

ABU DHABI – GAC discussion on Amazon IRP (2)
Sunday, October 29, 2017 – 17:00 to 18:30 GST
ICANN60 | Abu Dhabi, United Arab Emirates

UNIDENTIFIED MALE: Good afternoon. ICANN60, October 29th, this is the GAC Discussion on Amazon IRP.

THOMAS SCHNEIDER: Please take your seats. We have to resume our session. We are again on the discussion on a way forward, now internal to the GAC, on .amazon. This is session 13b, as it is called on the agenda.

Before we go there, just one piece of information for your attention with regards to a discussion that we had yesterday on the principles and procedures for the GAC participation in the Empowered Community, which is agenda item 5 that we discussed yesterday. The group with [inaudible] is working on a revised text trying to take into account the comments that we received yesterday and will probably be circulated tomorrow to the GAC list.

We do urge everybody with a view that we could adopt these principles and procedures during this meeting, so that they are in place in case something comes up. That would be one of the wishful outcomes of this meeting. I would just like to urge you first

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

of all to consider that this is also a working document that is a first attempt to develop some rules with some flexibility still in it which is not carved in stone but that will be reviewed in the course of time based on future experiences that we will make with elements of the mechanisms of the Empowered Community.

So I would urge you to not go too much into wordsmithing of the concrete text. Also, try not to go into too lengthy discussions about some details of these principles because we had now one one-time experience with this that worked well. And we will gain more experience in the course of time when more cases may come up, cases that may not necessarily for instance go to the last step of that mechanism which is decisional. But there may be cases where this time it was actually wished by everybody that this would go to the last step because everybody was supporting the proposal that came from the Board in case that something would pop up from elsewhere maybe it would be the aim to find the solution at the level of community forum and so on and so forth.

What I'm trying to say is please have a look at it and please try to look at this in a spirit of this is the best that we can get now and with a view to hopefully being able to adopt this in the course of this meeting before we leave. That would, of course, be very useful so that we have a basis for next cases in case they show up.

This is just a piece of information, so watch out for this to be distributed on the GAC list.

With this, let me go back to the agenda item 13b, which is the .amazon case. Whereas, we had I think a very useful and fairly constructive exchange with Amazon earlier today, the purpose of this session is to try and get to some shared understanding among all of us in the GAC on what to do, what are the next steps, and how are we going to organize ourselves between now and ICANN 61, taking in account the resolution and the invitation to the GAC that is contained in this resolution that was just adopted and published this morning.

Maybe you have all received e-mails with the letter that has been sent to me as the GAC chair that refers to the resolution. There you have received also the link to the resolution. They basically both say the same thing. I think it may be use to the floor to Tom so that he can read this out to all of us so that we have a clear understanding of what the Board is inviting us to do until the end of the next ICANN meeting and just take it from there. So, Tom, if you would be so kind and read this to us.

TOM DALE:

Thomas, thank you. Just before I do that, please be aware that the briefing materials that you have which were sent a couple weeks ago and some updates recently obviously do not cover

today's resolution by the Board, but you do have resource material there that was provided to you and which is on the website covering the history of the of this matter. And you have also a summary of the declaration of the independent review panel. In fact, you have several: one prepared by Amazon – Amazon the company, that is, not Amazon the river – and one prepared by myself. And you also have correspondence that a number of GAC members have had including the governments of Brazil and Peru with the ICANN Board over the last few weeks. So all of that material is there.

However, as Thomas said, I have been asked to draw your attention to the resolution that was agreed by the Board today and which has been passed on to GAC members, as Thomas said, in two forms. You have an e-mail from me that we spoke about earlier which included the letter from the chair of the Board, and you have an e-mail circulated by Olga from Argentina providing details of the resolution. Both of those are on the ICANN website.

So, looking quickly at the major points, if you can just scroll down a little bit, Gulden. I don't think we need all the whereases. Yeah, that's fine for now, thank you.

The important part of the preamble down at the bottom there is that “Whereas, the Board asks the Board Accountability Mechanisms Committee” (that's the new committee that in fact

was approved by the fundamental Bylaw amendment if you recall that exercise) “to review and consider the Panel's” (the IRP) “recommendation that the Board promptly re-evaluate Amazon’s applications and make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications, and to provide options for the Board to consider in addressing the Panel's recommendation.”

If you could scroll down please, Gulden.

And “Whereas,” (that Board committee) “has recommended that the Board ask the Governmental Advisory Committee if it has: (i) any information to provide to the Board as it relates to the merits-based public policy reasons, regarding the GAC's advice that the Amazon applications should not proceed; or (ii) any other new or additional information to provide to the Board regarding the GAC's advice that the Amazon application should not proceed.”

Scroll down please again, Gulden.

The substance of the Board's resolution is as follows:

Firstly, “Resolved, the Board asks the GAC if it has: (i) any information to provide to the Board” as per the previous statement); “or (ii) any other new or additional information” as I just said.

