
BARCELONA – GAC: IGO Access to Curative Rights Protection Mechanisms
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MANAL ISMAIL, GAC CHAIR: Can you please start taking your seats.

MANAL ISMAIL, GAC CHAIR: So maybe we should start. Welcome back everyone, this is GAC session three on IGO Access to Curative Mechanism, scheduled at 1515 for half an hour.

So, as you may all, or may not know, the curative rights mechanisms policy development process working group finalized their work and submitted the report to the GNSO. The final recommendations are somehow far from what the GAC has advised. And the GNSO will be considering this report during their upcoming meeting, the council meeting on Wednesday.

So, we are meeting the GNSO tomorrow. We are also meeting the board on Tuesday and we have already flagged this as an issue on our agenda with the board. So, it's good that we are all on the same page and be briefed and agree on what we expect next. First, let me hand over to Tom, if you can take us through the brief, and then we can open the floor thank you.

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TOM DALE:

Thank you, Manal. This particular item is a long running issue for the GAC and indeed for ICANN, it goes back quite some time. And again, I hope, that longer serving members will just bear with me a moment, if I try to explain a number of the terms and issues the here before leaving it to people who know far more about the technical details of the issues than I do, who are here in the room. But we are looking here at a report of policy development process, a PDP. And it's being run by the generic name supporting organization part of the GAC, sorry part of ICANN, and this particular PDP is dealing with curative rights with inter-governmental organizations, that is curative rights as opposed to preventative rights, and that is how IGOs such as the OECD and to pick two names at random - can seek redress and curative action in the event of an apparent abuse of the names through the domain name system.

The briefing that we circulated to you a couple of weeks ago requires one update, which I will come to in a moment, but to give you a quick recap this issue was considered in the GAC's last meeting and advice was provided to the ICANN board in the Panama City Communique, in fact it's been included in a large number of GAC Communique's in one form or another, but because the process itself has been going for a long time. The GAC decided at its last meeting in Panama City, to advise the board to firstly maintain current temporary protections of IGO acronyms until a permanent means of protecting those identifiers is put into place, and this is long standing GAC advice. Secondly, to work with the GNSO, advises the board to work with the GNSO and the GAC for the completion the ongoing PDP on IGO INGO Access to Curative Rights

Protection Mechanisms to ensure that GAC advice on protection of IGO acronyms which includes available small group proposal, and there is a history to that, but I won't go into that now, is adequately taken into account also in any related board decision. And finally, continuing work with the GAC in order to ensure accuracy and completeness on IGO context on the current list of IGO identifiers. This issue is about number two, in that advice that you the GAC provided back to board in Panama City. This has been a long-delayed PDP process.

The immediate update on which I will conclude before handing over to other, is that it's been known for some time that the draft recommendations in this report are inconsistent with or indeed in conflict with previous advice provided by the GAC on this issue, so there are significant differences on opinion and there have been for some time.

The GNSO Council which is the overall governing body for GNSO work including the outcomes of these PDP initiatives is considering at its meeting next week, on Wednesday, next week is considering a motion which is on the public record to approve the recommendations. To the best of my knowledge, there has been no exchange of views on this issue between the GAC and GNSO since the Panama City Communique and that's the factual update that I have Manal, but others my wish to provide more detail. Thank you.

MANAL ISMAIL, GAC CHAIR: So, yes John, OECD, please go ahead.

JONATHAN PASSARO: For the record this is John Passaro from the OECD. First of all, I want to thank everyone for your time and engagement on this issue, since the IGOs formed a coalition seven years ago in an effort to find a way to protect our identifiers from misappropriation in DNS. Just to give a little more context to what Tom and Manal were discussing just now. The GNSO vote concerns the IGO's ability to access the UDRP or UDRP like procedure. The reason why this is an issue, IGOs generally speaking have immunity jurisdiction from the national courts. And the UDRP requires in order for parties to use it, they submit to the jurisdiction of national courts. In order for IGO to access UDRP we need to find some way to accommodate this conflict. and that's what the current issue under discussion is. This has been an uphill battle from the start, largely because IGOs are unique creations under international law. Which operate in a fundamentally different way from the majority of ICANN stakeholders. It can therefore be difficult for people to understand the legal frameworks that govern the way that we operate and that facilitate our work. This has been especially evident throughout the policy development process for IGO Access to Curative Rights Protection Mechanisms that we are discussing now. IGOs tried repeatedly to educate those involved in the working group. Most of whom come from private domain registration sector regarding the nature of IGOs and why current UDRP is incompatible with our legal status. We thought that we would be helped on this front by the expert report of an international law professor that the working group actually enlisted to help them. But instead the working group cherry picked

passages from his report and ignored those sections that supported our consistent position about IGOs.

The IGOs also hit significant roadblocks following the positive work that came out of the so called small group, that Tom briefly mentioned just now. Which had been created at initiative of former NGBC, so stretching back a few years. What we understood to be constructive forum for come forward that would bridge GAC and GNSO advice on the topic. Was Somehow later portrayed the community as sort of rouge group that tried to circumvent ICANN procedures, nothing could be further from the truth, as the initiative and involvement of ICANN Board Members demonstrates. So, now we find ourselves in most regrettable position, as Tom said, the GNSO council is about to vote to accept a working group report that conflicts with years of prior GAC advice. And is also the subject of minority statements from both of the working groups chairs, that raise serious procedural and substantive concerns. If the final report of the work group does not even have backing of its own chairs I fail to understand how the council can move forward with the report. Nevertheless, IGOs are as ever ready to work with GAC, the board, and GNSO to find common sense resolution to the issue. We therefore call on the council and board to work with us to move past misunderstandings and engage in a constructive solution-oriented dialog. I remain confident that we can find a solution that works for all, in line with GAC's consistent advice over the years if only everyone is willing to discuss with an open mind. Thanks.

