

GAC Advice – ICANN76 Cancun Communiqué: Board Action (15 May 2023)

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
<p>§1.a.i IGO Protections</p>	<p>a. The GAC advises the Board to:</p> <p>i. <i>To proceed with the approval of the recommendations of the EPDP on Specific Curative Rights Protections for implementation;</i></p> <p><u>RATIONALE:</u></p> <p>The GAC affirms that IGOs perform important global public missions with public funds, that they are the unique treaty-based creations of governments under international law, and that their names and acronyms warrant appropriate tailored protection in the DNS in the global public interest to prevent consumer harm. It is also recalled that the EPDP Recommendations strike a balance between rights and concerns of both IGOs and legitimate third parties.</p> <p>In considering approving the Recommendations of the EPDP on Specific Curative Rights Protections for implementation, the GAC notes that the EPDP Recommendations received Full Consensus, and that the corresponding GNSO Council vote to approve said Recommendations was unanimous.</p> <p>Insofar as the above-noted EPDP Recommendations propose targeted amendments to the UDRP Rules to accommodate IGOs in addressing the abuse of IGO identifiers in the DNS, this Advice supersedes those aspects of GAC Advice in the following Communiqués, as follows:</p> <ul style="list-style-type: none"> ● In the GAC Los Angeles Communiqué (ICANN51), Section IV.5.b.i, in implementing any such curative mechanism, <i>“the UDRP should not be amended”</i>; ● In the GAC Hyderabad Communiqué (ICANN57), Section VI.4.II: <i>“a dispute resolution mechanism modeled on but separate from the UDRP, which provides in particular for appeal to an arbitral tribunal instead of national courts, in conformity with relevant principles of international law”</i>; ● In the GAC Johannesburg Communiqué (ICANN59), Section VI.1.a: <i>“The GAC reiterates its Advice that IGO access to curative dispute resolution mechanism should:</i> <ol style="list-style-type: none"> <i>I. be modeled on, but separate from, the existing [UDRP],</i> <i>II. provide standing based on IGOs’ status as public intergovernmental institutions, and,</i> 	<p>The Board understands that the GAC would like the Board to proceed to approve the recommendations of the EPDP on Specific Curative Rights Protections for implementation. The Board also understands that this advice from the GAC supersedes previous advice from the Los Angeles, Hyderabad, and Johannesburg Communiques, to the extent that the EPDP recommendations propose targeted amendments to the UDRP Rules to accommodate IGOs in addressing the abuse of IGO identifiers in the domain name system.</p>	<p>The Board accepts this advice from the GAC and thanks the GAC for clarifying the status of previous advice on IGO curative rights from the Los Angeles, Hyderabad, and Johannesburg Communiques. The Board notes that, in addition to the EPDP, the GNSO completed an earlier PDP on IGO-INGO Access to Curative Rights Protection Mechanisms for which the GNSO Council transmitted four approved recommendations to the Board and on which the Board had previously deferred action (https://www.icann.org/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-22-10-2020-en#2.b). The Board intends to resolve all pending issues relating to curative rights protections for IGOs at the second level of the domain name system. As such, on 30 April 2023, the Board voted to adopt both sets of GNSO-approved policy recommendations concerning curative rights protections for IGOs (i.e. from the PDP and EPDP).</p>