Now those requests contained in the resolution have been conveyed to the GAC chair and to you from the chair of the Board. So from the Board's point of view, I guess they would see the matter as now with the GAC for a response. There is a long rationale attached to the resolution. I won't read that out in the interest of time, but it is available in the material that has been circulated to you. Thank you, Thomas.

THOMAS SCHNEIDER: Thank you, Tom.

So this is the Board resolution. Any questions or comments on the resolution itself and the understanding of the resolution? Not yet on the way forward, what that means for us. But in case somebody has a question to what this means, I think it's good to clarify this at this stage.

Yes, Iran?

IRAN: Thank you, Chair. Thanks to the Board that [at] the GAC meeting we will be faced with very heavy resolutions which may have [been worked] out at length but for meeting here people need time to look at that one.

But the main question is that what has been asked by the Board [to the] GAC? Is it that we reconsider what we have given as GAC advice. We have discussed this morning and many of you mentioned that there is no reconsideration. Is it that now that the Board is in the preamble saying that he wants to associate certain public policy which in view of the Panel said that this decision or advice of the GAC was not based on the public policy? Does this question raised by the Board that means has been taken views from the Panel and it wants that we associate public policy?

I think it is very I would say unexpected. Question raised by ICANN to us, I don't that think we should go back. We mentioned the [tenure] of the precedence that after the complaint we will be asked to look at the advice we have given. Otherwise, we have to look into the many, many advices already given.

We need to be quite clear the objectives of this. We say that there have been some discussions and there is a suggestion or compromise suggestions and leave it to the countries to whom or to which this suggestion has been made to discuss it and to see whether they are agreeable, not agreeable, should be changed, should be rejected. I don't understand why we need to be involved in this situation.

There are mostly taken from the views of the Panel saying that there should be a rationale, there should be a public policy issue

associated with that. So it seems they are indirectly saying we have not taken into account the public policy issue, whereas it has been taken because coming from the countries involved in that matter and for them, that is a public policy issue.

I don't understand the objectives of this. Sorry, we may be narrow minded people, I or my colleagues in my country, but I don't think that we are prepared to accept some of these issues to go back and review or possibly – which I don't believe – revise the advice given. The matter does not belong to us. The matter is with the Board and the countries concerned and the entities or two parties concerned.

But we should not generalize this matter. We should not take it as a precedence. And it was clearly mentioned this is our very, very preliminary action to this, but we have to carefully read that word-by-word to see what is the objective. And each word is legal word, has some meaning for us and some impact in our future activity. We should not hurry. We should not be expected to give yes or no to do this or that.

Our principle is that we should not go back to the advice that has been given, and we should not associate that there was no public policy issue. There was public policy issue, and we should not accept that countries do not have or did not have any rights for the views that they have given of the geographic names. It seems

to me that it has been too much influenced by the Panel's views. So if they want, we can go to the 67 page of the Panel's and one-by-one comment on that. Thank you.

THOMAS SCHNEIDER: Thank you, Iran. Thank you for raising this question because I think it shows that it is important that we get an understanding of what the situation is or at least how the Board interprets the situation and then what the Board is inviting us to do.

In the hope to clarify a few aspects, let me make an attempt to explain what I think is what we are confronted with. The first thing is to understand that the Panel did not say that the GAC did not provide for a rationale or did not talk about what the GAC should do or did not question what the GAC did in that sense. It based its findings on a view that the Board failed to live up to the standards as they are set out in the Bylaws and the Board vis-à-vis the community or vis-à-vis the company in this case should have explained its decision more than just referring to that strong assumption as it is in the Applicant Guidebook.

The Panel recommends that the Board would signal whether there are well-founded merits-based public policy reasons for the Board to deny Amazon's applications. This is not addressed to the GAC. Then the Board invites the GAC to contribute with it's called "information." So the Board reaches out to the GAC and asks the

GAC whether there's any additional information that the GAC wants to send to the Board to help the Board take that decision or explain its decision or reassess its decision as it is recommended by the Panel.

So it's not the GAC is criticized or that the Panel asks the GAC to do something. It is the Board that you could also say asks the GAC for support for additional information – whatever that may be, it's up to us to decide – that will allow the Board to re-evaluate or reassess its decision. This is at least how I understand the logic of the situation that we are at.

But I have Brazil, Switzerland, and Nigeria on the list. Let's start with Brazil. Thank you.

BRAZIL:

Thank you, Thomas, and thank Kavouss for kicking off the discussion. I will ask you to allow me to take one step back because I think we should not be totally guided by the decision that was taken this morning by the Board since this issue involves many developments that have been taking place for quite a long time.

So just to recall that after the IRP's final declaration was made public, we together with Peru issued a document and we addressed it to the GAC. You can find it in the attachments to the

documentation that is before you to this meeting. It is Attachment 2, Draft Advice to Board, proposed by Brazil and Peru as circulate with regard to August 2017.

