

**ICANN Costa Rica Meeting
Cross Community Working Group C - TRANSCRIPTION
Saturday 10th March 2012 at 16:00 local time**

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Stephane Van Gelder: And the recording has started so we'll pick this up again. We've got three sessions to go before the end of the first day. And as a reminder we are all - well those of us who want to, having dinner together later on.

We will have to move down to the Hilton for those of you who - I don't know who's staying there and who is not, but it's just down the road - the Doubletree, thank you. So I'll say a few words about that later on.

But Osvaldo is the person that we can thank for organizing that dinner, so thanks to you.

And before that, just a few more work sessions and the first one is on cross community working groups. And what's been happening in your group Jonathan?

Jonathan Robinson: Thanks Stephane. So I'm Jonathan Robinson for the record, and I was the - was or am the Leader or Chair of this Drafting Team.

So really looking back a little bit, the structure of the presentation, I'll try and take up as little of the time so it creates time for discussion. But really, I've

tried to set the context and the objectives for the Drafting Team and provide you with an update since Dakar.

And then really the substance of this I think, is probably to review the draft principles and get any comments. You should all have seen them previously of course, but I have got them up here in the slides.

And I think it's important as well. My reading of this is we also need a basis for a way forward, and we'll come to that as we go through the presentation.

So really looking back a little and it's - I'm loathe to admit it, but it's probably going on perhaps even as long as a year back when there was an increased use of cross community working groups defined here as those chartered by more than one supporting organization or advisory committee, and the perceived importance of these.

But it - so there was a - there's a broad recognition of how important these are to the ICANN community now and looking forward. But it also began - the increased use then began to raise questions about whether there were any special rules or guidelines we needed.

So the GNSO went on to establish a CWG Drafting Team. And I think it's very important to reiterate here that the objective of the Drafting Team -- and I may come on to this a little more -- but was to assist us, the GNSO in formulating a view on this, but not to prescribe to the rest of the community how these might work.

And so it shouldn't be taken as that although we did make the Drafting Team open to any other members of the community to participate in.

So really our objective was to develop a proposed framework under which jointly chartered working groups or community working groups could function effectively and produce meaningful and timely reports and recommendations.

And as I said a moment ago, the objective being to develop a GNSO agreed perspective, at least as a departure point for developing then a broader community understanding of how these CWGs might work in terms of their role, function, and method for - in the future.

So to date we set things off with a charter, conducted an effective workshop of meetings in Dakar which really sort of pulled things together, and made a commitment which was in the charter.

I'm not -- I think the original - it was the original commitment -- but in any event, made a commitment in Dakar to get the draft principles published by the end of the year which we duly did.

And then we put that into a motion before the Council to consider and accept these - the draft principles. That got caught up in a deferral and minor (unintelligible) of the meeting and various things have slowed it down a little. And in effect we've had two deferrals of that motion until we find ourselves where we are today at this meeting.

So the motion to the best of knowledge is on the agenda for this meeting still, and it's something which we should be ideally prepared to vote on.

So then just looking at the structure and the way in which we work for a moment, the way in which we constructed the draft principles were into two major areas.

First of all, the scope of community working groups and some subsections within that, and then the operation.

Within the scope we looked at the possible purposes and in particular the relationship to the PDP process.

And as far as the operation of the groups, let's try and look at the initial formation, the ongoing operation, and then the possible outcomes that might arise.

And that structure that you see in front of you is what's represented in the document on the draft principles. And so that takes me really to the draft principles.

And I think the best way - I'm slightly - well what I've got here is three slides covering the draft principles. The wording, I'm sorry, is small on this big - on this slide, but those of you with laptops should be able to access these or have records - I mean they're on the ICANN site and they should be available to you.

We -- and I've got to be careful to make sure I represent this correctly -- we didn't formally poll for consensus. My memory and recollection is that we had good if not total consensus on almost all aspects.

Probably the thing we struggled with the most and had the potential to derail us was the concept of joint chartering.

