
DURBAN – GAC Plenary - Staff Update on New gTLDs
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HEATHER DRYDEN: Okay, everyone, if you could take your seats we've opened up all the links and can begin with our briefing from staff.

Okay. All right. So first of all, for a briefing, we are going to have an update about the registrar accreditation agreement which was recently finalized in a meeting of the board just prior to these meetings here in Durban. You will recall that this is something that the GAC has been advising and commenting on for some time and the GAC has endorsed the law enforcement recommendations that law enforcement had been advancing at various organizations and meetings, as well as bringing them here to the Governmental Advisory Committee. And so at this stage I think it is useful for us to have an update and to understand perhaps what are the key elements that we can find in the RAA that would be of interest to the GAC. And then following this we will receive an update about the gTLD program and some of the key dates and developments around how that program continues to move forward.

So to my right is Cyrus Namazi who works in gTLD operations.

CYRUS NAMAZI: Services.

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CHAIR DRYDEN: Services, sorry, and so we will turn over to Cyrus to give us an update. Just a technical note that we've lost the connection to the live scribes. They are still scribing. We just can't see them presently, so we're going to try to fix that as soon as possible. But rather than wait, I think we need to get started. So over to you, Cyrus.

CYRUS NAMAZI: Thank you, Madam Chair. Greetings, everyone. It's a distinct honor to be addressing the GAC today. I wanted to provide you a brief update on the 2013 RAA which was recently approved by ICANN's board of directors on 27th of June, highlight some of the major accomplishments that we've managed to get through into the RAA, in the new RAA, and then perhaps leave some time for some question and answers. And after that my colleague Christine Willett will be here to give you the operations update on the part of ICANN. She's actually delayed a little bit.

So the latest RAA, as I mentioned, was approved by ICANN's board on the 27th of June. It was actually posted for comment and reply, the 43-day comment and reply period, on the 22nd of April. Some area of the highlights, the things that I think all of us can be really proud of, include the 12 recommendations that came from the law enforcement agencies, GNSO, and ALAC. The feedback that we actually received during the comment and reply period was quite positive in general. Post that we made some clarifications to the final version, really mostly just clean-up to the language more than anything else. And we now have an amendment process in place in the new RAA that would enable

us to actually provide more timely updates to the RAA should it be necessary going forward.

So some of the specific highlights of the new RAA include the following: The new RAA includes a registrant's benefits and responsibilities document. In case you haven't seen it, this is a one-page document that is written in plain language. Currently in English but we will be translating the RAA into multiple languages. It provides a clear, easy to understand document for the registrants in terms of their rights and responsibilities. It's actually a part of the RAA so contractually tied to the words of the 2013 RAA. And in that, I actually would like to acknowledge the leadership of the registrars in taking the lead in drafting this document for us.

Enhancements to WHOIS verification were made. We now require account validation and verification in the form of address or e-mail. We have SLAs in place now for availability of WHOIS. And then the format of the WHOIS data has been standardized. And if there is inaccurate information, there's remedies also that are provided for in the RAA.

Another highlight is the proxy and -- privacy and proxy services. Currently in the RAA there is an internal specification while the GNSO is actually working on a permanent policy. It's a very solid internal specification that we deemed adequate while the GNSO does its job of actually developing the policy for it. [cough] excuse me. The abuse point of contact now is mandatory within the new RAA. It provides a dedicated abuse point of contact. And this point of contact is actually going to be provided on the Web site of the registrar. There is also 24/7 monitoring for law enforcement agency reports in case it becomes

necessary. Data retention specification has been beefed up quite a bit. This was a key recommendation from law enforcement that we've managed to negotiate with the contracting parties to put into the 2013 RAA. It actually expands the types of data that are being retained, as well as actually allowing the registrars to identify conflicts with local laws because different jurisdictions obviously have different requirements for retention of private data. And last but not least, there is enhanced compliance tools that are being provided in the new RAA. There is expanded suspension ability, there's expanded termination rights for people who actually commit cybersquatting or they actually do repeated breaches and offenses. We provide officers of the registrars to actually provide a certification of compliance with the RAA. And it also provides clearer rights for us to access and audit the registrar data.