We did that because we are concerned about of course the request of delegation of this strings to .amazon. This is a matter of concern for us. But the IRP's final declaration raised another level of concern, an additional concern. To that extent, I think the IRPs added another lay of complexity to all this discussion. And we have extensively explained why we think the IRP final declaration is problematic. We understand in effect the roles government are expected to fulfill in this model.

If you allow me, I will read out Paragraph 8 of our document, which I think synthesizes the concern. It reads, “The IRP’s recommendation that the Board should provide its own public policy reasons for denying application for new gTLDs independently from and in addition to GAC consensus advice contrary to the application constitutes a direct attack against the multi-stakeholder model of governance on which ICANN based. In particular, the IRP’s recommendation runs contrary to the fundamental principle that Internet governance should be based on the full participation of all stakeholders within their respective roles and responsibilities and that such public policy issues as may justify GAC consensus advice fall under the exclusive authority of governance. See Paragraph 35 of the Tunis Agenda.

This principle is expressly embodied in ICANN Bylaws which recognize that government and public authorities are responsible for public policy. Therefore, IRP’s recommendation that in order to act in accordance with GAC consensus advice the Board should undertake an independent examination of the public policy reasons underlying its decision to do so effectively nullifies the role and responsibility of governments in ICANN’s multi-stakeholder governance model.”

Basically, we read the IRP’s final declaration with a lot of concern because we think that by the end of the day it requests the Board to replace government in the role of accessing what is public policy.

Mr. Chair, in this I should [differ] with your assessment in regard to the IRP’s declaration because we think that the panelists request the Board to do it because basically they are saying the GAC made a mistake, that the GAC when made a decision was acting on the basis of wrong assumptions that are not correct, that are factually incorrect, that the GAC was misled in a way into accepting some wrong argument as the basis for the decision, and that's why it requests the Board to make that independent judgment.

So the IRP [parties] do not recognize the kind of public reasons we have extensively discussed in the previous discussion in the

previous session that the GAC when made the decision did not make the decision because someone said that the [ISO] list would protect it or that there would be some legal basis, but the GAC did so because it accepted the position and the plea and the demand of the Amazon Corporation Treaty of member states that there was political sensitivity in regard to that name, that there is the kind of attachment and very clear link to those countries. This was initially of course developed by us together with Peru, later on fully endorsed by Amazon [countries] by the full region of Latin America and by the fuller body of governments. This is the reason why the GAC made the decision.

As it has already been stated, at the time there was no need for rationale which could have been given. I think there would be no difficulty to link it to the kind of sensitivity that it raised. We understand we act in an advisory capacity, so the Board can accept or reject the GAC advice. The GAC consensus advice in that case creates a strong assumption that it will be accepted by the Board, but the Board can at the end of the day accept or reject.

I think one thing the Board cannot do is to ask the Board to revisit or to reassess its own decision because it's a political assessment made by government. And I fully concur with Iran. How can the Board request it to be reassessed or revaluated? Especially because it's doing that on the basis of an opinion of those three judges. With all due respect for them, but their interpretation of

what took place in this room – not exactly here in Abu Dhabi, of course – was based on the wrong assumption.

Maybe they were reading out some documents or making some selective readings and they concluded that the GAC made a mistake because the go ahead was making the decision based on wrong assumptions. We know this is not the case, so we do not think it's the case to request the GAC to reassess, to re-evaluate. It's up to the Board to make a decision. It's up to the Board to exert its leadership and its role in this model.

I think there are many inputs coming to the Board from many constituencies where the nature of the participation is different. I think it's up to the Board to try to work out these things and to come up with some kind of decision. I think it's not fair for the Board to request either the GAC or any party to revisit its own positions. That would set, as it has been said before, a very serious precedence.

So again, when we are looking at today, we're concerned of course of the specific case but we are concerned about the precedent we may be setting in accepting as government that some advice that was given can be reassessed or re-evaluated on the basis of that kind of request. We don't think this is the case.

And again, I draw your attention to the points we have raised in our draft GAC advice. In our opinion, the proper reaction to the

IRP final declaration – and I go directly to the conclusions of our document on the last page – we suggest the GAC advise the Board not to follow the recommendation of the IRP, and we suggest the GAC also to advise the Board not to take any further action relating to the string delegation request denied. Which does not mean there will not be a process toward trying to come to some kind of compromise.

In regard to the decision that was made today by the Board, we fully agree with what Iran has previously expressed. What does it mean that the GAC should provide merits-based policy reasons that informed its decision? What does it mean that the GAC should provide new or additional information to the Board? The Board has the GAC advice. The Board has the IRP. It's up to the Board to decide.

It's not fair for the Board to request us to do the job for them or to try to lead the GAC into some kind of, I don't know, a new debate or a reassessment. That would entail I think very serious concern because we're not now only dealing with a very specific case but there's a policy aspect that would be of concern to all of us.

I would stop here and I'd like to listen to our colleagues, but we think we should not be guided purely by what's discuss by the Board this morning because I think this already indicates a willingness to go into a direction we think would be

[equivocated]. It would be wrong, and it would go against I think the spirit of the kind of participation governments have had, limited participation we have had in this whole process. Thank you.

