

**ICANN Dakar Meeting
GAC/Reserved Names TRANSCRIPTION
Sunday 23rd June 2011 at 09:30 local**

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Coordinator: The recordings have started.

Stephane Van Gelder: Thank you.

So one of the waves that came out of that discussion yesterday was that we might want to look at doing something that wouldn't be called a working group but would be a joint group with the GAC to look at this issue and how we could take it forward.

One of the ideas that came out of yesterday's discussion was to almost go back to a task force kind of model on this. And that's where we left off yesterday.

So let me open this up once again for discussion -- and with a reminder that the aim is for us to try and prepare a way forward that we can then discuss with the GAC when we meet with them later on this afternoon.

So if anyone has any comments, please make them. Jeff, get on the (unintelligible).

Yes?

Jeff Neuman: (unintelligible).

Stephane Van Gelder: (Jeff)'s just going to say something to pass the time.

Jeff Neuman: Good morning.

Yes - no, I - so I think yesterday we talked about a mechanism and then we floated some ideas here. And the approach that we were going to take with the GAC -- and I'm just reading some of my notes here -- was to see if there was some sort of group -- whatever we call it -- to just work collaboratively to get their input on.

But there were some questions that were raised, or some issues raised here as to when you're asking for it on the reserved names lists, you know, is it - is it like the reserved name for the word example -- in which case, it would be something that could never be removed from the reserve names list.

Or was is something more akin to the reservation of a two-letter country code, where you can basically petition -- or the registry operator can petition the right to have the name removed.

And I think what it says in the context -- and I was just looking this up -- it says there that the registry operator may propose release of these reservations based on - based on its' implementation of measures to

avoid confusion with the corresponding country code -- that would be for the release of the two characters.

And I think later on it goes on to state that if you want release, that you'll - or I should say for country and territory names, those are reserved. But it says, provided that the reservation of specific country and territory names may be released to the extent that registry operator reaches agreement with the applicable government provides us further that - I'm sorry, I'm just scrolling down here -- provided further that the registry operator may also propose release of these reservations, subject to review by ITN's Government Advisory committee and approval by ICANN.

So there's a couple different types that are reserve names that this could fall into. You know, yesterday we also talked about should we distinguish based on the, you know, there is - there is one set of names toward the Olympic committee, there is one set of names that are reserved for the Red Cross and we - I don't think we finished that discussion.

So I think those are some of the items that we should talk about now and the - and what the approach is to bring this up with the Government - with the - with the GAC.

Stephane Van Gelder: Thanks, Jeff.

Anyone want to comment? I mean, the aim really clearly is to also use this time to prepare this specific topic for our discussion with the GAC this afternoon.

I mean, if we are to move forward and propose a kind of joint whatever, then we as a council need to be sure that we're all on the same page.

You'll remember that Jeff volunteered to lead this effort. I've not had time to send this to the council yet, but Zahid also volunteered - or sent an email. I forget. You sent it to the council - just me. Just me.

Okay, so Zahid sent an email volunteering for the group as well. So the group seems to exist already, so we just have to find the name for the entity.

But if we move towards that model, then we can perhaps let Jeff -- if he's going to lead this effort -- introduce that kind of notion with the GAC this afternoon when we talk about it.

And once again, the understanding that I had from my notes from yesterday was that we would be very much in open hand kind of mode, but not servile.

Would you want to, Wendy?

Wendy Seltzer: So one question that I would have for the GAC -- and I'm not sure how we can ask this diplomatically.

But is - to what degree are they coming to consultations with us, open to the possibility that we might not agree with everything that they have proposed and we're not simply rushing to implement their recommendations, but pushing back on some of them.

And how can we - can we - is there room for us to have a dialogue, or are they just going to push to the board if they don't get agreement from us?

Stephane Van Gelder: Well, yes. And that's a good point.

I mean, that's why I said not servile, because I think what we agreed yesterday was that we would not necessarily pass the message that you sent us a letter, we'll just rush off and implement every word.

What we're trying to find is some common way forward. Now, there's nothing to do -- in my understanding, is that there's nothing for us to stop what you've just said -- i.e., them going to the board and doing something.

That's not - but, you know, at this stage, the board has asked both of our entities to look at this. So one would hope that we would be given the time to look at it although time is short, as we know.

(Jonathan)?

