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GAC – GNSO Joint Session  
11 March 2012 – 17:00 to 18:30  
ICANN - San Jose, Costa Rica.

CHAIR DRYDEN:

Good afternoon, everyone. If you could take your seats. I know we are already running very late.

Again, could you please take your seats.

Okay. Thank you, everyone. First, our apologies for running late this afternoon. Thank you for your patience. And we do value our exchanges with the GNSO, so we're glad here to be having this exchange with you today.

Next to me is the chair of the GNSO, Stephane van Gelder. And we have a proposal for three agenda items perhaps to prioritize, starting with the IOC and Red Cross, so an update on that; and then secondly the Registrar Accreditation Agreement negotiations; and then time permitting, the WHOIS review team final report.

I would note in the GAC's discussions earlier, that we saw that there were issues that were common to the discussions we've had around the RAA negotiations, for example, with compliance. This was also an area that was highlighted by the WHOIS review team.

Regarding the IOC and Red Cross, I could look to the GAC leads to introduce that or we could begin with the GNSO.

STEPHANE van GELDER:

Perhaps I could just say a few words. This is Stephane van Gelder, chair of the GNSO. I would just like to thank the GAC for welcoming us once again. As Heather just said, we do value these interactions.

We had prepared a set of topics that Heather has just mentioned. And for each topic, we have a presenter or sponsor for the topic.

So, perhaps, I can suggest that we lead into the topics with a short introduction from the person that had planned to do that. And then these are just meant to stimulate the general discussion that we can then have.

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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The first topic is the IOC and Red Cross. And as you know, the GNSO has a drafting team. There's been some very close collaboration between the GNSO and the GAC on this issue.

Next to me on my left is Jeff Neuman, who chairs the drafting team and who has volunteered to carry this topic and introduce it for us. So perhaps I can just pass it over to Jeff.

(Music)

JEFF NEUMAN:

That's some great introduction music. I think I am going to use that from now on.

Thank you, Stephane. Thank you, Heather. Thank you for having us here. I think Stephane is right. I think this has been a good example of some close collaboration with the GNSO and GAC and I hope sets a future way for us -- for the groups to work together on additional items.

Just by way of background, as you know, the GAC delivered to the GNSO in September of last year a proposal on protecting the Olympic and Red Cross marks both at the top level and second level.

In October in the Dakar meeting, we had a session followed up by the delivery of a document to the GNSO, a question-and-answer document which did a really good job answering a number of the questions that were outstanding. The drafting team has been meeting since November, and we have come up with a series of recommendations that we will be voting on at the GNSO Council level this Wednesday.

So while I can't make any kind of representations that it will certainly pass, it's certainly a topic that we've been discussing. And our hope is that we could move forward with some or all of those recommendations.

The recommendations were also presented to interested members from the GAC on March 2nd through a joint teleconference and I think were warmly received, at least by the members that were on that call. And I know that you've had some discussions within this group on that subject. And to briefly go over the recommendations in a little bit more

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background, we decided that we had to split the issues into both the top level and the second level categories.

We decided to address the top level issues first because there was a need to finish out the work prior to the end of the application round that's currently going on that ends in just a few short weeks.

We are -- we have started work on the second level recommendations and our hope is to deliver those recommendations in time for the Prague meeting in June.

With respect to the top level, just to summarize the recommendations, essentially the staff implemented the board resolution in the current version of the guidebook. We, the drafting team, found that there were a number of flaws in the current staff implementation of the board resolution; namely, that while it protected certain Olympic and Red Cross marks, it only protected the exact matches and there wasn't a -- what they call a string similarity review. Meaning, if someone were to reply for Olympik, with a K or Olympix, with an X instead of a C-S, those would not be compared against the Olympic mark to see if they were confusingly similar. And, therefore, those registrations would -- those applications would go through. The drafting team felt that was an issue.

In addition, there was no provision to allow the Olympic Committee or the Red Cross to apply for their own marks. We also saw that as an issue.

Finally, as the GAC had presented to us, although the Olympic Committee and the Red Cross had submitted an initial list of protected names and different translations, that was an illustrative list. It wasn't meant to be exhaustive. And the staff when they implemented the guidebook said, These are the only translations we are going to protect and no others.

With all of that said, the drafting team came up with several recommendations. The first one being that the Olympic Committee and Red Cross should be allowed to apply for their own marks at the top level if that's what they wanted to do.

The second recommendation was that -- just as it says in the guidebook now, that exact matches of those marks should be blocked. However, with respect to other applications -- third-party applications, those

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should be reviewed under a string similarity review just like all the other reserved names. Just, for example, like anything that's close to GAC or ICANN or IETF, those all goes through a string similarity review.

