



Comments of **MARQUES, the European Association of Trade Mark Owners
on the Proposed Bylaws Changes Regarding Consideration of Governmental Advisory
Committee (GAC) Advice**

Introduction to **MARQUES**

MARQUES is the European association representing brand owners' interests. The **MARQUES** mission is to be the trusted voice for brand owners. **MARQUES** unites European and international brand owners across all product sectors to address issues associated with the use, protection and value of IP rights, as these are vital to innovation, growth and job creation, which ultimately enhance internal markets.

MARQUES membership crosses all industry lines and includes brand owners and trade mark professionals in more than 80 countries representing billions of dollars of trade annually. The trade mark owners and practitioners represented by **MARQUES**, together, own more than three million domain names and advise organisations of all sizes on rights protection in the domain name system. These domain names are relied upon by consumers across Europe as signposts of genuine goods and services.

More information about **MARQUES** and its initiatives is available at www.marques.org.

****MARQUES'** comments on the Proposed Bylaws Changes Regarding Consideration of GAC Advice**

MARQUES welcomes the opportunity to provide its comments on the proposed changes to the ICANN Bylaws to raise the voting threshold that is required for the ICANN Board to be able determine not to follow the advice of the GAC on ICANN's activities. **MARQUES** is opposed to the proposed change for the reasons set out below.

Under the current bylaws, if the ICANN Board decides to take an action that is inconsistent with the GAC advice, it shall enter into a consultation process with the GAC to inform them of their decision along with the rationale and try to find a mutually acceptable solution. Following the recommendations issued by the first ICANN Accountability and Transparency Review Team (ATRT1), a Board-GAC Recommendations Implementation Working Group (BGRI) was formed to formalise the consultation process that needs to be followed if the ICANN Board decides not to follow the GAC advice. The formalised consultation process developed by the BGRI require raising the voting threshold from simple majority (50% + 1) to two-thirds of the voting members of the ICANN Board for the ICANN Board to be able to decide not to follow the GAC advice.

While we appreciate ICANN's efforts to implement ATRT1 recommendations, we believe that changing ICANN Bylaws to raise the voting threshold would mean granting the GAC greater powers

to influence the policy making process than other advisory committees. Such an outcome has the potential to undermine ICANN's multistakeholder governance model under which the policies are shaped by the deliberations of different stakeholder groups at a level playing field.

In addition, the formalised consultation [process](#) developed by the BGRI prescribes a detailed and structured mechanism that would at least take six months to conclude with a possibility of further extension upon request by either the ICANN Board or GAC until a mutually acceptable solution is reached. Since the ICANN Board and the GAC are provided with plenty of opportunity to reach consensus and the voting mechanism is only to be utilised as a last resort, we believe that raising the voting threshold is not warranted.

We also note that along with the proposed change to the ICANN Bylaws, ICANN's second Accountability and Transparency Review Team (ATRT2) also makes a number of [recommendations](#) to improve the accountability and transparency of the GAC. For example, the recommendation 6.1 indicates that the GAC should consider a number of actions to make its deliberations more transparent and better understood to the ICANN community; recommendation 6.2 indicates that the GAC should formally adopt a policy of open meetings and publish clear criteria for closed sessions; and the recommendation 6.3 indicates that the GAC should develop and publish rationales for the GAC advice at the time advice is provided. In this regard, ATRT requirements must be implemented as a whole and the ICANN Bylaws should not be changed before any concrete steps have been taken to ensure that the GAC meets the accountability and transparency requirements of the ATRT2.

Finally, we consider the proposed change to the ICANN Bylaw an untimely move considering the ongoing, wider review process to enhance ICANN's accountability as a pre-condition of the IANA stewardship transition. As the suggested bylaw change relates directly to ICANN's decision making mechanism and the purpose of the discussions on ICANN's accountability is to develop effective checks and balances on decision making bodies, the two issues should be handled together.

In conclusion, since the ATRT2 recommendations to improve the GAC's accountability and transparency are yet to be implemented, the discussion on enhancing ICANN's accountability as a whole is currently ongoing and a formalised Board-GAC consultation process has already been provided by the BGRI, we oppose the implementation of the suggested bylaw change to raise the ICANN Board's voting threshold to be able to determine not to follow the GAC advice.

We thank you for your kind consideration of the above comments.

Yours sincerely,

Submitted on behalf of **MARQUES**

Signed on behalf of Caroline Perriard,

Chair of **MARQUES** Cyberspace Team