

**GAC Advice – ICANN71 Virtual Policy Forum Communiqué:  
Clarifying Questions and Updates – for 29 July 2021 Board-GAC Meeting**

**Clarifying Questions on ICANN71 Virtual Policy Forum Communiqué Consensus Advice**

GAC Consensus Advice Item	Advice Text	Board Clarifying Questions
<p><b>§1.a.1 - IGO Protections</b></p>	<p><b>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.</b></p> <p><b>a. The GAC advises the Board to:</b></p> <p><b>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).</b></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</i></p>	<p>The Board determined that the current moratorium should remain in place until the post-notification system was deployed. In order to understand why and whether or not the Board should change that determination, we need to ask the following questions:</p> <ul style="list-style-type: none"> <li>● The Board wishes to clarify that the GAC Advice is to maintain the current moratorium pending the conclusion of the IGO curative rights work track. Is the GAC advising the Board to maintain the moratorium until the working group submits its final recommendations to the GNSO Council or until some other point in time?</li> <li>● In a related matter, and in light of the GAC’s stated intention (as</li> </ul>

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	<p><i>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>noted in its letter to the Board in <a href="#">March 2013</a>) to review the GAC’s list of protected IGOs “prior to delegation of any new top level domains in a subsequent new gTLD round or every three years, whichever comes earlier”, how does the GAC plan to carry out these updates over time? Does the GAC intend to create a regular (e.g. yearly) timetable for reviewing the list in the future?</p> <ul style="list-style-type: none"><li>• Can the GAC confirm that the list of protected IGOs does not conflict with any existing national legislation protecting intellectual property rights, such that the potential creation of an ICANN policy to protect IGO acronyms in gTLDs will not affect the ability to comply with national legislation or international</li></ul>
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		<p>agreements on intellectual property protection? Can the GAC provide an update about its consideration of the possible public policy implications should ICANN's policies provide more expansive protections to IGOs than what is provided for by international treaties and national legislation?</p>
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**Clarifying Questions on ICANN71 Virtual Policy Forum Communiqué Follow-up on Previous Advice**

<b>GAC Follow-up on Previous Advice Item</b>	<b>Advice Text</b>	<b>Board Clarifying Questions</b>
<p><b>1. CCT Review Recommendations</b></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)<sup>8</sup>, 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’s action on CCT recommendations addressed to or seeking actions within the roles of various community groups indicated that the Board had concluded its work on those recommendations. The Board anticipated that, as those recommendations were taken up by the respective groups, this could result in new policy recommendations or advice that would be presented to the Board for consideration.</p> <p>The Board understands that the subject matter of various CCTRT recommendations is important to the GAC. Would the GAC consider giving the Board advice in a form focused on the content of the specific subjects or areas of public policy concern?</p> <p>During its previous ICANN70 clarifying dialogue on this topic with the GAC (21 April 2021) the Board presented several clarifying questions that appear</p>