If there were a string that was found to be similar or confusingly similar, at that point in time, the applicant would be allowed to seek a letter of non-objection from either the Red Cross or the Olympic Committee as applicable or they would be allowed to demonstrate their legitimate rights to a panel. And if they were able to demonstrate legitimate rights, it could move forward.

Now, that doesn't mean that the Olympic Committee or Red Cross couldn't use any of the existing objection mechanisms, it just meant they could go forward from that perspective.

The next recommendation that the drafting team has presented was that the Olympic -- the IOC and Red Cross marks should be protected in as many languages as feasible. Now, this differs a little bit than the GAC recommendation. The GAC proposal stated it should be protected in all languages on the Internet. But because there has to be a string similarity review and it has to be an objective process, we really felt that there needed to be some list that the applications need to be compared against. While the drafting team supported the notion of protecting it in all of the languages, it just modified the proposal to be in all the languages as feasible. To that end, we asked the Olympic Committee and the Red Cross to provide us with a list of all the translations.

The Olympic Committee and Red Cross have provided that list. There's still some discussion as to whether all of those names and translations should be on that list but we expect to complete that by Wednesday when the GNSO Council votes.

And, finally, the last recommendation -- sorry, the last proposal that the GAC had presented was that these protections should apply not just in the initial round but in all subsequent rounds. And to that end, the GNSO -- sorry, the drafting team had agreed that they should be protected in all the subsequent rounds but that the GNSO Council or community could -- may review the protection after the first round, if they chose to do so.

So the plan going forward now is that the council is presented with these -- with this motion, with these recommendations. We expect to

vote on them on Wednesday. If there is a successful vote of these recommendations, our plan is to present that to the ICANN board at this meeting.

Now, we've had a discussion with the ICANN board at lunchtime today, with the GNSO Council. The board has told us directly that they will not vote on that resolution if they get it at this meeting. But if circumstances called for it, they would be open to calling a special meeting at some point in the near future in order to decide this issue prior to the close of the existing round.

CHAIR DRYDEN: Thank you very much, Jeff.

JEFF NEUMAN: I'm sorry. I apologize. So what we're asking the GAC, obviously our ask of you all -- and I know you have been provided with these recommendations -- is to get some feedback as to whether these are recommendations that the GAC is willing to support, whether you believe we've addressed your concerns at least at the top level, and to get any other feedback that you have.

CHAIR DRYDEN: Thank you, Jeff.

So do we have feedback from GAC colleagues?

U.S. please.

UNITED STATES OF AMERICA: Chair, thank you, GNSO. Thank you, Jeff, for your very helpful overview. I was one of a number of GAC members, including the co-lead, Mark Carvell from the U.K., on the most recent call.

And you helpfully walked through the drafting team's work and I think you helped us better understand that you initially started out by focusing at the top level because you interpreted the board resolution as creating some loopholes that you very helpfully identified, and I think identified solutions to.

So we're very grateful to that effort, and your report is remarkably clear. It's very straightforward. It's exceedingly helpful.

We were also guided -- and I don't it should be any surprise, we were guided feedback from our colleagues at the IOC the Red Cross, Red Crescent who were able to help us fully understand that yes, they also felt very comfortable with this approach. So I do welcome that and I welcome your availability and interest on all of the drafting teams part to actually have the conference call prior to traveling because it's a very, very useful way -- we get so busy here, it was a useful way to prepare for the discussion.

I can say that of course what we really would like to see as the next step, as you have already forecasted in your own document, is, of course, the focus on the second level. And you know that, and we can follow-up with you more directly. I'm very mindful today that we are running quite behind. Probably our fault, and probably don't need to spend a whole a lot of time on this. However, I did think, and I think Mark wants to chime in after me, I do believe there have been some questions raised in not only the drafting team's minds but perhaps the entire GNSO vis-a-vis the sort of interrelationship or interplay, if you will, between what the GAC has put forward as a consensus GAC position for protection at the top and the second levels of the IOC and the Red Cross, Red Crescent. That, let's clarify, is a completely consensus GAC position. Some questions apparently have come up now as to sort of how does that -- how do we weigh that against the letters that you have all seen that are public from a collection of intergovernmental organizations and their councils to ICANN.

So I just want to go a teeny step further that Mark can add to. If you go back to the GAC proposal that was actually made to the GNSO, I believe it's dated September 14, on page 2 and 3 we clarify, there's a heading that says "rationale and basis for joint GAC/GNSO support."

So I think it might just be worth restating at this point that the proposal is based on what we consider to be a very unique tapestry of legal protections provided to both the Red Cross and Red Crescent through the Geneva conventions and to the IOC through the Nairobi Treaty on the protection of the Olympic symbol as well as through, and this is the kicker, as well as through laws in multiple national jurisdictions.

