

**ICANN Dakar Meeting
GAC/ GNSO discussion - TRANSCRIPTION
Sunday 23th October 2011 at 15:45 local**

Note: The following is the output of transcribing from an audio. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

Woman: Added a few chairs to the main table and if GAC representatives that are more numerous representing a particular member, if they could perhaps make some additional room as well so that the speakers from the GNSO can be seated with us at the main table. That would be appreciated.

Coordinator: This call is now being recorded.

Heather Dryden: Good afternoon everyone and welcome to the GNSO. We have about an hour or so to have an exchange this afternoon and we have quite a few agenda items now in addition to the ones initially proposed.

So for the GAC, that's going to be circulated to the GAC list. But as previously planned we will begin with a comparison of working methods or approaches on both sides of the GNSO and the GAC.

And then we will discuss the LEA recommendations to registrars and also the (protection) mechanism for the IOC and Red Cross. And then we will continue through the proposed agenda items as best we can within the time we have been allocated.

So to begin can I ask if Stephane, the Chair of the GNSO Council, to comment on how we may proceed with the first item.

Stephane Van Gelder: Thank you Chair and thank you to the GAC for having us once again. Hopefully members of the GNSO Council are in the room and are planning to discuss or lead some of these topics. Please do try and find a seat at the table if possible.

As Heather has just described, we had thought to start with a short overview way that various working methods, the way that we work, the way that the GAC works. This is something that came out of previous discussions that we've had the GNSO Council and the GAC where it's come to light that there was a feeling that some of our processes weren't known to all and it would be of some use to explain that.

So we thought we'd start by just providing a brief explanation and overview of the way the PDP process works and in order to do that I will ask Marika Konings who's sitting over there - over there with the mic - Marika, do you think you can make your way to the table possibly?

You're okay with the mic, okay. So Marika will give you a brief overview of the PDP process.

Marika?

Marika Konings: Hello everyone, my name is Marika Konings. I'm a Senior Policy Director and support the GNSO in its policy development activity so just going to provide you a very high-level overview of how policy development works in the GNSO.

There are of course other ways the GNSO undertakes projects or initiatives, joint working groups or across the community initiatives, but this is specifically related to policy development activity.

So first step in that process is that an issue is raised, also requesting an issue report. So basically that can be done through three ways, either the Board can request an issued report, an advisory committee can request an issue report or the GNSO Council itself can request an issue report.

There's a certain voting threshold associated with that in the GNSO Council and it's relatively low. It's at least 25% of the members of the council of each House or majority of one House. There's a very low threshold in getting that process started.

So that's (work on hold), something that has recently happened and I know you'll be talking about that in a minute on the Law Enforcement Recommendations of the specific motion that the GNSO Council requests. So that's a request for an issue report.

So that then gets to staff and staff is passed with developing an issue report. There are certain required elements that need to be in such as issue report like outlining the issue, whatever different elements that should be considered as part of the issue.

There's a requirement to provide an opinion from the General Counsel whether the issues considered in scope and would also contain a recommendation from staff on whether or not a PDP should be initiated on the issue.

That report is then submitted to the GNSO Council for its consideration and the GNSO Council then needs to vote on whether to move forward with the policy development process or not. And that's for example the stage where the GNSO Council is now in with the UDRP.

Their final issue report has been presented by staff and is now in the hands of the GNSO Council to decide whether to move forward with that or not.

Again, there's a specific voting threshold associated with that in order to move forward in that next step and to move forward with PDP, a vote of more than 33% of the council members of each House or more than 66% of one House is needed in favor in order to move forward.

So again, there's no unanimity required or super majority. There's relatively low voting threshold in order to get a PDP started. So once the GNSO Council decides to move forward with a PDP, a working group is formed and that's currently the operating model for the GNSO and any policy development activities to create a working group that's basically open for anyone in the interested community to participate in.

So not only GNSO community members, but anyone that has an interest in that topic is invited to join. So through that working group, the working group deliberates, has public meetings, normally publishes various durations of its report for public comment. Specifically requests input from the different communities and stakeholders on its report and in that way gets to its final report which is then submitted to the GNSO Council for its consideration.

The GNSO Council then in its turn needs to consider those recommendation and take a vote on it. Again, there might be certain thresholds of votes required, especially if it relates to consensus policies and those are a super majority vote in order to send those recommendations to the Board.

So once the GNSO Council develops those recommendations, they move up to the Board and then it's for the Board to consider those and if or once adopted, then they move forward with staff implementation.

And again, on the different steps on the way there are various opportunities for community input and participation. This is a very high level overview, there are a lot of, you know, small little steps and requirements in there and then the more...

Stephane Van Gelder: Sorry to interrupt, but this is very fast. It's being interpreted and there are non-native speakers in our community.

Marika Konings: Okay.

Stephane Van Gelder: But I'm trying to take notes as well, so.

Marika Konings: Okay I apologize. Not being a native speaker either, I know I speak very fast. So I do want to extend my offer to provide maybe more detailed overview of this policy development process.

We do have several presentations that we can also provide you with that take you through the different steps. Just wanted to highlight as well that as part of the GNSO improvement, a new revised PDP is going to be considered by the GNSO Council actually this Wednesday.

And broad lines, it has the same steps that I explained, but there are a number of enhancements made to that process to ensure broader participation, discussion and really making sure that there's enough time, enough room for input to make sure that at the end of the day, that well-informed decisions can be taken about certain topics.

And I think I'll leave it at that.

