

01 December 2023

**GNSO Council Review of Hamburg GAC Communiqué**

TO: Tripti Sinha

Chair, ICANN Board of Directors

CC: Nicolas Caballero, GAC Chair

Dear Tripti,

On behalf of the GNSO Council, we are hereby transmitting to you the GNSO Council's review of the Hamburg GAC Communiqué; the GNSO Council adopted the attached review documents on 30 November 2023.

The GNSO Council's review of each GAC Communiqué is an effort to provide feedback to you, in your capacity as members of the ICANN Board, as you consider issues referenced in the Communiqué that we believe relate to policies governing generic Top-Level Domains. Our intent is to inform you and the broader community of gTLD policy activities, either existing or planned, that may directly or indirectly relate to advice provided by the GAC. 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.

Kindly,

*Greg DiBiase, GNSO Chair*

**GNSO COUNCIL REVIEW OF GAC ADVICE CONTAINED IN THE [ICANN78 GAC COMMUNIQUE](#)**

GAC Advice - Topic	GAC Advice Details	Does the advice concern an issue that can be considered within the remit <sup>1</sup> of the GNSO (yes/no)	<i>If yes, is it subject to existing policy recommendations, implementation action or ongoing GNSO policy development work?</i>	<i>How has this issue been/is being/will be dealt with by the GNSO</i>
<p><b>1. Closed Generics</b></p>	<p>a. The GAC advises the Board:</p> <p>The GAC expresses its appreciation for the efforts of the participants in the GAC, GNSO and ALAC Facilitated Dialogue on Closed Generics.</p> <p>a. The GAC advises the Board:</p> <p>i. Prior to the next round of New gTLDs, to ensure that the forthcoming Applicant Guidebook clearly states that Closed Generic gTLD applications will not be considered.</p> <p><u>RATIONALE</u></p> <p>The GAC offers this advice in recognition of the support of the message from the Chairs of the ALAC, GAC, and GNSO to the participants of the facilitated dialogue that “unless and until there is a</p>	<p>Yes</p>	<p>Yes:</p> <p>Implementation Action: since the Advice makes specific reference to wording to be included in the AGB for the next round;</p> <p>Other: relates to the Facilitated Dialogue between the GNSO, GAC and ALAC seeking to find a potential solution on closed generics, which might then have led to further policy work</p>	<p>The GNSO refers the Board to Topic 23 <a href="#">Subsequent Procedures Final Report</a>, and to the letter from <a href="#">Sebastien Ducos to Tripti Sinha of 21 October 2023</a></p> <p>Specifically, from that letter, “The GNSO Council’s role is to manage the community process for developing gTLD policies through the bottom-up stakeholder process, not to make policy-related recommendations unilaterally. As such, the Council believes it appropriate to refer back to the Board’s March 2022 invitation to the GAC and GNSO Council to initiate a facilitated dialogue, which included a Framing Paper indicating the</p>

