Specification meets the “reasonable access” standard by requiring contracted parties to provide reasonable access to a requester who has a legitimate interest to data that is not outweighed by the fundamental rights and freedoms of the data subject. The rules do not, however prescribe how the contracted providers comply with this requirement. The Interim Policy does not prescribe a “system” that the contracted parties must utilize in order to fulfill their access obligations, nor does it contain a contractually-mandated standard form for requests for third-party access.</p> <p>Accordingly, the Board accepts the GAC’s advise to ensure that the requirements to provide reasonable access are operating effectively consistent with existing Consensus Policy by instructing the ICANN org to:</p>

	<ul style="list-style-type: none"> – educating key stakeholder groups, including governments, that there is a process to request non-public data; – actively making available a standard request form that can be used by stakeholders to request access based upon the current consensus policy; and – actively making available links to registrar and registry information and points of contact on this topic. <p><u>RATIONALE:</u> See Rationale on Item §2.a.i</p>		<ul style="list-style-type: none"> – educate key stakeholder groups, including governments, that contracted parties are obligated to address requests for non-public data; and -actively make available links to registrar and registry information and points of contact on this topic. <p>Although Org does not have authority to unilaterally obligate Contracted Parties to use a standard form, the Board directs ICANN org to collaborate with the Registry and Registrar Stakeholder Groups to develop a voluntary standard request form that can be used by stakeholders to request access based upon the current Consensus Policy and actively making that request form available.</p>
<p>§2.b.II Domain Name Registration Directory Service and Data Protection</p>	<p>b. The GAC advises the Board to:</p> <ul style="list-style-type: none"> ii. instruct ICANN Compliance to create a specific process to address complaints regarding failure to respond to, and unreasonable denial of requests for non-public domain name registration data, and monitor and publish reports on compliance with the current policy as part of their regular monthly reporting. <p><u>RATIONALE:</u> See Rationale on Item §2.a.i</p>	<p>The Board understands the GAC’s advice to indicate that ICANN Compliance should create a unique complaint form and monthly reporting metric for complaints regarding non-compliance with the Temp Spec requirements applicable to third-party requests for non-public registration data.</p>	<p>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.</p> <p>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.</p> <p>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.</p>

Montréal Communiqué: Follow-up on Previous Advice (26 January 2020)