THOMAS SCHNEIDER: Thank you. I take note of what you said and thank you. You make some fair points. But just to be precise, we are not necessarily asked to reassess our decision. We are asked to provide any information with that regard and to provide new or additional information.

For instance, one thing just as an example because you refer to it, the fact that the IRP has looked into some aspects of the decision-making procedures in the GAC and where there seems to be disagreement on the way that this is interpreted, new information or any relevant information would be that the GAC would say that this is not how things have happened and correct that in that sense just as an example.

So it is up to us in the end to think about what we want, in case we would like to give some information or material to the Board. It's up to us, of course. It's the GAC's decision on how to react. And I think you've made the point clear that the Board resolution is not the only thing, but this is to be seen in a broader context. So I

think that's clear. Thank you. Switzerland is next, and then I have Nigeria, and then I have the U.K., and then Iran.

SWITZERLAND:

Thank you, Chair. Jorge Cancio, Switzerland. I have been listening quite carefully to what the [cliques] from Iran and Brazil have been explaining. At the same time, although it's a really fresh resolution from this morning, I've tried to look into its wording, and there are some aspects of it that strike me or that really call my attention.

Regarding the discussion we were having, it's clear that the Board is not asking several things. They are not asking reassessment, they are not asking for a new GAC advice, they are not asking even for GAC advice. They are asking for information in general. Information on matters related to this issue. It's a very general formulation that the Board has used, and I guess it could make sense to try to clarify what they are really meaning in the bilateral we have with them. But of course we also have to look into the wording, and information is information and any information is any information. Also, as I said, there's now reference to input or to decision or to advice from the GAC.

So to be a bit operational, and perhaps my pragmatic and always operational thrust betrays me, I think that this morning and also this afternoon we have had very interesting discussions. I have

counted 16 different delegations taking the floor on this issue before with long statements, statements that were very well crafted, that made lots of considerations. Some of them adding really to what has been discussed before the GAC advice was issued in 2014 and clarifying also things that have been accessed or mentioned in the IRP decision.

I think that's a lot of information which is very relevant, and this information also has been brought to this committee when discussing with Amazon. It's also a fact and interesting information that all this did arise when having a dialogue with Amazon and the company here and after listening also to their initial ideas. So I would say there's a lot of information there that could be important to be brought to the attention of the Board.

On the other side, we have also seen some small but little glimpses of a possibility of, as Ambassador Fonseca said, that maybe a magic formula could be there if the parties interested here agree on reaching a such an agreement. The fact that these statements have been made that a magic formula is not completely excluded, that is also important information for the Board. That may be really critical, especially for avoiding any decision that could be precipitated before the parties really are able to access all the opportunities to arrive at such a magic formula.

I'll leave it by that, and I think the debates today really have been very useful and fruitful and really constitute relevant information on this matter. Thank you.

THOMAS SCHNEIDER: Thank you, Switzerland. Nigeria?

NIGERIA: Thank you. I would like to say the members of the GAC should let us try to go back to revisit the spirit of [inaudible] that I think was started in the earlier interaction and take this letter from the Board as being based on information that got much earlier from the Panel, much earlier than this meeting so that we do not get grieved and then react accordingly.

We should leave room for the possibility of still reaching a mutual agreement with the company as started in the earlier meetings. However, what I'm worried about is we shouldn't lose sight of this in our response. I think we cannot just say that we've given them information and then we're leaving it at that because the letter you know puts in some adjectives there stating that we need to provide merit-based public policy. So they are not saying they do not realize there are public policy implications. It is saying that those public policy reasoning we gave earlier were political, emotional, whatever it is but not merit-based.

So if in all the conversations that led to the GAC advice, if there were any documentation or information or material that were not required to be submitted along with the GAC advice in the usual practice, then I believe all such material information can then be provided to them.

But what is strange to me though is the fact that the Panel indicated that the Board didn't do its duty by having an independent review. The Board in turn told the BAMC to look at. What would have been interesting is for the BAMC having worked on the information they have currently to say that it is not good enough and the GAC should give it more information, but that doesn't seem to have been done at all. Instead of the BAMC to look at it, the next thing we get is that the ICANN Board is requesting for more information. If the BAMC has looked at it and then they now still find there's need for more information, then we will know what extra information to pass along to them, if any. That's the only [lack] I see in it. Thank you.

THOMAS SCHNEIDER: Thank you. I do have U.K. on the list, if I'm not mistaken. Thank you.

U.K.: Yes. Thank you, Thomas. I'm very much in sympathy with Switzerland's suggested terms of response to Steve Crocker's letter. It is a request for any new or additional information. So we could simply respond, you could respond along with the lines of, "In response to request from Amazon, the GAC had information exchange with the company which inter alia afforded the company an opportunity to present its proposal that provides a start point for a possible process to find a mutually agreed solution" and leave it at that.

