

**GAC Advice – Panama Communiqué:  
Clarifying Questions and Updates – for 31 July Meeting**

*Version 1.7  
Updated 30 July 2018*

GAC Advice Item	Advice Text	Board Clarifying Questions and Updates
<p><b>§1.a.I GDPR and WHOIS</b></p>	<p>The GAC considers that a unified access model is central to providing access to non-public WHOIS data for users with a legitimate purpose and this should continue to be addressed as a matter of urgency. Therefore,</p> <p style="padding-left: 40px;"><b>a. the GAC advises the ICANN Board to:</b></p> <p style="padding-left: 80px;">i. Take all steps necessary to ensure the development and implementation of a unified access model that addresses accreditation, authentication, access and accountability, and applies to all contracted parties, as quickly as possible; and</p> <p><u>RATIONALE:</u> The GAC notes that access to WHOIS information is critical for the furtherance of legitimate purposes associated with protecting the public interest including law enforcement; cybersecurity; consumer protection and the protection of intellectual property. To this effect, the development of stable, predictable, and workable access mechanisms for non-public WHOIS information is necessary. The GAC finds the existing requirements in the Temporary Specification for contracted parties to provide reasonable access to non-public information as insufficient to protect the public interest.</p> <p>In order to protect the public interest, as well as the secure, stable, and resilient operation of the DNS, the development and implementation of a unified access model is of utmost importance. The GAC considers that direct involvement and action is required by ICANN Org to facilitate and support this.</p>	<p>The Board has no further questions on this matter at this time.</p> <p>The ICANN org is currently seeking input from the ICANN community on the critical components of a unified access model for continued access to WHOIS data. The Board welcomes and encourages the GAC’s input to this process.</p>
<p><b>§1.a.II GDPR and WHOIS</b></p>	<p style="padding-left: 40px;"><b>a. the GAC advises the ICANN Board to:</b></p> <p style="padding-left: 80px;">ii. Publish a status report, four weeks prior to ICANN 63.</p>	<p>The Board has no further questions on this matter at this time.</p>

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		<p>The GAC may note that ICANN org recently proposed to community leaders a monthly informal update / discussion call with the leadership to address the range of interdependent GDPR related topics. This would be in addition to the regular formal communications. The org anticipates beginning these calls in August.</p>
<p><b>§2.a.i Protection of IGO Identifiers</b></p>	<p><b>a. The GAC advises the ICANN Board to:</b></p> <p style="padding-left: 40px;">i. Maintain current temporary protections of IGO acronyms until a permanent means of protecting these identifiers is put into place;</p> <p><u>RATIONALE</u> The GAC continues to await the long-delayed completion of the PDP on IGO-INGO access to curative rights protection mechanisms.</p> <p>As to (i), this PDP will have a direct impact on a permanent means of protecting IGO identifiers, which has been the subject of longstanding and consistent GAC advice.</p> <p>As to (ii), the GAC provided input to the PDP’s draft report in 2017, notably on the issue of IGO immunities, as did individual members and observers. The final report should reflect that substantial input; noting that current indications are that the PDP recommendations will not adequately reflect the GAC’s advice on this topic, the GAC remains open to discussions with the GNSO and the Board to ensure that this is the case. The GAC notes that the work on this PDP began by at least mid-2014 and has yet to satisfactorily reach a positive resolution. The GAC moreover notes that a 2007 GNSO Issue Report provided a blueprint for a means for handling domain name disputes concerning IGO identifiers which substantially matches the “small group” proposal. The temporary protections currently in place for IGO acronyms must remain in place until such time as the Board makes a decision regarding the most appropriate means to provide a permanent means for protecting these identifiers, given the irreparable harm that could result if these acronyms are released from the temporary reserve list before a permanent mechanism is established.</p>	<p>The Board has no further questions on this matter at this time.</p> <p>The Board will continue to maintain current temporary protections of IGO acronyms until the issue of protection for IGO acronyms is resolved.</p>

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	As to (iii), the GAC has previously advised the ICANN Board to allocate sufficient resources to ensure the accuracy and completeness of IGO contacts on the reserve list and awaits progress on this issue.	
<b>§2.a.II Protection of IGO Identifiers</b>	<p><b>a. The GAC advises the ICANN Board to:</b></p> <p>ii. Work with the GNSO and the GAC following the completion of the ongoing PDP on IGO-INGO access to curative rights protection mechanisms to ensure that GAC advice on protection of IGO acronyms, which includes the available “small group” proposal, is adequately taken into account also in any related Board decision;</p>	<p>The Board has no further questions on this matter at this time.</p> <p>The Board notes that on 9 July 2018 the Final Report from the IGO-INGO access to curative rights protection mechanisms PDP was submitted to the GNSO Council, and it is currently under review by the GNSO Council. The Board will consider any PDP recommendations that are approved by the GNSO Council and ensure that GAC advice is adequately taken into account in any Board decisions.</p> <p>The Board also welcomes the GAC’s desire to work with it and the GNSO and the Board is open to suggestions from the GAC as to how it believes such collaboration can constructively take place.</p>
<b>§2.a.III Protection of IGO Identifiers</b>	<p><b>a. The GAC advises the ICANN Board to:</b></p> <p>iii. Continue working with the GAC in order to ensure accuracy and completeness of IGO contacts on the current list of IGO identifiers.</p>	Can the GAC confirm that its request is for administrative resources to assist the GAC in maintaining the current list?
<b>§3.a.I Two-character Country Codes at the Second Level</b>	<p><b>a. The GAC advises the ICANN Board to:</b></p> <p>i. Work, as soon as possible, with those GAC members who have expressed serious concerns with respect to the release of their 2-character country/territory codes at the second level in order to establish an effective mechanism to resolve their concerns in a satisfactory manner, bearing in mind that previous GAC advice on the matter stands.</p> <p><u>RATIONALE</u> The GAC notes the range of actions taken by the Board in response to concerns previously expressed with regard to release of 2-character codes at the second level. However, these actions have not been sufficient from the perspective of the concerned countries.</p>	<p>In order to fully consider the GAC’s advice on two-character codes at the second level, the Board seeks to better understand the intention of the following advice language:</p> <ul style="list-style-type: none"> <li>• §3.a.I - “resolve their concerns in a satisfactory manner” and</li> <li>• §3.a.II – “necessary steps to prevent further negative consequences”.</li> </ul>

