

11 August 2016

## **GNSO Council Review of the Helsinki GAC Communiqué**

From: James Bladel, GNSO Chair

To: Steve Crocker, ICANN Board

Dear Members of the ICANN Board,

On behalf of the GNSO Council, I'm hereby transmitting to you the GNSO Council's [review](#) of the GAC Helsinki Communiqué. This review is an effort to provide feedback to you, in your capacity as members of the ICANN Board, as you consider issues referenced in the GAC Communiqué that we have identified as being relevant to generic top-level domains. Our intent is to inform you, as well as the broader community of gTLD policy activities, either existing or planned, that may relate to advice provided by the GAC.

As we noted in our response following the Buenos Aires meeting, the GNSO Council review of the GAC Communiqué is part of our continuing dialogue with the GAC to facilitate early engagement in GNSO policy development activities, and efforts to ensure that the GAC is informed of our work activities. To this end, I am also sharing this communication with the GAC Chair for distribution to the GAC membership.

The GNSO Council hopes that the input provided through its review of the GAC Communiqué will enhance co-ordination and promote the sharing of information on gTLD related policy activities between the GAC, Board and the GNSO.

James Bladel  
Chair, GNSO

Cc: Thomas Schneider, Chair, GAC

**GNSO REVIEW OF THE [HELSINKI GAC COMMUNIQUE](#)<sup>1</sup>**

<b>GAC Advice – Topic &amp; GAC Advice Details</b>	<b>Does the advice concern an issue that can be considered within the remit<sup>2</sup> of the GNSO (yes/no)</b>	<b><i>If yes, is it subject to existing policy recommendations , implementation action or ongoing GNSO policy development work?</i></b>	<b><i>How has this issue been/is being/will be dealt with by the GNSO</i></b>
<p><b>1. Future gTLDs Policies and Procedures</b>                      The GAC advises the ICANN Board that</p> <p>I. The starting point for development of policy on further releases of new gTLDs should first take into consideration the results of all relevant reviews of the new gTLD round and determine which aspects and elements need adjustment. In addition, the following should be addressed:</p> <p>a. Requirements with regard to interoperability, security, stability and resiliency should be met.</p> <p>b. An objective and independent analysis of costs and benefits should be conducted beforehand, drawing on experience with and outcomes from the recent round; and</p>	<p>Yes.</p>	<p>Yes.</p>	<p>1. Both the PDP on Subsequent Procedures and the CCT-RT are reviewing the need for adjustments. The GNSO Council encourages GAC members to participate in the PDP examining issues related to subsequent rounds of new gTLDs, and/or submit its feedback during this group’s as well as the CCT-RT requests for input and/or public comments. The GNSO Council intends to submit the GAC’s Helsinki Communiqué to the leadership of this PDP, and highlight this particular section for their review.</p> <p>(1)(l)(a) SSR concerns are always given priority for TLD delegations, or in the development of any new policy proposals.</p>

<sup>1</sup> Only of “Section V of the Communiqué: GAC Advice to the ICANN Board”

<sup>2</sup> As per the ICANN Bylaws: “There shall be a policy-development body known as the Generic Names Supporting Organization (GNSO), which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains.

<p>c. There should be an agreed policy and administrative framework that is supported by all stakeholders.</p> <p>II. All measures available to the Board should be used to ensure that a comprehensive and measured approach to further releases of new gTLDs is taken in a logical, sequential and coordinated way rather than through parallel and overlapping efforts and/or timeframes that may not be agreed by all relevant interests.</p> <p>RATIONALE</p> <p>1. There is currently no public policy reason why further releases of new gTLDs should not proceed as a general principle. There are, however, valid public policy reasons for applying a range of requirements at the application and post-delegation stages. The GAC believes such requirements derive at least in part from ICANN’s obligations with regard to the global public interest, as contained in existing and proposed Articles of Incorporation and Bylaws.</p> <p>2. Data is not currently available to allow a proper</p>			<p>(1)(I)(b) The comment period on the gTLD Marketplace Health Index (Beta is open. )The CCT-RT is also underway and comprises the analysis of the Nielsen Surveys and the Analysis Group Study, but a truly “independent analysis” would need to be requested by the PDP WG, and approved by the Council.</p> <p>(1)(I)(c) The GNSO Council agrees that '[t]here should be an agreed policy and administrative framework that is supported by all stakeholders.'</p> <p>This requires that the Bylaws-mandated Policy Development Processes are respected (participation by a broad range of community members is vital to this process) and not circumvented at any stage by members of the community that did not participate in the process.</p> <p>(II) The application, evaluation and delegation of future rounds of new gTLDs should be sequenced to address necessary dependencies and pre-requisites, but without creating artificial inefficiencies or delays.</p>
---	--	--	---