<sup>1</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>community-developed consensus policy in place, any applications [for closed generic gTLDs] [...] should not proceed.” A clear statement in the Applicant Guidebook will help potential applicants to avoid confusion and possibly the waste of resources. Additionally, the GAC recalled in its Comment on the Draft Framework for Closed Generics (15 July 2023) its concerns on “competition issues, the overall assessment of the value of Closed Generic 10 TLD for the Internet, their potential negative economic and social impacts, and the evaluation panel”. The good faith deliberations that took place in the Facilitated Dialogue addressed directly the question of whether Closed Generics could serve a “public interest goal” (as advised in the 2013 Beijing Communiqué) without reaching a solution garnering consensus within the community. The GAC further underlines the importance to promote an open digital space and is of the view that under these circumstances determining and arbitrating whether a proposed closed gTLD would meet a public interest goal would likely create</p>			<p>Board’s understanding that ‘[s]hould the dialogue not result in a mutually agreed framework [to be further developed through an appropriate GNSO policy process], it may be presumed that the Board will need to decide on what the most appropriate action is, within the Bylaws-defined roles and respective remits of the Board, GAC and GNSO.’ Accordingly, because the facilitated dialogue did not reach a mutually agreed upon framework, the Council believes the Board should decide how to move forward on this topic.”</p>
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	significant costs without providing any corresponding benefit.			
<b><i>Future gTLDs Policies and Procedures (Follow-up Advice)</i></b>	The GAC recalls its advice to the Board in the ICANN56 GAC Helsinki Communiqué (30 June 2016) that "An objective and independent analysis of costs and benefits should be conducted beforehand, drawing on experience with and outcomes from the recent round." So far the GAC is not certain of the availability of such analysis called for by the GAC. The GAC is looking forward to receiving such analysis at the earliest opportunity and ahead of ICANN79.	Yes, relates to next round?		<p>The request for a cost-benefits analysis was considered by SubPro in its Rationale to Recommendation 1.1. The GNSO Council <a href="#">motion</a> approving the New gTLD Subsequent Procedures Final Report 18 February 2021 requested that implementation proceed waiting for other dependencies to conclude and also requested that the ODP address the question of whether the recommendations were in the best interests of the ICANN community or ICANN.</p> <p>Specifically:  The Rationale to Recommendation 1.1 in the <a href="#">Final Report</a> states:  "In addition, the Working Group believes that the number of studies commissioned on behalf of the CCT-RT, including economic analyses on marketplace</p>

				<p>competition and enduser/registrar surveys, and which ultimately fed into the CCT-RT's determination of increased competition and consumer choice, address at least in part the GAC's request for a costs and benefits analysis."</p> <p>The Motion states;</p> <p>"2. Recognizing that nearly a decade has passed since the opening of the 2012 round of new gTLDs, the GNSO Council requests that the ICANN Board consider and direct the implementation of the Outputs adopted by the GNSO Council without waiting for any other proposed or ongoing policy work unspecific to New gTLD Subsequent Procedures to conclude, while acknowledging the importance of such work.</p> <p>3. Further, the GNSO Council requests that the ICANN Board initiate an Operational Design Phase on the Final Report of the SubPro Working Group and its Outputs as soon as possible, to perform an assessment of GNSO</p>
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				Council recommendations in order to provide the Board with relevant operational information to facilitate the Board's determination, in accordance with the Bylaws, on the impact of the operational impact of the implementation of the recommendations, including whether the recommendations are in the best interests of the ICANN community or ICANN."

GNSO COUNCIL REVIEW OF **ISSUES OF IMPORTANCE** CONTAINED IN THE [ICANN78 GAC COMMUNIQUE](#)

<b>Topic</b>	<b>Details</b>	<b>To which group(s) is the GAC text directed?</b>	<b>Does the issue of importance concern an issue that can be considered within the remit<sup>1</sup> of the GNSO (yes/no)</b>	<b>If yes, is it subject to existing policy recommendations, implementation action or ongoing GNSO policy development work? Please specify.</b>	<b>How has this issue been/is being/will be dealt with by the GNSO?</b>	<b>Does the GNSO want to provide additional feedback to the Board, the GAC, and/or another group? Please specify the response, target audience, and suggested method of communication or engagement (for example via this template, correspondence, and/or dialogue).</b>
<b>2. Future Rounds</b>  <b>Latin Script Diacritics in New Generic Top Level Domains (gTLDs)</b>	The GAC notes that a potential gap in policy has been identified on the use of diacritics characters in the Latin script. The GAC strongly supports a multilingual Internet free from barriers in existing policy and looks forward to continued engagement with the GNSO Council on this issue, and to reviewing the anticipated	GNSO Council	Yes, relates to Subsequent Procedures			The GNSO Council action from the ICANN78 Council meeting is a request for staff to produce a study to inform the GNSO Council on the issue of diacritics in Latin Script and in particular as it relates to .québec. The study is not an Issue Report, which has a specific meaning and