In the end, after much discussion and going around on that, we agreed to a position which I think would be correct to say, we didn't have full consensus on, to stick with the draft principle containing the requirement to have a single charter.

And so that could be one of the more - that could be the area that provokes discussion.

But really I think for each of these we had - for each of the possible purposes, the formation, execution and operation of the CWGs and the outcomes, we had a set of rationales.

I'm not sure, I wouldn't mind some suggestions as to whether you'd like to dive in and discuss particular aspects of these.

I think mechanically working through each area is possibly not the right way to go.

So I'll stop for a moment here. And I think really it's - I'm open to either two ways of doing this. And either we work through; but within a half hour session I'm not convinced we've got the opportunity to go through each of the draft principles.

Yes, Stephane tells me we could prolong it a bit if we needed to. And the alternative is that we simple pick up some points within this if there are any that there are particular questions or comments or areas of discussion.

And I'd encourage you to take this as an opportunity to discuss it amongst yourselves rather than - I mean I realize there's a Drafting Team and you may well what to say, well why did the Drafting Team formulate this?

But bear in mind that the objective of this is to have a GNSO agreed perspective on the CWG. So to the extent that you are willing to support or comment on these, that would be great.

Right, I'll hold.

Stephane Van Gelder: Yes, you know, just to after that, a couple of things. First of all I think it is worth having a discussion now.

Once again, these - one of the things that we're trying to do with these weekend sessions is to make them work sessions. So to the extent that we're not just having updates, but we are taking the opportunity that we have at being all together in the same room to generate discussion and facilitate resolution where it's possible.

So if we can take at least a few minutes to have discussion on this, I think it's useful.

Also because - and Jonathan touched on this initially, I think it's worth making that point. Some in the community - informally I've been having questions of why is the GNSO preaching to the rest of us on how we should handle cross community working groups, and that's not the case.

Jonathan made that point, but we may want to make sure that we make it as clearly as we can.

This is us working to propose solutions and recommendations to the rest of the community. And it's up to them to consider whether those recommendations are worthwhile or not. But it's not - certainly not us saying this should be done this way and that's it.

There's a similar process going on in another part of the community that I'm sure - well you must have all heard of it because I believe I sent an email to the Council list, which is the ALAC ICANN Academy which is a process that has come out of ALAC as a suggestion to the rest of the community.

And I think those kinds of processes are very useful as long as they're not misunderstood as one element of the community preaching to others.

So this is what we're doing here. And once again if we can - and perhaps you want to lead the discussion Jonathan, on the points, you obviously know them well. But if we can get discussion or if we can get a sense that the level of consensus we have at Council level on these recommendations, I think that would be useful. Thanks.

Jonathan Robinson: Bill?

Bill Drake: Thank you. This one has gone on almost as long I think as outreach and almost as equally mysterious sort of way.

But I think it's worth remembering going back - gee, I can't even think how many meetings, when a lot of these issues especially came to the floor over the JAS process that there were concerns not just in other parts of the community, but also within the GNSO, because sometimes it's kind of said that we all agree completely on everything.

They were at public meetings we had and also weekend sessions I think in Brussels and elsewhere, a number of us from the non-commercial stakeholder group did raise concerns about exactly how we do this.

In particular, on the point of single charters, many of us were very cognizant of the way the JAS process happened and we're concerned that if we had been very insistent on a rigorous sticking to one model that a lot of things wouldn't have gone forward that ultimately some of us believe were important to do.

So I think some folks have felt that it would be better not to have overly restrictive language and that it would be, you know, it ought to be possible to say something like, you know, one charter or winner as appropriate or some weasel words to that effect that provided an out rather than appearing to sort of lay down a market upon entering into discussions with SOSEs that we were insisting that it had to be this approach.

Because one could think about this in various ways I mean, you can say well, you know, it's that the work is only useful if everybody is on exactly the same page.

