Transcription ICANN Los Angeles
New gTLD Update to the Council
Saturday 11 October 2014

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Jonathan Robinson: Thanks, Volker. Thanks, Sarmad. Let's call that session to a close and then we have one more before we break for coffee mid-morning.

Bret Fausett: Would you like to break now or move straight into the next session?

Jonathan Robinson: Just one moment for the recording, we just switch off the recording and bring...

Are we okay to start with the next session? Thank you, we're good to go. Okay so the final session before we have a coffee break is we're going to hear from Bret Fausett on the progress from the discussion group on new gTLD subsequent procedures and the work going on in that group. Thanks, Bret.

Bret Fausett: Good morning. And I'd be remiss if I didn't welcome you to Los Angeles. I'm fortunate to call this city home so if any councilors have anything that they would like to ask or need help with around the city I'm happy to help. On this

particular working group you'll remember that we started this off based on a resolution that we passed in London.

And the purpose of the group is to start the policy development process, if necessary, for looking at subsequent rounds of new gTLDs. Our policy process here in the Council starts with an issue report and we had the discussion group created so that we could inform the issue report process.

So we are a prelude to the issue report. And I'm going to tell you right up front that this is going to be a presentation but I'm also hoping to start a dialogue among the Council. We have never had a process like this before. We have never had a pre-issue report discussion group to start the issue report process.

So one of the things that I would like to know, and I know that Steve Chan who has worked very heavily on this group as well is like to know, is so what output would be helpful to this process? We have started our reflection on the new gTLD process and right now we have heavy participation.

Steve may have the better numbers for me but we have a group of 40 or 50 people I think in - Steve's shaking his head yes - in the mailing list and so far we have come up with - we've asked people to submit issue statements of the things that they would like us to look at. And I think we've got 75-80 issues already raised.

So as we move forward one of the things we're going to try to do next is to organize these. And Steve has started the hard work of organizing these into logical sub sets.

And then the question that we're going to be faced is what do we do with all this information that we've gathered? There are obviously a lot of issues that people have identified that they want to look at. Some of them are going to rise to the policy level in which case if we want to change policies or initiating

new policy we're going to have to go through the policy development process so we'll need an issue report on that.

Some of them may not rise to the level of policy, some of them may be implementation details in which case we could create a report that could be feedback as it examines the new gTLD process.

And we've started having that discussion in the discussion group. And some people are of the mind that all 80 of these issues or 100, whatever we end up when we finish the process, ought to go into a single policy development group.

Some people are of the mind that we ought to have multiple policy development groups around some of the core issues as we've identified them by subject matter.

And then, you know, it may be that some people think that everything just needs to go into a staff report and that the current policy has been set and that we're happy with the round two that looks like round one.

So those are really the possibilities of what could come out of the discussion group. And so that's where we are right now. And our goal beginning this was to finish by the end of this year. Again, we are not trying to solve the issues, we are simply trying to identify the issues and to wrap them up in a way that they could come back to this Council and the Council could decide how it wants to create policy development processes around it. We're not solving issues, we're identifying them. So again we are trying to create work that is going to be coming back to the Council for a decision on how to properly put this into the policy development process.

So that's really where we are. I would love to have feedback from the Council, it doesn't need to be right now, it could certainly be at a wrap up session or throughout the week. But I think understanding what input the

Council would find helpful would certainly help us do our work in the discussion group.

Jonathan Robinson: Thanks, Bret. I think it's more than the Council as well it's anyone involved in the new gTLD program, more broadly within the GNSO gTLD applicants or now are registries. So it would be good. Has anyone talked in your group at this stage about I guess whether these issues that you're highlighting or points are gating factors for subsequent rounds?

Because you could argue that some things are improvements and desirable improvements but not necessary improvements and therefore - has that issue come up at all?

Bret Fausett: I'm sure I understand. So my view is that there's - subsequent rounds are baked into the process, they are going to happen. And they are on a current course based on our 2006, 2008 whatever it was policy recommendations. And if we want to turn that ship we need another policy development process.

