
ICANN73 | Virtual Community Forum - GAC Discussion on the Global Public Interest Framework
Monday, March 7, 2022 - 12:30 to 13:15 AST

GULTEN TEPE:

Welcome to the ICANN73 GAC Discussion on Global Public Interest Framework followed by GAC Preparation for Meeting with the Board session on Monday, 7 March at 16:30 UTC. We will not be doing a roll call today for the sake of time, but GAC members' attendance will be available in the annex of the GAC Communique and Minutes. May I remind GAC members in attendance to indicate their attendance by updating their participant's name to reflect their full name and affiliation. If you would like to ask a question or make a comment, please type it by starting and ending your sentence with <QUESTION> or <COMMENT> to allow all participants to see your request.

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English. Please speak clearly and at a reasonable pace to allow for accurate interpretation, and make sure to mute all your other devices.

Finally, this session, like all other ICANN activities, is governed by the ICANN Expected Standards of Behavior. You may find the link in the chat for your reference. With that, I would like to leave the floor to the GAC Chair, Manal Ismail. Over to you, Manal.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Gulden, and welcome back everyone. This session is scheduled for 90 minutes, and we will have it split into two 45 minutes for the Global Public Interest Framework discussion and the second 45 minutes to prepare for our bilateral with the Board.

So as you can see, we will be starting with the Global Public Interest Framework, and the ICANN Board developed a proposed Global Public Interest Framework frame for the purpose of facilitate and understanding Global Public Interest issues in relation to decisions, they have offered it to the community and during this session we will discuss whether the GAC is interested in exploring this framework and if so how and also so that we can be prepared for the upcoming discussion, the cross community

panel discussion on the Global Public Interest Framework scheduled immediately after this session.

The GAC topic leads are Jorge, GAC representative Switzerland, Nigel, representative of the UK and Velimira Grau of the European Commission who will lead and moderate our discussion for today. I would also like to welcome our guest speaker, Avri Doria, she's an ICANN Board member and lead on the topic of Global Public Interest, and many thanks Avri for joining us for the second time, who will provide an overview on this from the Board perspective. So with that, allow me to hand it over to Velimira.

VELIMIRA GRAU:

Thank you very much, Manal, and good morning, good afternoon, and good evening; good evening to all GAC colleagues. As Manal has briefly explained what is the purpose of this session, I will go directly into substance. I think it might be useful that we already go into the next slide please.

So as you may recall, the general public interest is a number of primary [indiscernible] governance document and namely the bylaws, articles of incorporation and [indiscernible] of commitments, and you can see extracts of those on the slide in front of us. As a reminder, I will say the general public interest has

to be determined from time to time by the community and through a bottom up inclusive and multi-stakeholder process, and I think that this is an important information to bear in mind so we can come back to it later in the discussion.

Next slide, please. So given the central role of the GPI, as Manal explained, the ICANN Board and the community have developed a framework, and basically this framework is designed to focus on specific context and issues that a decision of the ICANN Board, and recently actually the SSAD was used as a pilot case and the operational design assessment that was published recently refers namely to the general public interest framework and we will see this is also a very important piece of information to bear in mind and come back to.

Despite the framework being developed, it has to be said that apparently the challenge remains how to render I really the framework operational and hence the discussion we will be having today, whether it would be useful for us as GAC to use and if so, under which circumstances.

Before entering further into details, I just want to note some information that we have seen over the last weeks which is important to set the context which is about the financial year 23 plan which [indiscernible] the ICANN community reads to decide

whether the proposed Global Public Interest Framework can be used to demonstrate how specific recommendations, advice, and public comments are in the global public interest, and the pilot to be completed in FY23 and an important piece of information to keep in mind today.

With this and for the sake of time, I will hand to over to our special guest, Avri Doria, to give us a short overview of the framework and Avri, again, thank you very much to for your availability and time and thank you so much for accepting again to give us an overview and your knowledge about the framework and the rationale behind it, so please, the floor is yours.