<p>assessment, both quantitative and qualitative, of the round that is now concluding. Some important data, for example with regard to consumer safety and security, may not yet be being collected. To ensure a logical and efficient process, such data should be gathered before policy development processes move too far ahead.</p>			
<p><b>2. Privacy and Proxy Services Accreditation Issues</b>  The GAC advises the ICANN Board that:  I. the recommendations set forth by the GNSO PDP Working Group on Privacy and Proxy Services Accreditation Issues (PPSAI) raise important public policy issues highlighted by the GAC in its comments on the PPSAI’s Initial Report.  II. the Board should ensure that the dialogue on constructive and effective ways to address GAC concerns is continued.</p> <p>III. if the Board resolves to adopt the PPSAI recommendations, it should direct the Implementation Review Team (IRT) to ensure that the GAC concerns are effectively addressed in the implementation phase to the greatest extent possible.</p>	<p>Yes</p>	<p>Yes (Anticipated Implementation Review Team)</p>	<p>(2)(II) Members of the GAC and the Public Safety Working Group (PSWG) are invited and encouraged to participate and contribute to the implementation of the recommendations of the PPSAI PDP WG (if and when adopted), including through participation on the mandatory Implementation Review Team (IRT) to be formed to advise ICANN staff on implementation planning.</p> <p>(2)(III) Some concerns of the GAC may be addressed by the IRT, with the caveat that revisiting substantive policy discussions that have been completed are outside the scope of Implementation Review Teams. While the Board may provide general direction to an IRT</p>

<p>IV. GAC input and feedback should be sought out as necessary in developing a proposed implementation plan, including through participation of the Public Safety Working Group on the Implementation Review Team.</p> <p>V. If, in the course of the implementation discussions, policy issues emerge, they should be referred back to the GNSO for future deliberations in consultation with the GAC on potential enhancements to privacy and proxy service accreditation.</p> <p><b>RATIONALE</b>  In its comments on the Privacy Proxy Services Accreditation Issues (PPSAI) PDP WG Initial Report, the GAC highlighted public policy concerns raised by the PPSAI Working Group’s recommendations, notably that:</p> <ol style="list-style-type: none"> <li>1. Law enforcement and consumer protection authority requests for information from privacy and proxy service providers call for confidentiality as required and/or permitted by local laws;</li> <li>2. The PPSAI’s definition of “Law Enforcement</li> </ol>			<p>(e.g. to take into account GNSO guidance and GAC advice in devising the implementation plan) it does not have the discretion to direct specific outcomes for the work of any IRT.</p> <p>(2)(IV) The GAC and/or PSWG will have additional opportunity, along with the broader Community, to contribute its views and comments on the final PPSAI implementation plan.</p> <p>(2)(V) In addition to existing mechanisms for addressing additional policy issues that may arise during the implementation phase, once an accreditation framework for privacy/proxy services has been adopted and implemented, future policy issues that emerge as a result can be examined, potentially leading to future policy development work in this area.</p>
---	--	--	--

<p>Authority” as governed by the jurisdiction of the privacy or proxy service provider might imply that service providers need only respond to law enforcement requests from within their own jurisdiction while many investigations are cross-border, and;</p> <p>3. Privacy and proxy services should not be available for domains actively engaged in the collection of money for a good or service. Because these GAC comments were not reflected in the PPSAI Final Report, the GAC, in its Marrakech Communiqué, advised the ICANN Board to allow sufficient time for GAC consideration and discussion Members of these issues at ICANN 56.</p>			
<p><b>3. Two-letter country / territory codes at the second level</b></p> <p>The GAC has discussed plans proposed by Registry Operators to mitigate the risk of confusion between country codes and 2-letter second level domains under new gTLDs.</p> <p>The GAC advises the ICANN Board to:</p> <p>i. urge the relevant Registry or the Registrar to engage with the relevant GAC members when a risk is identified in order to come to an agreement on how to manage it or to have a third-party assessment of the situation if the name is already registered.</p>	Yes	Yes.	(3)(i) The GNSO notes that on 8 July, ICANN staff has recently published for public comment “Proposed Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes”.

