

**GAC Advice – Montréal Communiqué:**

**Clarifying Questions and Updates – for 17 December 2019 Board-GAC Meeting**

**Clarifying Questions on Montréal Consensus Advice**

GAC Advice Item	Advice Text	Board Clarifying Questions
<p><b>§1.a.I</b>  <b>CCT Review and Subsequent Rounds of New gTLDs</b></p>	<p><b>a. The GAC advises the Board to:</b></p> <ul style="list-style-type: none"> <li>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".</li> </ul> <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><i>See 16 December 2019 letter from the ICANN President &amp; CEO to the GAC Chair regarding this advice item.</i></p>

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<p><b>§2.a.I Domain Name Registration Directory Service and Data Protection</b></p>	<p>With regard to Phase 1 of the EPDP,</p> <p><b>a. The GAC advises the Board to:</b></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 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 9 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><i>The Board does not have any clarifying questions at this time.</i></p>

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<p><b>§2.b.I Domain Name Registration Directory Service and Data Protection</b></p>	<p>With regard to Phase 2 and the conclusion of the EPDP,</p> <p>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>b. The GAC advises the Board to:</b></p> <p>i. The GAC advises the Board to 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> <ul style="list-style-type: none"> <li>– educating key stakeholder groups, including governments, that there is a process to request non-public data;</li> <li>– actively making available a standard request form that can be used by stakeholders to request access based upon the current consensus policy; and</li> <li>– actively making available links to registrar and registry information and points of contact on this topic.</li> </ul> <p><b>RATIONALE:</b> See Rationale on Item <b>§2.a.i</b></p>	<p><i>The Board does not have any clarifying questions at this time.</i></p>
<p><b>§2.b.II Domain Name Registration Directory Service and Data Protection</b></p>	<p><b>b. The GAC advises the Board to:</b></p> <p>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</p>	<p>ICANN Compliance follows a standard approach and process in addressing all complaints it receives against registries and registrars with whom ICANN has contractual agreements.</p>

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	<p>publish reports on compliance with the current policy as part of their regular monthly reporting.</p> <p><u>RATIONALE</u>: See Rationale on Item <b>§2.a.i</b></p>	<p>ICANN Compliance does have individual complaint forms and reporting metrics for different complaint types. Does the Board correctly understand 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>