

Heather Dryden:

...we have accepted to talk about the cross community Working Group effort; the one on recommendation six, but really to talk about it in the sense of that that was a cross community Working Group and it's an example of such a group and so what does that suggest for the future if we're going to do cross community efforts that are similar to that, what were some of the challenges, and so it's an opportunity for GAC members to comment on that particular aspect. New Zealand, please.

Frank March:

Thank you Heather. Just in opening the discussion I'd like to refer back to the discussion we had earlier with the review group about, and the subsequent discussion that came out of that about the some contributions that the European commission made to that discussion around the nature of representation by individual GAC members and the way that those representatives have to work within their own administrations; the time that that takes and that sort of thing. And this particular Working Group suffered from an additional problem, unlike the one which we have just discussed dealing with the Working Group involved with the (inaudible 0:01:37) and dealing with the re-delegation issues.

This one was called together at very short notice, it was working toward an extremely tight deadline and there were no opportunities whatsoever for mature reflection or detailed consultation within my administration which is pretty slim compared with some around this table. So, it's an atypical example if you will, but I would like to say that in my experience it was extremely well run, and I will say this again in his presence tomorrow afternoon,

Chuck did a wonderful job of Chairing that group, brought some very disparate people together and it gave me an insight into the difficulties of working with the very different groups that make up the GNSO I have to say, and some of the issues they have which are in their own ways difficult as well as we have to deal with, they also represent a soft constituency in one sense or another. And of course, they also have things that perhaps we don't have to the same extent in terms of conflicts of interest problems as well.

So it was an eye opener for me but the point I wanted to make was that first of all it was working towards an extremely tight deadline, there was no opportunity for consultation, and that it does represent the sort of very rapid response I fear that ICANN constituencies and groups are going to be required to come up short term responses to questions in order to make deadlines. And I do think that somehow we need to find a way that the GAC can accommodate itself to that working and I realize the deep contradiction there. I'm not in any way willing to disagree with what Bill had to say earlier, but we do have to think our way through that. Thank you.

Heather Dryden:

Thank you, New Zealand, and I do hope you will raise that when we meet with the GNSO. EU Commission, please.

William Dee:

Thank you and thanks for those comments from New Zealand. I had a question of clarification actually though, I wonder if New Zealand could help with because unfortunately I wasn't able to participate in that Working Group due to, well due to all the other

stuff that we have to do at the GAC and the fact that it fell in the middle of the holiday season in Europe actually, I think in August. But that's by the way, but I did look at the recommendations when they came out and I think I got reassurance in the fact that one of the recommendations was that the sporting organizations and the advisory committees, including the GAC, should be asked to comment.

And I rather foolishly thought because that report had been sent to the Board that the Board would then ask us for advice in some way, it comes back to some of the things we've been talking about in the Joint Working Group. And I think, and this is where I'd like clarification, I think the next thing to happen is the Board considered the recommendations without any input actually from the GAC or other bodies, I mean is that, am I being unfair Frank, or is that what happened because if it did it suggests I misread the situation quite seriously. Thank you.

Frank March:

Thank you, Chair. Yeah, happy to answer that. My view always was, and I'm not sure how that recommendation slipped in quite that way, is that this was a report to the Board, quite clearly was Cross-Constituency Working Group that was working from an extremely tight deadline to get a report into the Board before its retreat in, I forget the exact date, I think it was in very early November.

Heather Dryden:

It was in September.

Frank March: September, right, it was extremely tight. Basically there was no, the opportunity to work was I think about three weeks. There was certainly no opportunity to refer to those groups prior to the meeting of the Board or the Board retreat. My view of it was that being a report to the Board, the GAC should take an interest of what the response of the Board was to that Cross-Constituency Working Group, recognizing that the GAC had not input into it as the GAC and had not had an opportunity to comment on it and given the deadline, I was expecting that there would be a Board response to those recommendations and then the GAC would consider the Boards response in the light of the recommendations and form some opinion. That was my understanding of the process that was to be followed.

Heather Dryden: EU Commission.

William Dee: Yes, thank you. That's very useful, Frank. So that means we're at that stage now where the GAC should consider the recommendations themselves and decide whether we can endorse them or whether we have different views? Is my understanding correct?

Frank March: Well, we're certainly able to do that if we wish. I would suggest that the actual recommendations of the Working Group themselves are what they are, they're not a consensus of any sense of the, they weren't even necessarily a full consensus of the Working Group. Many of them were majority points of view, some of them had very, very significant dissent within the Working Group. But they

were suggestions put forward in order to overcome a number of issues, which the GAC among others had raised, so to point out the same issues had risen from some parts of the GNSO and some parts, particularly ALAC. In fact our position was very, very much aligned with ALAC in terms of the concerns we'd drawn to the Board as notice, in terms of asking for a Cross-Constituency Working Group. So it's not the recommendations themselves I think that matter, we can certainly consider those, it is the Board response that is the key issue in my view. Thank you.

