

ICANN

**Moderator: Gisella Gruber-White
April 30, 2015
10:00 am CT**

Coordinator: Excuse me. Recordings have started. You may begin.

Yolanda Jimenez: Thank you. Good morning, good afternoon, good evening. This is the (unintelligible) Member Call on April 30, 2015. On the call today, we have (Andrew Harris), Andy Abrams, (Beth Alagretti), (Caroline Inguyen), David Fares, Elisa Cooper, J. Scott-Evans, (Mary Patella), Phillip Corwin, Samantha Demetriou, Steve DelBianco, (Tim Chen), (unintelligible).

We have apologies from (Gabiella Stack), (Catherine McGowen), (Brian Houssman), (Bob Heinbecker) and myself, Yolanda Jimenez. I would like to remind all participants to please state your name before speaking for transcription purposes. Thank you, and over to you, Elisa.

Elisa Cooper: Thank you, Yolanda. I actually don't have much to cover. So what I'd like to do is is (Gimsen) - (Gimsen) is not on the call.

Angie Graves: Sorry, but this is Angie Graves. I'm phone only. I didn't hear my name.

Elisa Cooper: Oh okay.

Angie Graves: And I thought (Gimsen) would be on. I was really kind of trying to answer that. But maybe he's phone-only as well. Sorry.

Elisa Cooper: Thanks, Angie. If (Gimsen's) not on, I'd like to just move forward to Steve DelBianco and dive right into policy because I think we have a lot to cover. But before we do that, are there any other items that folks would like to cover in today's call that we can save for any other business?

Jim Baskin: Yes, hi. This is Jim Baskin. It might fall under one of (Steve's) topics but the - we've gotten the request about - for people in the group that are interested in the new gTLD planning activity that's begun to join the e-mail discussion list. And I wanted to let you know what happened when I tried to do that.

Elisa Cooper: Oh, okay. Interesting - sounds like. Any other items that we want to be sure to cover in today's call. Okay, perhaps we can - we'll hold that off into any other business and then if anyone has anything else to add, I'll ask again at the end of the call.

So Steve, can I turn it over to you to jump into policy?

Steve DelBianco: Sure, Elisa. Yolanda, would you please put up the PDF of the policy calendar.

Yolanda Jimenez: Yes, thank you.

Steve DelBianco: Thank you. I sent the policy calendar just a few hours ago with a middle-of-the-night exercise since we were already up doing the cross-community working group call at 3 a.m. today. Thanks to all the different volunteers who have pitched in.

We've - despite all of the activity on the cross-community working group where IANA transitioned accountability, we've still been able to keep the BC -- Filing Comments. The last two we've done, I have not talked about before but the last two were, on April 28, we filed a comment on the release of some new gTLD geo-names and four of them were brands and two of them were generics.

And this was a great comment that Andy Abrams drafted which made a distinction in the BC's suggested approach for brand/non-brand open gTLDs. And all of you saw that first back on April the 9. I got a handful of - agreement comments. There were no objections and no edits that we filed out on April the 28.

Thanks again to Andy Abrams. On the 23 of April, Elisa Cooper and (Tim Chen) drafted for us a comment on the Expert Working Group draft report for internationalized registration data. Thanks again, Elisa and (Tim). Great job on that.

We filed that on the 23rd. Alright, so scrolling down into the current set of comments, we've got a couple that are active right now that we want to get done today because they're due tomorrow. They're due tomorrow.

So the first one on our list was Rights Protection Mechanisms. And while I'm describing it, please open the fifth attachment to my policy calendar - the fifth attachment file on RPMs. We had a great team effort on this between (Cat McGowen), (Mott Mood), Phil Corwin, (Andrew Harris).

And yesterday, Phil Corwin submitted an e-mail with a lot of comments on it. (Cat McGowen) and (Andrew Harris) worked a little bit to add those comments to an earlier draft that Andy Abrams had circulated. So it's

wonderful to have a lot of people on the drafting teams but it presents a challenge to the drafting teams - and myself included - a challenge to reconcile to make sure that comments that don't agree with each other get resolved in some way.