But I also think it can be useful to say that you take up a work item that's of interest across the community, but yet different players want to emphasize

different elements and work on different aspects, but in a somewhat synched way.

So, you know, why it should be necessarily be all through the mechanism of one completely consistent charter isn't entirely obvious to me. I think of these as sort of, you know, platforms for shared discussed around an issue, but then it's also to have people moving in slightly different ways and different aspects of it.

So that I think is one issue. And most of the other stuff that's in the language, I think really by this point is pretty - I don't know that anybody has many issues with other aspects. But I think that that was the one that there was discussion.

And I don't know if there is any ALAC people in the room who would want to speak to it, but at the time certainly -- well I see one waving -- but at the time that all of this was coming up there was a lot of people who were looking at the JAS experience in particular, but also (unintelligible) and other things and saying, are you sure you guys really want to frame it that way going in.

So I just - we thought it would be useful to at least have an opportunity to have a broader consideration with other folks in the room before we went ahead and just did this.

Jonathan Robinson: Yes, thanks Bill. And I think - Alain, I'll get to you and I obviously can't see if there's someone behind me would like to speak up Alain that's great.

So I think that really reinforces the point I made that there was a pretty strong if not unanimous consensus on virtually all that we've put down on this page. And the key area we grappled with was this issue for the reasons you've eloquently explained their words where it came from, and there was some concern over the joint chartering.

Alain Berranger: Thank you, a couple of things. First of all on the overall tone -- and this goes back to the discussion on why is the GNSO doing this unilaterally -- I think it takes some understanding of other groups to understand the GNSO doesn't necessary - I think never says, hey you Stephane, go negotiate on our behalf and we'll take whatever you get.

It just doesn't normally happen like that in the GNSO. And yet ultimately if all the ACs and SOs are to get together and come to some single rules, you are going to (unintelligible) a small number of people in the room.

And whoever is representing the GNSO needs to have some guidelines as to what was important to the GNSO and what isn't.

And I think if you frame it that way, people will tend to understand more why we're going through this process. And as open as it was, it is still a GNSO process.

That being said, the strident tone in some people's pronouncements within the working group was such that they feel that these have to be the endpoint of this final discussions; not a going endpoint.

And I think that's an expectation that has to change in the GNSO because these rules may end up changing when everyone else has to approve them. So that's the generic one.

On the two charters I'll only say a couple of words. I'll remind people that the JAS group had one single charter to start with. It had one single charter because if you remember correctly, a charter was proposed.

The GNSO adopted it due to a scripting error; the GNSO left out one of the provisions. It just got forgotten. Olaf had made a mistake on a slide and it didn't get approved.

The ALAC went back and changed what they did to delete that one also so that we could work on the same bible. You know the two charters happened on the re-chartering.

This particular set of recommendations which you're talking about now, is completely silent on re-chartering if the concept exists at all, so it may not be that bad.

But I think people need to remember that when we're talking about multiple charters, we're not saying, you know, one half of it's going to go there and the other half is going to go there, to use someone's analogy.

We're saying one half - one of the charters says let's do A, B, C, and the other charter says let's do A, B, C, D, E. So it's not as if they're completely different things. That's the way it's happened.

I'm not saying you could have two charters which go in diametrically opposite directions. And the ACs and SOs who agreed to that will be damn stupid in my mind.

And I think it's important to remember -- and my last comment -- that whatever principles we put in place today, the actual - any cross community working groups that's going to be put together is going to have to be approved by a living, breathing council and AC. And those groups are - should be able to make rational decisions on their own behalf.

Jonathan Robinson: I'm aware there's a queue. I've got three people in the queue. Just as a reminder - okay. So just a comment, and this is the danger Alain and others with the talking and the abstract for example in the way you describe about this point chartering, because there's no doubt that if a working group could deal with perhaps a subset and it's a very different issue, A, B, C, D versus A, B, C, D, E, F versus A, B, C and S, Y, Z on the other hand.

