

Transcription ICANN Beijing Meeting

Registrars/Registries meeting

Tuesday 9 April 2013 at 16:00 local time

Keith Drazek: You're not used to the new room. So the registries formed a sub-group or a negotiating team, met with ICANN staff legal this morning, also with Fadi and (Cyrus).

Matt Serlin: Sorry to interrupt. Could you just make a short announcement of what portion of the meeting this is? Just for your transcript, please.

Keith Drazek: Yeah, so...

Matt Serlin: Thank you.

Keith Drazek: This is the joint session between registries and registrars stakeholder groups. Okay, so we met this morning with ICANN staff. Fadi was there for most of the meeting. (Cyrus) sort of chaired the meeting from ICANN's side. ICANN leadership was there.

We went through sort of really initial preliminary discussions about the new language for the registry agreement, the new gTLD registry agreement. You know, the red line that we are reviewing now was posted on April 1. There have been subsequent developments specifically around what's now being called the extraordinary amendment process that you all are intimately familiar with.

The group this morning, working with ICANN staff, basically identified, say, nine or ten issues that they need to work through, negotiate out or negotiate forward. The biggest issue, I think, remaining probably is around the

amendment process; some questions about dispute resolution process. But they don't need to get into the details there.

We have committed to work constructively with ICANN staff on this issue, move this forward, and to, you know, try to reach a formative of an agreement that's acceptable or palatable, or something we can live with.

That same group is meeting again tomorrow morning from 7:00 to 9:00 -- or well, at 7 o'clock, I should say -- at 7:00. The registries are meeting at 7:00 to discuss it further, and we'll probably get back with ICANN at the end of that session. Let me stop there and kick it over to Jeff; see if Jeff has anything he'd like to add.

Jeffrey Neuman: Yeah, I think so. Oh, sorry. We - all right. Hold on. Just - we got remote participants. Make sure you state your name before you start. Jeffrey Neuman.

Keith Drazek: So this is Keith Drazek, chair of the registry stakeholder group. I just finished and now I'm kicking it over to Jeff Neuman.

Jeffrey Neuman: This is Jeff Neuman. I'm taking the mic from Keith Drazek, and will be speaking. Sorry, it's the end of the day. Yeah, so we discussed a number of issues that we have, as Keith said.

Number 1, like he said, you're familiar with. There's a few unique ones that are uniquely in the registry agreement, such as - well actually subcontract wasn't. Its code of conduct is one that I know is probably of interest that we're discussing.

And also the PIC dispute resolution policy (PICDRP), which has just been out there not for very long, that we have to comment on. And obviously not wanting everyone in the world to be able to file claims against a registry and

have it actually moved more into a compliance function of ICANN, as opposed to a third-party action.

Yeah, it's going well. You know, discussion with the Board -- they understand and they made a statement that if the registries are not ready to move forward with it, that's obviously - they're looking for Fadi to report that back to the Board if they do meet on April 20. Well I think they will, at least for the registrar agreement.

But with respect to the registry agreement, if Fadi indicates to them that it does not have the support of the registries, however that's determined, they won't move forward with that.

Matt SerlinMatt Serlin: Thanks, guys.

Keith Drazek: Okay, any questions? Anyone want to add any clarification? Jeff, go ahead.

Jeffrey Neuman: Yeah, not on the registry agreement, but on the registrar accreditation agreement, there's a motion in the GNSO Council, and that was proposed by Wendy, I believe. We had discussed it this weekend, and I know Volker had suggested maybe some other language.

But I think with intervening events and the fact that you guys are so close, that I would think that there's probably no need for the alternate language. And I'm assuming that we would not vote in favor of this motion; that we would essentially try to get them to withdraw it. Is that right?

Matt Serlin: Yeah, so let's - yeah, start it, Keith, because I have (Mason) if you want to go ahead. And, Volker, I don't know if you have anything, but I'll let (Mason) go. (Mason)?

Mason Cole: Yeah, that was the next item on the agenda list to talk about; talk about motions. Sorry. So, yes, generally what you're saying is correct. I don't think we're in a position to support that. We have a couple of procedural options.

One is we can ask for a deferral and just not deal with it this week. The other is we can let it come to a vote. But I don't see that there's any support on the contracted party side for that motion, or for the other one for that matter.

Matt Serlin: Okay, I'm sorry. Volker, go ahead.