We don't know what this process might be. It could be just further exchanges with the governments in the Amazon basin region. It could come back to the GAC plenary. We don't know. We haven't decided that. So leave it simply as that. As Switzerland has just said, it's a significant I think step forward that we've enabled to take place today an information exchange and a proposal articulated by the company and not taking a view on that proposal. But I think the temperature of the room is such that, okay, let's explore that and see where it goes. But it's a positive development which we should inform the Board of. So that's my suggestion. Thank you.

THOMAS SCHNEIDER: Thank you, Mark, for this further comment. Iran?

IRAN:

Thank you, Chairman. As I mentioned, we need to carefully read the resolution. Part of the resolution which is not labeled resolves or anything but after the preamble it is mentioned that in accordance with Article 4, Section 321 of the applicable version on the Bylaw, the Board considered the final declaration of its meeting on 23 September and determined among others that further reconsideration should be given.

It seems to us that the Board in application of this section wants to involve GAC. We don't see any reason why we should be involved in the reconsiderations. They could reconsider, but why the need to involve us? That's one point. The Bylaw does not say that. There is no mention of reconsideration of entity giving advice like GAC in the reconsiderations if any would be like to be [inaudible].

But our reading is different from reading of some distinguished colleagues. If you read what they said after reviewing and considering the final declaration, the Panel's recommendation, and all relevant materials, the Board Accountability Mechanisms Communicate (BAMC) concluded that it would be beneficial – please [kindly pay attention to this] – to receive any new or additional information that GAC might choose to offer regarding its advice that Amazon applications should not proceed.

In our view, this is implicit reconsideration. It's a legal point. In an implicit manner, ask us additional why we said that this should not proceed. It is reconsideration the decision by the GAC or advice by the GAC. We are not going to reconsider to what we have decided. It is not saying additional information. Read the last portion to why this information asked, asking what was our logic GAC should not proceed.? It's a reconsideration. Our logic was given before.

So, Chairman, you have to carefully read that and what we said is applicable. Our answer should be that this is up to the Board to decide what they want to do the with that, that we're not reconsidering. We welcome the proposal made and [give it to the] comments of concerned countries to accept or not accept that compromise. Chairman, I'm very sorry this is a request for reconsideration which would put a dangerous precedent in the future. Thank you.

THOMAS SCHNEIDER:

Thank you. I haven't found the particular lines that you were reading. But from what I read, I cannot see that the Board is asking us to reconsider our advice. It is asking us to provide additional information regarding the GAC's advice that we've been given in 2013. This is at least what I read. But let me give the floor for further comments.

I think there's several elements to try and maybe – looking at the time – sum up where we are. We have a number of different proposals of further action on the table, and the framework is this, I guess. One thing that we can see is that the Board does not intend to take a decision on this issue before ICANN 61 because, I mean, the Panel recommended ICANN to take a decision within 60 days. The 60 days, as we have heard, have already passed. I think this first of all is something that is positive that the Board is willing to give this model enough time to look at this issue. It has decided not to rush into a quick decision, which I think is something that has not always been like this and we should recognize that the Board seems to be aware of the sensitivity and the importance of this so it gives it at least a number of months. That's one of the elements.

The other one is that the Board now asks the GAC to provide additional information. It is up to the GAC to decide whether or not it wants to follow. And what it considers as information that may be useful may serve the purpose of the objectives behind our advice.

We have the proposal by Brazil that is still on the table, this proposed advice. In addition to giving information to the Board, we may give advice to the Board. We have this proposal by Brazil which is something that we will need to take a decision whether

we want to support that proposal or not or support elements of it and so on and so forth, so there is a number.

And there may be other things that we can decide to do. We may also give new advice based on what we've heard today with regard to a potential compromise proposal or something. We may give advice on whatever we want.

So we have several options now that we can try and work on for the next few months. It would be good to get some sense of where do we agree. In which direction may we agree to go to. So far, I must admit I have not yet felt a clear sense of what could be the way forward or what could be elements. If we don't have a clear way forward, maybe we can agree on elements that we would look into further as next steps. We've heard some elements or things that we could do, but so far I haven't heard, "Okay, this is something that we will do." So I'm trying to not talk about what we disagree, but let's try and find elements where we agree that action or further follow up would make sense. Maybe that helps us.

So I see Denmark.

DENMARK:

Thank you, Mr. Chair. Of course, this item is a very difficult one. But I have not much to add other than from our point of view. We

think it would be advisable that we inform, as was suggested by others, that we have had this discussion, that there is a proposal on the table from the company, and that also – and I'm referring especially to Brazil – have been open for further consideration and are looking for a mutually acceptable solution.

I recognize what I've heard that there are constraints on the political side and then there are certain [ministers] declaration and other things, but I think that would be looking from our point of view the preferred outcome of this meeting: to inform the Board about this and then have the company and the affected countries enter into a dialogue and try to find a solution.

We don't think that it is necessary or even appropriate at this moment to try to come up with a kind of GAC advice. As you so indicated, the Board have given the GAC the possibility up to the end of the next meeting to respond if there is something additional we would like to put to the Board before then. Thank you.

