

gTLD WG_ 2009-1-15 _ 278360

Cheryl Langdon-Orr:

The beginning of our agenda, which is the review of the action items - the action items from the 10th of December 2009 meeting-- The first matter on the issue of public morality, ALAC will inform the board that ALAC will be discussing the issue with the GAC. And ALAC is to begin discussions with the GAC. We're waiting for formal feedback from the chair of the government advisory committee as to when and how in Nairobi we can further discussion on this matter.

It was an outcome from our meeting together in Seoul that a number of members in the joint GAC and ALAC meeting felt that it might be worthwhile putting together a subcommittee or a joint ad hoc workgroup between the two parts of the ICANN world to explore where mutual interests and perhaps new approaches could be looked at. And we would like to think that some joint statement might arise from that. So that is an action item which is both ongoing and has, I guess, been dealt with partly inasmuch as statements have included our intentions to go down that pathway.

The second matter on the action items raised from the 10th of December 2009 meeting is on the issue of categorization. This is something that Vanda Scartezini had allocated to her name and was asked to guide the ALAC and At-Large community in our activities. By numbers of categorization, I think the intention was to get some inkling on the board's intention as they're looking at the [EOI] issue-- and, again, this is why I regret Patrick is not with us as yet on today's call-- whether or not there is going to be both a prioritization if the EOI activity goes through to finalization, which is very difficult for me to say for some reason, and, indeed, whether or not it's going to be an open-ended call or a certain number of categories are going to be set and all expressions of interest are going to need to fit into that set of categories.

Vanda has offered her apologies for this evening's call. And, so, we will ask, as an action item, for a follow-up request to get feedback directly back to the working group list from Vanda and, also, to our next At-Large call on this matter.

The issue of traditional knowledge, which was a very important part of our comments on [DAG] version three, where we have the matters of culturally inappropriate and very specific areas of almost intellectual property in the world is a new matter that we need to explore further. Karaitiana and Darlene were recognized in our action groups as RALO leadership people who have very particular expertise and an ability to outreach to the local indigenous communities to get us some information back to this workgroup. And a strongly worded paragraph on this issue was mooted. I am unaware of activities by either Karaitiana or Darlene on this matter. And neither of them are on this call.

Again, I would propose that they are matters that we ask them directly as an action item to get further feedback on. But I think it remains on this-- tonight's call, which is to overturn the previous call's decision - a very important matter that we need to write on.

And on the issue of independent (unintelligible), the words suitable and were resourced needed to be included. This, of course, is reflective of many of the concerns that Hong

and so many others working in the intellectual property area and having particular expertise have asked the workgroup to focus on. And I think that's a note that we simply have to recognize and complete.

With those action items reviewed, then I'll open for conversation. Perhaps Hong-- Thank you very much for joining us. Is there any particular matter on those more intellectual property issues, either the indigenous or traditional knowledge aspects or the independent aspect, that you'd like to make a comment on now?

Hong Xue: Thanks, Cheryl. I know this is a very long day for you already. It should be your midnight.

Cheryl Langdon-Orr: It is indeed.

Hong Xue: Well, I do have a couple of comments. I just tried to open the page on the December 10 call and summarize a couple key points. First of all, I want to go to, if you're allowed, agenda item two - about the review of the DAG version three.

Cheryl Langdon-Orr: Certainly.

Hong Xue: I believe we still have a couple of open issues that we do need to talk about. First of all-- Oh, I don't want to spam the issue on trademark protection, but this is really a critical one. This is on post-delegate (inaudible) resolution policy. And this is well included in DAG version three in the part of the contract with the new gTLD registry. This part, even though it's critically important for trademark issue, has not been included in STI - the special trademark review team. It's been left out-- I don't know whether intentionally by the board's request. But this is a very potentially harmful policy. We have some preliminary discussion on the list. And people have raised a serious concern that whether a registry that have took all the pains to go through the application process and eventually obtain a gTLD would-- or could be deprived of because of certain trademark claims, such as [Pandora]. We are watching the movie. Pandora is a generic term, but it happens to be a registered trademark for the jewelry in the United States. This is a very dangerous scenario.