Now I don't know if that's a gating factor but if we want to - the ship is moving toward its destination and all we can do at this point is change it. And I think it's going to happen - I only know that there's a gating there. But if somebody wants to change something then obviously this needs to happen.

Jonathan Robinson: That's a good point. The future rounds are baked into the existing policy and therefore it's a question of when not if and how. Philip - Philip Sheppard.

Philip Sheppard: Thank you very much. Philip Sheppard speaking on behalf of the Brand Registry Group. We're a member of this group and in fact just this week we submitted our initial thoughts to add to the list.

What struck me with the various issues that have been submitted is indeed the length of the list and significant number of issues raised. Although also

speaking with the voice of a little bit of experience of the policy that we originally set as the GNSO, which I was at the time involved in.

I think for me there's a whole bunch of stuff there and probably the majority (unintelligible) issues for which I think, you know, staff will be very willing to say yes, you know, we agree that - we can come back to you on that to suggest an improvement. And I think - and that might just leave a residual set of things which perhaps are more policy and need to be looked at.

So I'd have thought that the next step once we're happy with the comprehensive nature of the list is to go through each on the list and say is this probably an implementation in which case staff can advise as to what they can do with that and that will leave a smaller subset that we can look at or you can then look at in terms of policy. Be my initial thoughts.

Bret Fausett: I think that's right and I think that identification of policy versus implementation probably ought to happen at the working group level. But I think staff can also significantly aid us in that in trying to make their own independent determination of that also. So I'm hoping that we can identify those things from both sides and maybe find out where we're in agreement.

Steve DelBianco: Thanks, Jonathan. Steve DelBianco with NetChoice. Bret, you mentioned that GNSO policy was established and what year did you suggest? What year did you suggest we established the policy that set this ship on its course?

Bret Fausett: Yeah, it was long ago...

Steve DelBianco: Right.

Bret Fausett: ...2008 or...

Steve DelBianco: Exactly. And as we discussed this morning sometimes subsequent events occur and we have to figure out how to always work that back in to whether

we need to revise policy. And the two events I wanted to focus us on are well written up by staff in the report; one was in 2009, the Affirmation of Commitments, which included Paragraph 9.3, the affirmation review of the new gTLD expansion. And it's a review by a cross community group, not just the gTLD community.

And the other subsequent event was GAC advice from 2011 that called for a GAC review of that next round - of this round particularly with respect to rights protection mechanisms. So those two subsequent events occurred after the GNSO policy. So while the ship is perhaps on a course it seems to me we should acknowledge the ship is going to have to make two stops and undergo scrutiny of those reviews and that could then drive GNSO back into its policymaking role.

Bret Fausett: Yeah, I think that's right. And I don't want to carry the ship analogy too far but, yeah...

Steve DelBianco: Too late.

Bret Fausett: I think the ship is - my view - again my view personally - is that the ship is sailing and it's got both of those things on board because the staff-driven - there's the staff-driven process that's going to lead to a second round or subsequent rounds as we've decided to call it. And on board of that staff process are the two things you mentioned. They are obligated to do those things so that is happening.

I think the GNSO has a bit of a trump card to play that if we want to, I mean, we're - we are responsible for policy around GNSO implementation issues so if we want to turn that in any way or say you must do this then this is the process that has to happen and it has to go through a PDP.

Now it could be that we decide, look, all of our comments around the implementation details we're happy the way the ship is going; that's a

perfectly logical possible outcome of what the Council decides to do. They look at what the discussion group does and says, you know, we don't want to turn this at all. But if they do I think this is a process to do it. But I agree, those two things are part of the evaluation.

Steve DelBianco: Right, and we really can't decide whether we need policy until we see what the result of those reviews are and how well they're supported by the community. So the trump card, so to speak, I guess we could make the community aware the GNSO may reserve the right to do policy before the next round, that would be one way of expressing it.

But we don't currently have the results of those two reviews and we won't even have them by the time this discussion group is done. So it would be that new policy process where we would - to really take the ship analogy too far that's where we would take the results of those reviews on board.

Bret Fausett: Well, I think, again speaking personally, I think we can look at possible policy corrections after that review is over. I think we can also do it in parallel. And there may be some things that aren't going to be discussed in those processes that we can identify now.