Heather Dryden: Thank you very much for that. Do you GAC colleagues have any questions or comments on that presentation and about the approach towards the PDP, the GNSO follows?

All right well I have a question. I noticed that you referenced a low threshold to initiating a PDP. How do you accomplish balance in the capacity of a member of the GNSO to initiate a policy with managing what could be in fact numerous requests initiated? And how do you manage consideration of that and of that process so that it's achieving some sort of balance if you will?

Stephane Van Gelder: Yes I just want to thank Marika from ICANN staff for giving us that presentation. To address your question Heather, I think it's something that we've struggled with as well.

It's balancing our workload would be ability to initiate new projects and as I'm sure most of you know GNSO already has a very full plate. So it is something that there's no simple answer because on the one hand the way our voting thresholds are set up now, they are done that way so that there are no issues that might be important to some groups that could not be considered, could be set aside because the voting thresholds would be too high.

On the other hand and that's a function of the GNSO diversity as well that we need to be in a position to be able to do that, but on the other hand we are now suffering with a high workload. So this is an issue that we are paying particular attention to without having resolved it completely yet.

Heather Dryden: Thank you, thank you for that. Singapore please.

Man: Thank you Chair. For our education we are not recommending that the GNSO PDP process assuming the council - the PDP process (unintelligible), you know, the whole PDP process will open to a conclusion.

Do you have any idea?

Marika Konings: So this is Marika again, we have actually kept some statistics and it does vary depending on the complexity of the issue. But I think if you really go from start to finish, you look at at least a year and on very complicated issues I think the recent PDP's I have completed have actually taken more than two years.

I think that's highly related as well to, you know, staff and community overload because of many issues going on at the same time. But again, also taking more time to make sure that there's enough time for discussion and

then consideration by the different communities. So one to two years I would say, average.

Heather Dryden: Thank you for that. Are there any other comments or questions? If not, perhaps I can give or begin with a bit of an overview of some of the work that GAC's been doing on its processes and perhaps by comparing or looking at the ways in which we work that will generate a bit of discussion at the result.

So I will begin and I invite GAC colleagues to contribute and share their views as well on the issues particularly relating to the Accountability and Transparency Review Team recommendations where a number were made in relation to the organization overall as well as specifically in relation to the GAC.

As well the Joint Working Group Report of the Board and GAC which looked at reviewing the role of the GAC, made a number of recommendations so that's what I'm going to refer to at least begin making some remarks from GAC perspective.

So as part of the Joint Working Group we discussed GAC advice. It seems apparent to us that it would be beneficial to clarify for the Board, for the community what we consider to be GAC advice. And we determined that this is something that occurs in writing.

As it turns out some members in the community on the Board weren't clear as to if we were having a meeting and making verbal comments, whether we consider that to be GAC advice. So it could be writing in the form of letters that communicate the issue at the end of meetings and so on.

We'd also been asked before about whether our advice was formal and from a GAC perspective, we determined that this isn't a meaningful descriptor for GAC advice, but it's all formal that you wouldn't have informal GAC advice. But you may have GAC advice that comes in stages. You may have interim

advice, but formal and informal were not the primary considerations from our perspective.

We explain in the report that we work on the basis of consensus and I would note from Marika's presentation there was a lot of discussion of voting and seems to me one of the most pronounced differences between the GNSO and the GAC is that we place far less emphasis on voting to generate our advice. We work on the basis of consensus.

In terms of tracking GAC advice and this advice of course as reflected in the Bylaws is to the Board specifically. We identified difficulties with tracking that advice so one of the main recommendations we made in the report is for the creation of a register. And I'm pleased to report that we are working on that currently with Board to put in place a better mechanism for tracking advice that's been issued and how the Board responds to that or what action was taken in, in relation to it.

We also talk about the needs to have regular Board exchanges particularly where it appears that there may be disagreements regarding advice. We point out that the benefits of providing input early into the policy development process and of course recently this has been colored by our experience with the new (unintelligible) program.

And so we talk about that in the report. We also talked about the roles that the liaisons can play and while the GAC Chair serves as a liaison to the Board, we propose perhaps looking at having an additional liaison which would be a Board liaison to the GAC and so that is something that we need explore.

Also we talk about the fact that when GAC members do participate in other parts of the community, it cannot play a representational role and so we try to clarify the basis on which GAC members can participate in other parts of the community including GNSO working groups and so on.

And some of the challenges that we have in working in that regard. So I think those are some of the key relevant points here for this discussion. I don't know whether other colleagues would like to ask to that or whether anyone from the GNSO Council would have questions or comments in relation to that?

Stephane?

Stephane Van Gelder: Thank you, just a question. The report you mentioned Heather, is that available somewhere? I'm not sure where to get the report.

Heather Dryden: Yes, yes it is available. It was put out for public comment as well as being sent to the Board and so on so it is available publicly. It is on the GAC with (unintelligible) as well. But we can make sure that information is provided about that.

United States?

Woman: Thank you, I don't see a Registry Stakeholder Group - did I get that right - representative at the table, but I did want to note - there you are - well the Registry Stakeholder Group actually did submit comment on the Joint Working Group report which we're much appreciated.

Regrettably I'm guessing due to the press of work, the report attracted only two sets of comments. But hopefully that's enough for the GAC and the Board to go on. We haven't yet had our meeting, but we will be needing to discuss how to move forward because that Joint Working Group Report is a key input that will guide our discussion on how to implement the 5 of the 27 ATRT recommendations that pertain to the role of the GAC within ICANN.