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	GNSO Council's Issue Report on this topic.					timetable as defined in the Policy Development Process Manual.
<i>4. Urgent Requests for Disclosure of Registration Data</i>	The GAC welcomes the Board's reaction to the letter sent on 23 August 2023 in which the GAC 7 asked the Board to reconsider the publication of the proposed Registration Data Consensus Policy for gTLDs and expressed its public policy concerns on the appropriate timeline to respond to requests for registration data in select emergency circumstances, known as "Urgent Requests". The GAC supports the initiative of the Board to separate the topic of Urgent Requests from the publication of the overarching Registration Data Consensus Policy for gTLDs and to speedily continue discussions on the former to achieve an outcome which is	Board, Org, Community	Yes	Relates to Implementation of EPDP Phase 1		<p>The GNSO refers to the <u>Final Report from the EPDP Phase 1</u>, Recommendation 18, specifically:</p> <p>"A separate timeline of [less than X business days] will considered for the response to 'Urgent' Reasonable Disclosure Requests, those Requests for which evidence is supplied to show an immediate need for disclosure [time frame to be finalized and criteria set for Urgent requests during implementation]."</p> <p>The GNSO Council notes that the IRT has decided to remove the wording on urgent requests in order to</p>



	<p>acceptable to all parties. The GAC reiterates that “the proposed outcome of up to three business (not calendar) days to respond to the narrowly defined category of “urgent” requests for domain name registration data does not serve its intended purpose” and that the use of “business” and not “calendar” days is particularly problematic in this respect as it can lead to significant delays and would vary across different jurisdictions, leading to uncertainty. The GAC also recalls that in April 2023 the ICANN org Implementation Project Team (IPT) carefully reviewed the public input received and concluded that there was “sufficient justification to revisit the policy language and to require a 24-hour response time for urgent requests.” The GAC looks</p>					<p>allow the publication of the Policy, and has <a href="#">asked</a> the GNSO Council to consider this further.</p>
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	<p>forward to the early reopening of the discussions with the community, also based on the further input which is expected to be provided by the Security Stability Advisory Committee (SSAC), with the objective of achieving “an outcome that better meets the public safety considerations posed by urgent requests”. Because of the vital public safety interest implicated by Urgent Requests, the GAC emphasizes the need to commence and conclude this implementation work as soon as possible. Further, this work should include accreditation issues, among others.</p>					
<p><b>6. Transparency and GNSO Statements of Interest (SOI)</b></p>	<p>The GAC strongly supports transparency at ICANN and takes note of ongoing discussions within the GNSO and the work conducted by the GNSO</p>		<p>Yes</p>	<p>GNSO Operating Procedures</p>	<p>The GNSO’s CCOICI recently issued its final recommendations report. During the GNSO Council meeting at ICANN78 the motion</p>	<p>Currently, individuals participating in GNSO Groups and policy activities are required to provide Statements of Interest (SOI) as</p>

	<p>Council Committee for Overseeing and Implementing Continuous Improvement (CCOICI) on the Review of the Statement of Interest (SOI) Requirements. The GAC notes that the GNSO Council motion on this matter on 25 October 2023 was not adopted. The GAC expresses ongoing concerns, as noted in the GAC ICANN76 Communiqué, regarding a proposed exception in the SOI that might permit GNSO participants to refrain from disclosing the identity of the entities they represent in GNSO working groups. Section 3.1 of ICANN’s Bylaws state that “ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness”.</p>				<p>to adopt these recommendations did not pass. The GNSO Council will therefore consider next steps, in due course.</p>	<p>outlined in the Chapter 6 of <a href="#">GNSO Operating Procedures</a>. In the current SOI requirements, there are provisions allowing for a GNSO participant to refrain from disclosing the identity of entities they represent, where professional ethical obligations prevent such disclosure.</p> <p>The CCOICI was tasked to review the existing SOIs requirements and recommend modifications if needed. The CCOICI’s recommendations, therefore, did not propose a new exception, but rather proposed modifications to the current exception language, which was considered to be insufficient.</p> <p>The motion to adopt</p>
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	<p>Transparent disclosure of interests represented in GNSO working groups is part of the basis of credibility and legitimacy of ICANN's multistakeholder model. The GAC looks forward to continued engagement with the GNSO, Board and community on this issue.</p>					<p>the CCOICI Report on SOI did not pass in the GNSO Council meeting on <a href="#">25 October</a>. As a result, no changes will be made at present to the current SOI requirements and the existing exception language, pending consideration on next steps.</p>
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