So (Andrew Harris) did his best, I think, last night to - and consolidate comments from Andy, from (Cat), and from Phil Corwin. And that's Attachment 5. We've got to finalize this today.

So I would ask to take a queue - particularly Phil Corwin; I really want to know whether you believe that these comments reflect the suggestions that you made. Andy, you're first in the queue with your hand up; go ahead.

Andy Abrams: Thanks, Steve. This is Andy Abrams. Hopefully I can make your life a little bit easier. On 6A, that's where we had a little bit of a disagreement. I'm fine compromising.

I - think (Cat McGowen's) language is great and I'm fine going with that language for 6A. And then 5A is where Phil had pointed out that yes, there's possibly a lot of deterrents going on with the claim service, but how much of that is maybe unreasonably deterrents due to generic terms.

You know, I defer to Phil on the exact language, but maybe we'd insert something about further study is needed to determine the nature of the deterrents and that sort of thing. So I'm fine inserting some language there.

And then the final area where we had some disagreement was 5D where we were discussing whether or not to add a further statement on the claims notice about whether it was unlikely that a generic term would infringe. I still don't

think that we should put anything in there about whether or not something is likely or unlikely to infringe.

I think Phil circulated some language in an e-mail which included a note that, you know, you needed to obtain your own counsel. So long as we have that notice in there, I'd prefer sort of leave it less said than more in terms of whether something is likely or unlikely to infringe.

Steve DelBianco: Thanks, Andy. And I'll note that (Andrew's) reflection of your comments - for instance, 5B - is blank right now. And I believe that the drafters would desire that any comment we left blank we would probably take out the actual question and only leave in here the questions we did answer.

So J. Scott, you're next in the queue. And Phil, I hope that by now you've had a chance to compare your e-mail with the document I sent around. And I'll look for you to get in the queue and talk to us about whether you think we're good to go.

Go ahead, J. Scott.

J. Scott-Evans: I just wanted to say that I think that there's a fundamental nomenclature problem here, right. Domainers talk about generic terms but what we're really talking about is dictionary terms. And under the law, a dictionary term can be generic as to certain goods and services and can be a trademark as to others.

And this has been a fundamental problem in this debate all along is because one side talks about generic terms. Well, apple is generic as to apples, apple growers, apple seeds, but it is not generic as to computers.

So I would just ask that we make sure that any discussion we have use the appropriate terminology because I think that's where some of the confusion comes in, when you start talking about protection. If people say well, this is a generic term, well that's not necessarily true. It may be generic as to certain things but it is not generic as to others.

And it's that fundamental understanding that continues to have the cat chasing its tail with regards to this suggestion.

Steve DelBianco: Thank you, J. Scott. I'll note that the draft comment we have in front of us has the word generic in two of our replies, but, ironically, second time we use it, it says the generic dictionary word. So that's covering all the bases.

So for the drafters and (Andrew Harrison), particular, let's determine whether we want to keep the words generic and dictionary or just go with the word dictionary. Thank you, J. Scott.

Phil Corwin please.

Phillip Corwin: Yes, Steve. Can you hear me?

Steve DelBianco: We (unintelligible).

Phillip Corwin: Yes, I'm fine with going with dictionary. I understand what (Jay Scott's) saying, of course, and, you know, there's lots of words. There's words like "united" which are a trademark for lots of different purposes or (unintelligible) dictionary words and non-infringing for others.

So I think that's fine. I'm just looking up this letter - I don't want to hold up this discussion. I'll put in the chat if I have any issues with it, but for right

now, I'll give it a tentative yes and get back during this call if there's any issues. Okay.

Steve DelBianco: Phil, that'll help. During this call, since I need to close this off tonight.

Phillip Corwin: Right.