Heather Dryden:

Thank you, New Zealand. United Kingdom.

Mark Carvel:

Thanks. I think, Frank, you've very helpfully circulated the report to the GAC list yeah? When was that, was that...shortly after it was available. So I think one point we ought to bear in mind is what is the purpose of circulating it? I mean there was the opportunity then for GAC representatives to shout if this was totally off beam and not going in the right direction. I don't recall any response as a result of circulation. I'm not saying that that should be a substitute for a full blown discussion, but I think it's perhaps significant as a commendation of this group's hard work that it didn't ring alarm bells for many of the GAC reps who would have had the opportunity to look at it. So I'll just throw that in as a touch, Suzanne is shaking her head, I don't know if that's in agreement with me or... Anyway, I'll just make that point, thanks.

Heather Dryden:

Thank you UK, now over to the United States to disagree and then after that we have New Zealand again and EU Commission.

Suzanne Sene:

Thank you, Heather. I did want to sort of agree with Frank's assessment and that is, in fact a message, Mark, that he included in his email when he circulated the report that it probably was not for us to comment on the report, which was on its way as he sent it to the Board. It was for us to comment on the Board's response. So I think we've all been waiting for the Board's response as a far more sort of significant position for us to be reacting to. And it does strike me that maybe this is something else that we need to think about as we plan ahead for the next series of meetings because I know this is not Max's arena, but it would be useful if we have access to ICANN policy staff to perhaps come in and brief us on where things stand, things like this, you know where is it in the process.

My understanding is that staff has been interacting, I believe, with the Working Group to follow up with some questions, but it's all still a work in process. So I actually concurred with Frank's assessment, thought that it was very good judgment, and had been sitting back and waiting to see what the Board's position would be and then we could weigh in at that point and give some, that's where the added value would be as to whether that was consistent with GAC advice, because the GAC has actually taken a fairly strong position on the issue of morality in public order and the objection process that was developed around it.

So our issue still remains outstanding, several issue that we've already gone on the record, so we haven't really had... Well no,

let me amend that, we haven't seen the Board's response to the Rec 6 Working Group, and we have had a bit of a response, not to the totality, some response in the Peter Dengate Thrush letter to the GAC on some of our concerns. So I think that it is still a work in process and so I think it is still at play.

And then to go to the larger issue, not the substance of that particular Working Group or the recommendations themselves, but as we prepare for the exchange with the GNSO I think Frank you're probably right, we might want to walk through just so the entire membership understands what the constraints are on government representatives in participating in that kind of an exercise. I did try to keep up, but I confess I found it impossible to keep up with the numbers of emails that were flying back and forth, the number of doodle polls, and the number of conference calls because again I'm not in a position to participate in my personal capacity. So whatever intervention I would have made would need to be an official position, but there were a lot of shifting thoughts and shifting sands and a lot of debating going on.

I thought the exercise was very constructive and kind of likened it in my mind to what we do sometimes in my agency, and sometimes with other agencies, is brain storming. Tossing ideas around and trying to find options and suggestions for ways forward. So that is always constructive and the more minds that you can throw at something normally the better off you're going to be at the end. But that at some point if we continue with such Working Groups, I think that there will continue to be a problem

for GAC representatives. Certainly, I can just speak for myself, that I will have a problem meeting those kinds of deadlines with that kind of a format. So if we could explore maybe how to use that approach from a brain storming perspective without that kind of short deadline, what could be very useful. So that maybe a first step with the GNSO, is to explain what the constraints are and then to perhaps suggest that we explore using this at an earlier stage in a policy development process, possibly. Thank you.

Heather Dryden:

Thank you, United States. I do know that different parts of the ICANN community reacted differently to the report. For example, the ALAC, subsequent to the finalization of the report, issued a statement on what was contained in the report, in the time the GAC was apparently waiting for the Board's response first. What has been happening, and correct me if I'm mistaken Frank, is that following the Board resolution related to this topic staff has outreached to the Working Group first to do a call and on that call to sort of compare notes on how staff understood what was contained in that report and what the Working Groups understood what was contained in that report. And there were some areas where there was misunderstanding and so perhaps improvement can be made on those particular issues.

There is also going to be a session tomorrow at 5:30 that's going to be part of a workshop on this topic and they've invited the various Chairs to be on the panel. And as Frank was leading this effort for the GAC, I asked him whether he would participate. So there is going to be a session. It was moved to Monday, it was originally

going to be held when the GAC was in session, and so we and other parts of the community asked for it to be held on Monday when more people would be able to attend. So it might be worthwhile going to that session and expressing your views if there's an opportunity there.