Heather Dryden: Thank you United States. Okay so I see no requests for the floor. UK please.

Man: Thanks very much Chair and thanks to the GNSO for talking us through their processes and so on. It's very helpful; it's great actually to have finally a GAC session here in Dakar where it's not just the GAC. Much of our time here in Dakar is in closed session, but that's force of circumstance and it's not going to be the way we work in the future as recent previous GAC meetings, we've always been open session on pretty much everything we've discussed.

So it's great to see you all here.

As Heather described, we work on the basis of consensus and that sort of strikes up a question for me with regard to the GNSO and you have a great diversity as I think you indicated earlier Stephane.

What happens when one particular constituency is in very clear an obvious disagreement on a position, perhaps in regard to a PDP proposal or process under the PDP? I mean how do you resolve differences of positions between constituencies in order to determine a way forward on a particular issue? Is that something you can comment on?

Thank you.

Stephane Van Gelder: So perhaps I should clarify by saying once the council initiates a PDP, that is - there is a group that is tasked with doing that so the group itself will produce throughout its work life, it will produce various stages of a report that will become final once the group has finished its work.

And at that point the group which is anybody can join the group, any member of the GNSO community or outside can join the group. Once that's been done, the group produces a report which is deemed final and which represents whether it be consensus or what the final stage of agreement was within the group.

That report, so it will be made clear in the report if there was as I think you put it, violent disagreement from just one group of people or a person or a member of the group. Then that would be made clear in the report and different stages of consensus are defined in our Bylaws to allow for that to be represented.

And then the report will be passed back to the council for approval or rework if the council feels uncomfortable with approving the output of the group. So once again if there's violent disagreement from one area on the out put of the working group, then that may cause the council to ask the working group to reconvene and look at the issues again.

Heather Dryden: Thank you Stephane, Jeff please.

Jeff Neuman: This is Jeff Neuman; I'm with the Registry Stakeholder Group. I'm also one of the Vice Chairs of the GNSO Council and happen to chair the PDP group or the group that's in charge of revising the PDP.

I want to first draw a distinction between starting a PDP and the results of a PDP. We have the lower threshold in place to actually just start the PDP, to start the work on a particular issue. That's very different than when the council gets the results of the work and has to vote on whether to approve whatever the recommendations may be.

Voting to approve the recommendations that come out of the PDP are a much higher threshold, especially if you want it to amount to what we call a consensus policy. And a consensus policy are those things that can be enforced against the registries or registrars. That's a much higher threshold, but one of the things that was put into place in the PDP process was to make sure that the results weren't captured by one particular group.

So you could foresee for example a situation where PDP on something and it's a recommendation that requires let's say registries to do something. What

we didn't want in setting up the whole PDP would be to give unilateral veto rights to the registries. Otherwise you can imagine, especially if it was in the public interest or it was something that was good for the internet community, that the registries just got together and said, "No we won't do it."

You don't want to see the group captured like that so I think there's all this balancing effort. When you're talking about the UDRP, all we're talking about now is whether to institute the review process. We're not talking about particular changes to UDRP; we're just talking about whether to review the UDRP at this point in time.

Heather Dryden: Thank you for that, Jaime please.

Jaime Hedlund: Just to add to Jeff's comment, we must make a distinction between policy development and policy implementation and sometimes the distinction isn't very clear and I hope it is. It would be more clear to GAC members, but I think Jeff made the distinction on the initiation and the conclusion of the development process and not the implementation process.

Heather Dryden: Thank you; are there any further questions or comments on this? I think we can probably continue the discussion in a way as we go through some of the topics that we have on the agenda.

Okay so next on the agenda I believe we have the Law Enforcement Recommendations that were endorsed by the GAC and for the registrars and recent developments there. For the GAC, the United States has been leading so I'd like to propose that the United States introduce this topic for our discussion and then we can proceed from there.

So please United States.

Woman: Thank you, I'm very mindful that we don't have an enormous amount of time together and so, you know, apologies to Mason if I'm jumping ahead. We

have circulated - the GAC is - both the GAC and their law enforcement representatives are now very aware of the recent GNSO Council vote that approved a Registrar Stakeholder Group motion to ask for an issues report out on several - at least three in particular of the 12 Law Enforcement Recommendations that have been under discussion.

My law enforcement friends tell me they've been at this work since 2009 so a good two years and at least from most of us in the GAC, when we endorsed the Law Enforcement Recommendations, that was June 2010. So here we are, it's over a year later.

We had a very good exchange we thought in Singapore between the GAC and the Registrar Stakeholder Group where our takeaway was more positive than I think the results we're seeing today, quite candidly.

So I'm sure I'm going to be joined by colleagues around the table, but as we look back as to what we thought we had discussed in Singapore and thought we had arrived at a fairly clear sort of understanding that there could be a way forward on a voluntary basis whether you called it a code of conduct, whether you called it best practices, we actually didn't feel strongly what it was called.

What we felt strongly about was the need for action and so quite candidly I'm going to convey with my colleague's approval that the GAC and their respective Law Enforcement Representatives are frankly very, very disappointed with this resolution. We feel it's very, very little going forward. It's very late in the day and as we look into this model itself, we see this as a, you know, very constructive multi-stakeholder self-regulatory model.

And frankly we're disappointed that it can't self-regulate very effectively so it's very hard for us GAC representatives to go home to capital and report upstream where this is considered very high priority to mitigate criminal activity using the domain name system -- exceedingly high priority.