That is what we consider to be the primary and fundamental distinction between the IOC and the Red Cross as entities and the IGOs.

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So I thought it was worth putting that out. Obviously if you all want to come back and ask questions. Mark said he would like to tackle that, so I can turn to Mark if he would like to get into that.

UNITED KINGDOM:

Yes, thanks very much, and I really appreciate very much the joint working on this issue.

Of course, we are aware of the letter from the legal counsel for the intergovernmental organizations that was addressed to ICANN, and the Board is referring this now to the GAC for consideration.

We welcome the opportunity very much. Very cognizant of issues of concern for the IGOs, and we will -- we look forward to considering that. And we haven't yet discussed this fully within the GAC, but an option I'd like to propose to my colleagues on the GAC is that we invite the IGOs to present on this at the next meeting in Prague.

So that's basically my thinking as to the approach for addressing this issue of the position of the IGOs. We look -- really look forward to the opportunity now, through the hard work of the drafting group and the GNSO generally, to conclusion of the position with regard to the top level for IOC, Red Cross, Red Crescent during this meeting. And we note what you say about the Board's position with regard to timing of when they will be able to make a resolution on that. But hopefully that would be in time before the end of the current application round.

So that's my hope. And as I say, I really appreciate the work and progress on this. It's very fitting that as a result of the board resolution, we've made excellent progress.

Thank you.

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Thanks. I just wanted to add, I'm sure there's been reference to this but I'm not sure everyone has seen it yet because it came in just a few hours ago. Heather and I did get a letter from the ICANN board asking us in response to the IGO's request, asking us to provide policy request to the ICANN board regarding this request.

So obviously none of our two groups have had any time to discuss or reach any position on this, but in the light of the -- a good collaboration

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that we've had so far on this, we will hopefully continue that collaboration at the Board's request on to this new issue.

HEATHER DRYDEN: I have Portugal.

PORTUGAL: Thank you very much. I will be speaking in Portuguese, if you don't mind using the translation system.

In the first place, I would also like to thank the GNSO's work in terms of the response to the GAC decision on this regard. That is why of the names associated to the IOC and the Red Cross, actually there has been a lot of contribution to move forward to the point -- from the point we were at that point in time.

It is also our opinion that the report is clear enough and reasonable, and it's in a good direction to go forward in terms of first- or second-level protection of the names associated to these two organizations.

The point I would like to bring forward for discussion is, however, something of a different nature. This is associated to the way organizations can voice their objections and how to identify them.

We understand that an organization that deals with public policy cannot indicate the purpose of its own policies by pointing out the name of the organizations the policy applies to, because this would be a discriminatory approach. We understand that the right way to do it is to indicate the characteristics of the organizations rules may apply to.

We saw the U.S. remark a few minutes ago that the documentation initially given by GAC made reference to the baseline reasons to choose these two organizations. These baseline reasons have the issue that they are not transferred to objective application criteria, so additional effort is required to define them, but it is still a baseline.

The document, however, is the one that we need to abide by, the Applicant Guidebook that has not gathered any contribution as to the baseline definition of these organizations. And the only thing it does talk about is that these two organizations have positive discrimination because their names are protected. And even when now, if now the world choose these two organizations to make these requirements,



which we doubt it is like that, I don't think there are just these two worldwide, what can happen is that anytime some other organization may come up that does meet the requirements and so the scenario defined by the law should not be limited by the names they have.

I think this is critical not just for a question of principle, not just principle and rules and regulations of an organization that a public-policy agency has to abide by, but also for practical reasons, ICANN's liability of coming -- anytime any entity may come up that it meets these two requirements and that it has not been given the same treatment, that is something we should be careful about.

This is a present risk. It is a current risk.

Portugal's opinion is not the GAC's opinion, but Portugal's opinion, because it was not agreed as GAC's opinion, that these efforts should pursue two directions. One, the efforts with a good result in the GNSO in the sense of specifying technical conditions as to protecting the names of the IOC and the Red Cross, and there is another effort that needs to be pursued. That is how to define the characteristics and way objective application criteria should be defined to say which universe is to apply these rules. And that should not be the specific names of these two organizations.

Thank you very much.

EUROPEAN COMMISSION:

Thank you, Madam Chair. I have a question concerning the report which was interesting and I thank the drafting team for producing it. The question is concerning the process which has been proposed in recommendation 1, and specifically point C.2.2, which means that if an applicant cannot obtain a letter of no objection by the International Olympic Committee or the Red Cross, Red Crescent organization, the applicant must claim to have a legitimate claim in the string and demonstrate the basis for this claim and explain why it believes that the new TLD is not confusingly similar to one of the protected strings and makes evident that it does not refer, et cetera, et cetera.