<p>RATIONALE</p> <p>This advice is consistent with previous advice given by the GAC on this matter and reflects discussions across a wide range of GAC members during the Helsinki meeting.</p>			
<p><b>4. Use of 3-letter codes in the ISO-3166 list as gTLDs in future rounds</b></p> <p>The GAC advises the ICANN Board to:</p> <ul style="list-style-type: none"> <li>i. encourage the community to continue in depth analyses and discussions on all aspects related to a potential use of 3-letter codes in the ISO-3166 list as gTLDs in future rounds, in particular with regard to whether such a potential use is considered to be in the public interest or not.</li> <li>ii. keep current protections in place for 3-letter codes in the ISO-3166 list in place and not to lift these unless future in-depth discussions involving the GAC and the other ICANN constituencies would lead to a consensus that use of these 3-letter codes as TLDs would be in the public interest.</li> </ul> <p>RATIONALE</p> <p>In view of the intense debates and controversies over the use of geographic names in new gTLDs, the GAC requests that the community does not rush into a removal of the Applicant Guidebook protection of ISO 3166-1 alpha-3 codes. This move could have</p>	Yes	Yes	<p>The GNSO continues to engage with the issue of the use of 3-letter ISO 3166-1 codes as gTLDs as a Chartering Organization of the Cross-Community Working Group (CWG) on the Use of Country and Territory Names as TLDs. The GNSO will consider this group's scope and work and how best to integrate these into the recently commenced Subsequent Procedures PDP. In light of the significant community interest expressed in relation to this topic in Helsinki, the GNSO Council urges all interested members of the community to participate in the CWG and PDP Working Group.</p>

<p>political ramifications.</p> <p>ISO 3166-1 3-letter codes have strong associations with the country or territory they represent, sometimes even stronger than their 2-letter equivalent. Some GAC Members consider it appropriate to reserve their use for the local community or for purposes related to the country or territory identified. Some other Members consider that there may be other legitimate uses for the code that they would consider to allow.</p> <p>The interests of countries and territories not yet represented in the GAC should also be taken into account.</p> <p>For these reasons, the GAC requests time and sincere engagement in an all-inclusive dialogue among governments and stakeholders to identify and address concerns and potential risks before any proposal to change the status quo is made.</p>			
<p><b>5. Protection of IGO Names and Acronyms</b></p> <p>The GAC advises the ICANN Board to:</p> <p>i. pursue its engagement with both the GAC and the GNSO on the issue of IGO protections in an effort to reconcile differences between GNSO and GAC advice on this topic while remaining responsive to concerns laid out in GAC advice issued since the Toronto Communiqué;</p> <p>Taking into account the number of individuals who have joined both the Board and the GNSO since the</p>		<p>Yes</p>	<p>(5)(i) The GNSO refers the Board to the previously adopted (20 November 2013 – see <a href="http://gns0.icann.org/en/council/resolutions#20131120-2">http://gns0.icann.org/en/council/resolutions#20131120-2</a>) recommendations of the PDP WG addressing this topic and our statements on this issue during our engagement session in Helsinki. The GNSO Council lacks any remit to negotiate or alter these adopted recommendations to suit GAC advice.</p>



<p>GAC first brought this issue to the attention of the ICANN Community,</p> <p>The GAC advises the ICANN Board to:</p> <p>i. engage the IGOs in its discussions (both within the Board and with the GNSO) where appropriate, given that the IGOs are best-placed to comment upon the compatibility of any proposals with their unique status as non-commercial, publicly-funded creations of government under international law.</p> <p><b>RATIONALE</b></p> <p>This piece of advice is designed to encourage the Board to engage proactively with the GAC and GNSO on this important issue in order to continue the productive exchanges undertaken in Helsinki.</p>			
--	--	--	--