So what's next for us, someone reminded me this morning that the easy part is done now. It only took us two years to actually get the new RAA approved by the board. But the hard part is now beginning. There's quite a bit of operational pieces that will need to be put in place by the registrars. And keep in mind that registrars in other parts of the world who have not been as attuned and involved in the negotiation process may not know of all the details of what they are going to be required to do. So in that light we've actually initiated a global outreach to register our community, starting with the community in China. In the latter part of August we'll be conducting an on-site seminar in China, conducted in Chinese for all the registrars in China to become familiar with the 2013 RAA. And in that again we've actually partnered with some of the leadership of the registrar community to assist us in conducting this

seminar and providing actually training for their colleagues, so to speak. We also have the same seminar planned shortly after for North America and Los Angeles. We have in the interim webinars also planned, and we're also contemplating conducting these seminars in other geographies including Europe and perhaps Middle East and Africa.

Lastly, there is actually a WHOIS validation working group that is evaluating the tools that are available for verification of WHOIS data. That tool does not exist today. We're working together with the registrars to come up with a commercially-viable solution for that piece of the agreement.

So with that, let me open it up to questions, if there might be any. I'll be happy to attempt to answer them for you. Thank you.

CHAIR DRYDEN:

No questions? No comments? United States, please.

UNITED STATES OF AMERICA:

Sorry. Thank you very much. Thank you, Cyrus. That was very useful to have the overview and we certainly want to commend both ICANN and the registrar negotiation team for all of the hard work. I think several of us around the GAC table -- I'm glad you mentioned the GAC law enforcement recommendations -- I think this is now what, three years in the making when we first -- we, the GAC and our law enforcement colleagues, endorsed these recommendations. It was June 2010, and I think this is a really, really positive, positive development that you've now sort of put this to bed. We're very, very grateful for all those efforts. And I think we -- certainly speaking just for the United States,

we stand ready to continue to collaborate should questions arise. We have certainly signaled our ongoing interest in whatever the ultimate final specifications might be for proxy and privacy services, so I would like to put that marker down and make ourselves available to further consult.

I did have a question. At some point it had come up, and forgive me for not recalling which meeting, it was either Prague or Toronto, there had been some exchange between ICANN and the GAC as to whether your existing procedure for handling conflicts with -- WHOIS conflicts with national privacy law, there was a question that was circulated at that time as to whether the existing procedure, which I think dates back several years, either 2007 or 2008, would need to be updated to be consistent again. And I don't recall us ever sort of being invited to comment on that for a second time. So if you could just perhaps clarify where that issue stands, that would be really helpful. Thank you.

CYRUS NAMAZI:

Sure. Thank you. Thank you for all your encouraging words, of course. Yes, the process for that is going to be updated. I actually was not in Prague or Toronto. I joined ICANN in January. But we are working toward an updated process which we will welcome your inputs for it. And I believe the timing for it -- I'm looking at my colleague here -- I think it's going to be imminent actually. We're putting the last bits and pieces of it in place before we can share it for your inputs.

CHAIR DRYDEN:

Thank you. Okay. I have Germany and then the Netherlands.

GERMANY:

Yes, thank you and thank you for the presentation and also thank you to everybody who participated in this work which is, I think, very much welcome from our side. I just also want to reiterate what other colleagues said. We all -- as government we need to balance both the interests for law enforcement interests and on the other hand we also have privacy and data protection interests. And to move forward in this sense, I think we need to have a balanced approach.

This, as I understand, tries to go forward but as we say, the devil lies in the detail and operational question, as you also mentioned. And so far we really need to also look on our privacy interests and applicable laws in this respect. I still have some questions in respect what happens if this issue -- you write this negotiation between registrar and ICANN does not lead to some outcome that combines both, what instruments would ICANN have in this respect, and from our perspective it is really difficult for the registrar and that's why I want to highlight it, to be trapped between their national legislation on one side and on the other side by the ICANN applications from the RAA. And that is something that needs to be yes, minimized and should not happen. Thank you.

CYRUS NAMAZI:

Thank you. That's a very good comment that you made. In fact, this topic again came up in a GNSO meeting this morning and we're very sensitive to the fact that different jurisdictions have different data retention and privacy laws. And in particular within the EU community, there's ongoing work in terms of sort of I guess having an EU-wide privacy legislation being adopted. So in that light we are actually -- just

this morning I decided that we need to open a dialogue with some representatives of our European registrars to be able to identify things that can be common denominators and can be applied across the board to all the operators within the EU community to minimize the level of impact on the individual registrars. And of course to also be able to maintain their adherence to their local laws, to the extent possible.