(Jonathon): (unintelligible).

I mean, my understanding of this was that our approach was to be - that what I - what I thought we got to is our approach was to be twofold. It was - it was - it is and was, I think, agreed yesterday that it's very important for us to - half of it is diplomatic.

Half of it is saying, "We really appreciate all the good work that's gone into this. This is a - this is a well-structured letter that sets out a

compelling case. This is a really interesting area. We've talked about it, we've given it attention," and to emphasize all of those elements of our response.

The second component is to say, "Having said all that, we don't have unanimity on the council and so we think that - in the way in which to deal with this issue. And so we believe that the way forward is to work with you to see if there - if a workable solution can be found."

And I think it's -- to me, it's as simple as that. It's to get those two key points across. We've taken their request and their interest very seriously, we've given it the time it deserves, we appreciate the work that's gone into it, but it didn't result in a - in a uniform response from the council and so there's some further work to be done.

Thank you.

Stephane Van Gelder: Alan?

Alan Greenberg: Thank you.

There is a prior step to that, I think -- and at least related to the item I brought up and then Jeff gave some interesting insights on.

First, we have to make sure we understand - we both are sure we understand exactly what we're talking about. And as long as the letter is and as detailed as it - there is at least one or two areas where it's not clear that they've asked for the right thing or even if they've asked for the right thing, if the restrict - if it's restricted or I -- Jeff, I forget the

other type of name you have, which is reserved - not reserved, but available when they ask nicely.

And I'm sure, for instance, the Red Cross wants to be able to register the Red Cross, so, you know, it's not a forbidden name. It's one that's - can only be released to the right people.

So they may have used the technically incorrect terms. And because of the issue I brought up, it - they may not be asking for exactly what they thought they were asking for.

So the first step is to make sure we're all talking about the same thing and that we raise the issues that -- from our experience -- we need to have clarity on before we say yes or no.

It's rather improper, I think, to say we don't have unanimity on agreeing when we're not even sure what it is they're asking.

Stephane Van Gelder: Thanks, Alan.

(Thomas)?

(Thomas): I would like to support what (Jonathan) said -- that this really needs a diplomatic approach and the GNSO should not be seen as being stubborn in this area and defensive.

But at the same time, I think that - actually, when it comes to this discussion, one of ICANN's core missions is concerned. And that is not to give additional rights to rights holders, right?

And by opening the door to almost everybody coming in and asking for these - for getting additional rights, that would be quite a dangerous precedent. And therefore, this policy that - or I think there needs to be a solid policy surrounding it to prevent this - actually, from the few being broken.

And also, a reconsideration process is needed for those who have legitimate rights in certain jurisdictions to have a certain name actually to get that name stays open for themselves.

Stephane Van Gelder: Thanks, (Thomas).

(Debbie).

(Debbie): Thanks, Stephane.

So two things. One -- the reason I had asked a question yesterday whether or not there were any questions that had been sent on for the GAC -- I think they were hoping to get some questions in advance of the meeting so that they could respond appropriately and be poised to have a conversation.

It's my understanding -- not here to speak for the GAC -- well, obviously -- but it's my understanding that they're hoping for a dialogue and wanted to put some Q and A type of thing together to share.

The other thing that I would say is, for a next step forward -- trying to move this along -- if there's more comment about how we would create that group, I think that would be helpful.

I think some interesting points were raised yesterday about nomenclature and if we could just get past what we'd call it, but just say that we're going to try and work together.

I know there may be some concerns with how we frame that, but I think obviously framing the type of work might be a way towards getting to an end and just getting some resolution.

And then - oh, I'm sorry. And then - I'm sorry. To Alan's point about the nature of protection. I know that from our organization's perspective, obviously it's a reservation of rights. So we're reserving the right, should Red Cross want to register, you know, Red Cross dot shop or whatever.

But it's a reservation of rights for the organizations for whom the protection is to be applied to.

Stephane Van Gelder: Thanks.
Ching.

Ching Chiao: Thank you.

And I like to actually echo on what Alan just said. I'd like to offer it not in the - in the council capacity, but a - from a registry who has really done some comprehensive work where we've launched our own TLD.

We've worked with the GAC -- actually, not GAC as a whole, but with perspective members. So each member is from the Asia Pacific we worked with.