In another scenario and as a post-delegation DRP, the registries in the future will be responsible for the systematic abuse (unintelligible) of its registrants. So this is really new policy that's very different from UDRP and all the other. The trademark protection mechanism so far has been implemented or proposed in the ICANN system. This is kind of a new indirect liability that's been introduced into the ICANN policy. It does deserve a serious public observation and review. [It's saying that field people have mentioned that. So I hope, for this part, it should be seriously pointed out.

Cheryl Langdon-Orr: Hong, may I ask just to break in your words here at the moment - Would you be happy with this workgroup's support for your-- the transcripts-- quite literally, the transcript of your words, which I found both very understanding and naturally articulate on this matter-- to become the structure of paragraphs in our comments on this, because, wearing not just my ALAC hat but, also, my ccTLD and my general consumer advocate's hat, I'm very concerned that we have this tendency at the moment to drift towards additional levels of preferred protection or license being given perhaps inadvertently and perhaps deliberately by what we see happening in the new gTLD area. I would be of the view that quite strongly worded paragraphs raising the issue as concern to us should be included.

Hong Xue: Sure. I'm very happy to do that. And even from the point of view of consumers, this is a serious threat. Think about that. If a registry is going to be responsible for the registrant's potential abuse, then it's very likely the registry is going to censor the domain and

registration. They're worried. Okay, then (unintelligible) will be infringing or will not allow it to be registered in the first hand. Just really, real (inaudible).

Cheryl Langdon-Orr: Indeed. And it comes back to-- We're trying to apply a set of priorities or greater claims to things that, by the very nature of the trademark system, have so many numbers of classes. So, as you pointed out in your Pandora example, it is a generic term. It is a jewelry trademark, but it is also a registered and licensed trademark in a number of other classes in a number of other countries. So, to have perhaps the more mythological approach or interest group usage of the word at risk of not being able to be used in a new gTLD name is something I think we need to be very cautious about.

Hong Xue: Right. And, Cheryl, if I could--

Cheryl Langdon-Orr: Please.

Hong Xue: -- I have a second point. There is more on the working of this working group three. I fully agree with you; the name is very confusing. I guess it's puzzled a couple people. What is the meaning "working group three?" This is from [summit].

Cheryl Langdon-Orr: Well, I must say I've asked that to be overturned. It will be a residual term that you'll see rapidly disappearing. It's a legacy from the nomenclature we used during the summit. This is definitely to be termed the gTLD or new gTLD work group.

Hong Xue: Oh, well--

Sebastien Bachollet: Hong, it was three because it was DAC three. And then we were moved to working group four for the DAC four, I guess.

Cheryl Langdon-Orr: No, no, no, Sebastien. We're not going to have that level of confusion, not on my watch.

Hong Xue: Well, of course, we can rename it quickly. The issue is that-- Who are to be working for this working group? That's become a question. In Mexico, we have a small group and three leaders - [Evan and our friend Frantinesa] and me. Right. So three of us drafted the document-- and Rudy.

Cheryl Langdon-Orr: Yes.

Hong Xue: Me, Rudy, and Evan as the reporter. So this is small. But it's a working group. It's really (inaudible). And Sebastien took his precious time to (inaudible) those from time to time and made a great contribution. So this is sort of the core group. I wonder who are still working on this subject. I guess Evan is still on and anybody else--

I'm raising this because we're going to have a lot of work in front of us. We want to draft an agenda item three mentioned, a draft-- well, a document on this. And we have a couple of key points. I remember at the summit we had the division of labor, so each person will be responsible for certain topics. Hong is working on trademark issues, and Evan is working on the independent (unintelligible).

Cheryl Langdon-Orr: But, Hong, I'm very confident that, as that was a successful model in terms of the division of labor-- a successful model for the summit workgroup activity on the earlier draft AGs, that we should perhaps consider that a good model for this current workgroup to continue on with. If we look at those who joined us on the 10th of December call, you'll find, of course, your core group still there but the addition of representatives from--

Let me just scan through. We had Dave Kiskoondoyal, which makes sense from a little bit more of an African input. We certainly had, also, [Analisa Raja], who I think would continue to be interested and should be reached out to to be-- to reaffirm or to affirm her involvement in the workgroup. She has obviously some particular business interest in this but, as an At-Large structure, has continued to, I think, bring very good information and discussion to the table, particularly along with Rudy on the matters of fees and ongoing fees and application fees that, of course, we raised in our comments on DAG-2. [Heidi] also joined that call. [Michael Sprague] joined that call, admittedly as a fairly new person in the process. But I think we should ensure that we reach out directly to him as well and, of course, to Ron Sherwood acting as the ccNSO liaison. There are a number of concerns that I suspect we will have mutual interest with the ccNSO on certain matters, as we will with the GAC, that would be very useful for him to be involved, at least, in an ex officio manner.

