
DURBAN – GAC Plenary 3
Sunday, July 14, 2013 – 09:00 to 10:30
ICANN – Durban, South Africa

CHAIR DRYDEN:

Good morning. If you will take your seats, we'll take just a few minutes to prepare a bit for our exchange with the Board.

Okay. So just a few points of business before we get started.

A couple of things to note for the agenda. First of all, we have breakfast planned with the cross-constituency group that is part of the GNSO on Tuesday morning. And there will be an invitation circulated and more details provided about that, but maybe you could take note of that. That's Tuesday at 8:00 a.m.

Also, for Tuesday evening, two things to note. There will be a cocktail with the Board at 6:30 in the Durban arena. I think that's an area in this building. And that will be followed by a celebration of the ccNSO, tenth anniversary, and there will be shuttles available after the cocktail with the Board to take GAC colleagues to that. So there should be more information coming about that very soon.

And just to note that we've had to rework our support arrangements for today. Jeannie Ellers is not feeling well, so we will manage as best we can without her and send to her our best wishes that she is feeling better soon. But as I say, we've made sure that we have our support arrangements in place for our meetings today.

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So I think we were having good discussions starting at 9:00 today informally, so I was also quite satisfied to allow that to continue. And we have maybe 30 minutes or so now where we could have some discussions before we meet with the New gTLD Program Committee at 10:30 a.m.

And as I understand it, they will come to us prepared to take us through the agenda that we have agreed and identify some of the key points and questions that they have for us at that time. And then this will allow us to provide any thoughts or comments to them directly in that meeting, and then, of course, afterwards come away again and have discussions in the GAC about next steps. So that's how that meeting will be organized.

What we will consider doing now is just remind ourselves of the advice that we provided regarding category 1 in annex 1 of the Beijing communique. So these were the safeguards we identified regarding regulated markets, consumer protection, and sensitive strings. And we had listed in groups particular strings that we thought should be included there or that raised heightened sensitivities. This will be one of the main discussion items that we will need to revisit or work further on with our colleagues on the New gTLD Committee.

So again, that can be found in the Beijing communique, and it's 1, category 1. It will also be in your full scorecard where all of the Board's responses have been updated.

Also, as a reminder, that a paper was circulated recently to help as a basis for discussion and to improve our ability to understand what are the concerns that the gTLD committee has about that. And that paper is

called "Questions and Concerns Regarding Portions of the GAC Safeguard Advice."

So you might want to have those materials to refer to.

If we can just project on the screen that part of the Beijing communique on category 1. And as I say, it's really just to refresh our memories about what we advised there, and this can assist us when we meet at 10:30.

Okay. It's a bit difficult, I think, for some of us at the end of this table to read, but there are hard copies available, and it is available online. So I hope we can manage.

So just to recall, the category 1 refers to consumer protections, sensitive strings, and regulated markets. And the GAC begins by identifying five safeguards that are to apply to regulated or professional sectors. And here we have outlined safeguards that should apply to a list that follows, including groups named children, environmental, health and fitness, financial, gambling, charity, education, intellectual property, professional services, corporate identifiers, generic geographic terms, and inherently governmental functions, as well as an additional bullet that are identified but perhaps not with a group identified for fail, gripe, sucks, and WTF as top-level domains. And then the GAC provides a further three safeguards that should apply to some of those strings that are listed earlier, as well regarding the category 2. The first part, the restricted access top-level domains. We believe they are included in the lists identified in category 1. So we will perhaps also touch on that as well in our exchange with the New gTLD Committee.

So we have been asked some questions by the Board based on some of the challenges they see with implementing based on what we have provided them in category 1. And we did have a good discussion yesterday, an initial discussion, about what are some of the points that the GAC, or GAC members, might want to make in the session about this.

Does anyone have any comments or observations about this particular category, but I hope it was useful at least to just remind ourselves of what it was that we had communicated to the gTLD committee.

All right. I see none. All right.

So in addition to the category 1 safeguards, the gTLD committee will also be raising with us protections for the acronyms issue. And again, it's some of the questions they've come back to us with as they have looked at implementing the GAC's advice given previously on that topic. So they will also be walking us through some of their key concerns. And it will be an opportunity for us to ask them questions as well.

So we had some interventions yesterday, and it does seem that it will be beneficial for us to clarify, generally, where there are areas of agreement, where there are areas of disagreement based on what has been communicated to us so far. And then identifying next steps to perhaps find a solution in light of the questions and concerns that are coming back to us.

As a reminder, three additional issues were identified. And depending on our time, in the exchange with the New gTLD Committee, we might be able to get to those. And those three issues were the issue of advice

we gave regarding community applications, and this is an issue where we would need further GAC discussion, I think, if we were going to look at providing any further comments or advice. This advice was accepted by the gTLD committee.

