

**GAC Advice – Barcelona Communiqué:
Clarifying Questions and Updates – for 28 November Meeting**

Clarifying Questions on Barcelona Consensus Advice

Version 1.4

Updated 27 November 2018

GAC Consensus Advice Item	Advice Text	Board Clarifying Questions
<p>§1.a.I Two-character Country Codes at the Second Level</p>	<p>a. the GAC advises the ICANN Board to:</p> <ul style="list-style-type: none"> i. Explain in writing how and why it considers it is implementing GAC advice on the release of country codes at the second level; and <p><u>RATIONALE:</u></p> <p>This advice is adopted to support and oversee implementation by the Board of existing GAC Advice on the matter, including calling upon the Board to work towards resolution of countries concerns relating to the release of country codes as a result of the withdrawal of the release process in 2016.</p>	<p>In addition to responding to the three questions regarding two-characters at the second level in the Barcelona Communiqué, does the GAC also expect the ICANN Board to respond to the questions in the GAC memo from ICANN63 entitled “Agenda Item 6: Concerns regarding the Release of 2-Character Country Codes at the Second Level under gTLDs”?</p>
<p>§1.a.II Two-character Country Codes at the Second Level</p>	<p>a. the GAC advises the ICANN Board to:</p> <ul style="list-style-type: none"> ii. Explain in writing whether its Resolution of 8 November 2016 and its change from the preexisting release process (indicated in specification 5.2 of the Registry Agreement, sentence 1) to a new curative process (under sentence 2) are compatible with GAC advice on this topic, or whether it constitutes a rejection of GAC advice. The GAC advises the Board to set out its explanation in writing by 31 December 2018. Previous GAC advice on this matter stands. <p><u>RATIONALE:</u></p> <p>This advice is adopted to support and oversee implementation by the Board of existing GAC Advice on the matter, including calling upon the Board to</p>	<p><i>See Clarifying Question on Item §1.a.I.</i></p>

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	work towards resolution of countries concerns relating to the release of country codes as a result of the withdrawal of the release process in 2016.	
<p>§1.a.III Two-character Country Codes at the Second Level</p>	<p>a. the GAC advises the ICANN Board to:</p> <p>iii. Ensure that its direction to the ICANN CEO to “engage with concerned governments to listen to their views and concerns and further explain the Board’s decision making process” (Board Resolution 2017.06.12.01) is fully implemented including direct engagement with those governments in order to fully address their concerns.</p> <p><u>RATIONALE:</u></p> <p>This advice is adopted to support and oversee implementation by the Board of existing GAC Advice on the matter, including calling upon the Board to work towards resolution of countries concerns relating to the release of country codes as a result of the withdrawal of the release process in 2016.</p>	<p><i>See Clarifying Question on Item §1.a.i.</i></p>
<p>§2.a.I IGO Protections</p>	<p>a. The GAC advises the ICANN Board to:</p> <p>i. Facilitate a substantive, solutions-oriented dialogue between the GNSO and the GAC in an effort to resolve the longstanding issue of IGO protections, on which it reaffirms its previous advice, notably with respect to the creation of a curative mechanism and maintenance of temporary protections.</p> <p><u>RATIONALE</u></p> <p>The GAC understands that the GNSO has decided at this stage to not vote on the final report for the PDP on IGO-INGO Access to Curative Rights Protection Mechanisms, which adopted recommendations in direct conflict with longstanding GAC advice. Noting the positive advancements achieved to bridge the gap between GNSO and GAC advice on identifiers for the Red</p>	<p>In light of the fact that the GNSO has decided to not vote on the final report for the PDP on IGO-INGO Access to Curative Rights Protection Mechanisms, the Board is awaiting a GNSO Council decision on the way forward for the PDP. The Board stands ready to facilitate a substantive, solutions-oriented discussion when invited to do so by the GNSO and the GAC.</p>

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	Cross, the GAC remains optimistic that a substantive dialogue with the GSNO could help both sides better understand the issues at play and reach a lasting solution that can provide IGOs with GAC-advised protections for their acronyms while addressing the concerns of the GNSO.	

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Clarifying Questions on Follow-up on Previous Advice

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GAC Follow-up Item	Advice Text	Board Clarifying Questions
1. GDPR and WHOIS	<p>We emphasize the GAC consensus advice from ICANN62 that urged ICANN to 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. We welcome ICANN’s efforts to facilitate the necessary community discussion through the Unified Access Model papers and emphasize the need to drive these discussions towards concrete and timely results.</p>	<p>The Board has no clarifying questions at this time.</p>
2. Dot Amazon Applications	<p>The GAC welcomes the 16 September 2018 Board resolution on the .Amazon applications directing the ICANN President and CEO “to support the development of a solution that would allow the .AMAZON applications to move forward in a manner that would align GAC (Governmental Advisory Committee) advice and inputs on this topic”.</p> <p>The GAC notes that the rationale of the 16 September 2018 Board resolution states that “[t]he Board is taking this action today to further the possibility of delegation of the .AMAZON applications...while recognizing the public policy issues raised through GAC advice on these applications”.</p> <p>The GAC recalls its latest advice on the matter where “[t]he GAC recognizes the need to find a mutually acceptable solution” for the Amazon countries and for the applicant, and calls upon the Board to continue facilitating work that could result in such a solution (GAC Communiqué, Abu Dhabi, 1 November 2017).</p>	<p>The Board has no clarifying questions at this time.</p>
3. Protection of the Red Cross and Red Crescent Designations and Identifiers	<p>The GAC welcomes the progress made in the process of reconciliation between the GAC’s consistent advice and the GNSO’s past policy determinations on the issue of the protection of the Red Cross and Red Crescent designations and identifiers and marks its appreciation for the</p>	<p>The Board has no clarifying questions at this time.</p>