Steve DelBianco: (Andrew Harris), thanks again for the leadership you exerted pulling together the draft like this. I can take care of getting it in pretty form, stripping out the questions that are not answered. And I'll take care of formatting it and submitting it.

But (unintelligible) do that tomorrow so we'll wait for Phil to come in on the end of this call and then (Andrew), you and your team take one final pass taking care of the word "generic" - whatever Phil comes up with. If you get it to me late tonight, I'll get it in tomorrow.

Phillip Corwin: Sure. Thanks.

Steve DelBianco: Yes, thanks again, (Andrew). You've really been a huge contributor so far. Let me go to Number 2 on the public comment. This is our comment on the draft operating plan for ICANN in the Fiscal 2016 budget.

So (Gimsen) and Angie, (Chris Chappelo), J. Scott, and Susan Kawaguchi provided a second draft today. We first circulated it two weeks ago. And on that call, Susan Kawaguchi mentioned the need for us to call for budgeting - for face-to-face meetings on the Expert Working Group for who is replacement.

And Susan came in - yesterday - came in with a couple of extra sentences. So this is Attachment Number 4 to my policy calendar and I think this one is good to go. I'll take a queue, if anyone has any objections or wants to comment on it.

Otherwise, I think we will file this one probably today. Phil, your hand is up. Phil Corwin. Okay hand is down. Great. Thanks again to (Gimsen) and everyone else. We're going to file this one today.

Okay, the third one is a proposed implementation of the PDP recommendations for Inter-Registrar Transfer Policy, but just Part C. We've commented on a lot of other parts, but Part C is just about when changes are being made to the registrar information, like their name and (unintelligible) e-mail address.

Susan drafted a comment for the BC. Now, Susan just had an opportunity to turn to this yesterday the third attachment. It's not a very long comment; it's a relatively brief one and it's due on May the 9. So we will be under our 14-day required review period.

So consider that that review period starts today. Are there any BC members that want to help Susan to finish this comment or anyone who has a comment on what Susan circulated last night? Again, this is the third attachment to the policy calendar.

The file says BC draft comment on IRTP Part C. Looking for a queue or a volunteer.

Susan Kawaguchi: Hey, Steve. This is Susan. I'm not on Adobe but quick question for everyone is I have not been following this working group. So I'm a little bit confused on

what they're recommending. And so if anybody has been following and understand why they would consider the registrant e-mail address changing as a material change which would start the transfer process or considered a transfer.

So right now, as I read it, if you change your e-mail address as the registrant, that the registrar would consider that as a transfer, which I don't understand why. But there may be some good thinking behind that, just could not grasp it from what I read.

Steve DelBianco: Yes, that's a great question. And I want to note that Susan highlighted it with red highlight in the document and we've got to work that out before we file. Fortunately, in the queue, J. Scott has his hand up. Maybe J. Scott can reply to your question, Susan.

J. Scott-Evans: A couple of things first. I had said that I would look over her draft and I intend to do that today. So, Steve, I will do that today - this morning. Secondly, Susan, I'm not sure, but just from legacy arguments, not from anything with working group, the disk kind of has been turning around for about ten years.

I think that they consider that e-mail to be where all notices go about the domain such as renewal notices, auto renewal notices, and all of those things. And if that e-mail could be re-directed to someone who is not the owner, it would prevent the owner from being able to take the necessary action. And I think that's really why they consider it.

Now, whether that's a real or a fantasized issue, I don't know. But that would be just based on what I remember from legacy arguments about (unintelligible) and this whole process. That's where I think they think some fraud could occur.

Susan Kawaguchi: Oh.

J. Scott-Evans: And because of that, they want to make it very difficult.

Susan Kawaguchi: I thought I'd reach out to (James Budell) because I think he's pretty active on that working group.

J. Scott-Evans: Okay.

Susan Kawaguchi: ...and to try and get a sense of that. So...