There's literally so much has been identified as possible work that if we wait until everything is done, you know, we'll be here in a decade talking about it the same way we started talking about it in 2000 and didn't get going until 2012.

So I think we ought to identify what might have to go later but also think about the things that we can do now because there's so many moving parts. If we want to do it all we just can't do it serially, I think we're going to have to work in parallel.

Jonathan Robinson: Okay, guys, I'm going to move you. I mean, I think that that's a really interesting question that whole point about sequencing and we shouldn't lose

that. But I'm keen to give others a chance in the queue. I've got people coming up at the mic and I've had James and Thomas being patient so I'm going to - I'm going to swap between floor and the mic so we'll go first to James and then to Chuck at the floor mic.

James Bladel: Thanks. Well the conversation has moved on a bit from my previous comments. And I just wanted to ask - I believe the round two work plan that was published last month I believe that was a staff-driven document and not the result of this discussion group.

So my question is, are you using that in your discussions? Are you looking for opportunities perhaps to compress that schedule which I think we had a presentation last time that could take us out into 2018. And I think that how is that - how is your group reconciling that staff effort?

Bret Fausett: Yeah, we are aware of it, we've talked about it. And staff prepared that cognizant of what we were doing too so, you know, they put some of - they put GNSO inputs now into their staff report.

James Bladel: So it's coordinated.

Bret Fausett: It is coordinated.

James Bladel: Awesome, thank you.

Jonathan Robinson: Chuck.

Chuck Gomes: Thanks, Jonathan. Chuck Gomes speaking as co-chair of the Policy and Implementation Working Group. Now let me qualify and make sure everybody's aware, that's not a PDP working group but I think that the working group before the next round happens will have made some recommendations that hopefully will be acted on.

And I just want to very briefly just call your attention to this afternoon when you're meet - when J. Scott, the other co-chair - J. Scott Evans, will be giving an update. And pay attention to some of the things we're looking at because we're looking for reactions and it ties in very closely to what you're talking about, Bret, and the work that you're doing.

So this is just a plug for that, policy and implementation has been mentioned several times in this session, and there are good reasons for it. So we're looking at some things and we're going to want feedback from you in that session.

Jonathan Robinson: Thanks, Chuck. So I'm going to try and just capture that for a moment and ask that we capture that as an action item too. I'm not exactly sure what it is but it's thinking about the coordination between the work of policy and implementation, the discussion group, the staff work on the post current reviews and just think about the coordination and organization of those, the sort of coherence of those different efforts.

And there may be others as well. But, Steve, if we could capture that that would be great. All right I'm going to Thomas next and then I'll come to you, Edmon.

Thomas Rickert: Thanks, Jonathan. I was wondering whether it would be possible to set up a wiki for the issue that have been identified. Steve Chan has produced this mind map which I think is an excellent piece of work. But looking at that and looking at the different categories I think there are some issues that can easily be ticked off the list if staff acknowledges okay we're going to take care of that in future rounds.

I think the closer we are coming to a potential opening of a new round the more people will look at past issues. And if we had one resource where we could flag, okay, this has been identified and it's going to be taken care of in future rounds or other things that would require policy work then everybody

would transparently see where we are and the various issues that have been identified.

Bret Fausett: Steve, you want to take that?

Steve Chan: Sure, this is Steve. I guess directly to answer your question there's a wiki created where the mind map is actually already generated or shared actually. As we go through additional iterations they all get versioned, they're all present.

And I think as we develop additional further work where we start looking into - trying to look at these issues and define what might be recommended towards policy, what might be recommended towards implementation all that detail is going to be shared on the wiki itself so there is a space and it will be fleshed out with additional details. Thanks.

Bret Fausett: And, Thomas, you're right, I mean, some of the issues are clearly directed at the staff implementation. There are things like - there were too many delays in the process. I mean, that's really not something you can develop a policy around, that's purely sort of going to implementation.

And I - what I heard you saying is maybe staff can check some of these off and saying we've heard you, we will - this is part of what we're doing.