So the other issue are concerning the registry agreements and some of the provisions contained there.

And issue number 3, yes, singular and plural versions of the same string. And we, again, would want further GAC discussion but it may be something that we raise in the discussions with the New gTLD Committee.

So does anyone have comments about how we approach this exchange?

My sense is that we can let the committee -- the gTLD committee lead off, as I say, and walk us through the main agenda items and just communicate to us what are their key issues and challenges that they see.

Okay. I think that's agreement. We seem satisfied with that.

Ah, Canada, please.

CANADA:

Thank you, Heather. I just wanted to note Canada's particular concern with respect to one of the acronyms identified on the list of IGO names and acronyms. The acronym CAN identified by the Andean community is the ISO alpha 3 code for Canada. It has been recognized internationally as an abbreviation for Canada and has been protected at

the top level in the current gTLD round. And Canada would not give up existing recognition of having CAN protected on the ISO alpha 3 list.

We suggest that the GAC could advise the ICANN Board that protections awarded to IGOs for their acronyms include exceptions for ISO alpha 3 codes.

Thank you.

CHAIR DRYDEN:

Thank you, Canada.

Okay. So any other comments regarding the issue of IGO protections? And, in particular, acronyms in some of the proposals that have been made, but perhaps not explored further on that.

Australia, is that a request to speak? No. Okay.

AUSTRALIA:

Well --

CHAIR DRYDEN:

Okay. All right, please.

AUSTRALIA:

Thank you, Heather.

On the IGO list issue, I was just reading through the paper circulated by the IGOs on the 10th of July, and following our discussions yesterday where there was talk of having some sort of mechanism to deal with

contested acronyms, I note that the IGO paper talked about having a coexistence mechanism.

I'm wondering if there's any further detail on that available from our lead, perhaps, who has been involved in this.

A coexistence mechanism, and it seems that the IGOs are looking potentially at having sort of an objection mechanism. They're talking about the IGOs would not object to, which suggests that they're looking at some sort of objection mechanism.

Now, ICANN obviously has a number of objection mechanisms in place for various people wanting to object on legal rights grounds and so on and so on.

Do we know if the IGOs are looking to adapting one of those or creating a new objection mechanism for contested acronyms? Or is this perhaps something we need to discuss in the GAC?

CHAIR DRYDEN: U.S.?

UNITED STATES OF AMERICA: Well, thank you. And of course I note that our IGO colleagues are also in the room. So in part, I will defer to them as to their objectives in proposing their proposal.

I think what we reviewed yesterday was a sense that based on the conference call that the GAC and the IGOs held with the Board on July 3rd, certainly I was sharing with the group yesterday my take-away from

that call was that the Board was very hesitant to accept the IGO proposed approach because it put the IGOs in the position of serving as -- and I'm going to be casual here in my use of terminology, but serving as judge and jury.

And I think that was the point of contention with the Board; that it's very awkward for them to accept a proposed approach that has the IGOs on perhaps not settled legal basis to kind of pass judgment on whether a third party could use the same acronym.

So my sense is if we shift to a slightly different approach, which I gather that the IGOs, I believe, very graciously signaled their willingness to entertain a slightly different approach, it might be what Thomas Schneider proposed on the call, Switzerland, on July 3rd which is some variation of the trademark clearinghouse function which sends a notification such that when another entity is seeking to register -- and I'll use the easy one, because it's just a lot easier for us to understand -- WHO stands for the World Health Organization. It's also a word in the English language "who," and so conceivably there could be many uses, many registrants who would like to use the word "who" in front of any number of new gTLDs. And so the World Health Organization could be notified when there is a registration for who dot music or who dot shop or who dot whatever we can think of. And presumably that would not cause any consternation on the part of the World Health Organization because there's no prospect for consumer deception. A consumer is not going to be confused that who dot music is actually -- that word "who" is referring to the World Health Organization. So what we -- I think the IGOs could accept something along those lines. What I think there's another step that we haven't yet taken, and we may not be able to take

completely today, is there needs to be a review somehow built in by a neutral third party so that in the event there is some concern that there would be consumer deception or consumers might be confused then there would be some way to address that problem. So I think that still remains outstanding. I'm very anxious to hear what the board brings to us today because maybe they have given this some thought. I think at least it was very useful to have our preliminary discussion yesterday where I think we're all in agreement that we have now identified the issue that seems to be holding the board up. I believe we all -- certainly I can speak for the United States, we strongly support protection for the acronyms. So we want to find a solution to this problem. But I believe the board has raised a legitimate concern, and so I'm grateful that the IGOs are willing to also demonstrate some flexibility in finding a slightly different approach to how we manage this. I hope I've answered your question. Thank you.