Steve DelBianco: That's great. J. Scott, I appreciate you looking at today and the explanation you gave certainly persuades me that I'd want to know - if somebody who was authorized went in and changed the registrant's e-mail address. Because it would mean I would no longer receive notification of expiration.

So that's quite important. So Susan, (Jay Scott's) going to give a look at the document and then are you going to make an independent outreach to (James Budell)?

Susan Kawaguchi: Yes, I'll do that.

Steve DelBianco: Okay. And J. Scott (unintelligible)

Susan Kawaguchi: I'll follow up (unintelligible).

J. Scott-Evans: And Susan, if you'll just loop me in on that so that I'm aware of the discussion as I look over this and I'll take a second pass at the document.

Susan Kawaguchi: Perfect. Thank you.

Steve DelBianco: Okay, and I do want to note, Elisa, you had suggested once we file our budget comment to send that over to the IPC and I'll do that today.

Elisa Cooper: Okay.

Steve DelBianco: Alright, so the fourth public comment...

Elisa Cooper: I sent them a draft.

Steve DelBianco: ...is - the fourth public comment period just opened, and it's a short one. It's a short one because it's all about the cross-community working group has its draft plan on IANA functions. And that closes on May 20 - just 21 days from now.

It's a 30-day comment period. It's the same thing we're going to have for the cross-community working group where I'm representing you for ICANN accountability. That's going to open on May 4 for 30 days. So we'll have to go through some analysis of their proposal and a draft BC response.

Now, Phil Corwin and (Aparna) have been the two BC members following most closely at the CWG proposals. And the CWG is asking us to use their template for our comments. The template's not very restrictive of us; it sort of organizes our comments according to which piece of the report we're commenting on but we still have free form to indicate concerns that we have.

The CWG's proposal - those of you who had a chance to see it - looks an awful lot like the plan they floated six months ago.

You know, it calls for the ability to separate the naming function from ICANN's custody and they want to set up the IANA functions - employees and intellectual property in a wholly subsidiary of ICANN that the community and the customers of the IANA naming functions would have the ability to change where that contract is fulfilled to turn to the accountability mechanisms (unintelligible) and use those accountability mechanisms, such as a reconsideration or an independent review panel to challenge the actions of ICANN in the way in which it's conducting the IANA naming functions under the contract.

So we'll take a queue now. And Phil, if you want to add anything to that explanation, I think all of our members would find it helpful. Go ahead, Phil.

Phillip Corwin: Yes, Steve. Can you hear me okay?

Steve DelBianco: Yes, we do.

Phillip Corwin: Okay. Yes, you are - it does, in some ways, it hasn't changed that much. I want to make one point. I haven't got - been able to dive enough into the substance of it because - whoa - because I've been scrambling to head out to the (unintelligible) meeting flying out tomorrow.

But one, I think, overarching concern I have is that we - as a BC and everyone else as individuals - has been asked to comment on a proposal in a 28-day comment period - they said that it was going to be 30 but it wound up being 28 - on a proposal that has big gaps in it and which relies, for its accountability measures over the IANA functions on whatever the accountability group is going to turn out in early May, which we haven't seen yet so we can't judge yet until we see that, whether it works for the IANA function.

I just don't believe it's a good process to give the committee 28 days to comment on an incomplete proposal and then say that's going to be the only comment period and we're going to forward it to the inter-IANA coordination group with no further opportunity when we have a final proposal. So we're being asked to, you know...

Steve DelBianco: (Unintelligible).

Phillip Corwin: ...evaluate how a car drives when it's missing two tires.

Steve DelBianco: Right. Objection noted, Phil, but that's what we have.

Phillip Corwin: Yes.

Steve DelBianco: We have a deadline in front of us and it is what it is.

Phillip Corwin: Well, I think we should - what I'm getting to and I'll stop is that I think I would urge the BC to say that an additional comment period is needed. We've been told time and again that there are no deadlines, just goals and let's get this right to rely on comment on an incomplete proposal is not responsible.