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		<p>to be still relevant regarding this matter. They are re-produced here and the GAC is asked to re-consider them as part of this ongoing dialogue on this issue ...</p> <p>Based on this, the Board wishes to re-ask the following clarifying questions (from ICANN70):</p> <ul style="list-style-type: none"><li>• Question 1: Can the GAC confirm that its Consensus Advice remains that the Board should not 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’”, given: (i) the GAC’s belief (as stated in its 22 January 2020 letter responding to the CEO’s 19 December 2019 letter)</li></ul>
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		<p>that the distinction between “prerequisites” and “high priority” recommendations has lost some importance; and (ii) the GAC’s acknowledgment, in that same letter, that certain CCT recommendations cannot be implemented until after a new round of gTLDs is launched?</p> <ul style="list-style-type: none"><li>• Question 2: If the answer to Question (1) is Yes:<ul style="list-style-type: none"><li>o Can the GAC also confirm that “complete implementation” includes the two remaining CCT recommendations relating to DNS abuse that remain in pending status, i.e., Recommendations #14 &amp; #15 (negotiating and amending ICANN’s contracts with registries and registrars to include anti-abuse</li></ul></li></ul>
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		<p>measures and to prevent systemic use of Contracted Parties for DNS security abuse)?</p> <ul style="list-style-type: none"> <li>o If so, what does the GAC believe amounts to “complete implementation” of these two recommendations, in light of the GAC’s view that DNS abuse should be tackled in collaboration with the community and the GAC’s encouragement of community efforts to cooperatively tackle DNS abuse in a holistic manner?</li> <li>• Question 3: If the answer to Question (1) is Yes:             <ul style="list-style-type: none"> <li>o Can the GAC confirm whether “complete implementation” also includes those CCT recommendations that the Board passed through to community groups, given the GAC’s recognition in its 22</li> </ul> </li> </ul>
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		<p>January 2020 letter that: (i) the Board had requested the respective groups to consider and act on the recommendations; and (ii) in the case of the SubPro PDP, the Board cannot compel the GNSO to adopt the CCT recommendations?</p> <p>o If so, can the GAC clarify how it believes the Board can accept the GAC advice in a manner that maintains and respects the appropriate roles of the Board and the community in developing consensus-based policy? In this regard, the Board notes the GAC's reiteration that, while the Board's general reliance on and deferral in certain situations to community consensus is a positive role to adopt, the Board should nevertheless</p>
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		remain respectful of the advice it receives from its advisory committees.
<b>2. EPDP Phase 1 Policy Implementation</b>	<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 <i>“a detailed work plan identifying an updated realistic schedule to complete its work.”</i></p> <p>The GAC observes with continued concern that the Phase 1 Implementation Review Team (IRT) lacks a current published implementation timeline.</p>	The Board does not have any clarifying questions at this time.
<b>3. Privacy Proxy Services Accreditation Implementation</b>	<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>	The Board does not have any clarifying questions at this time.

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**Board Follow-Up on Previous Clarifying Questions**

Previous Clarification Question Topic	Clarifying Questions
<p><b>EPDP Phase 2 Final Report (from ICANN70)</b></p>	<p>During its previous ICANN70 clarifying dialogue on this topic with the GAC (21 April 2021) the Board presented several clarifying questions regarding the GAC Minority Statement on Recommendations contained in the Final Report of Phase 2 of the EPDP on gTLD Registration Data, which appeared to help form the GAC’s advice on the EPDP Phase 2 Final Report. A number of those questions appear to be still relevant regarding the GNSO EPDP generally. They are re-produced here and the GAC is asked to re-consider them as part of this ongoing dialogue on this issue.</p> <p>Based on this, the Board wishes to re-ask the following clarifying questions:</p> <ul style="list-style-type: none"> <li>● Question 1: Can the GAC provide more information on the legal risks associated with the possibility that a legal person’s registration data could include personal data? In addition, has the GAC taken into account the recent legal advice from Bird &amp; Bird on this topic to the EPDP Phase 2A team?</li> <li>● Question 2: In the SSAD context, can the GAC confirm whether inaccuracy will result in liability only vis-à-vis data subjects, or even toward third parties relying on the accuracy of the data disclosed? As with the topic of legal vs. natural, the EPDP Phase 2A team has also recently received advice from Bird &amp; Bird on this topic. The Board is interested to hear the GAC’s input on this advice.</li> <li>● Question 3: Given that contracted parties are responsible and liable for disclosure, how did the GAC expect the EPDP to have concluded with a centralized rather than a fragmented disclosure system? Does the GAC believe that the law supports a centralized system? If so, what is the source for this interpretation of the law? How does the GAC envisage ICANN compliance being able to be in a position to evaluate the substance of a contracted party’s decision and compel possibly a different disclosure decision than the one taken by a contracted party, when the contracted party is legally responsible and liable for that decision?</li> <li>● Question 4: Does the GAC feel that ICANN org should continue to pursue clarity regarding the question whether shifting decision- making would impact liability of the contracted parties /the Strawberry model with the European DPAs?</li> <li>● Question 5: The issue of controllership of the processing of personal data cannot be determined as a matter</li> </ul>

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	<p>of policy. It is determined by the application of the law to the facts of a given processing operation. Did the GAC take this into consideration when formulating its advice?</p> <ul style="list-style-type: none"><li>• Question 6: In the SSAD, we don't yet know exactly how/where/when/and by whom personal data will be processed (or even what personal data will be processed) because the system hasn't been designed yet. How does the GAC envisage policy development in this area without knowing these implementation details?</li></ul>
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