So perhaps it would be appropriate as an action item for this call for a direct outreach to everyone listed in the current population of the workgroup and those who have joined the December and this January call. So that means we'll add Dev and [Lutz] to that list and ask what particular parts of the DAG-3 they have a passion or interest in and whether they'd like to contribute either individually as a leader or along with some other person in the workgroup to divide up the interest.

If I may, Hong, I would suspect that the way things were divided up at the summit activity still makes great sense. Your particular expertise in the trademark interest, I think, would be impossible to match or master, and I'd very much encourage you to hold the pen on that. But it is certainly something we need to add in the traditional knowledge and ask both Karaitiana and--

Hong Xue:

Darlene.

Cheryl Langdon-Orr:

Sorry. I've just had a mental blank-- Darlene, on whether or not they would be able to contribute a paragraph or two. And perhaps if we start some form of collaborative effort on the wiki and on the list, even if we just patch some of these paragraphs from each of you together at this stage, that will at least start the drafting.

Is that to everyone's agreement? If you're in the Adobe room, please wave or put up a big red X if you disagree with that. But Sebastien would like to speak to the matter. Go ahead, Sebastien. Do you agree?

Sebastien Bachollet:

I agree. And I wanted to ask when, not to disturb this call, but we need also to discuss about expression of interest because there is already some work done on that. And it could be beneficial to discuss that issue also today.

Cheryl Langdon-Orr:

Yes. Well, in fact, if we look at the review of the guidebook, we'll find that, of course-- Sorry. My error. The action items-- When we're talking about categorization, this specifically goes to the matter of expression of interest. And I see both the activities of the subgroup that wrapped itself around the STI-- so I think we should also reach out to Olivier and see if he would like to introduce some very particular matters there. I think our review for the DAG-3 needs only to reference our statements that we put in on the STI. But we certainly need to divide up and make sure we reference what we have said on the expression of interest as well. The expression of interest activity, I believe, will be (unintelligible)-- something will happen. If we look at the seeking input and advise before we have to put in our comments-- Matthias, might I ask? Do we know when the outcomes of the public consultation process of the EOI is going to be made public? It would be to our workgroup's advantage if we knew if that was going to be available before our drafting of our DAG-3 comments are going to be done.

- Matthias Langenegger: I'm sorry. I was just on muted. I missed part of it. Which--?
- Cheryl Langdon-Orr: Because we've had the public comments for the expression of interest-- have closed, they should be being analyzed. Do we know when the--?
- Matthias Langenegger: When we get the summary?
- Cheryl Langdon-Orr: Yes.
- Matthias Langenegger: I don't know if we have a date, but I could try and find out.
- Cheryl Langdon-Orr: I think that would be extraordinarily useful because that will give us something to specifically react to and use as a set of points. Rather than just say - Please see our current comments and statements, I think it would be-- give us a little bit more meat into a paragraph on that.
- Sebastien, do you believe that we need additional work to go into the comments on the DAG-3 or simply annex and reference what we've already done? I note you put the link up there. That's why I'm asking.
- Sebastien Bachollet: I put the link because I don't think that it's a closed discussion. And we really need to ask Patrick to finalize the document and to-- we can maybe-- I don't know when it was supposed to be the last, because it's not the 21 of January that EOI must be-- comments must be sent. And, if it's the case, I think it's good to have that done prior to the end of the comments. And then, if you agree to put that into vote by ALAC as a [statement], because I think we have the basis for a document where I hope that everybody could be agreed on.
- Cheryl Langdon-Orr: So you would rather see us do it as a standalone, endorsed statement than integrated into our DAG-3 comments. Is that correct?
- Sebastien Bachollet: Yes, because I think we can't leave that with no comment from our group because I think it's a very important move. And if we wait to have a comment on the DAG-3 including that, we will miss this part of the debate. And some of us hope that the expression of interest will help to have a DAG-4 version and to have a final DAG version as soon as possible to allow--
- What I missed to do-- I (technical difficulties) between the discussion about election of the At-Large board members to draw a schedule line of when new gTLD could appear and what are the main (technical difficulties) to let you know and to have your feedback on that. I think something we are missing by ICANN staff is to have a view of the milestone and the date of those milestone, even if it's to be moved. And we know since two years that it's a moving target. But, if each time we don't have a new or an (unintelligible) or up-to-date scheduled version, it's quite difficult to go.
- I tried to incorporate the expression of interest, DAG-4, last DAG and when it could be, and it's quite scary because, for the moment, I don't see any gTLD before middle of 2011. And knowing that, for just one example, we have already-- we will have pretty soon some IDN ccTLDs. That's great. But I think we need to have IDN gTLD also quite soon.
- I would like very much that we have also the discussion about the categorization. But, because inside the comments I made about this expression of interest-- We need this categorization. It's already something we know part of gTLD-- future gTLDs are in one category; for example, the one-- the [language] geographic name, because it's taking care by GAC. And that's one category. We have the category of the [corporation] or brand