Steve DelBianco: So if I understand you correctly, we would reply by the 20th, but part of our reply would say we want a second public comment period after this one.

Phillip Corwin: Yes.

Steve DelBianco: (Unintelligible) we can come back with our final...

Phillip Corwin: On a complete proposal that's not missing key parts.

Steve DelBianco: Yes, let me just register my complete agreement with that. That's exactly what the cross-community working group for accountability is doing; we're doing two public comment periods knowing that the feedback we get on the first comment period is probably going to cause us to make significant changes to the proposal and we need to give the public another shot at that.

So we still need - I mean, I agree with you - we should ask for a second public comment period and point out the fact that the deadline is artificial. At the same time, we do have to get started on this template. And that's where I was hoping to look to you and (Aparna) as the one's closest to it to start to fill in some of the answers - not all of them, Phil, but just some of the answers so we can get it in circulation to BC members.

If you wish, we can wait until May 4 - that's only a few days away - because by May 4, the CCWG proposal will be out. I've kept you all apprised of what's in it. There will be an enhanced reconsideration and independent review process where the independent review panel can issue binding decisions on ICANN and the (unintelligible) bylaws which we've amended significantly to limit ICANN's scope and mission and to strengthen it with a lot of the commitments that are in the affirmation of commitments today.

So a lot of that will be a little bit clear on Monday. I did attach a hyperlink at the bottom of the report to the current draft which we reviewed and revised at 3:00 this morning. So there's another one will be ready later today.

If any of you are interested in the CCWG draft proposal, I will send around another e-mail once Version 10 is ready, but later today. J. Scott in the queue; go ahead.

J. Scott-Evans: I just wanted to quickly say that I agree with - completely - with Phil and I attended a meeting last week with (Danny Zabelmeda) and (Larry Strickland) on a - in Silicon Valley. And we didn't get to the ICANN issues until like the last five to six minutes of the hour and ten-minute meeting.

And during that, Strickling made this very impassioned plea for companies to go to Washington and to strongly support the transition to ICANN and the IANA functions, which point I took up and said well, I find that a little difficult given that we don't know what we would be supporting since we haven't seen any concrete plan, we don't have any implementation details. And that type of detail is going to be required for companies to willing to go and walk the hall congress and support this when we don't know exactly what we're supporting - to which point, (Zabelmeda) got much more animated than he'd been the entire meeting.

And said, well, what was I suggesting that can turn it over to the United Nations. And I said well, no, Adobe has publically come out on the record by posting a blog post that we are in favor of the continued private coordination of the internet with private industry in the multi-stakeholder models.

However, that being said, given all the missteps that we have seen in the implementation of the gTLD program, including, but not limited to, the .sucks fiasco, I thought that it was imprudent for me to go around and tell congress that I was completely onboard with ICANN when I don't have an implementation plan. I don't have any idea of what's going to occur. And so I just wanted to let you know that they're really pushing hard for us to go because I think Strickling got a budget issue with regard to the fact that he may not have any money to do anything.

And so I really am concerned that, you know, body is pushing this forward very, very stridently - keep saying well there is no deadline - I think you said in the public forum in Singapore - there is no deadline as long as we're done by August - I mean, by September 15. And I just want to say we need to be very careful and hold to our guns that we need both plans, we need specifics, and we need an implementation plan before everyone can do.

And part of that is to have robust public comment.

Steve DelBianco: Great point, J. Scott. We discussed, though, two weeks ago that a number of members were reporting on the lobbying that Secretary Strickling is doing - telling everybody to get in there and tell congress to back down. I don't think that request is going to be honored. And we - congress may be the only firewall to hold this thing to a high standard - not to stop it from happening, but just hold it to a high standard.

Go ahead, David Fares.

David Fares: Thank you Steve. I just wanted to agree with Phil regarding how to respond. I think that, once again, we're being set - we're being constrained - the timelines are being constrained by arbitrary deadlines and we've said over and over again getting this right is much more important than rushing this process. And it is absolutely impossible to analyze the proposal without the accountability mechanisms.

