

**GAC ICANN70 Virtual Community Forum Communiqué:
Clarifying Questions and Updates – for 21 April 2021 Board-GAC Meeting**

**Clarifying Questions
GAC ICANN70 Virtual Community Forum Communiqué - Consensus Advice**

GAC Consensus Advice Item	Advice Text	Board Clarifying Questions
<p>§1.a.i EPDP Phase 2 Final Report</p>	<p>a. The GAC advises the Board to:</p> <p>i. to consider the GAC Minority Statement and available options to address the public policy concerns expressed therein, and take necessary action, as appropriate.</p> <p><u>RATIONALE:</u></p> <p>In its GAC Minority Statement, the GAC provides input on its public policy concerns regarding the ways that the Recommendations contained in the Final Report of Phase 2 of the EPDP on gTLD Registration Data:</p> <ol style="list-style-type: none"> 1. currently conclude with a fragmented rather than centralized disclosure system; 2. do not currently contain enforceable standards to review disclosure decisions; 3. do not sufficiently address consumer protection and consumer trust concerns; 4. do not currently contain reliable mechanisms for the System for 	<p>The Board wishes to seek clarification from the GAC on the following items related to the GAC Minority Statement on Recommendations contained in the Final Report of Phase 2 of the EPDP on gTLD Registration Data, now forming the GAC’s advice on the EPDP Phase 2 Final Report:</p> <ul style="list-style-type: none"> • Question 1: Can the GAC provide more information on the legal risks associated with the possibility that a legal person’s registration data could include personal data? In addition, has the GAC taken into account the recent legal advice from Bird & Bird on this topic to the EPDP Phase 2A team? • Question 2: In the SSAD context, can the GAC confirm whether inaccuracy will result in liability only vis-à-vis data subjects, or even toward third parties relying on the accuracy of the data disclosed? As with the topic of legal vs. natural, the EPDP Phase 2A team has also recently received advice from Bird & Bird on this topic. The Board is interested to hear the GAC’s input on this advice. • Question 3: Given that contracted parties are responsible and liable for disclosure, how did the GAC expect the EPDP to have concluded with a centralized rather than a fragmented disclosure system? Does the GAC believe that the law supports a centralized system? If so, what is the source for this interpretation of the law? How does the GAC envisage ICANN compliance being able to be in a position to evaluate the substance of a contracted party’s decision and compel possibly a different disclosure decision than the one taken by a contracted party, when the contracted party is legally responsible and liable for that decision? • Question 4: Does the GAC feel that ICANN org should continue to pursue clarity regarding the question whether shifting decision-

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	<p>Standardized Access/Disclosure (SSAD) to evolve in response to increased legal clarity; and</p> <p>5. may impose financial conditions that risk an SSAD that calls for disproportionate costs for its users including those that detect and act on cyber security threats.</p> <p>The GAC is of the view that certain key recommendations and unaddressed topics in the Final Report of Phase 2 of the EPDP on gTLD Registration Data require further work and that the Board should assess how best to address them.</p> <p>The GAC is also of the opinion that the Operational Design Phase (ODP) can focus the Board on some of the practical implementation challenges especially those involving cost apportionment.</p> <p>The GAC looks forward to continued engagement with the Board and the community on these important issues.</p>	<p>making would impact liability of the contracted parties /the Strawberry model with the European DPAs?</p> <ul style="list-style-type: none"> • Question 5: The issue of controllership of the processing of personal data cannot be determined as a matter of policy. It is determined by the application of the law to the facts of a given processing operation. Did the GAC take this into consideration when formulating its advice? • Question 6: In the SSAD, we don't yet know exactly how/where/when/and by whom personal data will be processed (or even what personal data will be processed) because the system hasn't been designed yet. How does the GAC envisage policy development in this area without knowing these implementation details?