Thomas Rickert: So the idea was not to put the mind map into a wiki but have a wiki of the individual issues so that people can see what the status of the resolution of the issue is. And maybe it can be ticked off, maybe it requires policy work. You know, so I think we would prevent back and forth with the community by doing...

((Crosstalk))

Jonathan Robinson: Yeah, so Thomas thanks. That feels like a practical suggestion to throw into that pot of how we deal with the coordination. I'm conscious I've got people in the queue but Steve, respond to that if you'd like to.

Steve Chan: Yeah sorry. This is Steve. Just a - that was our intention was we start getting these - the issues into the larger buckets. We were going to create an individual wiki page per topic, put additional detail about what the interdependencies might be, the level priority, the mechanism that we recommend for it to be resolved, all those things will be put into an individual wiki page per some high level issue. So thanks.

Jonathan Robinson: Thanks. So just noting that I've got a queue which is Edmon, Avri and then J. Scott. Let me know if I've missed anyone. Go ahead, Edmon.

Edmon Chung: Edmon Chung here. So this is kind of following with what Chuck mentioned. But I probably should get myself on the mailing list and I'll get that later. But there are certain - I guess in my mind there are certain policies that were not implemented or either consciously decided to be the next round or ignored or, you know, just not included as part of the AGB.

So how do we - how do we look at that and is that the right - is this the right group to bring this out? The - or the policy versus implementation. The question there also is there must have been some staff's thinking that we were not provided a full answer previously that those things that were dropped. But how do we get that response is part of the question as well. Is there an interaction with the group?

Bret Fausett: That's interesting, I hadn't thought about that issue. You know, I think actually if there were things that were in the GNSO's prior policy recommendations that were not implemented I think the staff could pass a resolution and ask staff for an explanation, you know, point to the, you know, this is Principle 14 from 2008. We did not see it implemented, please explain and get us feedback before we did anything. I think that would - that'd be very

appropriate as a resolution for the Council and I'd be happy to talk with you, you know, afterwards about maybe how to get that happen.

Edmon Chung: Should it come from the working group or - because previously it has been talked about during the - as the AGB was finalized but eventually it was, you know, just disappeared.

Bret Fausett: You know, we haven't done that. We haven't looked at the previous policy recommendations. We've taken that as gospel, you know, we've said that if we, you know, in trying to identify what's policy and what's implementation we start from the groundwork of what is already policy.

Obviously if you want to contradict something in the - what was it - 18 principles that we passed before I think that's by definition policy. But we haven't looked at what might not have been implemented, I think that's a very interesting question.

Edmon Chung: Sorry for taking this time but just quick thing, besides the 18 there are also all these sub reports. And inside them there are many things that are, you know, not directly - well they are directly related to one of the 18 but there are more detailed recommendations from some of the sub reports.

Jonathan Robinson: Thanks, Edmon. Thanks, Bret. Just a quick point, you said - just to make sure we got this correct for the transcript actually you said staff could make a motion and you meant the Council could make a motion, I think...

Bret Fausett: Yeah, I meant the Council could make a motion, yes.

Jonathan Robinson: I've got Avri and then J. Scott and then I think we'll call this discussion to a close. Go ahead, Avri.

Avri Doria: Yeah, I thought the comment that staff could make a resolution was actually a very fine Freudian slip. I think that it's trying to pretend that the

implementation matched the principles is one of the great jokes of our time. And I think that we really do need to go through that.

One of the things that concerned me that got me to raise my hand was the notion that we would be able to have the staff say oh just check that off, we're taking care of that. Basically when I look at - and that was part of this whole coming up with this policy, I remember the discussions quite well; I remember a lot of the sub groups that Edmon was referring to.

And to pretend that we have an implementation that matches that is close to being a travesty. So to say that the staff can just check off, you know, and I'm not talking about our very fine policy staff here, I'm talking about the implementation team that put together this program, we should not be accepting the notion that staff can just check it off and say that's done. Thank you.

Jonathan Robinson: Thanks, Avri. J. Scott.