The question is if you have had any discussion or you could better specify what you mean by "legitimate interest." Do you mean an actual right? Do you mean an interest? And if so, how would that be defined? What does legitimacy mean in this sense?

To be clear, I'm sure I understand what the purpose is here, and I think it's a very good purpose. I'm just a bit unsure I understand and everyone would understand the language in here in the same way.

So it might be useful certainly for the Commission to better understand what you mean.

And also, this may be a stupid question, but who -- assuming (garbled audio) by someone that they have a legitimate interest in the string, who would assess that particular claim? Who will take the decision whether that claim is, indeed, legitimate or not?

Thank you.

JEFF NEUMAN:

Thank you for the question. This is Jeff Neuman. I think on the first part, legitimate interest, that was definitely the subject of a number of conversations that we had and there were a lot of different terms that were exchanged. Yeah, there was legitimate right or interest, and there was a lot of debate that went back and forth.

We ultimately ended up on this phrase, "the legitimate interest," in that it closely models what's currently in some existing policies like the UDRP, which allows someone to show a legitimate right or interest in a mark as a defense under a UDRP claim.

So ultimately, it was borrowed from that kind of structure.

All I can say it was the subject of a lot of debate and this is what the consensus of the group had agreed to.

With respect to who would decide this, there was not too much discussion about that, but there was a recognition that there's already panels that are set up to hear legal rights objections to applications or strings and it was the thought that those panels could be used for that purpose as well.

HEATHER DRYDEN:

A follow-up question, EU? Please.

EUROPEAN COMMISSION:

Thank you very much, Madam Chair.

Thanks for the explanation, and I will just make a couple of question to verify that I understood.

First of all, there's an idea to use the panels for the rights objection process, but there is not decision to use those panels; is that correct?

JEFF NEUMAN:

Correct. That's not something that the drafting team had decided on.

EUROPEAN COMMISSION:

Okay. And then if I may, I understand that we can't discuss the concrete cases now and we will need to verify when the cases arrive, but I'm just -- if the language is taken from the UDRP, which has a specific purpose, does that mean that that legitimate (indiscernible) legitimate interest will be interpreted as the legitimate interest in the UDRP process? Will it be broader? Will it be narrower?

To make an example, if somebody -- I think there is a city in Greece called Olympia. If somebody made a claim that he wants to register Olympia, which is not a trademark as far as I know, would that be a legitimate interest in principle?

JEFF NEUMAN:

I think that's a good question. I think that Olympia and the Greek marks have come up a lot in the discussions, and I think that's why we did not say trademark rights, was that we recognized as a group that there are rights that may not exist as trademarks themselves. So we did not want to exclude those marks or those strings from someone claiming a legitimate interest. And I think that goes to the heart of why we ended up on the term "legitimate interest."

As far as a precedential value on the UDRP, that's not the intent at all of the drafting team. That was not discussed.

One thing that was discussed within the Council on the issue of precedent was that we don't feel that this whole process and the board resolution at the last minute should be precedent for how we develop policy with respect to subsequent rounds. That we hope that if there are these issues that come up, that we'll have much more time to consider the policy ramifications of those before the Board makes a decision.

HEATHER DRYDEN:

Thank you.

I have United States, and then perhaps we can try to move to the next topic.

UNITED STATES OF AMERICA:

Thank you very much, Chair. And of course I couldn't agree with you more.

I apparently didn't have my wits about me earlier but now I have the paper in front of me. I just wanted to take the opportunity to say vis-a-vis the options that you have committed to arriving in your drafting team report for the second level, I think, if I may say for our GAC colleagues, going back to our original proposal, it would be option 2 that would best meet the terms of the proposal.

So I would like to go on the record as strongly encouraging that. But I would like to close by saying that, frankly, we have given some discussion to this sort of new approach that we have been asked to adopt by the board, if you will, with the GAC and the GNSO collaborating with one another to try to advance progress on a particular issue.

We hope that you do not mind and would, in fact, concur. We would like to offer to the Board when we meet with them on Tuesday that we have found this to be a very interesting experiment, that kind of goes to the ATRT recommendations, the five of which in particular pertain to the role of the GAC within ICANN, that this is something that we need to explore more often. And obviously the more flexibility we can have to jointly advance progress, we think it's a good thing.

Thank you.

HEATHER DRYDEN:

Thank you, U.S.

So....

STEPHANE VAN GELDER:

So let's move on to the next topic, then, and thank the U.S. for those comments taken on board.

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The next topic is the Registrar Accreditation Agreement. So once again, we have someone from the Council that will present this topic to open up discussion on it, and that person is Mason Cole, who is one of the Registrar Stakeholder Group representatives on the council. So, Mason, please.

MASON COLE:

Thank you very much, Stephane. I had a presentation. I don't know if it made it -- There it is right there. I apologize.