And yet what we've had to report recently, well this is the response we've had to date. A motion that has been approved and we like to sort of express to other GNSO Council members perhaps, although our Chair did send an email to try to share the concern with you that neither the GAC nor Law Enforcement Representatives actually endorsed that resolution.

Apparently however, that was not enough to cause a lengthier dialogue to suggest a need to perhaps step back and regroup and maybe engage with the GAC. Somehow that wasn't very persuasive so we're disappointed with that as well so quite frankly we almost feel as though we have taken a step backwards.

I did want to share with you all that we do intend to raise this with the Board because in fact as we look at those five ATRT Recommendations that pertain to the role of the GAC, they do address this issue of how can the GAC participate effectively in ICANN processes.

In this particular case we don't feel as though there is an effective avenue. We though we were doing the right thing by engaging directly with the parties in question who could actually collaborate with governments and law enforcement to advance what we were told are shared goals. So that's very nice to know that these are shared goals. Apparently where our views diverge is how to best meet those goals.

So we thought it was important that the entire council be made aware that the GAC is extremely disappointed and individual governments are going to be developing their own individual positions in coming back together as a group and certainly later this week we will be addressing this issue with the Board.

So maybe that's enough for me to say and I would ask colleagues if they would like to lay in as well?

Heather Dryden: Thank you United States. Would the GAC colleagues like to add anything at this stage as a comment? United Kingdom please.

Man: Thanks very much Chair. Yes we very much share the dismay and the concern expressed by the U.S. with regard to how this work which was a matter of common agreement and sharing of objectives seems to have drifted so badly into inaction.

It is difficult for us to report to ministers and I did emphasize way back in Brussels meeting I think that this is something that is right at the top level in governments combating abuse and ensuring that this whole organization ICANN works effectively with law enforcement and the registrars have a very obvious and particular role to play.

And I had understood that the commitment to developing an approach, a kind of self-regulatory approach, was there and it's the kind of approach that we in UK government and other governments always like to promote a kind of understanding that this is something for us to sort out and avoid any kind of petty-handed talked down legislative approach which is not - does not always lead to the idea of solution.

So the code of conduct and what I understood was a lack of support for many of the LEA proposals seems to have dissipated in a very surprising and frustrating manner. So we do want to underline that this is a critical issue and we look forward to your comments on as to whether you share with us the anxiety to put this back on track quickly and effectively.

Thank you.

Heather Dryden: Thank you UK, European Commission.

Man: Thank you Madam Chair, the European Commission would like to express a part for the positions for the U.S. and the UK in particular to (unintelligible),

the comment related to the needs of all stakeholders to realize that in order to defend a cyclical model against the pressures, it is necessary to ensure that this political sustainable, in this particular case it is a clear impression that this political sustainability is not there.

Heather Dryden: Thank you very much European Commission. So Mason Cole who is the Chair of the Registrar Stakeholder Group would like to speak. Can I ask that representatives from the other stakeholder groups comment on this? I believe there is interest from the GAC to hear the perspective of others in the GNSO and in particular in relation to the motion and how they understood what the GAC had been requesting and seeking in supporting these recommendations.

Stephane, did you want to speak first? Okay.

Stephane Van Gelder: No I just want to make a clarification to Mason is ICANN Chair be the registrar of stakeholder group, but we'll be joining the GNSO Council on Wednesday. He's been elected to a position of to represent the stakeholder group and the council has agreed that he would be able to speak in that capacity today to you. So just to make that clarification.

Heather Dryden: Thank you, Mason?

Mason Cole: Thank you Chair. Well I think on behalf of the registrars, the first thing I should do is say thank you for your candid input about the outcomes of the law enforcement proposals.

I would agree that the registrars are in agreement with law enforcement about the desired outcomes of law enforcement's proposals. I don't think it's accurate to say that support for those proposals has dissipated. In fact I would say that's entirely inaccurate.

I would agree with U.S. that we have a difference of opinion on how to best arrive at those desired outcomes. I think law enforcement was very clear when they made their proposals to us that what they were looking for was binding enforceable provisions of policy that could be imposed on the registrars and that we would be bound to adhere by.

The issue that I thought registrars are very clear in explaining was that a code of conduct or a voluntary method would not arrive at binding enforceable policy and therefore probably wouldn't achieve the outcomes that Law Enforcement Representatives were seeking.

So I'm disappointed that the GAC believes the registrars are road blocking the situation. I ensure you that that is not the case. I believe that this is simply a misunderstanding between the registrars and the GNSO about how to arrive at binding enforceable policy that would be useful in combating online crime. I think too that I may be helpful to revisit the process by which we got here when in 2009 when the RAA was sort of reopened for discussion, law enforcement made 12 proposals about potential changes to the RAA.

Some of those proposals as we have communicated to the GAC and to others before are available immediately, immediately available to be put in place to be implemented. Others are not because they require technology or services that are not available in the market or would need to be developed in cooperation with law enforcement and with the GAC.

That was communicated very clearly in San Francisco and in other meetings. That is not to say that we don't support the outcomes of those proposals because in fact we do. They just may not be available today, but we would be happy to cooperate with the community and intend to cooperate with the community to arrive at whatever solutions need to be arrived at to put those things - those proposals into place.

I believe it would've been helpful if registrars had been approached when law enforcement proposals were first made and before the GAC endorsed them to understand whether or not they were available to be implemented. I think that would have solves a lot of the frustration that we hear in the room today.