And I think the way in which we frame the discussion, rightly or wrongly in our working group was - my impression was the presumption of two charters we're working, while not diametrically opposed, at least potentially or (unintelligible), and that's perhaps where the major concern was.

But let me - let's hear from the - Evan first, on my left here.

Evan Leibovitch: Hi there. For the record my name is Evan Leibovitch. I'm from Toronto and I'm Vice Chair of ALAC.

I want to just go a little bit more into what Alain said without going into any specifics of charters or whatever, but just in general to speak of what seemed to be at least to some people in ALAC, a very strange feeling that here we had a discussion about cross community working groups that itself wasn't being done in a cross community method.

And since as Alain said, this is going to have to be something that gets signed off eventually by everyone, isn't it a better idea to have things baked in from the beginning as opposed to bolted on afterwards?

The idea of coming up with something internally and then putting out for comment and then getting comments back and then building them in, isn't it a little bit more sane to know at the beginning if there's going to be deal breakers in other constituencies.

So if there is going to be points of friction elsewhere, to know about that right at the beginning as opposed to doing this in a silo and putting it out and then getting an angry reaction back. Isn't it better to try and figure those things out at the beginning of the process rather than having them bolted on afterwards?

I'll leave it at that.

Stephane Van Gelder: So Evan can I just respond to that because I don't know if you were in the room, but we did touch on this briefly initially.

But I think - the point you make is exactly the point I was trying to make earlier on. There is no intent here to do anything but hone our own thoughts on this before presenting to anyone else.

And I used -- I don't know, once again if you were in the room then -- the example earlier on that the work ALAC has done on the ICANN Academy, which is something that is internal. It's an idea that has come out of ALAC and it's not being presented to the rest of the community.

And we could have the same reaction that you've just mentioned which is why are you doing this now? You haven't allowed us into this process before, and we could have deal breakers.

I would prefer to take the approach that ALAC has done some excellent work and volunteered that work and it's very positive and we should look at it in a positive way.

But I would ask that the rest of the community also extend the same level of understanding to the work that the GNSO is doing in this regard.

Evan Leibovitch: I'm sorry, one little follow-up and I'll finish. So Stephane do you foresee the idea of seeing a second generation of this, once the GNSO has an idea of what it wants.

And then to have, say a Drafting Team, but this Drafting Team has all the communities together with them all having their act together and all knowing where they're coming from and doing that together as opposed to a cycle of document, comment, document, comment?

Stephane Van Gelder: My personal opinion; what you're asking is can we have a cross community Drafting Team to hone the cross community Drafting Team? And while that sounds funny, my own personal opinion is that it's needed.

If there is a suggestion from one side of the community - here's a good idea, what do you guys think of it, then at some point, you guys, everybody needs to get in a room and discuss it; yes.

Jonathan Robinson: So I've got Wendy and Marilyn.

Evan Leibovitch: Thank you.

Jonathan Robinson: Thanks. I just want to make sure that we're very, very clear here that there are two things. Notwithstanding that Alain, to the discussion I mean one, in doing this work it was - the work of the Drafting Team and the meetings, both telephonically and in-person were open to anyone to participate in at any time. So it wasn't in any sense behind closed doors.

And I think two is, that's precisely Alain why I've got - you know, I think we need to know what the future of this work is. And that's the last slide after we've discussed the principles themselves is, well what - where do we take this work next? Where do we go with that, and I think that's a critical question for the community, and you rightly should ask.

So let's hear from Wendy and then Marilyn.

Wendy Seltzer: Yes, I'm coming out of - to this...

Jonathan Robinson: Wendy yes, I've got you and I'm sorry to interrupt, but I had also Mary, which is why I - but you are in the right order.

Wendy Seltzer: Okay. So Wendy here, and I'm increasingly dispirited by this process that, you know, we can't - while we need some space for GNSO counselors and

council to come together on it's view of how to participate in cross community work, we're then both criticized from outside for trying to think about our own internal process and seemingly unable to reach consensus on that process for interaction with other groups.