AVRI DORIA:

Thank you, I don't know whether the slide I have been using it in your deck but if it is, please go to that slide. I very much appreciate being invited to talk about it, and I will talk about it briefly here because we did already go through it, plus you have limited time.

A couple of things I want to say, and I won't go through all of the bullets. One, I want to say the Board is already determining GPI, Global Public Interest, on every decision and we talk about it, and we ask is that in the public interest and the various Board members come up and we look at the recommendations and we

look at the advice and at the comments and we make that determination. But what we don't have is an explicit definition that we say, yes, it meets the global interest because it matches this definition. And talking about it in terms of in each decision, the frames of reference may vary, so how do we both understand it in sort of a methodical, systematic way and talk about it and include the bottom-up multi-stakeholder process.

One thing we did not want to do is create yet another set of processes, that this is the set of processes. There is an assumption and in preparation of this, one of the questions was what are the assumptions behind this? There's an assumption that the PDP process, whether it's the GNSO one or ccNSO should include considerations of public interest. At the end of the day, the Board has to look at that combined with the advice, comments, letters, and make a determination bringing it all together is the Global Public Interest met by these recommendations? You know, it isn't the only decision, there could be decisions about technical viability, et cetera, but it is an important part of every decision.

So we went for if we can't get an explicit definition and -- before I got involved in this before I was even on the Board, there have been years of discussion that org was running on can we pin down a definition that will work for ICANN in all cases? There were some

really good definitions along the way but none of them met this threshold and none of them met the threshold of there being a consensus.

So the next assumption was what is there a consensus on within ICANN? There is consensus on our Articles of Incorporation, on the bylaws, the process the bylaws go through require getting the views of the whole community, bringing it together, making a decision and the bylaws were certainly worked through in the transition period, any change to the bylaws goes to the empowered community for confirmation. So it can be said that they have a level of consensus.

When you look through the bylaws and the articles, you can find many statements that correspond to various values that need to be met in public interest determination, and the framework we have has a very long list of them, of sort of five ICANN categories and within each of those five ICANN categories many categories that we think belong to public interest and each one of those is pinned to some statement within the articles, the mission, the commitments, the values, et cetera. So there tries to be a mapping of those things to that.

Now, our view -- and I won't talk much longer because I know this is a time for you all to talk -- and happy to answer any question

about anything. I can talk about this forever. But as I said, no change to processes. Each of the SO/AC's has their own set of processes. The Board has adopted this as a pilot to see if it works for us to be able to talk about the GPI, to be able to determine it more methodically. But we're already sort of asking the community, and that is all of you, to look at these things, to see if those definitions, those categories, that way of speaking of Global Public Interest when commenting, giving advice can be useful to you. What we do now is we go through -- and you can see this in the SSAD ODA, that basically the ODP went through comments and recommendations and how they were discussed and everything and basically did an extraction saying we looked at the discussions on Global Public Interest according to these categories, they were discussed, and we believe that the comments we received, you know, direct us to think that yes, this looks like it is in the Global Public Interest.

The Board now has to do its work on that. Again, we have to look at it, did the ODP covered all the categories that needed to be covered? Anything else we need to look at? Have we received comments since the ODA that redirect our view to sort of say you really need to pay attention to this that you haven't paid attention to as strongly in the ODA

So basically we're looking to look at the framework, see if it's useful, comment on ways it can be improved. It obviously needs to be improved, everything always needs to be improved, but even looking at it, it's a pilot, still early in its stages, look for your comments on how it can be improved, and any comments that refer to those categories makes it easier to basically say ah-hah, they spoke about this category in the framework and said this about it -- we don't have to extrapolate, or say I think we were talking about this category. I will stop there and I'm happy to talk about any of it in response to a question but thank you for listening to me, and I hope I talked slowly enough for translators.

