

13 June 2019

Cherine Chalaby
Chair, ICANN Board of Directors

Cc: Keith Drazek, GNSO Council Chair

Subject: IGO Access to Curative Rights Mechanisms - GAC Concerns and ICANN Board Consideration

Dear Cherine,

Since – and indeed prior to – the GNSO IGO/INGO Access to Curative Rights Protection Mechanisms PDP WG delivered its [Final Report](#) to the GNSO Council (9 July 2018), the GAC has engaged with the GNSO Council on regular occasions¹, seeking to align policy outcomes of this disputed GNSO process² with long-standing GAC Advice, which included IGO input not taken into account in the course of the PDP³.

In this context, during the ICANN63 meeting in Barcelona, the GAC took the step to [advise](#) the ICANN Board to “*facilitate a substantive, solutions-oriented dialogue between the GNSO and the GAC*” on this matter. As a reminder, the ICANN Board [responded](#) to this Advice (27 January 2019) that it “*stands ready to facilitate a substantive, solutions-oriented discussion should it be invited to do so by the GNSO and the GAC*”.

In a recent [letter](#) (31 May 2019), the GNSO confirmed, in our understanding, that it is not willing to take part in such a facilitated process until the ICANN Board considers the GNSO [resolution](#) (18 April 2019) that recommendations 1-4 of the PDP Final Report be adopted; here we note for the Board’s information that this GNSO recommendation was not the result of a unanimous vote.

At this stage, we would like to recall the [GAC Panama Communiqué](#) (28 June 2018) and specifically our Consensus Advice to the ICANN Board, to:

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

¹ Bilateral engagement on this matter includes: GAC correspondence on [9 August 2018](#), [21 October 2018](#), [17 April 2019](#) and [23 May 2019](#); related GNSO Council responses of [21 October 2018](#) and [14 January 2019](#), and [31 May 2019](#); the GAC/GNSO Leadership calls on 5 September 2018, 14 February 2019 and [21 May 2019](#); and face-to-face sessions during ICANN meetings, in particular during [ICANN63](#) (21 October 2018) and [ICANN64](#) (10 March 2019).

² See [contribution](#) from IGO representatives to the GNSO Council on 22 October 2018

³ See in particular Advice in the [GAC Hyderabad Communiqué](#) (8 November 2016) and [GAC Panama Communiqué](#) (28 June 2018) which referred to the [IGO Small Group Proposal](#) (4 October 2016)

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protection of IGO acronyms, which includes the available “small group” proposal, is adequately taken into account also in any related Board decision;

Additionally, we would like to take this opportunity to highlight two other areas of consideration for the Board:

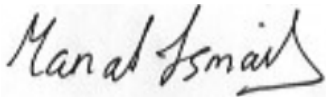
- Currently, recommendations 1, 2, 3 and 4 of the CRP PDP WG Final Report are in contravention of standing GAC Advice and Community input, including GAC Advice *inter alia* indicating that the UDRP should not be amended – but that separate dispute resolution mechanism *modeled on* the UDRP be considered – for purposes of accommodating the concerns of IGOs
- If the ICANN Board were to approve recommendations 1-4, there is a risk that new policy developments stemming from work to be done on recommendation 5 could create inconsistent policy outcomes.

Finally, we would welcome your confirmation as to the options available to the ICANN Board moving forward. It is our understanding that should the ICANN Board accept the GNSO policy recommendations, it would necessarily be rejecting Consensus GAC Advice and would need to enter into a dialogue with the GAC to find a mutually acceptable solution, per ICANN Bylaws Section 12.2(a)(x). Conversely, should the ICANN Board not adopt the GNSO policy recommendation, consistent with long-standing GAC Advice, it would need to engage in discussions with the GNSO per ICANN Bylaws Annex A, Section 9.

Looking ahead, the GNSO did not rule out taking part, eventually, in a facilitated dialogue amongst interested parties, including the GAC and the ICANN Board. In particular the Board may wish to know that we have asked the GNSO Council to share its views on the concept of GAC Early Engagement *vis-à-vis* planned chartering work on recommendation 5. Please note that during ICANN65, we had planned for a 60 minutes session for a dialogue on this issue. Given the current GNSO position, we are preparing to cancel these plans unless the Board wishes to use this opportunity to initiate a facilitated solutions-oriented dialogue, as part of its consideration of the situation.

We look forward to discussing this further with the ICANN Board, towards a timely resolution of this long-standing issue.

Sincerely,



Manal Ismail
Chair, Governmental Advisory Committee (GAC)