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	<p>inclusive consultative process conducted under the auspices of the GNSO's reconvened Working Group on the Red Cross and Red Crescent names.</p> <p>The Board is encouraged to adopt the GNSO Council's recommendations, which regard the reservation of the list of names of the 191 National Red Cross and Red Crescent Societies in relevant languages, as well as of the international organizations within the International Red Cross and Red Crescent Movement.</p> <p>The GAC notes that the issue of the acronyms of the two international organizations within the Movement (ICRC and IFRC) were not covered under the abovementioned GNSO process and recalls standing GAC Advice that the temporary protections presently accorded to these acronyms remain in place until such time an appropriate resolution of this issue is reached.</p>	
<p>Follow-up to the joint statement by ALAC and GAC (Abu Dhabi, 2 November 2017)</p>	<p>The At-Large Advisory Committee (ALAC) and the Governmental Advisory Committee (GAC) thank the ICANN Board for its response to their joint statement “Enabling inclusive, informed and meaningful participation at ICANN”, issued at ICANN60 in Abu Dhabi on 2 November 2017.</p> <p>In its response, the Board referred to the Information Transparency Initiative (ITI), launched in January 2018, which hopefully will lead to the creation of a document managing system that – as required by the ALAC and the GAC – will allow, even to non-expert stakeholders, a quick and easy access to ICANN documents. However, its development will take time. According to the ICANN website, its delivery is expected in December 2019.</p> <p>In their joint statement, the ALAC and the GAC also asked ICANN to produce executive summaries, key points and synopses for all relevant issues, processes and activities – something that could be implemented without delay.</p>	<p>In view of the financial and staff resources that will be needed in order to provide the level and extent of services as were offered for the IANA stewardship transition process, can the GAC clarify what it means by requesting these services for “all other relevant issues”?</p>

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	<p>In its response, the Board referred to the current offer of monthly newsletters, pre-and post-meeting reports and video interviews, as well as to the ICANN Learn online platform. All these initiatives are commendable and likely to improve access to information and content regarding ICANN activities. However, they are not enough to reach the goal that the ALAC and GAC have in mind.</p> <p>Particularly in policy development processes, non-expert stakeholders need executive summaries to be able to quickly determine, whether a particular issue is of concern to them, and if yes, to participate in the process easily and effectively, on equal footing with other stakeholders, even if ICANN is not in their full-time focus. Summaries should be provided at least, but not only, on issues put out for public comment. Clear and up-to-date information to facilitate quick understanding of relevant issues and high interest topics is key for inclusive, informed and meaningful participation by all stakeholders, including non-experts.</p> <p>In the context of the IANA transition process, ICANN was able to offer timely and comprehensible information by breaking down complex issues into understandable components, which allowed interaction within the entire community. The ALAC and the GAC are now asking from ICANN that the same level of effort be made and the same service be provided to the community concerning information on all other relevant issues.</p>	

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Clarifying Questions on Follow-up on Deferred Advice

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Deferred GAC Advice Item	Advice Text	Board Clarifying Questions
<p>San Juan Communiqué §1.a.IV GDPR and WHOIS</p>	<p>a. the GAC advises the ICANN Board to instruct the ICANN Organization to:</p> <p>iv. Distinguish between legal and natural persons, allowing for public access to WHOIS data of legal entities, which are not in the remit of the GDPR;</p>	<p>The Board has no clarifying questions at this time.</p>
<p>San Juan Communiqué §1.a.V GDPR and WHOIS</p>	<p>a. the GAC advises the ICANN Board to instruct the ICANN Organization to:</p> <p>iv. Ensure continued access to the WHOIS, including non-public data, for users with a legitimate purpose, until the time when the interim WHOIS model is fully operational, on a mandatory basis for all contracted parties;</p>	<p>The Board has no clarifying questions at this time.</p>
<p>San Juan Communiqué §1.a.VI GDPR and WHOIS</p>	<p>a. the GAC advises the ICANN Board to instruct the ICANN Organization to:</p> <p>v. Ensure that limitations in terms of query volume envisaged under an accreditation program balance realistic investigatory crossreferencing needs;</p>	<p>The Board has no clarifying questions at this time.</p>
<p>San Juan Communiqué §1.a.VII GDPR and WHOIS</p>	<p>a. the GAC advises the ICANN Board to instruct the ICANN Organization to:</p> <p>v. Ensure confidentiality of WHOIS queries by law enforcement agencies.</p>	<p>The Board has no clarifying questions at this time.</p>
<p>Panama Communiqué</p>	<p>a. The GAC advises the ICANN Board to:</p>	<p><i>See Clarifying Question on Item §1.a.I in the Barcelona Communiqué.</i></p>

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<p>§3.a.I Two-character Country Codes at the Second Level</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>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</p>	

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	<p>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> <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</p>	

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	<p>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>Panama Communiqué §3.a.II Two-character Country Codes at the Second Level</p>	<p>a. The GAC advises the ICANN Board to:</p> <ul style="list-style-type: none"> i. Immediately take necessary steps to prevent further negative consequences for the concerned GAC members arising from the November 2016 Board Resolution. 	<p><i>See Clarifying Question on Item §1.a.I in the Barcelona Communiqué.</i></p>