VELIMIRA GRAU:

Thank you very much, Avri for this. It's definitely very valuable and also many thanks for explaining the assumption that is behind the GPI framework. I definitely [indiscernible] this is an important building block to have on minds for discussion and before asking colleagues to proceed with the next slide, I also wanted to make two other important remarks for the discussion. Basically today when we will be looking into the GPI framework in this GAC plenary session, I think it's important to bear in mind what Avri said about the difficulty to come up with general public interest definition. So I just want to put in light the scope and say for sure this is not the purpose of our exchange today, to try to define the general public interest but to reflect upon the

framework. And then an important point is of course the SSAD, given it is the pilot use case that was concluded so far I think it's important to look at this from the angle of the GPI framework but without going into discussions about the substance and the recommendations in SSAD at this stage. So with this, I will ask if we can go to the next slide which is about our ICANN plenary and how we can reflect on it.

I think that in order to be able to let's say appropriately contribute to the ICANN plenary discussion on the GPI framework, it would be useful that we have a short actually at the objectives behind the session and also to see what our objectives and what we can do here today in the session.

So when it comes to the ICANN plenary that will be held later today, basically there are three main objectives. The first one is to understand how the GPI framework can be used by the ICANN community in ICANN processes. Then the second objective is to discuss the license from the pilot use case, and third, to consider whether and how the framework could or should be adjusted. So this is also appearing in the helpful intervention of Avri, so I would say these three objectives but also to reflect what is in the financial year 23 operating plan, I think it would be helpful to focus on these three main points. First, what are the pros and cons of the GPI framework? Second, how it could be improved or

clarified? And third, how the framework could be applied in our GAC work. Now, to help our exchange with these questions, I propose we look at the questions for tonight's plenary and reflect on them. Next slide, please. Thank you.

As you can see from the slide, there are a number of questions on which it would be helpful to reflect in order to feed or reflections on the questions into how the GPI framework could be improved, how it can service and to what extent is fulfills the needs of the community. So basically you can see a number of questions here, the one they just mentioned, but also I feel at a number of questions that were discussed at this preparation actually of the ICANN plenary for tonight, and I think these questions may help us to trigger our reflection. Like should the framework be mandatory, could it be used more broadly? What is the benefit of GAC in using it and if so, under what conditions we could apply it? How to adapt to this.

And it's a fair question also to ask how the framework helps meeting the requirements of the articles of incorporation and for those of us who have been looking into the SSAD on ODA and the pilot use case, I think it's the appropriate moment to share our observations about what is in annex 2 of this pilot use case.

So indeed with this and bearing in mind we don't have so much time for discussion, I would like to open actually the floor for exchanges from other GAC colleagues, and then with my colleagues from the European Commission will be happy to share with you how actually we see the framework and how we're approaching these questions. Thank you for this, and thank you Chair, for the floor. I hope colleagues who have already the possibility to reflect on the GPI framework are able to intervene now and share their observations.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Avri and Velimira. So the floor is now open for any immediate reactions to what we have heard so far or views on the questions we have on the screen. And as Velimira mentioned, those are the questions along the lines, the discussion of the upcoming panel is going to [indiscernible] so good to have internal GAC brainstorming so we're on the same page before we move on to the community discussion. Jorge, please, go ahead, Switzerland.

SWITZERLAND: Thank you, Manal. Jorge Cancio, for the record. I guess it's convenient and also a good idea to break the ice if I have been part of the preparatory group of this plenary session, and I think the Global Public Interest of course is something that resonates a

lot with the GAC, I think if you look into the operating principles of the GAC, we have the mission, so to speak of feeding public policy recommendations into the public policy making and also the aspects pertaining with the intersection with international or local law, so I think it's very important that we have this discussion, so thanks very much to Avri for introducing the issue and to Velimira for leading this session and for representing us at the plenary session, the plenary cross community session.

I have basically two questions. And I think they are questions for the discussion at the plenary. And one is what teeth does this process or framework have? So if the Board were to come to the conclusion that a policy outcome or an outcome from a cross community Working Group or from whatever issue the Board decides upon, doesn't really meet the Global Public Interest, what would the Board do? Does it refer it back to the community? What does the community [indiscernible] in such a case, if a GNSO policy does it start a conversation with the GNSO Council, how would that look like? And to what extent can the Board justify its decision to let's say remand or give back some policy or some community output back to the community based on this Global Public Interest Framework? So that's the first thing.