This is a very a brief presentation that will update the GAC on the status of negotiations we are having with ICANN staff about the various policy and procedure requests that have been made of registrars. So if we could have the first slide, please.

Oh, there we go.

So just a bit of background.

In 2009, you will recall that the GNSO and the At-Large Advisory Committee opened a process whereby the 2009 version of the Registrar Accreditation Agreement was reviewed. A drafting team was formed at that point to collect input from the community on policies, procedures, other requests that registrars would be in a unique position to fulfill.

The community input was very robust. There were, by my count, 83 discrete requests plus several what I call overlaps, essentially the same request being made from different parts of the community.

In 2010, the drafting team concluded that part of the work, issued a report to the community. At that time, we -- the registrars wanted to have a better and more collaborative working relationship with law enforcement about their requests and we in 2010 met with representatives of law enforcement at a meeting in Washington, D.C. to review their requests.

The next slide, please.

Okay, so -- I'm sorry. One prior to that.

I'll just keep going. Yeah, there you go. So in 2011, as many of you will recall, several of us met in Brussels with representatives of governments and law enforcement. We had a very extensive consultation in Brussels over the -- specifically the 12 requests that law enforcement had made.

The registrars went through each of those and discussed in depth the operational issues that were associated with those requests. And then in the -- at the San Francisco meeting in March of 2011, we issued a report on that and made that -- on the conclusion of those discussions, and made that available to the ICANN Board, to the GAC, and to the GNSO.

Then later on last year, you'll also recall that the board passed a resolution directing negotiations to commence immediately. And they did shortly after that meeting.

Next slide, please.

So we spent some time now sorting out the various parts of all these proposals. The drafting team sorted those into high, medium, and low priority categories. The law enforcement requests were the early focus of our negotiation effort. And -- along with a general emphasis on higher priority issues.

And we recognize that there is a compressed time frame on the part of the negotiations. So, knowing that we needed to get the work done as quickly as we could, we chose to focus on law enforcement requests as well as the high priority items.

There are other ways that sort of necessitated us to sort these out. In our existing contract, there's what's known as the picket fence, which is a dividing mechanism that allows us to know which issues are generally available for negotiation and which are more meant to be directed to policy development through the GNSO.

And then an important ask on our part, too, was a predictable amendment process. Because the structure of the GNSO itself is meant to lend predictability not only in security and stability of the DNS but also the security and the stability of the companies and the actors that are operating the DNS.

Okay, next slide, please.

So this is the process by which we conducted the negotiations. The registry and registrars appointed a negotiating team on each side, along with a couple of legal advisors who could give us input on contract law.

We've conducted, I believe, five in-person meetings since the Dakar meeting. I mean, not counting the Dakar meeting. Five separate in-person meetings. Those were held in Los Angeles and in Washington, D.C., and then far more sessions by telephone.

So we've probably met somewhere on the order of 15, 16 times in long negotiation sessions. That -- the output of those were multiple drafts language and charts to compare where we are on language.

And then I think you'll be pleased to hear as well that we had a separate discussion with a couple members of the GAC and with some representatives of law enforcement as recently as last month to make sure that we were crystal clear on the desired outcomes of law enforcement's proposals. And that was a fruitful discussion, I'm pleased to say. Next slide, please.

So it hasn't, obviously, been all wine and roses. There have been challenges to this process. But what we've discovered is, even in what appear to be very simple issues, complexity is almost always involved. An example would be some of the data privacy laws, particularly those that come out of the European Union and some other jurisdictions. Those -- some of those laws and regulations are different from those in other jurisdictions. And we need to find a way to make sure that the outcome of the negotiating process satisfies all those laws as well as the community's concern. Another challenge is diversity in the registrar population either by geographic location, thus, subjecting us to different jurisdictional requirements or by business model. All these things require us to get consensus with our own group, the registrar stakeholder group, to make sure we have a unified position when we're negotiating.

Next slide, please.

This may be the most significant thing I'd like to get across today to the GAC, which is that we've been asked to address things that sometimes address only registrars. And other times they address the entire community. So WHOIS validation is a good example of that.

Registrars aren't necessarily formally empowered to make decisions where the community will be broadly affected, at least we don't want to do that without their input. And, as I mentioned, several of these proposals are very complex. It will require shared input and the contribution to the rest of the community. I think this is particularly the case with WHOIS verification.

And tomorrow the registrars are leading a discussion for the entire community. Everyone's welcome. Everyone's encouraged to be there -- to discuss how to practically go about the validation scenario for WHOIS. Okay. Next slide, please.

So I can report that the sessions with ICANN staff have been contentious at times. But they've been collaborative and, I believe, conducted in good faith. And I think I can speak for registrars when I say that we're looking forward to wrapping those up. Next slide, please.