So perhaps we just throw up our hands and say, ad hoc or (unintelligible) wins.

Jonathan Robinson: Marilyn and then Mary and then Nicke.

Marilyn Cade: It's Marilyn speaking. I was going to say how enthused I am about the substance that's in this, at least it's a good place to continue to build on.

But I'm also noting for myself, that I do think within the stakeholder groups and the constituencies, since we're talking about working groups that may involve more than policy, I think as we think about what that might entail we'll need to think about what the appropriate process is to reach the sub-entity to recruit from.

So for instance if there were to be a budget cross community working group - - I'm looking at Chuck back there in the back -- who has a history with me and Ken Stubbs and others, of remembering there used to be a cross community budget group.

So recruitment would not go to the Council for such a topical group I'm assuming, from my read of this, but that this would be a kind of a framework that it's the framework as I understand it. I'm just trying to seek clarification Jonathan.

It's the framework we're trying to reach agreement on so that in the different groups as those in AC, then we would be able to figure out how we can respond to a request based on the topic and the scope of responsibility of any groups. That's what I thought we were working on.

Jonathan Robinson: And I think that's correct. That's my understanding as well. This is not - in other words this is not to suggest that the recruitment of a community working group would be from within the Council itself by no means.

This is the mechanism - it's a mechanics or a method by which community working groups could be initiated, developed, and have a productive outcome.

Marilyn Cade: So I would just make a follow-up comment. So I would take as a work item myself, within the CSG, I would think within the CSG as we look at this, we would say so what's our mechanism to be able to respond to a call for a cross community working group on Topic B, that's not a GTLD policy topic which would mean we need to look at this and come back with - and I think that would be true.

I know Olivier is here - I think that would be true for the ALAC and for the GAC, etcetera.

Mary Wong: Thanks Jonathan. So two short comments I hope. I think first on - and they both relate to the joint - single joint charter issue.

I think first is I don't suggest that we engage in wordsmithing here, but it just seems to me that it would be useful to have additional wording in there, whether it's something like, to the extent feasible.

Or going along the lines of what Alain was saying earlier that to the extent issues develop during the process that might involve a revisiting of the original charter, that that be done in some manner, shape, or form.

I think that would be helpful because it would signal to folks that it is not a top down dictation; one charter. And then when things happen everybody goes up and does the A, B, C, X, Y, Z.

Then the other suggestion - and there may not be time in this meeting although perhaps, depending on the groups, availability, I think Jonathan in some ways it's fortunate for us, but unfortunate for you that you're Chair of this group because I can't think of a better ambassador us to go to the groups that have some misunderstanding of how and why we're doing this and to do a face-to-face, short Q&A with them.

I think that would also go a long way towards minimizing the misunderstanding to date.

Jonathan Robinson: Well I've got two people in the queue already, Mikey, John, and then Alain.

I just wouldn't mind a comment from anyone in response to what Mary said about the issue of re-chartering.

Does - I mean is re-chartering open-ended or is it in some way - yes, Jeff.

Jeff Neuman: Yes, if you could just - this is my recollection. It wasn't just a re-charter it was they were done with - in the JAS group they were done with the first portion and they made a bunch of recommendations in the first portion.

And then they wanted to then continue their group to address those recommendations.

And so for example one of the recommendations I think was to basically set up a financial - I forgot exactly what it was. Right now it's a recommendation that came out of the first part, and then they just automatically adopted a new charter that said okay, that was our initial recommendation and now we're going to go about doing it.

It wasn't a simple matter of re-chartering due to some difference in a couple of words or something omitted, there was very significant differences.

And in that case the reason why there was also a significant amount of discussion is, you know, and why we had different charters is we are the GNSO.

We have specific things that are within our mandate and other things that are not within our mandate.

The ALAC is lucky in a sense because they can address a whole range of things and topics. They don't really have necessarily the limitations on jurisdiction that we at the GNSO do.