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GAC ICANN70 Virtual Community Forum Communiqué - Follow-up on Previous Advice**

GAC Follow-Up on Previous Advice Item	Advice Text	Board Clarifying Questions
<p>1. CCT Review and Subsequent Rounds of New gTLDs</p>	<p>The GAC is seeking a coordinated approach on the implementation of the specified Recommendations from the CCT Review ahead of the potential launch of a new round of gTLDs.</p> <p>Pursuant to GAC advice issued in Montréal (ICANN66), related correspondence with the ICANN Board and subsequent discussions, the latest on 23rd March during ICANN70, the GAC looks forward to be periodically updated on the ongoing consideration of the above mentioned advice, and, in particular, the Recommendations marked as "prerequisite" or "high priority", namely: 1, 5, 7, 9, 11, 12, 14, 15, 16, 17, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35; for example through a tracking tool that identifies the status of each Recommendation in terms of who is taking it forward, how it will be implemented and when it is expected to be completed, particularly in regard to Recommendations attributed to the Organisation and the ICANN Community (in addition to the Board).</p>	<p>Regarding the topic of the CCT Review:</p> <p>The Board seeks further clarification from the GAC regarding how to interpret the GAC’s follow-up on its Montreal advice in light of the correspondence and discussions that took place between the Board and the GAC after the Montreal Communique was issued (i.e., the Board-GAC clarifying call on 17 December 2019, the Board’s final scorecard of 26 January 2020 and the letters exchanged on 19 December 2019, 22 January 2020, 11 February 2020 and 8 June 2020). The GAC’s follow-up does not seem to take into account the important clarifications provided in the exchanges of letters. This clarity is imperative to the Board before finalizing a position on the Montreal advice.</p> <p>Based on this, the Board wishes to ask the following clarifying questions:</p> <ul style="list-style-type: none"> • Question 1: Can the GAC confirm that its Consensus Advice remains that the Board should not 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’”, given: (i) the GAC’s belief (as stated in its 22 January 2020 letter responding to the CEO’s 19 December 2019 letter) that the distinction between “prerequisites” and “high priority” recommendations has lost some importance; and (ii) the GAC’s acknowledgment, in that same letter, that certain CCT recommendations cannot be implemented until after a new round of gTLDs is launched? • Question 2: If the answer to Question (1) is Yes: <ul style="list-style-type: none"> ○ Can the GAC also confirm that “complete implementation” includes the two remaining CCT recommendations relating

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	<p>The GAC also recalls its advice to the Board in the Helsinki Communiqué that <i>"An objective and independent analysis of costs and benefits should be conducted beforehand, drawing on experience with and outcomes from the recent round."</i> Such analysis has yet to take place. In this regard, the GAC notes that the Operational Design Phase may provide the opportunity for this analysis to assist the Board as it considers whether a second round of New gTLDs is in the interest of the community as a whole.</p>	<p>to DNS abuse that remain in pending status, i.e., Recommendations #14 & #15 (negotiating and amending ICANN’s contracts with registries and registrars to include anti-abuse measures and to prevent systemic use of Contracted Parties for DNS security abuse)?</p> <ul style="list-style-type: none"> ○ If so, what does the GAC believe amounts to “complete implementation” of these two recommendations, in light of the GAC’s view that DNS abuse should be tackled in collaboration with the community and the GAC’s encouragement of community efforts to cooperatively tackle DNS abuse in a holistic manner? ● Question 3: If the answer to Question (1) is Yes: <ul style="list-style-type: none"> ○ Can the GAC confirm whether “complete implementation” also includes those CCT recommendations that the Board passed through to community groups, given the GAC’s recognition in its 22 January 2020 letter that: (i) the Board had requested the respective groups to consider and act on the recommendations; and (ii) in the case of the SubPro PDP, the Board cannot compel the GNSO to adopt the CCT recommendations? ○ If so, can the GAC clarify how it believes the Board can accept the GAC advice in a manner that maintains and respects the appropriate roles of the Board and the community in developing consensus-based policy? In this regard, the Board notes the GAC’s reiteration that, while the Board’s general reliance on and deferral in certain situations to community consensus is a positive role to adopt, the Board should nevertheless remain respectful of the advice it receives from its advisory committees. <p>Regarding the GAC’s Helsinki advice: <i>The Board does not have any clarifying questions at this time.</i></p>

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2. IGO Identifiers	While the GAC welcomes the new GNSO Work Track on Curative Rights, the GAC recalls prior GAC Advice (e.g., from Johannesburg and Panama) and ICANN agreement on a moratorium for new registrations of IGO acronyms ahead of a final resolution of this issue.	<i>The Board does not have any clarifying questions at this time.</i>