

# **ICANN Board-GAC ICANN76 Consensus Advice Clarifying Questions Call**



11 April 2023

# Agenda

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- Welcome - Tripti Sinha
- Opening Remarks - Nicolas Caballero and Becky Burr
- Review of ICANN76 GAC Consensus Advice and Board Clarifying Questions
- Closing Remarks and AOB - Nicolas Caballero and Becky Burr

# GAC Consensus Advice and Board Clarifying Question

Topic	GAC Consensus Advice	Board Clarifying Question(s)
IGO Protections	To proceed with the approval of the recommendations of the EPDP on Specific Curative Rights Protections for implementation;	<p>The Board notes that, in addition to the recent EPDP on Specific Curative Rights for IGOs, the GNSO completed an earlier PDP (on IGO-INGO Access to Curative Rights Mechanisms) for which the GNSO has transmitted 4 approved recommendations to the Board. While those 4 recommendations do not substantively change or affect the criteria and scope of the UDRP (or the Uniform Rapid Suspension procedure that is modeled on the UDRP), the Board wishes to resolve all pending policy questions that the community has worked on in relation to the issue of IGO curative rights protections.</p> <p>The Board therefore informs the GAC that it intends to consider and act on both the previous GNSO PDP and the more recent EPDP at the same time.</p>

# GAC Consensus Advice and Board Clarifying Question

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IGO Protections	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.	<p>The Board notes that this advice is consistent with the GAC's view, expressed in <a href="#">October 2021</a> in response to the Board, seeking <a href="#">clarification</a> from the GAC to ensure that the permanent protections that ICANN will put in place for IGOs are consistent with and do not exceed the legal rights that IGOs possess under international law.</p> <p>In view of the discussions that have taken place since that time and the understanding between the Board and the GAC that direct interaction is preferable to formal correspondence for resolving difficult issues, the Board would like to seek the GAC's agreement that any further questions regarding IGO protections be addressed via channels other than formal correspondence (e.g. the BGIG, bilateral meetings, and discussions between IGO subject matter experts from the GAC and ICANN org).</p>

# GAC Consensus Advice and Board Clarifying Question

Topic	GAC Consensus Advice	Board Clarifying Question(s)
Registration Data Request Service (formerly known as the WHOIS Disclosure System)	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 law enforcement requesters when measuring usage of the WHOIS Disclosure System.	<p>Can the GAC clarify what it means by “confidentiality of law enforcement requests?” The Board would like to understand what data needs to be treated as confidential, in what way, to and by whom.</p> <p>Additionally, is it the GAC’s wish to ensure that only law enforcement agencies can utilize such a confidentiality feature? If so, 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. (cont. on next slide)</p>

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Registration Data Request Service (formerly known as the WHOIS Disclosure System)	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 law enforcement requesters when measuring usage of the WHOIS Disclosure System.	<p>Without the identity verification feature, the Registration Data Request Service will not effectively be able to verify law enforcement agencies' identity to trigger confidential treatment of the requests. 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. (cont. on next slide)</p>

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Registration Data Request Service (formerly known as the WHOIS Disclosure System)	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 law enforcement requesters when measuring usage of the WHOIS Disclosure System.	We therefore request that the GAC responds to the questions raised above while considering the limited time and resources available for implementing the Registration Data Request Service. It is important to keep in mind that the service is intended to be operational for only two years, and any additional features must be carefully evaluated in terms of their benefits versus the potential impact on the current development efforts, which may cause delays and unforeseen costs.

# GAC Consensus Advice and Board Clarifying Question(s)

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Privacy and Proxy Services	<p>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.</p>	<p>The Board understands that this assessment is already underway within the org, including how the Registration Data Request Service work could serve to streamline the implementation of the PPSAI recommendations.</p> <p>The Board looks forward to reviewing this work and taking action on Recommendation 10.1.</p>
Privacy and Proxy Services	<p>To regularly update the GAC on the status of activities related to privacy and proxy services.</p>	<p>Can the GAC clarify whether it has identified other activities related to proxy and privacy services that it would like updates on, in addition to what is noted in 3.a.i?</p>

# Closing Remarks and AOB

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- AOB