THOMAS SCHNEIDER: Thank you, Denmark. So if I understand you right, and I think that makes sense, we don't have to decide today. This is not that we have to decide today what we are going to give in terms of additional information until the end of ICANN 61. I'm just trying to get a sense. Because we will meet physically the next time, those

who will not be at the IGF at least, of course, we can also meet at the IGF in December by the way informally, which is something that has happened earlier. That was an invitation to the IGF that just jumped in. Sorry for that.

So we will meet the next time in ICANN 61, and we need to by then at the latest be very clear about what we want because that's the last chance at least given this framework that we know. We may have more time that the discussion will continue after ICANN 61, but the elements that the Board is asking us is scheduled for ICANN 61.

One thing may be that we may give several pieces of information during this course of time. For instance, we may give the information in some short time after this meeting that we understand that there are attempts going on to try and find mutually acceptable solutions between the parties directly and that we informed the Board about that this is happening and that the GAC is willing to give some time to these discussions to see whether there is actually a mutually acceptable solution that can be developed and that we would continue to look into matter at a later stage when we have more knowledge about whether such a solution is there or not.

So that would be, for instance, something that we could say, "Okay, we give some information about now about what we know

and what we hope that may happen.” And then at a later stage where we may have more information feedback about the progress of these discussions we may come back with additional information if appropriate, if useful. That may be something that may make sense. If this is what I understand, Denmark, that may be something we could build on and then say, “Okay, let's say this now and say we may come back with further communications at a later stage when we know where we are.”

I see some people nodding. I have I think Brazil and then Iran. Thank you.

BRAZIL:

Thank you, Tom. I think you have summarized very well the options we have. I agree with you [Jorge], we don't need to rush into making any decision at this point and time. Especially because we still have to further read carefully and digest and fully access the Board decision that was taken this morning.

May I just in that context, I think the paragraph that Mr. Arasteh has previously focused, I think it's very important that the paragraph starting with, “After reviewing and considering the final declaration, the Panel's recommendation, and all relevant materials, the Board Accountability Mechanisms concluded that it would be beneficial to receive any new or additional

information that the GAC might choose to offer regarding its advice that the Amazon applications should not proceed.”

I think the following sentence is even more important, “The Board believes that any such new or additional information would assist the Board in conducting a comprehensive re-evaluation of the Amazon applications in accordance with the Panel's recommendation.”

The way I read it here seems there is already a decision on the part of the Board to conduct a comprehensive re-evaluation and in that context they are requesting from us additional information. If this interpretation is correct – I think we should further read out and make sure – this would exactly represent the situation we were concerned and which prompted us to provide that draft advice.

We would be concerned if the ICANN Board would provide a re-evaluation or independent judgment in accordance with the Panel's recommendation. Because the Panel's recommendation is based on the assumption that the GAC reasons were not correct and therefore the Board should revisit it and therefore would serve as a second kind of revisiting instance in regard to the Board and would replace the role of the Board in regard to assessing what is or isn't public policy.

If this interpretation is correct, that second sentence is a matter of very serious concern for us. And any new or additional information would be – and I agree with what Mr. Kavouss said before – it would be in a context of a reconsideration process that we are contributing to. In a way, we are condoning the idea that the IRP Panel is being followed and we are contributing to that. We would be very much concerned if we would do that.

We would have no difficulty in providing any new and additional information along the lines that were proposed by Switzerland and others to further provide some inputs, but not if it is considered as part of a reconsideration process being undertaken by the Board in accordance with the IRP’s recommendation.

If I can refer to our latest proposal, Mr. Chair, we would not be against providing some information but not link it to the Board request. We can as the GAC say that we have considered the issue, that we state this or that, but not linking it to the Board decision because I think the Board decision needs to be furthered examined and digested by us so to make sure that we are not accepting any precedent that may be detrimental to the GAC, detach it from that specification could be very I think negative precedent. Thank you.

THOMAS SCHNEIDER: Thank you. CTU and then Iran.

CTU:

Thank you, Mr. Chair. My understanding is like yours in that from the resolution it appears to me that the Board doesn't plan to take its final decision until after ICANN 61. And clearly, based on the IRP, the Board is reconsidering the decision in this particular matter.

What appears to me is that since the IRP talked about merit-based reasons related to public policy and these sorts of things, the Board already has the GAC advice on the matter. Given that the Board is reconsidering, they've put it in writing, they've said it would be beneficial to see if there's any other new information that they can take into account in doing their review. It's a fact the Board is doing a review.

The Board isn't asking the GAC to review its advice or anything like that. They've just come back to their competent source of public policy advice, which is the GAC, to ask if there's any new information that has come to hand that could help them in doing the review.

I don't see that the GAC offering any such new information sets a precedents or compromise advice or whatever because some years have passed. I don't know. Is it possible that there might

have been some new information that has come to light that could impact what the GAC would say? Well, I haven't heard anything, but it is in the realm of possibility.