I regretfully look back on that situation and remember that it was the registrars who began the dialogue with law enforcement and I am pleased to say that that dialogue became fruitful over the last year or so. And I understand that it is a pence between registrars and law enforcement at this point which I find very regrettable as well.

There's simply no reason for that to be the case. So let me just repeat and I'll be happy to talk with any of you individually or again as a group during the course of this week, but let me reassure you again that registrars agree with law enforcement and with the GAC that the most appropriate thing to arrive at with law enforcement proposals is binding enforceable policy that can be enforced across all registrars, not just the ones willing to a sign a voluntary code of conduct.

We've committed to law enforcement that we will arrive at binding enforceable policy via the quickest available method and the fastest available method to us right now is the policy development process. And I hope that we can move beyond the discomfort of the moment and arrive at solutions that both sides of the people are pleased with.

Heather Dryden: Thank you Mason. I'm reminded with your reference to the fact that some things can be implemented in the short-term versus the medium versus the long-term that we were in agreement I had thought as reflected in the GAC communiqué from the last meetings that there would be a report outlining those measures.

I would also point out that the recommendations made by law enforcement are high level recommendations. Clearly you need to do work (unintelligible).

I mean there need to be work done when being given a high level of recommendation to turn that into something implementable, but that doesn't mean that the recommendation isn't clear or that the (spirit) of the recommendation is durable.

So I would point that out and again I think it should be clear that the GAC is looking for action and that continues to be the case.

So I have next Zahid Jamil and then Kristina Rosette. Go ahead.

Zahid Jamil: Thank you, Zahid Jamil from the GNSO Council as BC Councilor. As BC representative, I get a (unintelligible) resolution and the BC voted against it, at least I did and I know IBC did as well.

I know Kristina will be speaking after me. Also we did seek at least a deferral of this motion and we said that, you know, we need more information because we understand that law enforcement is not totally behind it. But there seem to be some sort of a rush in this and we were not convincing enough I guess in trying to delay that.

What I did do was seek a clarification and got a response from the registrar representative as to if these are just some of the proposals. Is it possible that tomorrow we could pass another resolution adding all those things that law enforcement wanted in there so we could remedy the situation?

And the response I got from the Registrar Stakeholder Group representative was that, "Yes I don't see why that could not be made possible." In that respect -- and that's on the transcription, you can look it up on the meeting transcripts - so maybe moving forward one of the remedy or sort of solutions in this would be that a resolution of that sort is moved forward.

We would love to know, at least you would love to know, what it is that, you know, the GAC wants implemented. Maybe we can work with inside the

GNSO, see what we can do there. So that's a proposal maybe if you send us something we would be happy to do that.

Thank you.

Heather Dryden: Thank you for that offer, Kristina Rosette you're on.

Kristina Rosette: Kristina Rosette, Intellectual Property Constituency. I did want to just confirm for your information that my other IPC councilor did in fact vote against this motion in large part because it was in fact our understanding that it was not supported by law enforcement.

And we also had not received answers to very important questions such as for example, "What is the plan for moving forward with the additional LEA Recommendations?" "And why for example is it necessary to initiate a PDP process to require a registrar to publish on its Web site a valid physical address for purposes of receiving legal services process which is one of the aspects of it?"

I do also want to make you aware of another kind of parallel development on this issue, namely that back in 2009 when the RAA amendments or what became of the new version of RAA was put up for vote.

It was initially blocked by what is now the Non-Contracted Party House and when we did in fact vote to approve it in March of 2009, we did so on the understanding that there would be efforts made to discuss how to go forward with those potential topics for future amendments which had not been incorporated and have not in fact manifested themselves in amendments.

A group was convened. They put forward two processes, Process A/Process B. Process A had stronger support than Process B. A motion to move forward with the Process A namely for identifying a way forward for dealing with these

other topics that had been identified as high and medium priority was defeated on a House - split House vote.

The Non-Contracted Party House was in favor, the Contracted Party House was opposed. A motion to move forward with a modified version of Process B was put forward in San Francisco with a vote along the same lines. And because I am an eternal optimist, I have introduced for the council's vote on Wednesday a further refined version of Process B.

I frankly do not know whether or not that is going to pass, based on past voting history I would suspect very much that it is not. But that is a non-LEA counterpart to the LEA Recommendations.

Heather Dryden: Thank you for that, I have Australia then Jeff then the European Commission.

Man: First of all this has been a very useful discussion and I'd like thank GNSO members for their input to this discussion. I find that very valuable. I think it sort of ties together with the presentation we had on working on the working methods and it's interesting to see how this, for me anyways, to see how this plays out in an area where there is difference of opinion it would seem within the GNSO.

One thing I'd be interested to follow-up is not immediately, but at same stage how GNSO feels that potential issues like this can be taken forward from a GAC representative point of view. I share the views that GAC members have spoke before that sense of frustration here. But it would be useful to see if there is a way that things like this can be taken forward, so.

But going through the comments that Mason Cole in particular, I really I'm struggling here just to see that it's taken so long to come forward with the start of process on three recommendations that seem to me to be basic registration type issues. We're not looking at the issues here it would seem to me, we're putting up a contact, an email contact point on a Web site for

someone and this takes a year to get to the point where we initiate a process that's going to take another year. This I find astounding.

But and then to follow up, following conversation in Singapore. I had understood that we would be checking all 12 Law Enforcement Recommendations, but I had understood that we would be seeing a table or some kind of checking document that had all 12 recommendations and a proposed implementation part for each so that we could all be clearly informed and have an ongoing dialogue about how we were taking these forward.