MANAL ISMAIL, GAC CHAIR: Thank you John. Any other comments on this topic? Switzerland please and then WIPO.

SWITZERLAND: Thank you Manal. Jorge for the record. And I would like to support what John just said from OECD, and I would also like to draw your attention to the fact that in the last years, we had a process between the GNSO and the GAC to come with better procedures for furthering mutual understanding. This was the so called GAC GNSO Consultation Group, which delivered its recommendations, I think in 2016 or 2017. Anyway, one of the recommendations which I think were accepted by the GNSO and also have been assumed I think here by the GAC, is that there is consultation procedure between the GAC and the GNSO council when there is awareness that recommendations coming from GNSO PDP conflict with GAC advice. And specifically, this GAC GNSO Consultation Group stated in its recommendations that it does encourage the GAC and the GNSO council to engage in dialog either through the regular mechanisms identified, this is the GNSO liaison to the GAC, or the GNSO leadership meetings or and at OC basis in those instances where there is an obvious difference between the proposed PDP recommendations and GAC input that has been provided. I think it's clear, in this instance we are before such a case. And if we look to the latest implementation plan of these recommendations that was circulated to the GAC, one year ago, in October 2017, it mentioned as one of the implementation measures that it's encourages dialog between GAC and GNSO council to converge views before consideration by GNSO council of the final report. And if deemed necessarily have a consolation mechanism in

place. So, what I want to say with this is we have very specific recommendation of how to improve our cooperation and collaboration between GNSO and GAC. This case clearly fulfills the case for such collaboration procedure to happen. And I am really surprised, that this decision of adopting the GNSO PDP recommendations is before the GNSO council next week on the 24th of October, if I am not mistaken without having engaged with the GAC in this exchange in this convergence, effort or in this conciliation. I would really like to urge the GAC leadership to take this up with the GNSO and avoid what would be a very bad situation, and that is the GNSO council adopts recommendations which they know clearly that are inconsistent with GAC advice. Thank you very much for taking this up if possible.

MANAL ISMAIL, GAC CHAIR: Thank you Jorge. And before giving the floor to WIPO let me just assure you that we have already brought up the specific language of the recommendations of the GAC GNSO consultation working group with the GNSO leadership on GAC GNSO leadership call prior to the meeting here. But again, it's also very useful that we bring this again to their attention when we meet jointly tomorrow. So, WIPO, Please.

BRIAN BECKHAM: thank you Chair. Sorry this is Brian Beckham from WIPO. I support the comments from my colleague from the OECD and Switzerland and wanted to just remind us that in Hyderabad the GAC advised ICANN that to meet IGO's you need treaty status and dispute mechanism modeled on but separate from EDRP.

In particular one which provides for appeal to tribunal instead of national court should be adopted. The Hyderabad rationale added that, as IGO undertake global public service mission and protecting names and acronyms in the DNS is in the global public interest. The small group rationale strikes reasonable balance the rights and concerns of both IGOs and legitimate third parties. And further reminded us that ICANNs bylaws and core values indicate that the concerns and interest of entities most affected here IGOs should be taken into account in policy development processes. Finally, in Abu Dhabi, the GAC raised concerns about openness, transparency and inclusion and representativeness and process integrity that are enshrined in ICANNs bylaws and GNSO operating procedures. These concerns have unfortunately played out in the PDP working group report that the council is set to vote on this week. As my colleagues from OECD said, IGOs of course remain, willing and able to reach a positive solution. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Brian. France please.

FRANCE: thank you very much Manal. I would like to thank John from OECD and Brian from WIPO for the work they have been doing on behalf of the IGO coalition to limit the misuse of the acronyms on the DNS. And I would like to express again the full support of the French Government to what they are doing. As it was said by previous speakers, we are at a situations where the first results from the GNSO are a bit disappointing.

So, I think as GAC and as GAC leadership we need to engage further with our friends from the GNSO so to try to find a satisfactory solution for this issue that has been discussed, as you know, for many, many years now. We will need to move this forward, thank you.

MANAL ISMAIL, GAC CHAIR: Thank you France. Any other reactions? Portugal please, Anna.

PORTUGAL: Thank you. I like to say we support what France said. I think it's incredible that we are still discussing something that anyone could it's obvious that this acronym they have to be, how do you say, protected? Yeah that's it.

MANAL ISMAIL, GAC CHAIR: Thank you, Portugal. Any other reactions? So, as I mentioned we are meeting the GNSO tomorrow. We have our meeting with the board on Tuesday and luckily enough both meetings are before the council meeting on Wednesday, when decision will be taken by the council. So, it will be good to bring those points up again, I believe with both the GNSO and board as well.

We also have preparatory session to prepare our meeting with the board, so we can get in to more details at the time. Excuse me. So, any other comments? So, if not maybe we can conclude here, so we have I think ten minutes or like nine minutes before we have someone from the NomCom joining us to brief us on the NomCom review. So, nine

minutes to stretch and then we reconvene at a quarter to, please. Thank you.

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