CHAIR DRYDEN:

Thank you, United States. So would anyone else like to comment on this topic? Yeah, okay. So I'll hand over to the representative from WIPO.

WIPO:

Good morning, GAC members, and thank you very much for allowing WIPO, on behalf of the IGO coalition, to come here and make a comment just on this very important and very widely debated issue. The GAC advice -- and there's been some comment about IGOs being the complete judge and jury on this. The IGOs would just like to clarify that being judge and jury is not the case in the IGO proposal for co-

existence. We certainly agree that there needs to be some scope for review by a third party, independent neutral third party. However, we would say at the first instance IGOs -- it would be reasonable for IGOs and practical as well for us to be involved in making a preliminary contribution, determination, or agreement, whether any registration of an IGO-protected acronym poses any problems. And this proposal does have several safeguards built in. For example, as you said, we would not object or stand in the way of any proposed registration of a domain name that is bona fide and doesn't pose -- potentially pose any confusion or mislead or harm the public. An IGO must respond to any request to register a domain name within 60 days, and if no response is given by an IGO, that would equal to no objection and the registration can go ahead. And if an IGO was to have an issue with a proposed registration of a domain name, that must be explained by the IGO. And if this -- if it so happens that there is an issue that the IGO perceives with a proposed domain name registration, that would be the appropriate practical and reasonable opportunity for an independent and neutral approval process. And we are certainly open to suggestions and ideas of how that could happen. And how that could happen and by who. Thank you.

CHAIR DRYDEN:

Thank you for those comments. Are there any further questions or thoughts on this topic? Okay. U.K., please.

UNITED KINGDOM:

Yes, thank you very much, and good morning, everybody. Thank you for the response from WIPO on behalf of the IGO coalition. It's very helpful.

What I need a little bit help -- a little bit of help on is just the scale of this activity because there are going to be acronyms which are used by businesses and markets the world over, you know, and they will be potentially registering at the second level and many domains in different areas of commercial activity. So what I'm not quite clear about is how your proposal, as opposed to a clearinghouse proposal, would function globally, if you like, to ensure that the acronyms, when they do relate to the particular organization and to ensure that there's no potential abuse, how that is going to work globally and ensure the balance of interests of those entities that have a legal ownership of those acronyms through trademarks or whatever in their particular commercial activity. So if you understand my question is how is that modality that you're proposing going to ensure that it would all work smoothly and that balance is achieved on a global scale. And in an environment when you have many hundreds of new gTLDs in various commercial areas. Thanks.

WIPO:

Thank you very much from the U.K. I would say that part of the issue with this it has been taken on a case-by-case basis but a lot of that will relate to communication and the IGO proposal does set out that IGOs must make it clear who the point of contact is for this. Some potential registrants would be aware of this issue. Some may not be. It might -- there would be something perhaps to be discussed. And I believe we've made the scope in our proposal as to how a potential registrant could find out about it, either through the registry or perhaps the trademark clearinghouse notification could be discussed. But our proposal does ask that IGOs be able to request any potential registrant who gets in

contact with them, however that may be, to provide information about who they are and if they are trademark owners with a legitimate business, then they simply have to point that out to us, and as I said in our proposal, does say that where a registrant is bona fide and looking to use it for legitimate interest and there's no potential for misleading or harm or suggestion of a connection with the IGO, then we would not stand in the way of that proposal. So it's simply a matter of communication and providing that information to the IGO. Thank you.

CHAIR DRYDEN:

Thank you for that. Okay. Any other request to comment on either this or how we approach our exchange with the gTLD program committee or on other issues that we're about to review with them? No. Okay. All right. I think we're in good shape, at least for this point in the meeting. And we have about 10 minutes or so before -- oh, 5 minutes before our colleagues arrive. So can I ask that for any of you where you have more than one representative seated at the main table, that you reduce to having one representative in order to make room for our colleagues from the new gTLD committee. They need to be seated with us at the main table. So we have about five minutes. So don't stray too far, please. Okay? U.K.

UNITED KINGDOM:

Thanks. As we've got a few minutes, can I make an announcement?

CHAIR DRYDEN:

Yes.

UNITED KINGDOM:

That as we have done at previous GAC meetings, the commonwealth in formal group has met to discuss commonwealth initiatives that are happening in the Internet area and especially those that involve ICANN, and I propose that the commonwealth informal group gets together at 12:30 on Tuesday for about half an hour in the first part of the lunch break. If anybody has -- from the commonwealth colleagues group has any major problems with that, grateful to let me know. But provisionally I'd like to schedule that as a kind of a half hour slot for commonwealth colleagues to meet. Thanks.

CHAIR DRYDEN:

Thank you.

[END OF AUDIO]