Volker Greimann: Yeah, I see the merits of the motion and I support the spirit that's behind it. But as you correctly said, the recent events have overtaken this motion. And while it could be redrafted to be workable, I don't think the original purpose still applies in this case.

So it would only be the Council sending a message, and I think that message has already been turned in various conversations that we had over the weekend. So for this motion, I think the need is not there anymore.

Jeffrey Neuman: This is Jeff Neuman again. I think if it does, if we're not able to convince them to withdraw it, I think a deferral's just not - I mean we're ready to vote on it, so a deferral's kind of - but if we do, we're probably going to need to offer an explanation, because I think the people that suggested it actually probably believe that it's in our benefit. So they're going to be a little puzzled.

How - I know this is being transcribed, but how direct do we want to be? I mean there are two problems with the motion. One was - or there's one really big problem with the motion.

(Unintelligible) was okay, but it seemed to end with a statement basically implying that the GNSO has a role in approving the registrar agreements. And so do we wait for that? Or not even tackle it? Or do we just be direct and...

Matt Serlin: Yeah, so (Mason)'s going to queue-jump over Michele and respond directly to that. Go ahead, (Mason).

Mason Cole: The answer's yes. We feel exactly that way and we brought it up on the - over the weekend. So using that as part of our statement won't come as any surprise to the Council.

Matt Serlin: Michele, go ahead.

Michele Neylon: Thanks, (Myles). No, I mean Jeff's point is well made and it's important. You know, if other members of the community are putting forward motions because they feel that, you know, the multi-stakeholder process is being circumvented or they want to do something in support of us, even though events may have changed to move forward, we should do our best to make sure that that is addressed, it is acknowledged.

Because I mean for God's sake, when I came into this circus, half the bloody time the IPC, the (BC), the ALAC, the NCUC, the NCSG, the registry, the registrar, and all the other bloody alphabet soup (unintelligible) -- everybody was fighting with everybody else. I mean it's nice to see that sometimes they can actually have proper conversations and act like adults, not like a bunch of squabbling kids.

So I think, you know, this is something we should welcome and try to work towards, because the idea from some parts of the community that, you know, registrars and registries -- in other words, contracted parties -- that we don't or can't kind of possibly understand the issues faced by registrants or end users, I find, at the best of times, quite disingenuous when reality is that, you know, they're our customers.

Matt Serlin: Yeah, go ahead.

Keith Drazek: I was actually going to switch gears a little bit. Still talking about the registrar accreditation agreement, but more specifically on the public comment period that's open, and whether there's anything you'd like the registries to consider submitting. But if we're still talking about the motion, then I'll hold off.

Matt Serlin: Yeah, I think Volker had a point on the motion. Go ahead, Volker.

Volker Greimann: Just as an idea to try to build bridges there, I had written an alternative version that is being circulated among registrars, which would have been acceptable to us.

I simply don't know if you'll need it there anymore, but we can still try to get them to amend the motion to the version that I have prepared, and then table it under the argument that we want to see how the negotiations finish up. And if there's a need for it, we can still discuss it at the next meeting over the phone.

Jeffrey Neuman: This is Jeff Neuman. We should probably talk to the proposers offline about this; see what they want to do.

Matt Serlin: Yeah, agreed. We can get - there's a couple other motions we should get back to. But, Keith, to your point, that's a good question actually in terms of public comment. And, you know, off the top of my head, I don't know. I'll see if (James) or (Jeff) or any other members of the negotiating team have any other input. But yeah, (Jeff), go ahead.

Jeffrey Neuman: Thanks. I think just, you know, on the comment, because I think one of the items that we heard in the session yesterday and, you know, you always hear people say, "Oh, I submitted comments and it's not in the agreement, so the process is broken or my comments weren't listened to."

I think just the reinforcement that people outside of the contracted parties should not have, you know, should not have a seat at the table in discussing a contract, and there were other processes to get input from those people.

But I think, you know, I'm not going to say, hey, write something commending us. But, you know, saying that, hey, these guys worked hard. We took input and the right parties were involved in that process, and we believe that that is how some of that process should work when it comes to a contract between ICANN and the registrars.

And, you know, of course you want that for yourself because I think that's important to stress, because people seem to forget it, because we've heard, over the last few days, say, "We don't know why we weren't involved in the negotiation between these two parties. We should have had a seat at the table."

Matt Serlin: Thank, Jeff. Yeah, Jeff. Other Jeff. Sorry. Neuman.