So there were a lot of misunderstandings at that point in time. It wasn't as if some of the things we didn't think were worth discussing, but they were things outside of our mandate.

So re-chartering is not always as simple as, you know, fixing a word here or there. I think correcting typos is one thing but then looking at substance and comments has to go through the same process the original one went through.

Jonathan Robinson: All right, thanks for that Jeff. I'm reluctant to get too involved. Although the JAS is a real working example of where the issue was and what the attempts to solve, we've got to be careful not to get drawn completely in, but I appreciate the clarification.

All right, so we are now heading towards our time, but I do have people who have been very patient. Mikey and John in particular haven't had a chance to speak so they at least should have an opportunity to say something. So Mikey...

Mikey O'Connor: This is Mikey; I'll be pretty brief. But Jonathan is being a good scout, and since I was the pretty militant defender of the single charter thing I just wanted to chime in a little bit.

I was on this working group as a customer of the working group because I run several cross community working groups and I wanted to make sure that I had a framework that I could function in.

In my life when I actually worked for a living, I used to work under arrangements letters. And what concerns me about the idea of multiple charters is it would be as though you were a lawyer or a consultant and you had two arrangement letters with different clients or different deliverables for the same project. And that's infeasible to me.

So I think the notion (unintelligible).

So what my (unintelligible). So I wasn't in any way connected with JAS, (unintelligible) as just a project manager (unintelligible).

(Unintelligible)

Man: Can you hear this?

Man: Sure, I can put it on hold.

Man: Let me hang up.

Mary Wong: I wasn't restricting them to re-chartering. And I think re-chartering is a pretty drastic step. I won't go so far as to say it should be the last resort, but it was intended to keep the process flexible, nimble, fairly simple, and not give the impression as someone said earlier, that that one charter is like the one (unintelligible).

Jonathan Robinson: Olivier has made a desperate plea for ten seconds.

Olivier Crepin-LeBlond: Thanks very much, and I might say ten second to say my name; Olivier Crepin-LeBlond of the ALAC.

Two charters that are diametrically opposed to each other; of course not, that's totally insane. But a charter that is a subset of another charter; of a bigger charter then I think that would.

Jonathan Robinson: Thanks Olivier. So it's incumbent for me to try and wrap this up now. We've got a motion that deals with this. I mean the next steps really were first of all to do what we've done today is review, explain, and discuss the principles.

I mean in many ways this is a reflection - this discussion is a reflection of the discussions we had in the working group in the Drafting Team itself. So to that extent that's pretty encouraging because the Drafting Team appears to reflect fairly accurately the way the GNSO perceives this.

It's largely uncontroversial. There is some discussion to be had around the issue of chartering. We are due to consider a motion at the Costa Rica meeting here now.

And really the challenge for us then remains is how this, you know, this doesn't now become sort of stillborn within the GNSO and that it actually provides life to some, you know, to the discussion outside and that the things develop within the broader community to have a consensus on how community working groups work.

Alan Greenberg: If I can ask a question; it's Alan Greenberg. Maybe GNSO is not destined to vote on this. Maybe there's enough guidance at this point that you don't need a motion and whoever is going to talk to other groups to start off the discussion has plenty of guidance.

Man: It's not clear you need to adopt it.

Jonathan Robinson: Yes, that's my position.

Stephane Van Gelder: You're probably right. I mean it's an option but we do need to have some sense of whether we as a group have agreement on the recommendations. And the way we normally do that is by voting.

Jonathan Robinson: Well I have to indulge one of our most experienced amongst us and offer Chuck the final word there.

Chuck Gomes: Wow, final word. Hey, I'll be real brief. I would just encourage the Council to approve this and let's move on to a community working group to work on it.

Jonathan Robinson: I have to give him his credit, he probably said that a year ago. All right, so there you have it. Thanks very much everyone.

Stephane Van Gelder: Thank you Jonathan; thanks everyone. Let's close this one operator please, and we'll start the next session with Rob giving us an update on the uniformity of contracts and the issue reports which...

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