J. Scott Evans: I just want to speak to a word of caution when I here like work in parallel and all of those things, not to jump too heavily on what Steve said but, you know, there are a whole lot of people in this room and online and listening to us - oh by the way I'm J. Scott Evans from Adobe Systems and I'm President-elect of the International Trademark Association.

But there are a lot of people who read about us in the press and watch about us from just snippets they hear around and one of the problems this organization consistently gets itself in trouble is there's not a coordination of what the work is supposed to and what it's supposed to mean.

And I worry very much when I hear things like work in parallel and no one's really figured out how it fits into the process because I got to tell you, there are a lot of people who sit outside this room who still feel quite - I don't know if I would say cheated or like unfulfilled by economic studies that were

promised when they were supposed to be done and the first round went through and they were done afterwards and there was a lot of - a cloud of mystery and suspect around those.

And so I just think that you need to clearly articulate what this work is supposed to do and you need to look at the plan that's already been put in place and you need to explain to us as - in a transparent way how it's going to fit into the whole process so that people who are on the outside looking in feel like we're not working, you know, they're not people who are working in one area and another area and they're ignoring each other and it's not working and it's a broken organization.

So I just think that you need to clearly articulate as the Council what you expect your work to do and how it fits in and you need to work with staff and with the Board to understand how that's going to work, rather than having disagreements or different ideas that are silently assumed by everyone and then when it all comes together at the end it's a huge misunderstanding because we thought our work was going to fit in here and we thought you were going to listen to us here, you need to figure that out now.

And that needs to be articulated and coordinated and that's your job, Council, as a policy coordinator is to figure that out, to articulate it, to have those discussions now so that the 50 people on the mailing list working with Bret aren't angered at the end of the process when they feel like their work has been ignored. The Board doesn't feel like it's been held up and held hostage because it didn't understand what this work was going to fit in.

So I just implore you all to clearly articulate and work together as a group, all of us, to understand how this work all fits together into the plan that's already been put forth even if that means changing the plan that's been put forth. I'm not saying it's written in stone but we need to have that discussion up front because it's unfulfilled and assumed expectations that continually gets this

organization in trouble from a public relations standpoint outside the walls of a basement on a Saturday morning in Los Angeles.

Jonathan Robinson: Thank you, J. Scott. And I think that's what I started to try and do with looking at - putting a placeholder into coordinate these different activities on subsequent rounds so I think your point is well made. I did say I'd close the queue there but I can never close it when Kristina is waiting at the mic.

Kristina Rosette: Kristina Rosette, IPC. And I am a member of this group but I have just joined and I haven't made it through the past transcripts yet so I apologize. But kind of following on on what J. Scott and Steve were saying, I think it would be really helpful for I think both the group, the Council and the broader community if at some point in the not-too-distant-future the group could identify kind of maybe three or four issues as examples from the mind map and identify how exactly those could possibly work in parallel so we can in fact have a better sense of yes this actually is something that can work in parallel possibly.

Or alternatively, you know, we've taken a really close look at it and we don't see how we can make this work. And, you know, based on the work that we've done in trying to figure out can they run on parallel tracks we've come to the conclusion that we haven't and then that would then feed into J. Scott. Because as I look at the mind map there are a whole bunch of issues there that I see that really, really have to be addressed before there would be a next round because otherwise you're going to end up with certain applications just coming up against a roadblock.

And that I think will then further exacerbate some of the frustrations and concerns that J. Scot was referencing. So I don't know to what extent that is on the to-do list of the group. But if it wasn't already I'm certainly planning to suggest that it be there.

Jonathan Robinson: Thanks, Kristina, and thanks everyone. That was a very useful discussion and it - I mean, I think we perhaps in a - between a rock and a hard place and that's what we've got to figure our way out of because it feels to me like there's going to be some pressure for another round and some pressure to conclude this round satisfactorily and those two are naturally in tension. So I think we've got our work cut out for us to try and figure our way through that.

Thanks, everyone, we've had a good morning session so far. We're going to take a 15 minute break now, we're around half an hour behind the published schedule but I think we've had some good and important discussion so it's necessary to that.

We'll see you back here at 11:15. Thanks.

END