And the second, which in my view isn't really that explicitly embedded into the framework itself is the question that Velimira

mentioned. And of course that is one question I have been pushing around for some time because it really concerns me or it's something that I find important. In the end, if we look at the Articles of Incorporation or the bylaws, the Global Public Interest is what the community determines from time to time through an inclusive bottom-up multi-stakeholder community process. And if I look at the Global Public Interest globe itself, I miss a little bit some assessment or tools, indicators to assess whether those requirements are inclusive, bottom up, multi-stakeholder, are really met.

So my question is, is it implicit somehow in the elements of Global Public Interest Framework or are we understanding that as it is coming from the community, for instance a GNSO PDP recommendation, that as it comes from the community we take for granted that the process has been inclusive bottom-up multi-stakeholder, and so on. But does the Board really subject this to material assessment? So I think I spoke too much already.

Thanks for your attention, and I give back the mic.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Jorge, and thank you for the brainstorming and breaking the ice. So any -- I see Susan, US, please, go ahead.

UNITED STATES: Thank you, Chair. And I don't know if Avri would like to respond first to Jorge's two questions which are very relevant, because then I had questions on the framework itself and just to clarify my understanding of what it is. So I would defer to Avri if she would like to respond to Jorge first.

AVRI DORIA: I'm happy to respond and also happy for you guys to collect a few things together and respond. Whatever it is you want. Call on me when you want me to respond, and I'm ready to do so.

UNITED STATES: Well maybe since the thoughts are fresh on the top of my head, I will go ahead and ask them.

So I spent some time with the framework last night, and I would just like to -- if you could just help confirm my understanding, or correct it, in either case, the framework itself seems to be a set of 15 different questions that would serve as a [indiscernible] for the Board to ascertain whether any given recommendation that is put before it serves the Global Public Interest. I guess if that recommendation itself needs to go through the assessment, so I have pulled out these 15 different questions and tried to break them down. I mean, admittedly, it appears there are a number of

questions within each question. So it seems to call for a very rigorous analysis which would seem appropriate.

Some of the questions that were posed by our colleague Velimira for this discussion today is whether the GAC should adopt this into its own processes, whether it should be mandatory, et cetera. I don't think we would be quite ready to answer some of those questions today, I think this would benefit from further discussion, but what I just wanted to ask is kind of my description of this as more of a heuristic, is that correct? And I guess if so, I have some further feedback on the set of questions. But in the interest of time, I will pause in case other colleagues would like to ask questions and get out of the way for Avri to respond to Jorge's questions as well. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Susan. So I don't think we're looking for immediate answers. I believe we're -- but I stand to be corrected by Velimira and Nigel and Jorge. I think we're brainstorming and it's the first time that we have discussed the topic, so I think we're just starting, but I see Velimira's hand up, over to you.

VELIMIRA GRAU: Yes, thank you, Manal, and thanks very much to Susan and Jorge for the very valuable questions. I was about to make precisely the

same comment, that of course Avri is here to guide us in terms of understanding, and I think indeed this might be good that based on the brainstorming we have, probably would give her 2 or 3 minutes at the end to respond to some of the questions or at least to correct misunderstandings in terms of what we might have possibly not having got right. But I guess indeed it might make sense that we first brainstorm among ourselves so that as well because a clear understanding of what we possibly don't understand and also because I think it would be valuable for us, to GAC, to further bring into the plenary today. And I see Nigel's hand up, thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Velimira, and Nigel, go ahead.

UNITED KINGDOM: Yes, thank you, good afternoon. I will be very brief, I think this has been a good interaction and I totally agree, it's a brainstorming rather than sort of trying to get to the bottom of everything, and of course the session later will be very informative as well. And I just hope that -- and thanks to Avri and of course Velimira for introducing such important issues and really to thank the Board for piloting this in a degree of seriousness, which I think it merits, and it will be good to hear from Avri how difficult or easy it was for

the Board to apply this framework to the different policies that come before them. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Nigel, good question. I see Susan's hand up and I think after that Avri, if you would like to provide some reactions to what has been said so far. Susan, please.