Jeffrey Neuman: Hi, Jeff Neuman. I completely agree with that sentiment. I think at this point in time, because we're negotiating our agreement, I don't know if we want to file a comment that would incite people to get pissed off at us -- excuse my language, sorry -- get mad at us and then just have them take it out on our negotiations.

So while I agree with those sentiments, I'm okay with filing comments completely supporting the agreement and saying we think it strikes the right balance. But to go any further than that might backfire on us and on our negotiations.

Matt Serlin: Yeah, no, I mean I'm obviously sensitive to the dynamics that are going on. So we can take it offline and talk about it and, you know, see how the week progresses, I suppose. See where it makes sense to be. Yeah, anything else

on the (unintelligible)? I think we can move on to the Council. (James), go ahead.

James Bladel: Not on the RAA and not necessarily part of your RA, but at some point we're going to have to discuss our RAs and how those are going to look. I think those, you know, between these two groups we need to open those conversations.

Matt Serlin: Yeah. So I know - so some of us have already started this discussion within - give a little plug to the (NTAG). And (Statton) actually has been - is he here? I know he's on. There he is.

(Statton): Hi.

Matt Serlin: (Statton) has been leading an effort with a bunch of people on the (NTAG) to work on kind of a model RAA, to make it at least look similar in a lot of the TLDs. And so maybe it's a good idea to bring - once that group has kind of gotten its - it's still in its kind of formative and beginning stages. But once that group's kind of progressed, it's probably a good idea to bring them together with the registrars.

Matt Serlin: One more follow-up question, comment, is that I posed this question in the negotiation sessions and earlier to this group, and it seems like now ICANN is -- through (Cyrus) -- is starting to - the ball is rolling downhill and I wanted to raise the issue with the registries and (NTAG) as well.

There is so much operational and development work coming down the pipeline, whether you look at just the new policies that are going to be implemented -- the RAA, the RA and the trademark clearinghouse, as well as just the, you know, the abstract of adding all these new gTLDs.

So I'm trying to build momentum for this idea that sometime after Durban but before we get too far into the autumn, that there be some sort of a summit

that's not necessarily policy-focused, but it's kind of how do we make all this stuff come true.

You know, right now we've developed a lot of words on papers and (unintelligible)s and things, but somebody's going to have to sit down and write code and develop procedures. And some of it may be seen as competitive differentiators, and that's fine and that's off the table.

But some of it, you know, isn't, and I think might benefit from a group discussion. Would that be something that registries and (NTAG) would want to be a party to as well?

Matt Serlin: Well we think it would be great if GoDaddy would sponsor it. That would be fantastic.

Matt Serlin: We're going to do it like in August. You want to come to Phoenix?

Matt Serlin: August in Phoenix.

Matt Serlin: No, ICANN was actually talking about helping out here, either at their office or at a venue close by. So we're talking, you know, I mean all this stuff is just really in the, you know, germination phase here. But we're thinking that this is - something like this has to happen. It's just way too much stuff coming down the pipeline in a very short period of time.

Keith Drazek: Yeah, this is Keith. I think that's a great idea.

Matt Serlin: Okay, great. Sorry, (John). Is that a thumbs up that you're good or that you want in the queue?

Matt Serlin: (Unintelligible).

Man: Cool. Thank you. Okay, I think let's move over to the other GNSO motions. And I think (Mason) - sorry, Jonathan.

Matt Serlin: Great. We got - yeah. We're making (unintelligible) work today. He's been running around.

Jonathan Robinson: Hello? Hello? Hi, it's Jonathan Robinson. Two things. One, I mean actually it strikes me (unintelligible) comment. But I think the last time we tried to do something like that was the trademark clearinghouse. So we need to be careful what we wish for, but that's on the implementation side.

But on the motions, just to be clear, we've discussed one. There is one more, and that's it. There are no others. Okay, so we only have the one, is the one from Maria Farrell, which I think is a work in progress. So it looks like that may change, but we don't have any firm indication of how it has changed at this stage.

Matt Serlin: Thanks, Jonathan. (Unintelligible)?

Matt Serlin: Yeah, I just wanted to say what a smashing success that was, by the way, compared to the original spec that was put out by, if you remember, (unintelligible).

Matt Serlin: Okay, I've got (Mason) and Stephane. (Mason)?