I don't think I've seen that document so it would be interesting to know, I had some insight I think from other GNSO members about where this may be going now. But going forward I would strongly encourage that we do so that there are not these kind of exchanges in the future. That we all have a common understanding about where this is going.

And I thank you.

Heather Dryden: Thank you Australia, so I have in the list the European Commission. I have Jeff, Mason, Singapore and Mary and then we will need to conclude I think on this agenda item as we're running short on time.

So European Commission please.

Man: Thank you Madam Chair. We would just like to go on record that we share the surprise of Australia and other GAC members this problem before us and I would like to pass on behalf of in particular (Michael Leeks) of the Commission and the Directorate General for (foreign affairs) which had been in close contact with the law enforcement agencies in (EU).

Their surprise what they did diplomatically on what exactly are the problems that these recommendations raise because we must either be missing

something essentially in here or we can't quite see the reason to launch and not exist on having providing a valid physical address for the purpose of the (unintelligible) legal service including valid street address, city or region, telephone number and a fax number.

And I'm just mentioning of our (unintelligible). And again maybe we're losing something, but we lack the qualification.

Thank you.

Heather Dryden: Thank you for that, Jeff?

Jeff Neuman: Hi Jeff Neuman from the Registry Stakeholder Group. When we were presented with the motion from the registrars, we did not see voting no as an option. To us voting no meant don't even take that little step forward. We did not see it as other groups may have seen it as more as a protest vote.

It wasn't a choice of views, except all or none. It was do we even take this step forward so to the registries, if we voted no it would have meant let's not do anything. And the registries took the view that we'd rather take this little step than do nothing at all. So I think that's very important to consider and that's what we a registry considered.

So voting no as a protest was not an option. I do also want to clarify something that my colleagues from the Business Constituency said he asked for a deferral. That is correct, he did. But under our rules of procedure has already been deferred once and if the person proposing the motion did not want a deferral or accept the deferral a second time, our rules are that it does not get deferred a second time.

So that's just maybe a little confusion we can go back and think more about, but that's just the rules that we had. As far as a way forward, absolutely additional issue reports can be requested. They can even be combined with

the existing issue reports. We made that point on the call. The registries in fact would like to see additional issue reports.

And I also want to caution with due respect to my colleagues from the IPC, before you form any opinion on the Registrar Accreditation Agreement I ask that you have a discussion with all sides of that issue. I think it wasn't completely characterized correctly and so yes there is a motion, but there are a whole other host of issues that that motion so I ask that before any kind of formal opinion is formed that additional consultations take place.

Thank you.

Heather Dryden: Thank you, Mason?

Mason Cole: I know we're short on time so I'll try to be brief. A couple of issues, I'm not sure with regard to the specifics of the law enforcement requests. They are in fact quite specific, I'm not sure about the characterization of high level because if you look at the 12 requests, they're very, very, very specific. And I would remind the GAC that we went through in each of those in our discussion with law enforcement and were very clear with them about what was immediately able to be put into place and what was not.

And the reasons for it, the rationale behind all of those. So I confess that I'm confused as to why there remains confusion about why all of these things can't be put into place today. To the point that some of these things are very easily put into place like an address for service or an abuse contact, I would point out that many of the registrars already do have those things available on their site.

That the point of having a PDP or some other binding piece of policy in place is to ensure that it is universal across all contracted registrars and is enforceable. And then in general I appreciate everyone's input about their disappointment with inaction. I confess we're very confused about the idea

that there has been inaction. We've invested a great deal of time with law enforcement and with the GAC to try to find workable ways to move these things forward and we remain very committed to doing that.

If the GAC would like additional communication from the registrars, the registrars would be pleased to do that. If the GAC would like a new dialogue with registrars about how to collaborate to get the things that are not technically available for registrars to implement today, to bring those into fruition. The registrars will be very happy to do so.

I hope that we can get past this moment of frustration and understand the rules under which all of us have to operate according to the obligation that registrars have under contract to ICANN and that we can get past this moment and we can find ways to collaborate.

Heather Dryden: Thank you Mason. I didn't hear anyone say that all of the measures can be immediately implemented. The discussion we had previously was about identifying which could be implemented now or which could be identified within the medium and then in the long-term as a useful means of ensuring action is taken.

Regarding the recommendations, perhaps I wasn't clear, but the intent of the recommendations I believe is clear. And the discussion about how you implement and what are the technical issues, whether the operational issues and so on. That's a discussion that can take place, but the intent of the recommendations I believe is quite clear for LEA and for the GAC.

All right so I have United States, Singapore and then Mary and then we will move to the next agenda item.

So United States please.

Woman: Thank you Heather and like Peter before me, I do appreciate getting the feedback from individual constituencies. It's extremely helpful for us to hear directly because I do think this is actually a case study for us in terms of how in fact different our working methods are. I mean this just highlights how very, very different they are.

I'd like to address just a couple of points if I may and I know we're taking more time, but I actually think this is critical because these are some fundamental issues that are quite candidly they're going to be obstacles unless we can find a way to resolve them. They are going to remain as obstacles to us collaborating in a self-regulatory manner.

So the first point where I think there is a misunderstanding is a comment that the registrars were somewhat frustrated that law enforcement came to the GAC first. Well law enforcement agencies are part of their governments. So from a government perspective, this is the most logical step they could possibly take. They belong to us so they first collaborated amongst themselves and it was truly a GAC-wide effort and they respectively approached each of their GAC members and we met as a GAC.