Okay, so moving on I have New Zealand and EU Commission.

Frank March:

Thanks. And I apologize again for, I think there's just a couple of points I'd like to emphasize that came out of that. One was that ALAC could comment because they actually vote on stuff and of course the GAC doesn't and it didn't seem to me to be any possibility at all of getting any sort of consensus view from the GAC in time for that meeting within the constraints of operating, in fact ALAC had enormous problems doing it even though they have quite established processes for making decisions (inaudible 0:16:31).

Second point is that it seemed to me, and I'll be making this point tomorrow and of course it's open to violent, well hopefully not violent but perhaps vigorous disagreement on the part of other members of the GAC. But the particular issues that seemed to me that the GAC drew to the Board's attention in asking for such a Working Group to consider, in fact were tackled by the Working Group very constructively. In particular the responsibility of the Board for example for its decision making, which could not be opted out of, and the impossibility of having some sort of international jury to make those decisions of behalf of the Board

was well and truly canvassed within that group and fully accepted by it. In fact it was one of the strongest supported recommendations of the group. So it seemed to me that it did look at the issues the GAC raised, it raised a whole lot of other issues as well because of the nature of the group. So there's plenty of room for disagreement with some of its recommendations. Things like certain majority decisions of the Board and a whole host of other, what in my view are red herrings.

I'd just like to comment very quickly on what Suzanne said about the working methods. They were impossible. The sessions were, for me, often in the middle of the night, but I have to say that there were some things about the way that it ran that the GAC could pick up on in terms of its indecisional meetings. There were lessons to be learned from the way that was handled that the GAC could benefit from. And I'd like to discuss those at some point with you Heather and perhaps with Max about how we can get that level of support through ICANN for the way that these meetings are conducted. And there were some extremely useful online tools, for example for speaking, that I miss greatly at our last conference call because I didn't get a word in, whereas in fact within that Working Group I was able to speak as and when I needed to very simply. So thank you.

Heather Dryden:

Thank you, New Zealand. EU Commission.

William Dee:

Yes, thank you and thank you for the clarification again. I forgot to thank Frank actually on behalf of all of us for making the effort

to participate in that group; it's important that we do have colleagues amongst us actually prepared to make that kind of commitment. I, like Suzanne, I did actually try following that in the beginning but I've got a day job you know. It was ridiculous. My mailbox was getting full of emails and I couldn't deal with it at all.

I have to say just in response to the UK's point actually that I'm, unfortunately my silence wasn't an indication that I didn't have a problem with the recommendations, it was my misreading. And I apologize for that. I opened the document and it said that recommendation is that the GAC will have a chance to react to this or comment on it and I thought great, I'll do that when we get asked to do it. So I think there was a problem with communication there, but my bigger concern, and I'm sure that people are going to reassure me that that's not true, is that the Board may have had the impression that the GAC didn't have any problems with the document or that we'd endorsed it.

Now I'm not saying I have anything I want to raise here, but it's a question of procedure actually. And it seemed to me to be a fairly rapid process and we have a long history of discussion in this committee about confusion and problems with communication and I think that is my concern now is that I certainly got confused and I'm an experienced GAC member actually and I've seen most of the ways we work and that one threw me.

So we need to be careful I think and have a bit of discipline about these kinds of things. Perhaps, if necessary making a case to the Board that the GAC didn't endorse those recommendations. Just perhaps a stupid question, Frank you said that we should, and I'm happy to go along with this because this sounds very sensible, but we should now concentrate on the response of the Board to the recommendations. What was the response to the Board? Is the problem that there hasn't been one or...there hasn't been one? Okay, just for clarity, that's I'm sorry I'm not following this terribly well. I've been focusing on other issues, but that's the situation is it, that there hasn't been a response?

Frank March:

Yes, actually Heather is probably in a better position to answer this than I am since she actually attends the Board meetings, but my impression is that what we've had back is a load of cobblers frankly, to coin a phrase. For those that need a translation, there are less complimentary words that rhyme with rubbish that could be applied to the Board response so far.

Heather Dryden:

Thank you, New Zealand. It's quite possible that the Board would describe its response in terms of the tasking to staff to go back to the Working Group and try to establish or improve understanding on some of the issues so that more from the report could be integrated into the applicant guide book. So that may be what they tell you if asked. And another point that I think is useful that relates to discussions we've had already here is the fact about the bylaws that a cross community Working Group doesn't exist within the bylaws. So the Board I think understands quite clearly

that in this particular case it didn't have that standing and I don't believe the Board at all considered it to be with the endorsement of the GAC, in fact it was I think made clear that it didn't, it couldn't; so if that's helpful.