TLD, because that's something quite different than any others and so on and so forth. And I really would like--

Cheryl Langdon-Orr: (Inaudible) community and community use. Indeed. Yes.

Sebastien Bachollet: Yeah. And then there are-- I say it's not really-- Or it could be a categorization, but I guess we have two types of things. We have what I call categorization, the geographical name, brand TLD. But we have also some what I call (but I don't know if it's the right word) segmentation; for example, community and non-community TLDs, for-profit and not-for-profit organizations. So that could be something to shape a landscape of how we want to take care of all that, because, obviously, a community TLD for a nonprofit organization for a .CAT-like TLD is something different that [.Google], brand TLD, for-profit, than with-- no community, even if they will claim that they are community. Just a bad example. Sorry about Google (unintelligible), but just to pick a name.

Cheryl Langdon-Orr: I think we understand where you're getting to. Sebastien, may I ask you and, indeed, the rest of the group, then - Should we then pen a paragraph in our DAG-3 response which highlights what you've outlined but specifically calls for a clear and unambiguous set of categories to be explored and established which is in parallel or which synchronizes with any expression of interest future activities?

Sebastien Bachollet: It's a good question, Cheryl. My feeling was something that expression of interest could help ICANN to build that categorization because, if we-- If ICANN asks for expression of interest and it's mandatory and that's something important [each month] that there is and everybody-- but it's mandatory, knowing that four months of communication will be done before opening this possible gTLD obligation. And then, after, let's say, one month to put your expression of interest, ICANN can open the least of the gTLD string requested. And then we can work on real situation, not just on, yes, we imagine that we will have-- Maybe we will not have any-- What I can say? Maybe, let's say, company were giving up and no one will come. Or we will see categories that we never thought about. And it could be easier to do it on the basis of real-world than on just dream or even some people pushing for something and not something else.

Cheryl Langdon-Orr: Sure. Sure. Okay. Thank you, Sebastien. Hong, go ahead.

Hong Xue: Okay. I have three points, from specific to general. The first one is on categorization. I guess this is very important issue as we are going to comment in DAG-3 statement. For categorization, do I understand that not only the categorization for new gTLD or gTLD but categorization for the whole [DNF] needs to be reviewed. It's being strongly proposed already that [IDMs] are neither gTLDs or ccTLDs. They actually are special TLDs. But it seems ICANN put IDM into the pigeonholes of ccTLDs or gTLDs. So it seems that is the facts. This cannot be changed. So we've limited our discussion on categorization in new gTLDs.

I guess the present system does have its own weakness, and I feel (unintelligible) her wisdom, to comment. And she is willing to draft this paragraph. That's great. I'd like to defer her great job clarifying this issue. But I do believe the community-based new gTLDs, even though it's controversial, should be maintained because it seems the only way for some community to get a TLD.

Cheryl Langdon-Orr: Yes. Yes. And, indeed, part of the expression of interest outcomes, I believe, many of us would hope, Hong, is that there would be no time delay or no unreasonable impediment in the process that would be inflicted on those clear community benefit ones.

Your other points?