Mason Cole: I was just going to introduce what the motion was about. In essence, what Maria's upset about is the policy versus implementation decision made by (unintelligible) or staff at some level. And the motion asks the Board to reconsider the course of action on that decision, and not implement the trademark plus 50 additional terms until the GNSO votes in favor of it.

Matt Serlin: Stephane?

Stephane Van Gelder: Thanks, (Matt). This is Stephane Van Gelder. Just maybe a bit more context on this that might be useful to you, Jonathan, as well. We feel, the registrars, that the motion itself as drafted would be difficult. But the message might be worthwhile pursuing, so we have had discussions with the NCSG on this.

It may be (unintelligible) announce things that I haven't had confirmation of, but it may be that the motion will be rephrased more as a statement than just a motion asking for the Board, as (Mason) has described, asking for the Board to take a position on something that they really have no business taking a position on.

Now I've kind of lost track of what the GNSO Council is doing. I apologize. But I believe you have sent or have decided to send recently a statement to Fadi anyway. So one of the questions we had for the NCSG is how much overlap there might be between a statement that you might have already formed and one that might get re-sent, asking basically for similar things. So perhaps there can be some clarity.

About it for that, but this is something that we are discussing with them just to try and make sure that the NCSG doesn't feel that every time they propose something, (unintelligible) maybe finish there, we just directly oppose it as contracted parties. We feel that it's (unintelligible) building bridges there and making sure that there is a good working relationship with that side of the house.

Matt Serlin: I can respond to that, Stephane. Number one, I agree with you that that approach is healthy. We don't want to just, you know, kick out any motion automatically. The status of communication about the strawman proposals is that Fadi requested that the GNSO provide policy advice by the end of February, which we did in a letter that the majority of the Council -- not all of it, it's not unanimous -- but the majority of the Council supported.

And the position on trademark plus 50 was that the Council viewed that as policy, and it deserved Council attention if it were to be implemented. The others, I think, pretty much the decisions made about the other ones by staff followed GNSO's way of thinking about whether they were policy or implementation.

Matt Serlin: Okay, I think Jeff Neuman had a comment.

Jeffrey Neuman: Yes, thanks. This is Jeff Neuman. The way the motion's drafted is really inflammatory. I mean there's just a bunch of language in there that's just kind of poking Fadi and just bashing him, which I don't think is the right tact.

But that said, I think we are ready to have a conversation during the Council meeting kind of supporting a couple things. Number one is that - and we said this to the Board actually directly.

And, Stephane, you may have been - it maybe have been towards the end, where we basically said that, look, the GNSO is the policy development body. It is not a policy development body in ICANN. It is the policy development body at ICANN with respect to gTLD policy.

And so that being the case, if any other agency or anything outside the GNSO -- whether it's the GAC, the ALAC, the IPC -- separately lobbying them, anyone comes directly to the Board, if the Board is thinking about going in a direction that is not consistent with the advice given by the GNSO, then the Board should have an obligation to come back to the GNSO to get at least, at the very least, its response, and a recognition that the GNSO is the policy development body.

And I think that's going to rear its ugly head with GAC advice this week again. And so I think - again I think we support the notion of the non-commercials in the sense that we are the policy making body. And if we say something is policy, at the very least, even if you disagree, Board or staff, you need to

come back to us, the GNSO community, for our response, reply, explanation -- you name it.

And so I think that's one thing we take away from the motion. And then on an implementation level, one of the points we want to make -- and it was raised by actually Jon Nevitt -- was, you know, we thought that the extension of 60 to 90 days may have been a policy matter.

And not only did the Board kind of just do it anyway, but with the release of the ICANN fees that they're charging for the clearinghouse, not only do we have an extra 30 days of claims, but now with 30 cents a transaction, they've now increased our costs without ever coming back to us to kind of either defray those costs.

Does that make sense? We have 30 days extra of costs that we didn't have before. So I don't know if (John) wants to restate it, but that's basically it. So those are a couple of points we wanted to make during that discussion.

Stephane Van Gelder: Yes, yeah, thanks. Stephane Van Gelder again. I just want to - I was in that discussion when you made that point, and you made it very eloquently. You made, I think, a very important point. Thank you for making it to the Board.

It's expecting - we're going from a specific point, but it's a general point that we should be going to. And this is why, I think, we should be speaking to the NCSG.

I agree with you, and this is what we were saying earlier on, that the motion itself is not the way - it's not drafted the way you'd like to see it drafted now -- have the idea this constant bashing of the model, which means that the GNSO, being the policy development manager, the manager of that process, it's constantly overruled by people going through whatever -- the GAC or someone else.