GAC Follow-up on Previous Advice Item	Text of Follow-up on Previous Advice	Board Understanding Following Board-GAC Call	Board Response
<p>1. Protection of the Red Cross and Red Crescent Designations and Identifiers</p>	<p>The GAC welcomes the progress made towards the permanent protection and reservation of the Red Cross and Red Crescent designations, names and identifiers from registration at the second level. It takes note with appreciation of ICANN Board's Resolution of 27 January 2019 acknowledging the public policy considerations associated with the protection of the Red Cross and Red Crescent names in the domain name system, adopting the consensus recommendations of the reconvened GNSO Policy Development Process, and instructing ICANN staff to execute the protections to be afforded to the names of the 191 National Red Cross and Red Crescent Societies, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies. The GAC welcomes the outputs of the Implementation Review Team and encourages ICANN, upon completion of the current public comment forum, and pursuant to comments made, to publish and to notify ICANN's Contracted parties of the new policy and of applicable implementation/compliance deadlines.</p> <p>The GAC also reaffirms its past advice that the acronyms of the two international organizations within the International Red Cross and Red Crescent Movement (the ICRC and the IFRC) be addressed under the same protection regime to be agreed and implemented for the acronyms of IGOs.</p> <p>The GAC lastly encourages the Board to consider complementing the list of Red Cross and Red Crescent designations protected at the first level and included in the Applicant Guidebook, with the full and agreed list of names and identifiers of the different Red Cross and Red Crescent organizations.</p>	<p>The Board understands the GAC's welcomes recent steps taken to complete the implementation of the Consensus Policy for protecting the names of the 191 National Red Cross and Red Crescent Societies, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies in accordance with the standard Policy Implementation process.</p> <p>The Board understands the GAC's reaffirmation of its past advice that the acronyms of the two international organizations within the International Red Cross and Red Crescent Movement (the ICRC and the IFRC) be addressed under the same protection regime to be agreed and implemented for the acronyms of IGOs.</p> <p>The Board understands the GAC encourages the Board to consider complementing the list of Red Cross and Red Crescent designations protected at the first level and included in the Applicant Guidebook, with the full and agreed list of names and identifiers of the different Red Cross and Red Crescent organizations.</p>	<p>The Board acknowledges this follow-up advice item. The Board notes that the Public Comment period for the Implementation Plan for the GNSO Consensus Policy relating to the Protection of Certain Red Cross Names closed recently on 12 December 2019, and the public comment summary and analysis report has now been published: https://www.icann.org/public-comments/red-cross-names-implementation-2019-10-23-en</p> <p>The Board understands that ICANN Org anticipates publishing the Policy prior to ICANN67, with an effective date to be no later than 1 August 2020.</p> <p>Regarding the topic of protection for certain acronyms of the two international organizations within the International Red Cross and Red Crescent Movement, the Board had previously indicated its wish to resolve the question of second level protection for IGO acronyms in a holistic fashion, so as to allow for a comprehensive policy solution. In this regard, the Board is reviewing four approved policy recommendations from the GNSO concerning curative rights protections for IGOs. The Board is aware that a fifth recommendation has been referred to the GNSO's Review of All Rights Protection Mechanisms Policy Development Process and a separate Work Track in which IGOs and the GAC have been encouraged to participate will be established.</p> <p>Regarding the GAC's guidance on protections at the first level for certain Red Cross and Red Crescent names and identifiers, the Board notes that any changes to the scope of protections that were provided under the 2012 New gTLD Program round should be the result of community-developed policy that is submitted to the Board for consideration.</p>
<p>2. IGO Protections</p>	<p>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.</p>	<p>The Board understands the GAC's continued attention to the topic of protections for IGO identifiers, and that the possibility of creating a specific PDP work track concerning a curative mechanism to address the issue of IGO identifiers has been under discussion between the GAC and the GNSO.</p>	<p>The Board acknowledges discussions between the GAC and the GNSO about a specific work track concerning a curative mechanism to address the issue of protection of IGO identifiers. The Board understands, further, that the GNSO Council is voting on a charter for this work track in January 2020 and awaits the community's decision on this matter.</p>
<p>3. Domain Name Registratio</p>	<p>The GAC emphasizes again that the Privacy Proxy Services Accreditation Issues (PPSAI) policy recommendations remain highly relevant and implementation efforts should continue as appropriate, in parallel with the</p>	<p>The Board understands that the GAC continues to emphasize that the Privacy Proxy Services Accreditation Issues (PPSAI) policy recommendations remain highly relevant and implementation efforts</p>	<p>The Board acknowledges the GAC's attention to this matter and interest in continuing the implementation work of the Privacy Proxy Services Accreditation Issues (PPSAI) policy recommendations.</p>

<p>n Directory Service and Data Protection</p>	<p>ongoing policy development work in the EPDP on gTLD Registration Data. The implementation of the PPSAI should not be deferred until the completion of the EPDP.</p>	<p>should continue in parallel with the ongoing EPDP on gTLD Registration Data and that the PPSAI not be deferred until completion of the EPDP.</p>	<p>However, the Board continues to support ICANN org’s decision to pause this implementation work. The EPDP Phase 1 Recommendation 27 specified the need for ICANN org to identify and address all policies and procedures that might be affected by the EPDP Phase 1 policy recommendations and the new Registration Data Policy and to provide this analysis to the GNSO Council. ICANN org has performed a detailed review of a set of 15 existing policies and procedures and has drafted a Wave 1 report that has been shared with both the IRT and the GNSO Council. In ICANN org’s forthcoming Wave 2 Report, the PPSAI will be analyzed. The Board and ICANN org remained aligned that it would be imprudent to drive forward on implementing policy recommendations without conducting the appropriate analysis and obtaining guidance from the GNSO Council on any next steps which may call for further policy development work in light of the EPDP Phase 1.</p>
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