- Hong Xue: Oh, right. The second one is on the (unintelligible) of our statement on EOI-- on the statement now on DAG-3. You raised an interesting point that we should merge two. To my understanding, they should not be merged. The obvious reason is that DAG-3 statement is for DAG-3, and EOI is not a procedure (inaudible) DAG-3. Well, I know EOI has its own benefit, and I'm reading the draft statement. Is it drafted by Sebastien? This is good.
- Cheryl Langdon-Orr: Patrick.
- Hong Xue: Oh, Patrick.
- Sebastien Bachollet: It's Patrick. Yes.
- Hong Xue: Even though I have my own personal reservation to this newly added layer in the already very complicated application process, but I can go with the majority will. But I don't believe it should be merged with the statement on DAG-3.
- The third point is an initial working plan for this working group. I guess the most difficult-- To our experience, the most difficult thing is to take the first step. So (inaudible) Heidi or Matthias create a wiki page, and divide the wiki page into three bulletin points-- sorry-- five bulletin points. These five points have been specifically raised in our previous calls, such as the first one is morality and public order. The second one - categorization. The third one, while traditional knowledge-- we can rename this (inaudible) for the understanding of ICANN people. The fourth one could be IO, independent (inaudible). The fifth one I raised today. That's PDDRP or other trademark issues. So these five points have been raised, and each of them-- almost all of them have got an author.
- Cheryl Langdon-Orr: Okay. Well, can I say, before you move to your next point, Hong, that I would like to see that as a specific action item that-- as an outcome of today's workgroup call that that becomes an action and that in the general workgroup wiki space we have those five categories listed and a sub-page attached to each of those and that we also add an action item from today's call ensure that on the list we confirm at least one primary author but also additional assistants to each of those-- that people are going to own those particular topics to start the initial drafting before we weave them back together.
- Hong Xue: That's actually my last point.
- Cheryl Langdon-Orr: Oh, I do apologize, Hong. It's just that we great minds think alike. Please. I'm sure you'll make it much more articulate than I did. Go ahead.
- Hong Xue: Right. I guess we assign homework to specific people and drive them to work.
- Cheryl Langdon-Orr: I'm sorry to preempt you, my dear. I do apologize. Anything more before I recognize Sebastien? Okay, then, Sebastien, go ahead.
- Sebastien Bachollet: Yeah. I wanted to absolutely agree with Hong. IDNs-- It's something different, and we have to take-- I like the wording she said about there is-- we need to categorize the ccTLD and gTLD because, as a matter of fact, even in the ccTLD world with the .TV and some other examples like that, we are facing some difficulties. But we have to try to have a full picture of the landscape or the domain name space. And maybe we need to add somewhere something about-- what's about a TLD with multiple ways to write it in different scripts? Is it everybody-- each candidate will have to pay for each of them? Or how it will work? I know it's some discussion happened on that at the second level. But at the first level it's something we need to discuss. And I am sure that one of the big

troubles with all that is who will get .com in Chinese, .com in India, .com in whatever you want, because it's something important to know how it will be handled, those ones. Thank you.

Cheryl Langdon-Orr: Okay. Thank you, Sebastien. Anybody else? Jim or Dev or Lutz, would you like to bring in any particular points on what's being discussed? I see us having a fairly nice skeleton being developed here. But I-- Okay, Lutz is declining. That's not a problem. Jim or Dev?

Jim: No. I'm fine. I'm just participating as an observer. Thank you.

Cheryl Langdon-Orr: Okay. Dev?

Dev Anand Teelucksingh: I don't think I have anything more to add other than what's been said. I think it's a good idea how we have the five important issues and just try to tackle those issues, especially the categorization one. I think it's-- I think it has to be done. But it's also, I think, the trickiest-- a tricky one.

Cheryl Langdon-Orr: Yes, it is. Now, I would just expand, then, on what the current proposal is in terms of our homework-- that we need both repopulate this particular working group and revitalize the interest and reaffirm the commitment of the existing workgroup members. And I think Hong's list of five subcategories and wiki pages will go a long way to encouraging people to look at where they would like to spend their efforts in doing this draft.

I think the morality and public order we probably should, in that one, because we've got a fair body of comment going all the way back to the very first of the DAGs. I think when we have made comments that affect each of these five subcategories, we should list those as reference materials to the wiki page because that will make it easier for people to work from established statements, when we have them. And that will also mean that we have to have a general reference which links to the work of the STI statements that we've put in and what we will be putting in on the EOI when that goes to vote before the end of the month.