And we went through a seven-month process of how do you like to call it -- negotiating, bargaining of how - what are the names to be put on a certain list to be protected, to be reserved, to be blocked.

There is - so what I'm leading to, the - my - I will actually point out is that - whether we should work with them and one type of mechanism of this group -- will there be a GAC position on certain lists?

From my own experience I have some doubts on that, because eventually we will have to talk with every government on their cities, on their cultures, on their foods -- some may have - some may have royal family names, some may have some major political figure names to be put on the - on such lists.

And you can go on and on and on without a (unintelligible). It could put you into a infinitive process, so I have sort of a - and also, just to point out this is my personal view -- I have some reservation on the outcome of this potential working group, but I'm for a exploration of trying to setting up some mechanism of work things out.

But my own experience tells me that at the end, you'll - each registry may just have to deal with perspective countries.

Just my two cents.

Stephane Van Gelder: That's useful. Thanks, Ching.

Zahid?

Zahid Jamil: Thanks, Ching. That's such a good one to watch out for, because we don't want this to sort of just expand at - to no end.

What I think we should also keep in mind is that we're not responding to each and every government and what we will be doing is responding to GAC.

So if something comes out of the GAC, I'm sure they have their own processes. It'll be limited, so, you know, let's keep that in mind as well.

Ching Chiao: Just quickly.

Man: Right.

Ching Chiao: So you're right. I think that's the - that's the ideal case.

But from our own experience -- and we also put in my (unintelligible) head back on -- is always the GAC will count back to the members dates or their member, then they will have to go through an NP and some GAC member -- they will simply reply, "Our position is no reply, because potentially a gTLD operator is a commercial entity."

And they have no responsibility to reply as such.

Stephane Van Gelder: Thanks.

(Andre)?

(Andre): Let's be real.

The objections will be always be a form of letter addressed to the ICANN CEO from the particular government or from a particular bureaucrat in the government.

You know, within the countries, a majority of the countries even don't know that such a structure as a GAC exists, so let's be real. There will be objections.

Stephane Van Gelder: Mary.

Mary Wong: Thanks, Stephane.

I think there are members in my SG that share the concerns that Ching has just raised, obviously. And to some extent, I think the document and the Q and As that (Debbie) had spoken of would be helpful, at least for this specific instance.

But I think going forward, Ching raises some really good points. And I think - and on a related note, if it's - is a question that's a related note -- and I brought this up yesterday -- I don't think anybody really wanted to answer, so that's okay if we don't want to answer it now.

But I feel that I should bring it up again that in the GAC letter, it talks about this particular act as an implementation detail and talks about it as an amendment to the registry agreements.

And I did wonder -- and members of my group did wonder -- if this is a statement and a position that the council agrees with.

Irrespective of the nature of the group and what it is that we do, that seems to be the premise of the GAC letter. And I felt it was worth spending a few minutes on, if that was also a matter of concern to others.

Stephane Van Gelder: Jeff?

Jeff Neuman: So I have a question on that. And maybe someone who's got more history -- and I don't know if Marilyn's still in the room.

But - oh.

Stephane Van Gelder: She is.

Jeff Neuman: So when the GNSO proposed the policy to the board on new gTLDs, I do not believe the reserved names list was final at that point. I think there was still work that was being done on it.

Was it - or was it part of the policy that was actually referred to the board at that point in time?

Marilyn Cade: The Reserved Name Working Group was an independent working (unintelligible).

The Reserved Name Working Group was an independent working group that Chuck chaired and we had subparts that included looking at whether - what the conditions would be for the release and allocation of single-letter names at the second letter, examining the technical issues that still limited symbols at both the first and second level and

numbers, but also looked at some of the other questions about changes in the reserve - the existing reserved names list.

We did not develop a procedure about adding new categories of reserved names, but we did do, I think, a pretty exhaustive look at what the present conditions are in the - and identified what the various lists are of reserved names.

It's a pretty robust report that could be referred to fairly easily, I think, as a - as a background resource.

Chuck Gomes: Thanks, Marilyn and thanks Stephane.

Yes, the - and the reserve - for those that don't know, the Reserved Names Working Group was a part of the new gTLD process. That group made recommendations with regard to reserved names that the council then -- in its' approval of the new gTLD program -- approved, okay?