Okay. A word about timing, since I know the GAC is very interested in a timeline for when this will be concluded. I will tell you that our highest priority -- and I think this is true of the staff as well -- is an outcome that can be accommodated by everyone concerned -- the registrars, the staff, and the community.

And it's our priority to make sure that a quality agreement is the end result. We are moving with urgency, but not at the cost of the quality of the deliverable. We want to make sure this contract is one that can be implemented and doesn't have to go back and be reopened at some other time because of a problem that arose out of a negotiation that maybe wasn't as careful as it should have been. Next slide, please.

The steps here are, as you've seen on the staff report March 1st, there is an extensive reporting on the community with where we are on each of the proposals that are under consideration. We have a collaboration on the verification issue that begins tomorrow.

We're going to conclude negotiations shortly. We'll post an agreement for community comment. And then, if there are other issues that should be addressed through policy development, then we will advocate for those. And, with that, that is the end of my presentation. Thank you to both the chairs for the opportunity.



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CHAIR DRYDEN: Thank you very much for that overview, Mason. United States.

UNITED STATES OF AMERICA: Thank you, Madam Chair. And thank you, Mason, for your very helpful presentation and overview. I'm going to keep my comments very brief, because I know I have several GAC colleagues and law enforcement colleagues in the room who may want to wish to say something.

But I did want to go on the record to express the sentiments of the GAC as a whole, that we have very much appreciated the opportunities that we have been afforded, as a result of our outreach, to make ourselves available to both of the negotiating parties.

I think I can reconfirm that we are exceedingly mindful that we are not negotiating parties. But, as the source of the preponderance, perhaps -- I think I could say that -- of the text or the concepts that are under review for new proposed language, we have wanted to make it crystal clear that we believe it behooves us ourselves to be available to answer questions you may have, to help shed any light, if something doesn't appear to be clear. So we would like to continue to do that. We, ourselves, found the two exchanges -- one January 31, one February 10 -- to be extremely helpful and very constructive for us. And we certainly hope that was considered a two-way street. So I'm going to just sort of suggest that, while everybody around the GAC table very much welcomes the progress report -- because I'm sure the entire community welcomed the progress report. And it's helpful to have had the identification, particularly when we're in agreement in principle -- and I notice that quite a large number of them are. I will defer to colleagues who I think wish to raise some questions about those who are not as yet. And simply to urge, also, as you go forward, much as we appreciate your report of the progress -- and that's very, very welcoming that you are close to text that could be posted for public comment. So that's quite welcoming.

Just sort of to suggest, also, that, to the extent possible -- and if you all feel you need to do it or not need to, that's even better. But to share with the community at some point before the close of the week a timeline, so a sense of when we can expect actual text, when we can expect to have an opportunity to weigh in, what are the next steps?

And then, finally, and my closing sort of suggestion is to capture a strong sense around colleagues around the table. We see a very, very close linkage between what is going on with amendments to the

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registrar accreditation agreement, the proposals that are contained in the WHOIS review team recommendations, and contract compliance.

(Skype dropped).

>> That is, from our perspective, a bit worrying. Because, quite frankly, it's harder, in principle, to get the text. I am personally -- the Commissioner is personally even more surprised. There is one point in which there is an agreement in principle on recommendation number 9, which is about the retention from law enforcement of personal data, all data non-necessary personal data but data collected as part of business operations as registrars. I would like to have a clarification that worries -- understand the problem, text.

>> Optimistic that we can reach agreement on that. -- negotiated parties need to learn more about. That, when we do arrive at agreement on that, it's as informed as it can be and enforcement by compliance.

>> At the end we need to make sure that all registrars are operating on an even playing field. And I think those are the particular challenges on that request. As I said, I'm optimistic that we can reach an agreement.

So I hope that's helpful.

CHAIR DRYDEN: Would you like to respond, EU Commission?

EUROPEAN COMMISSION: Thank you, Madam Chair. That is helpful. But I'm not entirely sure it answers my question, which is I still can't understand where is the problem of principle. If you could really make a very brief answer to that, what is the difference in principle? What you're telling me seems to me to be a problem of text, what you actually put in the text of the agreement.

But my understanding is that there is a disagreement between the contracting parties on the very principle. The data that is retained for business operation should, under legal order, be transmitted under judicial order, be transmitted to law enforcement. Is my understanding correct? Is there a problem of principle in that?

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MASON COLE: I don't want to speak for staff as the absent negotiating party, but I can give you the registrar's point of view. I don't think the disagreement is as severe over principle as you might think it is. It may be more a question of priority and how do we prioritize all of the requests that are being considered under the current negotiating session. I still am optimistic that we will reach an agreement on that specific item.

CHAIR DRYDEN: Thank you very much, Mason. I have the FBI and then the U.K., please. United States.