UNITED STATES: Thank you, Chair. I just wanted to ask one kind of substantive question in particular to Avri too to add to the host of questions. It looks like the seventh question in the framework directs the Board to consider that the matter addressed is within ICANN's mission, and it also seems that the precursor to use of this heuristic tool, to the framework first is -- well, it's a threshold to use the tool it should be first determined that the issue under consideration is within ICANN's mission. So I was hoping that you wouldn't mind addressing that in your collective comments. Thank you so much.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Susan. Avri, if you can bear with us one more intervention, and then I will give you the floor. Thank you. So European Commission, go ahead.

EUROPEAN COMMISSION: Thank you, Manal, and happy to see all the colleagues here. So very quickly, because Velimira has already explained a few points, I wanted to echo Jorge and also with Susan and Nigel, we need time to assess the tool. The tool as such is not good or bad, the idea itself waiting to assess the Global Public Interest is a very good one because already we don't need to already go into the abstract definition Global Public Interest but if the tool is used -- doesn't make sense. If not adjusted to every situation -- it needs to be contextualized but it is certainly good to have one such a tool.

The main issue is how this is used, in the sense that first of all, the main point is that what we have seen from the testing of the SSAD ODA which was also a very good initiative, it's important that the framework as run as part of the recommendation development, because it's important to be sure that the Global Public Interest is injected since the very beginning, since when the recommendations are created, not only to see whether they were taken into account.

And then coming to this second point, the goal whether it's taken into account or not, it's important and I think we as GAC have a special interest in that, that Global Public Interest concerns need to not only be taken into account but addressed the SSAD a very

good test field for that and also regards the whole EPDP process, the GAC has been very active in expressing its view and in some cases went ahead with minority statements and it's important to see if we as government representatives believe we have in the way of supporting the public interest, important that when concerns are raised, they're also addressed, not only taken into account.

So these are two reflections but the one more important for tonight is the inclusiveness part, because that is very tricky to ensure the concerns of the Global Public Interest are really inclusive consideration how big is the ICANN community. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, very valuable remarks, all well noted. So Nigel, is this a new hand?

UNITED KINGDOM: Sorry, it was an old one, I do apologize.

MANAL ISMAIL, GAC CHAIR: It's okay. Velimira, this is a new hand, I believe?

VELIMIRA GRAU:

Yes, Manal, thank you. I am just a little bit also mindful of time so I will try to be brief.

I just had a few points to suggest for consideration for other discussions here within the GAC. So I just wanted to add a few points to what already my colleague [indiscernible] and also Nigel and Jorge mentioned. So basically the way I have approached or at least understood the tool is that for the time being it is used like a monitoring tool and a ready tool for the Board indeed to see whether given the recommendation, public comment, or decision, are falling within a given category that is set from the framework.

So I believe from that perspective, actually it may be a useful tool for the Board. I also believe that due to the very holistic broad and let's say detailed categorization, this is a good tool to account for the public interest and I believe we could also use it in the GAC also at the moment where we are for instance preparing our GAC advice or reflecting our position on policy recommendations, because then it will be very helpful also to bring to the Board how we see a given issue, how it relates to this framework, and I think this will be helpful for the bottom up approach, especially if other groups do exactly the same.

Then in terms of improving, there is one point for me which is linked to this, let's say, to the question of what is the good moment for the tool to be applied? And there I just want to stress that I very much agree with one of the findings of the SSAD use case as was said, this consideration of general public interest should be done at the very moment of the policy development, and I therefore think that there is another very important moment which is the one of the GNSO deliberations. Because I believe that in order to be effectively addressed the GPI should be weighed properly and not only discussed but also accounted for by the GNSO Council when the GNSO Council positions itself on a given set of recommendations. So I will stop there. Thank you

MANAL ISMAIL, GAC CHAIR: Thank you very much, Velimira. And now Avri, you have the last words, please.

