

7 August 2017

Submission of Adopted GNSO Council Review of the Johannesburg GAC Communiqué

From:

James Bladel, GNSO Chair
Donna Austin, GNSO Council Vice-Chair
Heather Forrest, GNSO Council Vice-Chair

To:

Steve Crocker, ICANN Board

Dear Members of the ICANN Board,

On behalf of the GNSO Council, we are hereby transmitting to you the adopted GNSO Council's review of the Johannesburg GAC Communiqué. The Council formally adopted this version as a result of an electronic vote on 4 August 2017.

As noted previously, the GNSO Council's review of each GAC Communiqué is an effort to provide feedback to you, in your capacity as ICANN Board members, as you consider issues referenced in the Communiqué that the GNSO has identified as relating to policies governing generic top-level domains. Our intent is to inform you and the broader community of gTLD policy activities, either existing or planned, that may directly or indirectly relate to advice provided by the GAC.

The GNSO Council hopes that the input provided through its review of the GAC Communiqué will enhance co-ordination and promote the sharing of information on gTLD related policy activities between the GAC, Board and the GNSO.

James Bladel
Chair, GNSO

Donna Austin
Vice-Chair, GNSO Council

Heather Forrest
Vice-Chair, GNSO Council

Cc: Thomas Schneider, Chair, GAC

GNSO COUNCIL REVIEW OF THE [JOHANNESBURG GAC COMMUNIQUE](#)¹

GAC Advice - Topic	GAC Advice Details	Does the advice concern an issue that can be considered within the remit ² of the GNSO (yes/no)	<i>If yes, is it subject to existing policy recommendations, implementation action or ongoing GNSO policy development work?</i>	<i>How has this issue been/is being/will be dealt with by the GNSO</i>
<p>1. Intergovernmental Organization (IGO) Protections</p>	<p>a. The GAC reiterates its Advice that IGO access to curative dispute resolution mechanism should:</p> <p>I. be modeled on, but separate from, the existing Uniform Dispute Resolution Policy (UDRP)</p> <p>II. provide standing based on IGOs’ status as public intergovernmental institutions, and</p> <p>III. respect IGOs’ jurisdictional status by facilitating appeals exclusively through arbitration.</p> <p>The GAC expresses concern that a GNSO working group has indicated that it may deliver recommendations which substantially differ from GAC Advice, and calls on the ICANN Board to ensure</p>	<p>Yes</p>	<p>Yes</p>	<p>The GNSO Council notes that the GAC has reiterated its previous advice regarding access to curative dispute resolution mechanisms by IGOs. Similarly, we refer the Board to our earlier responses, noting that the work of the Policy Development Process (PDP) on this topic (IGO/INGO Access to Curative Rights) is ongoing, and this group anticipates publication of its Final Report and recommendations prior to ICANN60 in Abu Dhabi.</p> <p>The PDP recently conducted a Public Comment period on its Initial Report, and received multiple thoughtful submissions including many from IGOs. Each comment from the</p>

¹ Only of “Section VI of the Communiqué: GAC Advice to the ICANN Board”

² As per the ICANN Bylaws: ‘There shall be a policy-development body known as the Generic Names Supporting Organization (GNSO), which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains.

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	<p>that such recommendations adequately reflect input and expertise provided by IGOs.</p> <p>RATIONALE This Advice aligns with the view of governments that IGOs perform important public functions for citizens worldwide, and that protecting their identities in the DNS serves to minimize the potential for consumer harm.</p>			<p>community containing new data or ideas was extensively considered and discussed by the PDP working group, and the PDP leadership reports that its Initial Report is likely to be materially amended as a result of taking these comments on board.</p> <p>Previous GAC Advice on this topic included the “IGO Small Group Proposal” from October 2016, which outlined a separate dispute resolution process tailored exclusively for IGO/INGOs. In addition to comments posted to the ICANN Public Comments forum, the PDP also considered the “IGO Small Group Proposal”, and included it in their analysis. But as the PDP nears the conclusion of its work, it is clear to Council that their Final Recommendations will diverge from GAC Advice and the “IGO Small Group Proposal” in at least two respects.</p>

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				<p>First, the PDP working group does not recommend the creation of a new, separate dispute process solely for the use of IGO, but instead outlines the means by which these organizations can better access existing processes like UDRP and URS. And secondly, the PDP does not conclude that it is within their (or the GNSO's, or ICANN's) remit to grant, extend, or restrict the jurisdictional immunity protections of IGOs, or to limit the legal rights of registrants who are party to a dispute with an IGO.</p> <p>The GNSO Council chartered this PDP with the objective of ensuring that IGOs and INGOs have access to low-cost and effective rights protection mechanisms, in order to mitigate abuse of their identities in the DNS and aid in their work serving the public needs of citizens across the</p>

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				globe, and the PDP working group believes that its Final report will meet that goal. We eagerly await publication of the PDP's recommendations, and further discussions among the Community at ICANN60.

Follow-Up on Previous GAC Advice and Other Issues	GNSO Response
<p>4. Geographic Names as Top-Level Domains GAC Members welcomed and participated in the cross-community sessions held at ICANN59 on geographic names at the top level. The GAC considers that any further process of policy review and development should: (a) continue to allow all stakeholder groups to participate equally; (b) take into account the history and rationale of the arrangements currently in place; and (c) apply an evidence-based policy approach to any proposals for future arrangements. Regarding the use of geographic names at the top level, the GAC recalls its advice and positions as stated in the following documents:</p> <ul style="list-style-type: none"> • GAC Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains (2005), paragraphs 4.1.1. , 4.1.2. and 8.3. • GAC Principles Regarding New gTLDs (2007), sections 1.2 , 2.1 ,2.2, 2.3, 2.4 , 2.7 and 2.8. • GAC Nairobi Communiqué (2010): Application of 2007 Principles. • GAC Durban Communiqué (2013): Future application of 2007 Principles. • GAC Helsinki Communiqué (2016): 3-letter codes. 	<p>The GNSO Council also takes note of the “Geographic Names as Top-Level Domains” section of the communiqué restating previous advice and positions. Among those positions are references that imply that certain geographic top-level domains should be addressed by, and only through, a ccNSO PDP. With respect to that position we note that rather than initiate a ccNSO PDP on country and territory names at the top-level, the ccNSO established a Cross Community Working Group on the Use of Country and Territory Names (CCWG UCTN) that was jointly chartered by the ccNSO and GNSO. The CCWG UCTN recently produced a final report, but was unable to provide recommendations on the use of country and territory names as TLDs, beyond the use of two-characters. The GNSO strongly believes that these issues are currently within the scope and charter of the GNSO Policy Development Process on New gTLD Subsequent Procedures (SubPro PDP). As a result of the recent Cross Community Discussions on geographic names conducted at ICANN 59, the SubPro PDP is establishing a new Work Track 5 on Geographic Names at the Top Level and inviting representatives from each of the SOs and ACs to form a Leadership Team for that Work Track. The GNSO Council encourages participation from the community, including the GAC, in that SubPro PDP to ensure a multi-stakeholder bottom up solution to this issue.</p> <p>This approach is consistent with the GAC’s position also contained in the “Geographic Names as Top-Level Domains” section of the communiqué “ ... that any further process of policy review and development should: (a) continue to allow all stakeholder groups to participate equally; (b) take into account the history and rationale of the arrangements currently in place; and (c) apply an evidence-based policy approach to any proposals for future arrangements.”</p>