And I have a request from Italy for the floor and UK and Brazil, and then if we can let's move maybe to talk about new gTLDs and what we would like to raise with the GNSO, I think that's probably the other major issue that we would like to address with them. Okay, so Italy.

Stefano Trumpy:

So if we are going to mention this Working Group report we should take note of this very useful exercise and thank the GAC members that gave their contribution because to endorse I think is not something that we are able to evaluate. In any case I'm saying only this, that it took me the time of running 2000 miles in the Atlantic Ocean in the plane to read and to appreciate a lot there is an enormous amount of information that is very interesting in that. But then end of this study is leaving open different options and so it is not something that is giving specific advice what to do to the Board. And so the Board as you say will perhaps give to the staff and instruct the staff to try to reach some proposal among the different options. In the end it was real interesting to see the report and I'm among also those that didn't read the hundreds of thousands of emails that were transmitted to the GAC last month. Thank you.

Heather Dryden:

Thank you, Italy. UK.

Mark Carvel:

Thanks. Just coming back to my point about the document being on the GAC list, I took part in some of the, well a mere fraction of the time really that Frank put in, I did take part in a few of the Working Groups calls, it was very difficult and unsocial hours and long hours, they were very long calls, but that's a reflection of how rich the exchanges were. But my point is, especially for people who have been involved in something, an important initiative like this, and then there's silence on the GAC list. I thought it was a bit disappointing. If you have a reaction to something why not put it on the GAC list because then that does generate awareness and triggers useful exchanges and so on. So that was the only point I was making in terms of if there was something completely wrong with the approach then an alarm bell could be rung. That's the only point I was trying to make really. Thanks.

Heather Dryden:

Thank you, UK. Brazil.

Jose V C Hansem:

Just a clarification in order to see if I'm misreading the document, but when we ask ourselves whether it's clear or not to the Board that we need further discussion in that and I want to remember the your letter Heather from November 22 and when we state that the GAC will be interested in Board's views of the recommendations content in the report of the group, the cross constituency group, and that the GAC believes its necessary that further discussion and development of string review process and so on. We need final discussion on that. So, I believe this would be part of the discussions we will have with the Board today and the further

discussion we expect to have I think it's clear the message that we need extra time in order to react to the report. Just a clarification, thanks.

Heather Dryden:

When we meet with the Board later this week, with meet with the GNSO this afternoon, but in terms of setting the agenda for the board, it's certainly something we can put on. And we are anticipating as part of our communication regarding new gTLDs this week, drafting something as a Working Group, which I can remind you meets tomorrow from 11-12, and if we're going to detail remaining issues and so on, then it seems quite appropriate to include a reference to that issue and what the GAC expects or seeking clarification from the Board on that. Does that answer your question?

Jose V C Hansem:

Yes, this will also be part of the job tomorrow we have when the drafting exercise, thank you.

Heather Dryden:

Alright. So, that's that issue. With the GNSO I suspect we do want to raise with them new gTLDs. We may get asked for our review regarding the final draft applicant guidebook and we can draw on comments already made when we discussed this yesterday and I can leave it to colleagues to jump in, in that discussion with the GNSO. Is there anything particular that GAC members would like to identify now in preparation for that? Alternatively we can just do it at the meeting and have a quick break before they arrive at 5:00. I see nodding from one of the smokers in the group around that. EU Commission.

William Dee: Yeah, sorry I hesitate to take the microphone again, but can we reverse that question and ask them whether they're happy actually with DAG 5 because of course they made policy, but this is being implemented by the staff and it's a diverse community GNSO, I'd be interested to know what their views are on the current draft applicant guidebook. On other words give them the work actually instead of us having to do it all. Thank you.

Heather Dryden: Absolutely. Fine. Okay, let's ask them. Alright. So are we agreed that those are our two main topics? United States.

Suzanne Sene: Apologies to take time away from everybody's break, including my own, but I wonder this may not be the right meeting to do it but at some point we might want to alert the GNSO to some of the suggestions and proposals we are considering in light of the Joint Working Group report and the Accountability and Transparency Review Team, this issue of how is it you would get GAC input earlier on in a policy development process and just maybe put that out there that we might benefit from a further exchange on that very issue.

How would they respond to a change in the bylaws that would sort of suggest that they would need to tell the Board how they took our views into account for example? And we may get a resounding negative response that would suggest that that might not be a good way forward; something along those lines. And again with only

hour we may not have that kind of time, but I just wanted to flag that as a possible future subject. Thank you.

Heather Dryden:

Yeah, we could certainly just flag that this afternoon and let them know that this is what we're going to be looking at as part of the Joint Working Group. So the GNSO will be here at 4:00 and so let's, oh, 5:00 thank you. It's the end of the day. Alright, so 5:00, please be back in the room. See you then, thanks.

[End of Transcript]