CHAIR DRYDEN: Thank you, Germany. Next I have the Netherlands.

NETHERLANDS: Thank you for your presentation. I have a question in line with my German colleague, and maybe you could confirm what I have seen and heard. On the problem that certain registrars would be in breach and in violation of their national privacy law, which is the case in European countries, I have heard from the Article 29 working group, let's say the old independent data protection service of Europe together, they already wrote to ICANN a letter in which they basically confirm that certain provisions are in violation of the European data protection framework and also the national implementations in every country. And also that that is the basis, as a general waiver for registrars, not to - - to have an exemption on certain provisions. Is that correct? Thank you.

CYRUS NAMAZI: Yes. Thank you for your question. To some extent, that's correct. So the Article 29 has not really been officially adopted by the European Union into legislation, but we're closely monitoring that.

Now, having said that, the right of the registrars not to be in breach of their local laws in their jurisdiction is actually protected in the new RAA meaning that once there is -- it is identified that the local laws actually have different requirements on the registrar than what's in the RAA, we have a mechanism in place on the part of ICANN that provides a waiver so that the contracted party, the registrar in this case, continues to be in compliance with their contractual obligations and, of course, as well as the local rules and regulations and laws. Does that answer your question?

NETHERLANDS:

I'm confirming basically what you said, that there is a mechanism in place to provide a waiver in case there is conflict of local law.

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Just one -- the only question which remains is that do you accept the -- let's say the Article 29 statement as being from a competent authority for this waiver? Thank you.

CYRUS NAMAZI:

We accept it from being an authority but it's not a legal authority is our interpretation of it. That it actually has not been adopted into legislation by the EU. When and if it becomes adopted, then, of course, there is further steps that we'll take to ensure that our contracted parties are in line with -- in compliance with it. But we look at them -- we look at them as an authority but not a legal authority at this state.

CHAIR DRYDEN: Thank you. Next I have Sri Lanka, please.

SRI LANKA: Thank you. Thank you, Chair. We also would like to join in by thanking all the work that has gone into this process and seeing some light in having a draft agreement in place. I have a question in relation to implementation given the questions my European colleagues raised. Firstly, what is your implementation timeline? I think you may have mentioned that. I'm sorry if I omitted to hear that. Given the frequency concerns being raised and all the other issues being raised by my colleague from Netherlands, what is the expected implementation time frame.

Secondly, my question is if for any reason, hypothetically one party decides not to sign it, what is the intended course of action that you, ICANN, plans to take. Thank you.

CYRUS NAMAZI: Yes, thank you for your question. To answer your first one, the timeline for compliance with the requirements of the new RAA is January of 2014.

To answer your second question, there is really no, for lack of a better term, arm twisting involved in having the registrars actually sign up to the new agreement. The only stipulation is that if a registrar is not a party to the 2013 RAA, then they can't actually be doing business in the new gTLDs. So that actually is sort of the incentive for them to continue to convert. And on top of that, we will not be issuing or renewing old

RAAs. So when it comes time for renewal or extension of an existing RAA, the only RAA that there is to sign is the new one.

CHAIR DRYDEN: Thank you very much. I think I have EU Commission next.

EUROPEAN COMMISSION: Thank you, Chair. I would like to join my colleagues from the Netherlands and from Germany on their comments. And thank also for the approval of this agreement. I know it is taking up a lot of time and most of our concerns were included, but we would like to express our concerns as regards some of this outstanding (indiscernible) and data protection and in particular as regards the purpose of the processing and the retention of the data. But we're more than glad to engage in the conversations to further discuss these points and the arguments raised by the Article 29, the working party, at your earliest convenience. Thank you very much.

CYRUS NAMAZI: Thank you very much.

CHAIR DRYDEN: Thank you. So next I have Iran and then I will move to close the list and then U.K. Iran, please.

IRAN: Thank you. First of all thank you for the presentations and thank you for the work that has been done. Congratulations. Simple part was two

years. I think that the difficult part would not be much longer than that. Much, much longer than that. I have few comments and observations.

With respect to this -- references in this document of a period, seven days, ten days and so on, so forth. It is a calendar day or it is a working days? This is one point.