That is perfectly logical, that is how governments work. I do happen to know anecdotally however that many of them consulted with registrars and registries informally. So this wasn't a surprise. I would like to clear the air on that point. Nobody should ever be surprised that the GAC is going to represent some subset of our respective governments.

That is natural, that is logical so let's take that one off the table. That is going to happen each and every time. There's another element in different working methods that I think we haven't even discussed. I won't go into the details, but it is pretty striking to me and I believe many of my colleagues around the table are probably going to start nodding their heads. Very striking to me that a GNSO motion tabled by the Registrar Stakeholder Group and agreed by the majority has a (point 4).

It says law enforcement agencies provide and it has all sort of detail as to what the registrars think law enforcement need to do for them. Now there was no dialogue back with either the GAC or law enforcement before that text was put into motion. There was no dialogue back from any of the other constituencies. Thank you for the two that did vote to not to move forward.

So the registries I would say I don't know where it is that the GNSO has authority to actually task ICANN staff to write an issues report that somehow includes a task to law enforcement agencies. So I'm very confused as to how this not only got in here, but how anybody could proceed from the GNSO without collaboration and coordination with the GAC and law enforcement.

So that is another real problem I think we have in our - there's a disconnect. Let me just be very blunt there -- this is a disconnect. I'm not sure how this would happen or how anybody thinks it can be actually addressed. And I also want to thank Kristina Rosette and I do concur with her. I can't seem to hear the comment that if you don't have a PDP, this is not binding. This is where you lose government, you lose any sympathy, you lose any support.

It is simply impossible for us to write a briefing memo for our political managers to explain why you need a policy to simply put your name on your Web site. It is simply mind boggling that you require that and you're saying that it has to be enforceable. We thought we had a pretty good exchange in Singapore where you said that the people in the room represented 80% of the registrar constituency and that you were fully prepared to implement probably up to 9 of the 12.

So that's the context in which we are now coming to you saying this looks pretty poultry and actually it looks a little silly. So I did leave you with that and to refresh memory that we too, those Law Enforcement Recommendations that the GAC endorsed were intended to amend the RAA. So it's pretty disheartening to think that here we are, we have one motion that addresses

so little of what GAC and law enforcement have asked for that it's disappointing.

But then we're hearing that it's entirely possibly on Wednesday that yet another motion to amend the RAA is going to fail. So at what point, when does the GAC have any confidence that any of these tools are available to actually address the problem we've identified. That you have said to us you share our concern, so that's where we feel lest it's completely in limbo with no clear way forward.

Thank you.

Heather Dryden: Thank you United States, I understand my Co-Chair Stephane would like to respond on that point.

Stephane Van Gelder: Yes thank you very much. Heather, I just wanted as Chair obviously I'm unable to comment on the issue itself and I won't do that. But I did want to make the point that the motion that you referenced and the (point 4) that you referenced is in the process we described earlier on, a request for an issues report.

So in our processes when the GNSO Council feels it needs more information or more in depth knowledge of something, a topic before considering, and I highlight the word considering, to whether initiate a PDP there is a policy development process on it. There is a request for an issues report so I just want to read the resolve on that motion which read, "Resolved the GNSO Council requests on issues reports on the following possible policy revisions and/or additions."

So it's research at this point. I just wanted to make that point.

Heather Dryden: Thank you, okay next I have Singapore and then Mary and then we will move to the next agenda item.

Singapore please.

Man: Thank you Chair. First of all we are grateful for the (grant) addition given by the GNSO colleagues; however we are a little bit concerned with the priority and the timeframe given by the (unintelligible) constituency pulling up the LEA Recommendations.

If you look at the record in Brussels meeting, I think several LEA Recommendations (unintelligible). And now we find that certain items on near-term become subject to issues report and we also heard that PDP in the worst can take over two years and there could be another policy implementation time frame.

So you wonder if the three issues that are identified in the issue report solutions which to us is part of procedure (unintelligible) it would take - it takes a long time and we wonder how the GNSO view with the remaining nine LEA Recommendations? Perhaps we can show some light on that.

Thank you.

Heather Dryden: Thank you Singapore, Mary?

Mary Wong: Thank you Chair, my name is Mary Wong and I'm an (unintelligible) counselor from the non-commercial use of constituency. So I'd like to take this opportunity to respond to the Chair's request and address the GAC on behalf of that constituency.

First let me preface my comment by saying that our constituency recognizes and agrees that these issues are very important. Secondly, my constituency also recognizes and appreciates the GAC's input into so many important matters, many of which are dealt with and will be dealt with by the GNSO with its own processes.

So we welcome further input from an interaction with the GAC. Having said that on this particular issue, we wish to highlight the fact that a lot of the recommendations whether on this particular issue or even going forward on other general matters could potentially have an impact on other users and other communities within the GNSO including the NCUC which I represent.

And just as an example in this last motion and let me just pause here to echo the comments made by Jeff, my colleague from the Registry Stakeholder Group. On the consequence of the voting no on that motion the NCUC Council voted yes, but in that respect the discussion that went into the motion, the draft and the revisions brought out a number of issues that were impactful on non-commercial users.

And as a result the final resolution included an agreement to do a freedom of expression impact analysis of some of the recommendation. And so I offer this as an example to the GAC that while I understand and we understand the frustrations with timing and perhaps the processes that are very different from yours, that it is important that some of these issues - in fact most of these issues be brought before the council so that the whole of the GNSO can give their feedback as to the impact of some of these.