And there's never an end to the conversation. You can always reopen anything that's been said. This is what you said to the Board, and I think that message did get across. Those conversations are never closed. And until and unless the GNSO Council is made the full stop in the management of that policy making, then that will never happen. And I believe that's the NCSG's message.

So I believe the essence of that message may need to be redrafted in a comment, and this is what (Matlin), myself and others have proposed to them, as maybe an avenue for taking this motion, which could be considered right now just a placeholder for tomorrow's Council meeting, and taking that motion to somewhere where others may be able to side along with it.

Man: Yeah, thanks, Stephane. Oh yeah, (John).

Man: (Unintelligible) and welcome to you. It's fine.

Man: I lost the bet.

Jonathan Robinson: Thanks, (John). It's Jonathan Robinson. Stephane, just to pick up from where you left off, I mean the alternative or a variation on that is that that motion direct the Council to write a letter reinforcing those points.

But I should reiterate that those points have been made directly to the Board in the Council meeting with the Board in the registry stakeholder group meeting with the Board. And my impression is that the Board, and indeed Fadi himself - and I've spoken to individual Board members and to Fadi on this issue.

I think that message has come through very loud and clear during the course of that meeting. There's not a reason why we shouldn't put a full stop under it with a letter or a motion that expresses that. But I'm in no doubt that we have

made that point, and we should be able to do that elegantly and properly without being inflammatory. So thanks very much.

Matt Serlin: Yeah. We are running a little close to the start of the Board/GAC session that we want to try to get to, so any other - I think we've got a pass forward on the motion, and we'll continue that before the Council meeting tomorrow.

The last issue I think we had was to just get a quick update from Chuck. If you could give us an update on the IGO issue and have any discussion on that, and then hopefully we can wrap in a few minutes. Thanks.

Chuck Gomes: Thank you. It probably should be (David), but for the sake of time I'll go ahead, because (David)'s the rep on that group, but we both serve on that group. The registry stakeholder group decided today to support protection.

We already had agreed to support protection of the IGO/INGO - excuse me, the Red Cross/IOC names at the top and second level by finite list provided by the GAC. We expanded that today to support the GAC's list, and we now have a finite list of 192 or so names of IGOs, and they've got some criteria that those match.

(Unintelligible) a finite list, protection at the top and second level, with an exception procedure. And in both cases, it's probably less meaningful for the IGO full names.

And we also, with regard to acronyms of the IGOs, we're not supportive of just protecting acronyms. But we would be supportive -- and this is a suggestion that's come out of the working group -- allowing the IGOs, if they wanted to, to submit their acronyms into the trademark clearinghouse. Probably have to come up with a new name, because they're not trademarks in most cases.

And that would be a means of accommodating the IGOs with regard to acronyms. But we're definitely not supportive of just protecting acronyms at the same level as the full names.

Matt Serlin: Yeah, thanks, Chuck. (Mason), go ahead.

Mason Cole: Chuck, just to make sure I have the facts right, I believe what I read was that the GAC is asking for protection of both the term and the acronym, correct?

Chuck Gomes: Good question, (Mason). I actually - I had to leave the IGO/INGO PDP working group meeting a little bit early, and I had a nice conversation with (Heather). And when you look at their letter, it looks that way.

She tells me they're not - that's not a done issue. My understanding, although I haven't seen the communication - and we may get some insight in this important GAC meeting, because I understand from one of the Board members, he's going to ask some questions in this regard.

The Board is pushing GAC on the acronyms as well. But again, there's an alternative that's on the table at least briefly to provide another way to deal with the acronyms that doesn't just give them the protection that they're asking for.

Mason Cole: All right. Thank you, Chuck.

Matt Serlin: Any other comments on that one? Okay, well I think we've got just about five minutes to get ourselves up to the GAC room, so it was good that we were able to wrap a little bit early and get ourselves there. Thank you to the registry stakeholder group for their time today, their continued dialogue and discussions that we had.

Thank you all for your participation today. Thank you to the staff, the technical folks, the folks that handled the room. And the GAC room is upstairs. It's in

the big room, right? Or no. Oh, it is in B? Okay, yeah. Function B. Thank you, everyone.

Keith Drazek: Thanks for having us.

Matt Serlin: 4:45.

Coordinator: Thank you for calling the digital replay service.

END