Now, we did not specifically address the two name categories that we're talking about now. Somebody -- I think maybe it was Jeff that asked a question with regard to how it all - I mean, reserved names basically do go in the contract.

There's a schedule in the registry agreement that has reserved names and there are different categories. Like Jeff has already pointed out in the case of two character names, there is -- at the second level, those are reserved initially, but there is an exception procedure that can be followed.

And if that - if the conditions are met, it could be used at the second level. So there is precedent for that kind of thing.

I recognize the complications that some of you are raising with regard to doing that in this case. But the original reason that I raised my hand was to just talk about discussions that we had in the registries when this issue first came up quite a few weeks ago.

And our concerns were really setting undue precedent, you know, opening up the door so this becomes a revolving door -- some issues like that, because that's what we saw as problems.

Now in my personal opinion -- and we're still discussing it in the registries -- in my personal opinion, the - and like I said yesterday, the GAC's letter actually put a lot of those concerns -- at least in my mind -
- to rest.

I don't see those risks there anymore for the undue expansion, the misuse of this, of - for some - for another name category to be added like these two, they would have to meet a pretty high bar.

And so what I'm sharing with you right now, I - the original concerns we had before we ever saw the GAC letter have been addressed in my mind, at least. And I feel pretty comfortable about that.

Stephane Van Gelder: Thanks very much, Chuck.

We have four minutes left in this session. Any other comments, please?

Phil Morano: Hi everyone.

If you don't know me, my name is Phil Morano. I work for Silverberg, Goldman and Bikoff in Washington DC and we serve as outside council for intellectual property and internet law matters for the International Olympic Committee.

I just wanted to briefly respond to some of the statements made yesterday regarding treating the IOC differently, or problems that some folks might have with the IOC's end of the proposal.

I would encourage those people to look at history here and look at the citations in the GAC letter to the GNSO council, wherein a lot of these issues are actually addressed and answered.

I mean, the relevance of the Nairobi treaty -- things like that. The non-profit mission of the IOC -- it's all in the relevant history. And, you know, in addition to that, I'm here. So just please approach me and ask me any questions you have. I'm happy to talk to you.

Thanks very much.

Stephane Van Gelder: Thanks. Thanks for making yourself known too, as well.

Any further comments? Sorry, Alan. And I can't see you, you're behind the fan.

Alan Greenberg: That's why I'm waving in both directions.

Just a very quick point. One of the previous questions that Marilyn and Chuck answered had a tone to it as if - is the - that the reserved name book is a fixed entity and once it's said, it doesn't change.

I would have thought by its' nature that's not the case. For instance, GNSO is a reserved name in the list. If our name merged to be XNSO, I presume that would be added to the GNSO - to the reserved name list similarly.

So I would think by its' nature it is a potentially dynamic list.

Chuck Gomes: If it's okay for me to respond, Stephane, the...

Stephane Van Gelder: Yes.

Chuck Gomes: The - it - like Marilyn said, we didn't actually develop a process for changing it.

But I think that's a fair assumption that you make, that changes could be made. At some point, maybe we should talk about how that would change.

There are certainly ways that we could probably implement without a formal process, but I think it's a fair assumption that it's not - it's not something that can't change in the future, just like it could change right now.

Stephane Van Gelder: Thanks.

Jeff, Marilyn, then I'll bring this to a close.

Jeff Neuman: Just so everyone knows, it has changed since that list.

In fact, GNSO and ICANN are no longer on that list. The only name that's reserved permanently is example. That's it. No other word is reserved permanently.

Everything else has either, you know, xn-- as reserved, but it's reserved for a particular use for IDNs. CC's are - or the two other CC code is reserved, but can be removed. And the other category is country and territory names, which are initially reserved, but can be removed.

So let's not kid ourselves. I don't believe it's an - it's an issue of policy. It's an implementation issue. It's changed since day one. I think we should get over that. We have a very detailed and specific request from the GAC and I think we should deal with it.

Let's get over these issues of whether it's policy or implementation and move forward.

Marilyn Cade: I was going to say exactly what Jeff said.

Stephane Van Gelder: Well, that's a good way to end a meeting.

Okay. Well, we'll pick this up again with the GAC, I'm sure. Thanks very much. We have a half an hour break, then we will convene again for the new gTLD session. Operator, please end this session now.

Coordinator: The recordings have stopped.

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