Some may be pure implementation details; others may at first sight not appear to be policy that impacts a large number of users. But upon examination they might and so we urge the GAC to take that into account.

Heather Dryden: Thank you very much Mary. Okay so let's move onto the next topic which is the protection mechanism for the IOC and Red Cross. The UK topic lead from the GAC side is the UK. So I will to turn to the UK to introduce that topic and then the GNSO can respond.

Man: Thanks very much Chair. I think I can be quite brief on this because I'm sure we're all familiar with the tasks before us flowing from the Board resolution in

Singapore which says that it looks to the GNSO and the GAC to prepare advice on - well there's two aspects on those implementing permanent protections within Olympic and Red Cross and Red Crescent at the top level.

And secondly protection at the second level. And we submitted a proposal attached to Heather's letter to Stephane, 14 December to amend the GOT registry agreement that we got to second level name. So two issues and look forward to hearing from GNSO colleagues about how we implement this and the kind of mechanism that maybe you have in mind for action on this.

And of course we're ready to assist with that as soon as you're ready to go with this.

Thanks.

Heather Dryden: Thank you UK, I believe Jeff is going to respond on the GNSO side.

Jeff Neuman: Thank you, yes first I want to say that we really truly appreciate all of the work that has gone into your letter, your proposal and again want to thank you for all the detail that's contained in there. We want to assure you that we have and will continue to take the proposal very seriously. We don't have unanimity in the council on this topic and believe the way forward is to try to find a way to work with the GAC in a collaborative manner to find a solution to some of the issues that we've already identified.

We understand that working together in some sort of group -- I call it a group and not a working group -- working together in such a group, we understand that it would be as individual GAC representatives, not as an opinion of the GAC that we find that getting your input into the process would be extremely helpful to know some of the thinking that went in behind some of the thinking and proposals.

To that end, we also want to make sure that we understood exactly what the proposal was asking. So I'm going to give a summary of the way we understand it and of course please let us know if we don't have the correct understanding. But at the top level, it's our understanding that the GAC is asking for two things.

One is that the exact name in the attachment in those attachments to the letter regarding the Olympic and Red Cross (marks), you put on the official reserve names list as opposed to what as ICANN has put it in right now in the Guidebook which they call Strings Ineligible For Registration. And the difference is being that strings on the reserve list would actually go through a string similarity review as opposed to just outright - just these exact matches.

And the second thing that we understand at the top level is that the reservation being a permanent one as opposed to just this current or this next round that's coming up. At the second level we understand the position that the names, what it says in the proposals that the names be reserved, one of the things identified by the council is that there is different types of reserve names.

There's a reserve name like the word example which is reserved outright with no ability to get that name off of the reserve list. There are also reserve names like the two letter country codes which although initially reserve in reading the Guidebook those names taken off the reserve names.

((Crosstalk))

Jeff Neuman: And there's also a third type like the country and (unintelligible) names which say that provided that the (unintelligible) of the specific country and territory names may be released to the extent that the registry operator reaches agreement with the applicable governments providing further that registry operator may also propose release of these reservations subject to review by ICANN's Governmental Advisory Committee and approval by ICANN.

So in our discussions we talked about things like grandfather Olympic marks, you know, Olympic airways or airlines. Sorry and at least in the United States, there's Olympic paint and some other grandfathered marks. So a discussion of how or if we'd be able to have some sort of process to remove those names if they were legitimate rights to use those.

And also there was discussion to make sure we understood the proposal, even at the second level it was only from what we understand a request to reserve the exact mark and not strings that were containing that mark. So for example in a dotSport it would be the reserve Olympic dotSport, but not necessarily Olympic games dotSport.

So we just want to make sure that we understand that correctly and that's what the proposal is asking for.

With that said, we look forward to working with you, you know, maybe forming a group to work on these issues to understanding the output of this group would have to go back to the larger group whether it's the GAC and also the GNSO, but we really do want to thank you for this proposal especially for your input so early on in the process.

I think this is a first and I hope a first of many so thank you very much.

Heather Dryden: Thank you Jeff, United States?

Woman: Thank you Heather and thank you Jeff. I wonder if the next logical step might be that you put all of the questions that you believe the council has with regard to the proposal to the GAC in writing so that we can consider it as a group. That would be extremely helpful.

Thank you.

Heather Dryden: Thank you United States so that seems like a useful next step. Are there any other comments or questions?

Okay so with that - Jeff, you have something to ask?

Jeff Neuman: Yes and also I know there's a transcript, but if there's anything I've mischaracterized, you know, if you could please let us know. I gave our own summary and again it's just based on our reading.

That'll be really helpful if there's anything we've not characterized correctly and also after we submit these in writing if there's a way we can work - obviously timing on this is critical and short because if we can get these into the registry agreement before anyone actually signs the registry agreement that would be the best way.

Unfortunately the only mechanism after registry signs in agreement is through the whole PDP consensus policy process which I know we all want to avoid so if there's a way after we submit these in writing that we can form some sort of task force or something that could look at some of these issues with the understanding that everything goes back to the group. That would be great.

Heather Dryden: Thank you Jeff. So thank to the GNSO Council for meeting with us today. We do appreciate the time spent that we had some good discussions and we look forward to meeting with you again.

So as for the GAC, if we could continue in five minutes so very short break and then we will continue with our sessions.

Stephane Van Gelder: Excellent, for the GNSO Council can I just remind councilors that there are two more sessions in the room across the corridor if you are able to make those.

Thank you very much to the GAC for having us.

END