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	<p>On 15 March 2017, through the Copenhagen Communiqué, the GAC communicated its understanding to the ICANN community, and in particular to the ICANN Board, that there were “changes created by the 8 November 2016 Resolution” relating to the release procedure of 2- Character Country/Territory Codes at the Second Level.</p> <p>As stated in the 15 March 2017 Copenhagen Communiqué, the changes introduced by the 8 November 2016 Resolution meant that, contrary to the then prevailing practice, “it is no longer mandatory for the registries to notify governments of the plans for their use of 2-letter codes, nor are registries required to seek agreement of governments when releasing two-letter country codes at the second level”.</p> <p>Accordingly, in the 15 March 2017 Copenhagen Communiqué, the GAC provided full consensus advice to the ICANN Board, which included requests that the Board “[t]ake into account the serious concerns expressed by some GAC Members as contained in previous GAC Advice”; “[i]mmEDIATELY explore measures to find a satisfactory solution of the matter to meet the concerns of these countries before being further aggravated”; and “[p]rovide clarification of the decision-making process and of the rationale for the November 2016 resolution, particularly in regard to consideration of the GAC advice, timing and level of support for this resolution.”</p> <p>Under the 8 November 2016 Resolution, ICANN’s “President and CEO, or his designee(s), is authorized to take such actions as appropriate to authorize registry operators to release at the second level the reserved letter/letter two-character ASCII labels, not otherwise reserved pursuant to Specification 5, Section 6 of the Registry Agreement, subject to these measures.”</p> <p>Previously to the “changes created by the 8 November 2016 Resolution”, in its 30 June 2016 Helsinki Communiqué, it was stated that “[t]he GAC considers that, in the event that no preference has been stated [as to the requirement that an applicant obtains explicit agreement of the country/territory whose 2-letter code is to be used at the second level], a lack of response should not be considered consent.”</p>	
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	<p>Also, previously to the “changes created by the 8 November 2016 Resolution”, there was an established process for requests to release two-letter codes. As advised by the GAC in its 11 February 2015 Singapore Communiqué, this process involved “an effective notification mechanism, so that relevant governments can be alerted as requests are initiated”, and it relied on “[a] list of GAC Members who intend to agree to all requests and do not require notification”.</p> <p>On 20 June 2018, the GAC was informed that, on 12 June 2018, ICANN had authorized the Registry Operator for .XXX “to release for registration to third parties and activation in the DNS at the second level all two-character letter/letter ASCII labels not previously authorized by ICANN for release and not otherwise required to be reserved pursuant to the Registry Agreement”. The announcement of the release of not previously authorized 2-character codes at the second level has caused some GAC members to reiterate serious concerns about ICANN’s ability to engage with the relevant GAC members to find a satisfactory solution to the matter. These unresolved concerns include doubts about ICANN Board’s ability to provide a satisfactory explanation for the “changes created by the 8 November 2016 Resolution”, as well as to adopt measures – pending a satisfactory settlement of the matter – to prevent further consequences from the “changes created by the 8 November 2016” for the concerned GAC members.</p>	
<p><b>§3.a.II Two-character Country Codes at the Second Level</b></p>	<p><b>a. The GAC advises the ICANN Board to:</b></p> <p>ii. Immediately take necessary steps to prevent further negative consequences for the concerned GAC members arising from the November 2016 Board Resolution.</p>	<p>Please see response to §3.a.I</p>

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**Follow-up on Previous Advice (31 July 2018)**

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<b>GAC Advice Item</b>	<b>Advice Text</b>	<b>Board Clarifying Questions</b>
<b>1. GDPR and WHOIS</b>	The GAC recognizes that the Board deferred four items of GAC advice. The GAC urges the Board to take steps to address these issues.	The Board has no further questions on this matter at this time.  The Board will take steps to address these in cooperation with the GAC, as ICANN org takes into account the feedback from the European Data Protection Board, and community, and prepares for the next iteration of a unified access model, and if needed, any modifications to the Temporary Specification when the Board considers its renewal.