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	<p style="text-align: center;"><i>III. respect IGOs' jurisdictional status by facilitating appeals exclusively through arbitration."</i></p> <p>In terms of the continuation of the moratorium, in the ICANN71 Communiqué, in advising the Board to maintain the current moratorium on the registration of IGO acronyms as domain names in New gTLDs pending the conclusion, and implementation, of the Recommendations of the IGO Curative Work Track, the GAC noted that in the absence of access to a curative rights protection mechanism, a mere notification of the registration of a domain name corresponding to its identifier is of no real utility to an IGO, because an IGO has no current ability to arbitrate a domain name dispute.</p> <p>In that same light, the GAC previously has advised the Board to maintain the current moratorium in the ICANN61 San Juan, ICANN62 Panama and ICANN71 Communiqués, noting that the removal of interim protections before a permanent decision is taken on a curative mechanism to protect IGO acronyms could result in irreparable harm to IGOs.</p>		
<p>§1.a.ii IGO Protections</p>	<p>a. The GAC advises the Board to:</p> <p style="padding-left: 20px;">i. <i>To maintain the current moratorium on the registration of IGO acronyms as domain names in New gTLDs presently in place until the full implementation of the recommendations of the EPDP on Specific Curative Rights Protections.</i></p> <p><u>RATIONALE:</u></p> <p>The GAC affirms that IGOs perform important global public missions with public funds, that they are the unique treaty-based creations of governments under international law, and that their names and acronyms warrant appropriate tailored protection in the DNS in the global public interest to prevent consumer harm. It is also recalled that the EPDP Recommendations strike a balance between rights and concerns of both IGOs and legitimate third parties.</p> <p>In considering approving the Recommendations of the EPDP on Specific Curative Rights Protections for implementation, the GAC notes that the EPDP Recommendations received Full Consensus, and that the corresponding GNSO Council vote to approve said Recommendations was unanimous.</p>	<p>The Board understands that the GAC is advising the Board to maintain the moratorium on second level registration of domain names matching the list of IGO acronyms provided by the GAC, until the recommendations from the EPDP on Specific Curative Rights Protections are fully implemented by ICANN org.</p>	<p>The Board acknowledges this advice from the GAC. The Board had previously stated that it intends to instruct ICANN org to provide, as an operational matter, an ongoing notification service that would inform an IGO if a domain name is registered that matches that IGO's acronym (https://www.icann.org/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-22-10-2020-en#2.b). The Board had also informed that GAC that it plans to offer this service at no cost to IGOs, and to maintain the moratorium on second-level registrations matching the list of IGO acronyms until the post-registration notification system is ready (https://www.icann.org/en/system/files/correspondence/botterman-to-ismail-23feb21-en.pdf). In this regard, the Board acknowledges the GAC's statement that, in the absence of access to a curative rights protection mechanism, a mere notification of the registration of a domain name corresponding to its identifier is of no real utility to an IGO, because an IGO has no current ability to arbitrate a domain name dispute.</p> <p>As part of its 30 April resolution adopting the EPDP recommendations on specific curative rights protections for IGOs, the Board requested that ICANN org develop an implementation plan that will include resource estimates and a timeline for implementation. The Board notes that ICANN org uses a default six-month policy change cycle (https://www.icann.org/en/system/files/files/gdd-policy-change-cale</p>

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<p>§2.a.i Registration Data Request Service (formerly known as the WHOIS Disclosure System)</p>	<p>a. The GAC advises the Board to:</p> <ol style="list-style-type: none"> i. To direct ICANN org to promptly engage with the PSWG to identify and advance solutions for confidentiality of law enforcement requests so as not to preclude participation by 	<p>The Board understands the GAC would like ICANN org to engage with the PSWG to discuss how law enforcement-affiliated data requestors may be able to seek confidentiality for registration data requests when using the Registration Data Request Service (RDRS).</p>	<p>The Board accepts the advice and will direct ICANN org to engage with the Small Team and the PSWG in a discussion about (i) the circumstances in which additional confidentiality for registration data requests submitted using RDRS is appropriate; (ii) the nature of any such additional confidentiality needs; and (iii) how such additional confidentiality protections might be provided through RDRS. RDRS is</p>