UNITED STATES: Hi. This is Bobby Flaim, FBI, United States.

Mason, we thank you for the report. We've been working with ICANN on the registrars on this. And I think some of the most important things is we're going to have a session on verification tomorrow. We have some text to provide the registrars and also ICANN that may help in drafting some of the text.

And I think the most important thing to stress is the fact that we actually have a document from which to work on.

Mason very clearly pointed out that we've had lots of negotiations. But I think the most constructive thing at this point, from the law enforcement perspective, is to actually have text of the RAA agreement that we can go forward with.

I think most of what we have discussed, the 12 law enforcement recommendations that pertain to the registrars, have been agreed upon, for the most part. There are a few things that need clarification. But I think the best thing at this point is to actually come out with the text as soon as possible that we can work from. And I think that would be the most constructive thing at this point.

CHAIR DRYDEN: Thank you, U.S. U.K.

UNITED KINGDOM: Yes, thanks very much. And thanks to Mason for a very comprehensive report. I'm greatly encouraged. This has been a critical issue for a number of governments. It's gone to the highest level. The whole area of detecting cybercrime is the subject of major conferences, the London Conference on Cyber script, Cyberspace last year and so on. This whole

engagement on the law enforcement recommendations has been a bit of a rollercoaster ride. I think we all agree to that, but I feel we're getting there. And the agreement on so many principles is very reassuring. And I'm also reassured by what you said about getting close, really, to agreeing text and so on.

And, beyond that, I really want to support what the U.S. has said about keeping us informed. And a timeline and follow-on action following the conclusion of these negotiations, I would really appreciate. It's important for me, you know, to have a clear understanding when I talk to our colleagues in law enforcement in the U.K. And we get to brief our ministers and so on.

So keep going with keeping us informed. I really urge you to do that. And I -- I also feel that we've got a better understanding within the GAC of the place of registrars in this world that we're all working in. That's also very encouraging and reassuring. And I hope very much we can continue the dialogue.

Perhaps at the next meeting, if we could have another discussion about, you know, the place of registrars, the issues that you are still facing, and perhaps opportunities where the GAC can help you through the GAC joint working with the GNSO.

So I really hope that we got a good relationship going here. And it's producing results. And it's empowering us in administrations with knowledge and the sense that we're making progress on some issues which are critical to the Internet that are going to be discussed in global conferences over the next 12 months or so, some major conferences coming up where cybersecurity, cybercrime are going to be featured again. There will be the follow-on conference in Budapest in October to the London conference last year. So this is all highly relevant. And it's relevant within regional groupings and also in groupings I'm involved with regard to the Commonwealth of Nations. So I'm very pleased. Good to hear from you. Thanks.

CHAIR DRYDEN:

Thank you, U.K.

I don't see further requests. And, as it's getting -- ah, please, Council of Europe.

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COUNCIL OF EUROPE: Thank you. Just to express once more the position expressed by the FBI. It's important to have text as quickly as possible as complete as possible so we can come to concrete results on this.

CHAIR DRYDEN: Thank you, Council of Europe.

I have Wendy Seltzer.

WENDY SELTZER: Thank you very much, Heather. I wanted to ask further to the discussion of feedback and input, how can the GNSO Council engage the GAC in further discussion about the law enforcement recommendations so that we can be prepared to approve the amendment when that negotiation is completed? Because we, too, aren't parties to the negotiations and want to make sure that they are solving the problems of the community and want to have these discussions in parallel so that a negotiation isn't reached that then is rejected by council because it doesn't meet the needs of the broader community that GNSO Council represents.

CHAIR DRYDEN: Thank you for those comments. As it is getting late -- oh, Australia. Did you want to comment on that?

AUSTRALIA: I was initially not going to comment, because my colleagues had already covered the points. But I -- but just -- I'm interested in next steps. Mason's slide had some next steps.

Is there a step between there that perhaps I'd missed from that slide, which is GNSO Council approval? Have I misunderstood some of the process here? How does this -- what are the next steps going forward here? Thank you.

STEPHANE VAN GELDER: If we're talking about -- sorry. This is Stephane van Gelder. If we're talking about the negotiations themselves, they are not part of the GNSO process at this time.

There's also an issue report that's just come out on the RAA, which is part of the GNSO process and which will be considered, if that's what you're talking about. But we did talk to the board today about that.

The reason is that for us it poses a slight problem of understanding, because we have these two processes running side by side. And we did ask the board what their expectations of the GNSO at this time was with respect to that issue report which came out just a few days before this meeting. So -- and the recommendation in that, from staff, is that nothing be done until the negotiations have had time to advance, which is a process that seems to make sense to everybody at this time.

Perhaps I should keep the mic. I note, very mindful that we've already taken up our time.