I'm wondering how much further, without the other members of the workgroup being present, we can get through in today's call. Perhaps-- Yes, Sebastien; go ahead.

Sebastien Bachollet: It was a mistake. But I guess for today we are done. What I would like maybe to send to the people you list as the potential participants to this work-- to send them as soon as we have the recording-- to send them this recording to allow them to keep informed on what we said today and use that as some element for their own work too.

Cheryl Langdon-Orr: Indeed. That's an excellent plan, Sebastien. Matthias, can I ask-- Is it possible to-- particularly because this is not a terribly long call, nor do I think it's been a very complex debate. It's been, I think, a very multi-stranded but, in each of those strands, quite linear and simple to follow set of statements which have had absolute, if not, universal support by all members of the workgroup on this call. If we could have a transcript of this and if each of us on this call could just take the time to check the transcript-- The reason I'm asking for that transcript to be shared, as well as the recording, as Sebastien suggested, is that some of what has been said, particularly by Hong and by Sebastien, I believe, are text in their own right that we could lift a lot of what's been said in this call to be, at least, first draft text for a number of our five subcategories. And I'm hopefully going to make everyone's life easier, not harder, if we use that tool.

Matthias, I'll leave that as an action item for you. I know that there's an awful lot of transcriptions getting done at the moment. But, if it's possible sometime in the next 72 hours or so for that to be made available and to go out with the MP3-- or, sorry, the link

to the MP3-- We don't want to send the actual MP3 out. That would be a little bit unreasonable for people to have to download it. And, if each of us - particularly, Hong and Sebastien, who I think have contributed the lion's share in the intelligent debate we've had here today, can just check that their words have been accurately and reasonably recorded. And we will have, then, something that we can cut and paste, I guess, out into our new wiki designed for the workgroup. And the reenergized and revitalized and repopulated workgroup list can get their teeth into and, hopefully, in fairly short order get some meaningful drafting done.

I'm now going to call for any final comments or any other business for this workgroup. If you're in the Adobe room, raise your hand. And, if you're not, make some sort of noise at me over the telephone line.

I'm not seeing anybody, in which case the only piece of any other business or agenda item that I believe comes in under next steps that we have not covered in our summation for today's call is when we will have a future meeting. I'm very aware that in some parts of the world we're getting into certain festival and celebratory, lunar new year and family requirement times. For example, when the lunar calendar changes, people from a number of Asian countries have particular familial demands and requirements on them, which may make next meetings a little bit more challenging than they would be at other times in the year.

I would like, however, to ask that you let me know-- Do you think we need to just put out a general doodle or we need to say we will be meeting late in February? Hong, do you believe late in February would be relatively clear for most of our friends in Asia-Pacific?

Hong Xue: Oh, sure. No problem. The lunar new year is actually in the middle of [February].

Cheryl Langdon-Orr: In the middle. Yeah. I'm just concerned that some of those festival times drag on a little bit. I just want to make sure we pick a date that's well the other side of those. So could we look at something in, shall we say, the last week in February?

Hong Xue: Oh, sure. No problem for me.

Cheryl Langdon-Orr: Okay. It's just that we can't go exactly one month, Hong. Otherwise, we're going to be smack, bang in the middle of it all. So I'm not just going to say we'll meet next month at this time, because, if we meet next month at this time, that won't be a very good time for a number of people.

Okay. Well, we'll put out a doodle then to cover some times in the early part of the last week in February.

And, with that, unless anyone has anything else to say, I'm going to wrap up this call and look forward to having the transcripts, the links to the MP3, and, indeed, the, I think, very nice skeleton approach that we've come up with today happening on the wiki. And I certainly like the way this is approached - the division of labor and a weaving together into a final document in short form.

Sebastien, if I could, could I get you to pop on your executive and vice chair hat and follow up directly with Patrick on those matters of the EOI?

Sebastien Bachollet: I will.

Cheryl Langdon-Orr: And I'll also ask Vanda to get back to us on those matters. Any action item that we've missed, Matthias, I'm sure you'll be picking us up on and making sure that we don't miss out on.

Okay. With only a few seconds to go, thank you. Good morning. Good evening. Good day. Good night. And good work. Thank you, all.