AVRI DORIA: Thank you. And three minutes to answer all these will be challenging but I might continue in the session that comes later. First of all, at this point it is a Board tool and it's not mandatory nor is it envisioned as mandatory because each of the supporting organizations and advisory committees has their own way of

working, you know, and their own way of fitting into considerations.

Now, in terms of the use of it, the general idea, like I said, with the first assumption is that the PDP process is the one that is at first level looked at for inclusiveness. And in fact when the Board is looking at the recommendations it looks at the discussions it looks at the comments that were broad in, the issues that people brought up, how they were dealt with, were they dealt with, are there minority positions that were taken into account, et cetera.

So in terms of the PDP, a lot of this is being done, it just takes a certain amount of digging and abstraction to say oh, yes, that was a Global Public Interest issue, therefore, you know, it applies, that was not. So what we're saying is would it be useful? Asking the question, would it be useful to actually use of the categories, some of the questions. Now the questions themselves are just quotes from our documents. They're just quotes from the articles; they're just quotes from the bylaws with the words will it put in front of them. So in doing this, there was no creation of new concept, creation of new questions. And it was largely done by [indiscernible] within the staff, so we worked together. It was sort of what are the statements within the bylaws that call out Global Public Interest.

One of the questions we have for you all, did we miss any or did we misapply it to the wrong category or whatever in terms of doing that, so that's the question.

As someone that was a computer professional for many years, is it a heuristic? It certainly can be used that way, but it really wasn't necessarily defined as a proper heuristic as heuristics are defined. In other words, it's not a decision procedure that we will go through step by step by step, it's we'll look at the questions, we'll look at the issues, see which relate to which, and this is one of the things that's important in terms of use. If in the process of doing a PDP, in the process of doing a comment, in the process of giving advice, people have sort of addressed these in this language, then it makes it easier to sort of pull them out and say we have a Global Public Interest issue that was specifically spoken of, it was spoken of in the PDP, it was addressed in the following way, it was solved or not solved.

Those are the questions that the Board has to look at when it's trying to determine, you know, does a recommendation get approved. And this is both for the GNSO recommendations and ccNSO recommendations, have to take a look at the questions in that manner so I don't know if I have handled my way through all the questions yet.

So a question of what happens if the Board decides it's not -- I really can't answer that. Sometimes the Board comes back and asks questions. Sometimes the Board may reject -- I cannot predict that. But what would be necessary in use of this if it was a Global Public Interest concern, to be able to have the language that we can use, the references that we could use to sort of say why or why not. But certainly I can't recommend -- I mean, I can't say what would happen in a particular instance. I want to point out that the SSAD one is still basically halfway through -- oh, I have already gone way over my time -- halfway through the process, we have yet to do the Board's side of it. At the end of doing the SSAD we will do an evaluation, how did it work, not work, what can we do to improve it in terms of looking forward to the experiment in that. So I can't say how easy it is yet to apply yet or how hard, after 73 we will sit down and sort of say okay, you know, let's do our part of it. And I will stop, and I will look through the questions and any I didn't answer, apologies, I will try and fit them into what I say in the next session. Thanks.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Avri, and indeed, I think any questions that were not addressed at this point in time, there is a second point during the community plenary in an hour or so, so please engage and participate in the session. And thank you again, very much, Avri, for joining us and thank you to Velimira, Jorge, Nigel, and

everyone who participated. Thanks to our topic leads, it is indeed an important topic to the GAC, yet we need to digest and maybe pilot and see how we can benefit from it, particularly as we talk about closed generics that have been served by [indiscernible] the Global Public Interest, so maybe a starting point in using the framework.

And we're five minutes over time, so I'm concluding the discussion on Global Public Interest, but GAC colleagues, please remain in the Zoom room, and we will proceed directly with our preparation for our bilateral with the Board. And thank you very much to support staff for being that ready and that fast.

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