So, yes, I just wanted to support your - (Phil's) suggestion and your seconding of it.

Steve DelBianco: Thank you David. And we - do understand though, we are going to go ahead and provide a substantive reply to the CWG proposal, but we will probably

start our comment with the caveat that says that given the incomplete nature, we believe a second comment period should occur. That's what we'll do.

And I just put into the chat something that Phil Corwin and I were discussing earlier this week is that Milton Mueller has reported that the negotiations going on between ICANN Legal and the number and protocol people. Remember, the number and protocol folks came back with slam dunk, easy proposals to transition their IANA functions, and yet, ICANN Legal is insisting that when it gets to negotiating the actual language, that there be an irrevocable, permanent assignment of the protocol and numbers to ICANN.

So Milton is known for his exaggerations. So I'm anxious to find out whether there's corroboration to that. But if so, please read that blog - and I do believe that should make it into our comment - as an indication that when it comes to the naming function -- the third leg of the stool here -- if ICANN Legal insists on permanent, irrevocable custody, then we will have lost the ability for the community to discipline ICANN for under-performing on IANA.

So look at that when you all get a chance and I would love to get some volunteers who would assist Phil and (Aparna) at drafting a reply to the CWG. I see (Jay Scott's) hand up; is that a volunteer's hand, J. Scott?

J. Scott-Evans: No, no. It's - it is a comment. I saw something from my technical people and I think I saw an article circulated that there's been some breakdown in those discussions and there's been a little bit of shock in the technical community.

Steve DelBianco: That's what I'm hearing.

J. Scott-Evans: (Unintelligible).

Steve DelBianco: J. Scott, when you get a chance to read Milton's blog...

J. Scott-Evans: Yes.

Steve DelBianco: Yes, because he may - he quotes (Bill Woodcock) who we've all assumed is a rather sober, technical guy who's extremely concerned about the stance that Legal is taking.

J. Scott-Evans: Yes. It - and that's what I saw. I saw another article in more of a mainline press saying that they made a presentation and said that (Steve Crocker) had said publically in Singapore that the board had no issue with the proposal whatsoever, but now that Legal has talked everything up.

Steve DelBianco: And let me report to you that ICANN Legal has been instructing their representatives on the CCWG to say that the CCWG would be one public comment period and the second one only if needed. Only if needed.

There's the same headlong rush to get it done for political purposes on the assumption that if it - if the transition lingers into 2016, it'd be - could become a political issue with the presidential election in the U.S. I don't understand how that could excuse trying to rush through an incomplete plan. Worse, still, how does that excuse ICANN insisting that they want to clout the will of the community by insisting upon permanent, irrevocable custody of the IANA functions? So we've going to have to push back and maybe with congress or maybe with Secretary Strickling.

And there's going to have to be a lot of ways to do that. J. Scott, your hand is still up. Anything further?

J. Scott-Evans: No, just slow to move.

Steve DelBianco: Got it. Thank you. Alright, and the next item is the .sucks discussion. Now, Elisa, I want to note that this could go on quite some time - the .sucks. It's complex and we're dealing with two letters. It's the only other policy item I needed to handle because sort of - I've already updated you all on the Channel 4.

So the question for you, do you want to cover other things on our call or go rectly (sics) to .sucks, which could probably use the rest of our time?

Elisa Cooper: I think that David Fares might have a few updates for us in terms of planning for the Buenos Aires meeting. So maybe if we can give a few minutes to David and then resume with this conversation and then we can use the full time for it.

David Fares: Okay, this is David. I think my update will be very brief. We are in full swing with IPC and ISPs in preparing for the Buenos Aires meeting. There are really two outstanding issues. One is our time with the board.

We were designated one hour for all three constituencies to meet with the board, and we are going back to the board and explaining that -- as we always have to do -- that we're three different constituencies with distinct views, and that we would like to have more time.