All the Board is looking for is any additional information that might be useful to them from its own competent source of public policy advice, which is the GAC. It doesn't call on the GAC to do any more than that. I don't see a problem with that. I think the signal has been sent that they are giving the period between now and ICANN 61 to see what could be worked out in terms of resolving the situation. That's all I see for this situation and, well, that's all I have to say. Thanks.

THOMAS SCHNEIDER: Thank you. Iran.

IRAN: Thank you, Chair. I think we should not rush into providing any reply to this resolution. We could mention that we have received this resolution, if I am not wrong, dated today or I don't know the exact date. It seems it's dated today. While we were in session dealing with a very heavy agenda that we have already agreed on, and on the other hand, the amount of legal material contained in the resolution we did not have sufficient time to digest the resolutions and find out what exactly we were asked to provide.

However, you could say that GAC intends to discuss the matter at its next physical meeting to identify the need or otherwise to provide any additional information than those already provided with the advice and, if deciding to provide additional information, discuss the nature of the information and then inform the Board subsequently.

Chairman, we should not rush at this meeting. We receive it. We sleep over that. We try to digest that and carefully read that. Some people may need to consult their legal departments to see what is the content, what is the impact, what is the impact of that in future decisions, whether [inaudible] other decisions or advice of the GAC as a result of this may be subject to reconsiderations. There are many things that we have discussed.

Please kindly consider that you have your own views fully respected, but our views need to be taken into account. I don't think that we should go to any measure of temperature who is in favor of providing information, who is not in favor. Let's just digest that and say, if possible, that we will do it at our next meeting to see whether or not we have to provide information and, if we need to provide information, what would be the nature of the information and what would be the impact of providing additional information on the past decisions or advice given and on the future. Thank you, Chair.

THOMAS SCHNEIDER: Thank you, Iran. I think we all agree that we should think and not rush but, nevertheless, have an understanding on how to move forward. I don't think this is a contradiction, so I think we are in agreement about this.

I see Hungary and then the U.K. Am I missing somebody? Hungary and then U.K.

HUNGARY: Thank you, Mr. Chairman. I understand that there is no rush. I could hear it from different members of GAC. I would like to call your attention to the fact that we are going to provide some information in the communique anyway about the meeting we had with Amazon. And eventually, depending on the extent of this information, it may be the short one which has been proposed by U.K. which is a factual information or we may go a bit further, so it very much depends on us. But we have to keep in mind that in any way we are going to provide some information in the communique. Thank you.

THOMAS SCHNEIDER: This is our choice. This is the GAC's hands. But I would tend to agree with you that we should probably provide some information about what we did, what we discussed, with whom

we discussed as part of the communique, whether this is in the advice section containing advice or whether this is in the other issues or under any other section of the communique, that is something that the GAC needs to define. Also, some text would need to come from somewhere as a draft that we could use then on Wednesday at the latest to be put in. And I hope that won't take us until early morning hours.

So next is U.K. and then Switzerland.

U.K.:

Yes. Thanks. I'm just mindful, of course, we have the opportunity to ask questions to the Board at our meeting with the Board with regard to the intent of the resolution and the linkage, whatever exactly it is, to the request for information. So maybe the meeting with the Board allows the opportunity for Brazil and others, Iran, to ask the Board about the intent of the resolution, whether it actually does infer a re-evaluation of the decision reliant on further GAC advice. I'm not sure about that. Subject to further consideration, but maybe a question or two to the Board will help us.

But I think we should proceed with a response with regard to information along the lines that I was suggesting earlier. I think that would give some comfort to all the parties about wanting to

move forward to see if there is a mutually agreed solution in the offing.

I'm conscious, for one, that Amazon are looking for some action somewhere along the line to help them out, whatever you think about their case. You know it's a bit harsh on Amazon to have to wait until the next ICANN and GAC meeting before anything really happens, whereas a response along the lines I suggested of signaling, well, there's a possibility of some course that could lead to a resolution happening between now and over the next two months or so. I think that could give comfort to the company, and I think that would be a very satisfactory for many governments as well. Thanks.

THOMAS SCHNEIDER: Thank you, U.K. Switzerland?

SWITZERLAND: Thank you. Just to go back very shortly to my prior intervention and also following up to the suggestion made by Hungary, I think that in the end, in the communique we have to mention this meeting with Amazon. We have to mention that we had a subsequent discussion. I think we could link here or include as an annex the transcript of the full discussion because it's really worthwhile looking into that.

And in addition, although as I understand it, the communique is also directed to the Board, also there are other parts that are not direct advice to the Board. Maybe we could include a sentence drawing its attention to the proceedings and the transcript of the discussion.

In addition, whether we are able to find consensus language for the communique highlighting certain aspects of the discussion, as Mark was proposing, I think this is something for us to decide in the coming days. But some of the elements are, of course, that we had this bilateral discussion with Amazon, that there were a lot of interventions that were very thoughtful and went into public policy considerations, and of course that there is a glimpse of a possibility of a little light at a very long tunnel, which is called magic formula in the words of Ambassador Fonseca. Thank you.