But we did have a third topic that we'd asked someone to present to you, which -- and that person being Joy Liddicoat. And the topic is on -- well, Joy, I'll let you introduce it. You'll do it better than I can.

JOY LIDDICOAT:

Thank you, Stephane. And thank you, Heather and also GAC members, for this opportunity to raise with you a particular positive development that the GNSO Council has become aware of among government members and member states of the United Nations Human Rights Council, where, with the support of the Office of the High Commission for Human Rights, the Human Rights Council on the 29th of February just passed -- convened an expert panel on freedom of expression in the Internet. And, while issues of human rights may not be so new to those GAC members present here for whom they come up from time to time, in fact, this was the first occasion on which the Human Rights Council was given an opportunity to specifically look at the Internet and Internet-related policy issues. And we wanted to welcome the initiative to ask if the GAC were aware of the panel and to just say that, in any event, it's come to the attention of the GNSO Council.

We were interested to hear the GAC views about this. In particular, we think it may be useful for the PDP process, which calls for impact assistance in particular areas for new policy development.

And we -- the GNSO was of the view that this is something that could be considered in the future in a collaborative way with the GAC. Thank you.

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CHAIR DRYDEN: Thank you very much, Joy. Are there any comments on that, or would GAC members like to reflect on the question? U.K.

CHAIR DRYDEN: Thank you very much, Joy. Are there any comments on that, or would GAC members like to reflect on the question?

U.K.

UNITED KINGDOM: Thanks very much, Heather. I have to confess, I'm pretty much unsighted on all of this. It is very interesting, and I'm really open to engaging on this and assisting with you in advancing this. I think it seems highly appropriate. But that's coming at it from a very off-the-top-of-my-head reaction.

I want to keep close to it. Thanks.

CHAIR DRYDEN: New Zealand. Sweden, then New Zealand.

SWEDEN: Thank you very much. I just want to echo what my U.K. colleague said, that this is very interesting. And I also want to acknowledge that I know that you have been actively engaged together with my Minister of Foreign Affairs. Minister of Foreign Affairs, Carl Bildt, has been engaged in all these activities. So I know you have a close working relationship with him. So thanks.

And, of course, I need to add that, of course, that also involved the Minister of Enterprise. We have a few activities coming up in Stockholm this year that I know you are going to be present. Thank you.

CHAIR DRYDEN: Thank you, Sweden.

New Zealand.

NEW ZEALAND: Yeah, I would just like to note and welcome Joy's comments on this. Human rights and the Internet is becoming an increasing focus of interest, definitely one of public policy interest. And New Zealand will be following it and contributing to discussions as much as we can. Thank you.

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CHAIR DRYDEN: Thank you very much, New Zealand.

E.U. Commission and Council of Europe.

EUROPEAN COMMISSION: Thank you, Madam Chair. Just to express, to echo what my other colleagues have said, our strong interest for this discussion. The Commission has been following quite closely all the discussion related to human rights -- on the Internet human rights and the Internet in whatever combination of terms you may think of.

As a matter of fact, recently vice president Nellie Kroes, Commission of the Digital Agenda, has met with the special representative of the U.N. on freedom of expression specifically to discuss his report on freedom of expression on the Internet. She was quite interested. And also for information which may be useful, in fact, the European Commission has an obligation to perform impact assessment for all their legislative -- (indiscernible) legislative proposals. And as of the entry into force of the Lisbon treaty which was -- it is bad that I don't remember the date, but it was some time ago.

We are under no -- (audio dropped) -- in that impact assessment, also an impact assessment on human rights, on the fact that our legislative proposals would have on human rights.

So we would be very much looking forward to discussion on that. Having said that, a word of caution, which is that without absolutely underestimating the importance and the possibility of human rights as a policy development process within ICANN, ICANN is not necessarily the best place to discuss these issues. You may or may not be, and we should also be careful. But, again, I want to stress this is absolutely not to underestimate the importance of the issue.

We should be careful not to overstretch the scope and mandate of the activities of ICANN.

So I think what would be useful is to discuss the way in which the ICANN community could engage with other organizations which are active in this sphere and which perhaps have more competence in this sphere. But I would like to see how we can best cooperate on this. Thanks.



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CHAIR DRYDEN: Thank you for that.

COUNCIL OF EUROPE: Council of Europe thank you. Council of Europe is highly interested in this topic and, indeed, the secretary of the Council of Europe has been instructed by the committee of ministers of the Council of Europe to promote human rights issues at all levels in relation to Internet governance.

CHAIR DRYDEN: Thank you very much.

I think at this point, we can conclude for the day. We've had a good exchange, as always, with our colleagues in the GNSO. So thank you, again, for coming to meet with us. And, again, apologies for running late today.

>> END OF SESSION <<