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	<p><i>law enforcement requesters when measuring usage of the WHOIS Disclosure System.</i></p> <p><u>RATIONALE:</u></p> <p>The GAC welcomes the Board’s February 27, 2023 resolution approving the launch of a proof-of-concept approach for a WHOIS Disclosure System intended to gather demand and usage data to inform community discussions and Board consideration of the Phase 2 Recommendations of the Expedited Policy Development Process. In the GAC Kuala Lumpur Communiqué, under Issues of Importance, the GAC stressed “the importance of including a mechanism to allow for confidential law enforcement requests” and recommended that ICANN org engage “with the GAC PSWG to further discuss the issue of how confidentiality of law enforcement requests will be ensured and how the (meta) data of all the requests of law enforcement agencies will be handled.” To date, this engagement has not taken place. Nevertheless, during the GAC Meeting with the ICANN Board, ICANN org indicated that the proposed system design would not provide functionality for maintaining confidentiality for law enforcement requests.</p> <p>Law enforcement agencies investigations may be compromised if requests for domain registration data are not kept confidential. A lack of functionality in the proposed WHOIS Disclosure System to provide for such confidentiality will almost certainly deter usage of the system by law enforcement agencies which will in turn decrease the amount of data that the pilot program will be able to collect. The GAC highlights that further engagement between ICANN org and the PSWG is necessary to resolve this issue. A satisfactory approach to this concern is also consistent with the Board’s resolution “to encourage comprehensive System usage by data requestors.”</p>	<p>ICANN org worked with the EPDP Phase 2 Small Team to identify what elements of the System for Standardized Access/Disclosure (SSAD) policy recommendations would be needed for a proof of concept, which is meant to be cost effective and simpler than SSAD, for the purpose of data collection for up to two years. As the SSAD Operational Design Assessment (ODA) identified the identity verification feature (SSAD recommendations 1 and 2 from the EPDP Phase 2 Final Report) to be the major drivers of cost and complexity, the Small Team did not recommend inclusion of these recommendations in the proof of concept design, which the GNSO Council recommended and the Board has directed ICANN org to implement.</p> <p>Without the identity verification feature, the Registration Data Request Service will not effectively be able to verify law enforcement agencies’ identity, and limit the requests to treat the data request confidentially to the law enforcement agencies. In addition, the EPDP Phase 2 Final Report did not explicitly require a confidentiality feature. Recommendation 9.7 and Implementation Guidance 17.3 both note it is a possible feature that may be considered during implementation of the SSAD. Consequently, the Org did not assess the feasibility of the confidentiality feature in the ODA to keep the design simple, instead opting to consider it during implementation.</p> <p>While the Board understands the GAC’s interest in a mechanism to allow for confidential law enforcement requests, adding identity verification and accreditation features will 1) fundamentally change the nature of this “cost effective and simpler” system, 2) detract from the project team’s resources to shift focus to designing identity verification and confidentiality features while likely putting the development of the Registration Data Request Service on pause for an unknown duration. This would result in 3) extending the development timeline from the current 11 months to an unknown duration and likely requiring additional budget to procure vendors.</p> <p>The Board understands that, while the confidentiality feature based on the identity verification might be ideal, a simpler feature such as a radio button to inform the registrar of the request for confidentiality when processing a request may be helpful to law enforcement-affiliated data requestors.</p>	<p>being built on current specifications, but it does not prevent discussions, at an appropriate time, on future enhancements. The Board notes that the RDRS is intended to be a simple system that can quickly be developed and launched to inform the Board’s and GNSO Council’s discussion on the future of the SSAD policy recommendations.</p>

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<p>§3.a.i Privacy and Proxy Services</p>	<p>a. The GAC advises the Board to:</p> <p>i. <i>To prioritize the assessment related to the pending RDS-WHOIS2 Review Recommendation R10.1 which called for the Board to monitor the implementation of the PPSAI policy recommendations, and all necessary steps to resume this implementation, consistent with the intent of the GAC’s previous advice.</i></p> <p><u>RATIONALE:</u></p> <p>The GAC notes in the recent Quarterly Report on ICANN Specific Reviews (21 February 2023) that “it is anticipated that ICANN org may begin to work on the impact assessment of the outcomes of ongoing community work in Q1 2023 to inform Board action of Recommendation 10.1” of the Second Registration Directory Service Review (RDS-WHOIS2).</p> <p>Recommendation R10.1 provides for the ICANN Board to monitor the implementation of the Privacy Proxy Services Accreditation (PPSAI) policy recommendations and thus implicates the previous GAC Advice in the Kobe Communiqué and the GAC’s Follow-Up on Previous Advice within the Montreal Communiqué.</p>	The Board understands that the GAC supports prioritization of the assessment necessary to take action on RDS-WHOIS2 Review Recommendation R10.1, which called for the Board to monitor the implementation of the PPSAI policy recommendations, and all necessary steps to resume this implementation, consistent with the intent of the GAC’s previous advice.	The Board accepts this advice, noting that the assessment is in progress within the org, and that this will be an important step for the Board to consider in taking action on RDS-WHOIS Review Recommendation R10.1.
<p>§3.a.ii Privacy and Proxy Services</p>	<p>a. The GAC advises the Board to:</p> <p>i. <i>To regularly update the GAC on the status of activities related to privacy and proxy services.</i></p> <p><u>RATIONALE:</u></p> <p>The GAC notes in the recent Quarterly Report on ICANN Specific Reviews (21 February 2023) that “it is anticipated that ICANN org may begin to work on the impact assessment of the outcomes of ongoing community work in Q1 2023 to inform Board action of Recommendation 10.1” of the Second Registration Directory Service Review (RDS-WHOIS2).</p> <p>Recommendation R10.1 provides for the ICANN Board to monitor the implementation of the Privacy Proxy Services Accreditation (PPSAI)</p>	Based on its 11 April 2023 call with the GAC, the Board understands that, in addition to updates around the status of R10.1 noted above, the GAC is interested in receiving updates around the Registration Data Request Service work, particularly as this work has been noted by the Board as an opportunity to “streamline the implementation of the PPSAI recommendations” and other any other work related to the implementation of the PPSAI recommendations.	The Board accepts this advice, and will instruct the organization to provide timely information around the status of activities related to proxy and privacy services in its updates to the GAC.

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