THOMAS SCHNEIDER:

Thank you, Switzerland. It's an interesting idea to basically share the discussions that we have. Whether we attach the transcript in paper form or whether we provide for a link, for instance, for those that make it accessible somewhere online, that may be the more environmentally friendly version than putting it on a paper. Jokes aside. No, actually it's actually not a joke, but it's not relevant. I think that's a proposal that we could build on.

We are basically about to close our session today. I think from what I hear, the elements that may be defining a way forward is, first of all, we don't have to take a decision now regarding how to react to the resolution. We have several elements of possible actions on the table, including the GAC advice proposal from Brazil and Peru.

But what we may say or may do is include a section as a piece of information in the communique that we had an exchange with the Amazon company, that we've heard a number of arguments or relevant issues that were brought up in the discussion, that this discussion made available maybe through a link to the transcript for those interested to follow it, that we may have had a discussion with the Board about the meaning or the intention of their resolution (e haven't had this yet, but may have had it by Wednesday) and that we would further look into ways to move this forward.

We would on one hand encourage the company and the concerned governments to do all they can to find a mutually acceptable solution. This wouldn't be an advice. It would just be an expression of a hope or an encouragement. And that we would further look into how to respond to the letter sent from the chairman of the Board to the chairman of the GAC and we could leave it at that for today, for this week. That would be one option.

This is something that we can all I think sleep over it and think about and formally continue to discuss. What we may discuss is who would provide, in case that you would want to have something in the communicate about this along the lines that I outlined which is based on what I hear, who would draft such a text? Ideally, it would be a small group of people that would try to cover the variety of expectations and such a text.

We don't have to take the decision now, but it would be good if we had a very small drafting team that would come up with the proposal for such a text. Because if we don't, then we may have a very long Wednesday evening/afternoon/whatever, which is what I'm trying to avoid. But if necessary, we'll stay as long as we have to. But the more consolidation we would have on a piece of information drafted by a group, of course, that would facilitate our Wednesday.

I see Iran is wanting to take the floor, and then I'm trying to wrap up. Thank you.

IRAN:

Thank you, Chair. We agree with you to do that one. I would like our distinguished colleague, Jorge, reconsider the situation. I do not agree that we attach transcript. Transcript is just a way facilitating to understand. We just refer that, "Please see transcript and record." That's all. We don't attach that because

we do not want to put any [precedence in future that attaching a transcript]. Transcript they might have some difficulties, problems. First of all, should we proofread? I have seen many word in a transcript which does not reflect what was said. The CCWG was one big problem, and they said so always transcript after proofreading by the people that's provided. So cross reference to the transcript after proofreading and record, but not attach that. We don't want to put any precedence for future. Thank you.

THOMAS SCHNEIDER: Thank you, Iran. Of course, proofreading is very important because, as you say and I've made this experience myself as well with transcripts of calls with other constituencies that some errors and misunderstandings may simply result from lack of quality in the transcript, so proofreading is, of course, something. As I said, I don't think we will physically attach the transcript. We may provide a link. That may be useful. Of course, we don't have the time to discuss this. This is up for the GAC to decide in the end.

So yeah, please, I think we can stop now if you agree. And if you agree that we would look for volunteers for a small drafting team that would come up with some draft text, let me say something, by end of tomorrow or early Tuesday, something that we could

have first initial, informal exchange on somehow during Tuesday. That would, of course, be very efficient.

Yeah, so I think we can leave it at that for now if you agree. No opposition to ending today's meeting, we have consensus on this, which is very positive. So thank you. It was another intense weekend. My last intense weekend in this function with you. Comparative advantage sometimes, we need to seize that. Tomorrow morning before the opening ceremony, that is blue element, which means that is something that is for all GAC members. We have a GAC meeting with the community. We have the meeting from 8:30 to 9:00 with the ICANN MSSI team reviews. I knew what it was. I'm forgetting it now. It has really been a long weekend, but Rob is going to help me out of course. What is MSSI's meeting strategy?

UNIDENTIFIED MALE: Multi-stakeholder Strategy....

TOM DALE: That's the ICANN staff team that's responsible for reviews.

THOMAS SCHNEIDER: Okay, so this is about the reviews that we've touched on several times already during this week. That is trying to improve or solve

the current issues that there are with the new mechanism to put together review teams and also the way the reviews are conducted.

And now following this session, of course, is the session of the public safety working group. I think in this room from 6:30 to....

UNKNOWN SPEAKER: [It's a social event for newcomers. Social event.]

THOMAS SCHNEIDER: Oh, this is the social event. Sorry. It is written quite small and, as I said, I had quite an intense year. So forgive me. PSWG newcomers session. It doesn't say it's a social event. So it is a social event? Okay. So it is a social event, so enjoy it. Have a nice evening. See you tomorrow and/or Tuesday. Thank you.

[END OF TRANSCRIPTION]