Second point, you defer kindly that for the outreach for the operational part. You're organizing seminars and meetings, first one in China and so on and so forth. I understand and I think that perhaps whatever experience you gain from these seminars will apply them to the other seminars where appropriate and where applicable. That's it.

But the third comment that I have is very important. You kindly said that there is a mechanism in case of noncompliance with the national legislation. Is this mechanism embodied in this agreement because that is a very, very important issue, is if there is no compliance with the national legislations, that is the fundamental issue of each country, then there is -- if it is not properly reflected in the agreement, it might have difficulty of implementation. Even though you said that there is -- a separate mechanism. This separate mechanism either should be directly included here or it should be cross-referenced in one way or another. Otherwise it will be two separate things, and from the legal point of view it might have some difficulty of implementation in case of the noncompliance. And I thank you very much for any comment you will provide. Thank you.

CYRUS NAMAZI:

Thank you very much. So to answer your first question, the number of days that are referenced in the RAA are typically calendar days. And your second comment about, you know, the learning that we, I guess gain by doing -- conducting seminars and webinars in different parts of the world and bringing it back and sharing it within the community, of course that's a very valid point. We hope to do that and continue to really share more information as much as we can.

On your last topic, the way this issue of adherence to local laws is addressed in the RAA in particular, with respect to privacy laws, is made by reference to a waiver which we will issue on a case-by-case basis. So it can't be the same document that can actually be incorporated into the RAA. So there's a process that exists by which we actually identify what type of waiver and to whom it needs to be issued. And then once it's issued, it's incorporated into the RAA.

CHAIR DRYDEN:

Thank you. Next I have U.K., please.

UNITED KINGDOM:

Yes, thank you, Chair, and thank you, Cyrus, for the update and report. It's been a long haul. But we're very pleased with the outcome. This is an agreement that we support. I think this result is testimony to effective cooperation between actors in the market, the registrars, between ICANN staff and governments and law enforcement. So it's a case book example, I think, of effective cooperation, focused minds, objectives including addressing a major problem, cybercrime. So I think this is a major step forward in addressing that problem, and that's how I

report it to my minister. So I think it's a great effort. Congratulations to all and appreciate the effort. Thank you.

CYRUS NAMAZI: Thank you very much, sir.

CHAIR DRYDEN: Okay. I see no more requests to ask a question or provide some comments on the RAA. So with that I think we can thank Cyrus, and clearly there is a lot of appreciation for achieving this result after all the effort and work that's gone in over recent years. So I think that's a really positive take-away from the briefing. And thank you for coming to give us such a useful overview of the key components of that RAA and what some of the outstanding issues are or next steps to be taken are. So thank you.

CYRUS NAMAZI: Thank you very much.

CHAIR DRYDEN: So next we can move to the briefing on the new gTLD program more generally. So to my left we have Christine Willett who will provide us with that briefing. So welcome, and over to you.

CHRISTINE WILLETT: Thank you so much for having me here. It's definitely my pleasure to be able to speak to you today. I have been with ICANN nine months now, and I feel very privileged to be shepherding the new gTLD program

through really what's the end of a very long life cycle and timeline of the program.

The Policy Development work that led to the program began -- depending on how you count it back -- in 2006. So far precedes my tenure here at ICANN. So I feel very privileged to be shepherding this phase of the program sort of across the finish line.

In the last several months since the Beijing meeting we have made significant progress for the program. We have been primarily in an initial evaluation stage, the evaluation stage of the applications. And that has progressed very significantly. As of yesterday, Friday, my team has published results for through priority number 1,200 of the applications. So we've released 1,100 initial evaluation results. That's yielded over 1,000 applications having passed initial evaluation. We have had 13 applications identified as eligible for extended evaluation. There have been 49 withdrawn applications out of that first 1,200 prioritized. Three have not been approved, in part based on advice from the GAC. Other applications are on hold and we haven't released results yet because they are still in an evaluation process.

So we anticipate continuing with the initial evaluation process through the end of August and releasing the results for all 1,930 initial applications. In total we have had 97 applications withdraw. Today that leaves us with 833 active applications. So that's what we're working on.

Another significant activity since our Beijing meeting was the objection and dispute resolution work done by the dispute resolution service providers. ICANN staff really simply shepherds and monitors the objection and dispute resolution process. That is not for us to intervene

in those proceedings. We had a total -- the community filed a total of 263 objections that were found admissible and filed. Just in the last few days we had the first resolutions of those proceedings published. Several -- four of the legal rights objections were finalized and published by WIPO this week. So the objection and dispute resolution work continues to be an active area for our providers, and we are keeping a close eye on that.

We just -- starting on July 3rd we initiating the contracting process with applicants through priority number 50 who were eligible to proceed to contracting. So 31 applications received, what we are calling a contracting information request. So they were invited to submit documentation to proceed into contracting. I'm sure Cyrus probably spoke of some of the upcoming activity. So we're working with those applicants to move towards contract signing as quickly as possible, for those interested and who meet all of the criteria to sign registry agreements. Our intention is to continue to fill our pipeline with contracting requests, so to invite applicants to participate in the contracting process in the coming weeks, based on the capacity of the team as well as considering all of the many other issues that are still being discussed at the present time around security and stability. So pending the outcomes of that work we will continue to invite applicants into the contracting process.

As we look ahead to extended evaluation, we do have some applicants who are eligible for extended evaluation. We expect to expedite the timing for extended evaluation so that we can move those applicants through extended evaluation in the most timely and efficient manner. Hopefully by the end of the year is our plan.

I've also been shepherding a number of projects around rights protection mechanisms, our trade mark clearinghouse, our URS system, Uniform Rapid Suspension service, as well as a number of other operational support mechanisms, namely our SLA monitoring capabilities and our EBERO capabilities that are part of the new gTLD program. I'm pleased to say that those programs, those projects continue to be on time and we expect they will be operationally ready by the time we delegate the first new gTLD later this summer or early fall. So that would be the overall update for the program, and I welcome questions.

CHAIR DRYDEN:

Thank you very much. So that's quite a bit of data to take in. Thank you for providing some of the -- the key numbers involved in the applications and where they are in the process. Are there any questions for -- for staff on this about the program generally and the timelines or key decision points that are involved with that? Questions, comments. Okay. I saw Pakistan, please.

PAKISTAN:

Thank you for sharing statistics regarding gTLD applications. My question is that you said that three applications were withdrawn on GAC advice. How many advice GAC sent to be withdrawn, in total numbers?

CHRISTINE WILLETT:

So I apologize. The total number withdrawn applications are 97. Three applications have been in the status of not approved. Two of those

were based on GAC advice. The dotAfrica application, the dot GCC application. Those were two of those three.

PAKISTAN: Sorry. My question is then how GAC advice that these are objectionable or controversial, how many numbers are there?

CHRISTINE WILLETT: If I understand the question, you're asking, out of the GAC advice how many drove the withdrawals from the program.

PAKISTAN: Yeah, yes.

CHRISTINE WILLETT: If I understand the question, you're asking out of the GAC advice, how many drove the withdrawals from the program.

I don't have that number. That's a great statistic. Let me see if I can gather that number for you.

CHAIR DRYDEN: Thank you for that question.

Okay. Are there any others around the table?

Spain? Yes?

SPAIN:

Hello, thank you very much for your presentation.

I have a question regarding the trademark clearinghouse. The trademark right holders will have to renew their interest in having their names protected as far as I understand, I think on a yearly basis. But at the same time, and this is my question, will the trademark clearinghouse be in place forever or just during the sunrise period?

Thank you.

CHRISTINE WILLETT:

Thank you very much for the question. So rights holders are able to register their trademarks in the trademark clearinghouse for a period of one to -- one through five years. One, three or five years I believe is the increment. So those marks will be in the trademark clearinghouse based on how long -- and they are renewable. So even if you register for one year, you can renew that trademark in the clearinghouse.

The trademark clearinghouse will exist through not only the sunrise periods but also the claims periods for all new gTLDs. So it's a mechanism that is prescribed by the program. So the claims period is now 90 days for new gTLDs at a minimum. So the clearinghouse will be around through the sunrise and the claims periods for all new gTLDs.

CHAIR DRYDEN:

Thank you for that response.

Okay. I don't see any further requests to ask a question or comment. So at this point, I will thank both Christine Willett and, again, Cyrus for coming to brief us today. It's much appreciated, and I'm confident that

if we identify further questions for you that we can provide those to you later on and seek your further guidance on those.

So thank you both. And for the GAC, we now have a coffee break. So let's take 30 minutes. I know we're running behind, but I think we can manage. So 30 minutes. Thanks.

(Coffee Break).