Steve Crocker seems to agree that more time would be good. So what we're looking to try to do -- and Steve is looking into whether this is feasible -- is to move the CSG session to the last session of the day with the board, and then we would tack on an additional 30 minutes so at least constituency would have 30 minutes.

All the other constituencies get an hour, but that's where we are at this juncture and we think that's the best approach. This time we can assess if it works well in Buenos Aires, and then provide input for Dublin if we do not like the process.

The other thing that we're looking into is whether we change the day for our breakfast. The non-commercial folks, we've asked if they would like to meet with us. They're very interested in doing so, but they can't meet with us on Tuesday. So we're - if we can change the date then we will try and coordinate with the non-commercial folks to see if we can find a mutually convenient time. If not we'll just have to look for another group if we want to proceed with the breakfast.

And really Elisa, I think at this point those are the two important issues regarding coordination for Buenos Aires.

Elisa Cooper: Great. Thanks, David. So feedback, over to you to open up the conversation on dot sucks.

Steve DelBianco: Okay. Thanks. Yolanda has positioned the policy calendar right at the precise place where I recap what we've done on the dot sucks issue. This is not an open, public comment period...

Elisa Cooper: You know what? I'm sorry, Steve. Can we just let Jim Baskin - he had that any other business. Can we let him share that? I'm sorry.

Steve DelBianco: Of course.

Jim Baskin: Okay. Thanks. This will be really short. As I said when I introduced it, I had tried to get onto the mailing list for the discussions on the next GTLD round

and I got - when I went in and tried to join I got a note back from (Glen) saying that I have to make a decision if I want to become a regular member of it or an observer.

And the only way I'd be allowed to be a regular member would - that I be obliged to attend the meetings, teleconferences, and take an active part in the discussion on the list. Otherwise I'd have to be an observer and then I can read the mailing list, but not post to the mailing list, cannot attend the calls or even listen in real time. I could only listen to the MP3s and read the transcripts -- which to me is like not being on the list at all because you can do that anyway.

And I was wondering whether that - is that a common requirement now for being on mailing lists?

Steve DelBianco: This is Steve speaking for the CCWG. It is not a requirement. Participants and members can both reply all. Phil and Susan, anything you can add about projects that are organized by council and whether that's the new rule?

Susan Kawaguchi: I hadn't heard anything like that. I'm surprised by that. So maybe we need to push back.

Jim Baskin: Yes, I was surprised by it too. And it was about a week ago and I didn't do anything about it because I wanted to bring it up on this call in case I had missed something about new rules. Because I'm not sure that I can, you know, commit to full active participation on all the conference calls and the meetings, and active discussion on the list.

But just being an observer sounds like you're not even on the list at all. You can just go in and, you know, look through the - on the website what's happening. But - so...

Steve Del Bianco: Jim, this is Steve. Would you ask (Glen) to explain to you where that rule came from. Because if it's just Bret Fausett -- the self-appointed leader of this group -- it may be that we can push back hard at the council level. Because I don't think they can make rules like that. Would you ask (Glen) and would you send it around to BC private when you get an answer?

Jim Baskin: Sure. I just got a notice from her again today reminding me that I hadn't responded to her original request. So I'll get back to her and ask her where that rule came from. And then when I get an answer I'll let everybody know.

Steve DelBianco: You know what? And whatever the answer is, it would be beneficial to your colleagues in the BC if we do have more BC members participating. And if you can't make enough meetings and then they take some action against you we'd all be there to back you up. So I do encourage you to join at the level that they're asking even if you're not confident you can make all the meetings.

Jim Baskin: Yes. I'd like to be able to do everything they'd like, but I just don't - I don't like the idea that they won't let me in unless I commit to doing all those things. But I'll - first I'll ask her why this - whether this is a new rule and where it came from, and then depending on her answer I can just go ahead and become a full member. But I'll let you all know what the result is.

Steve DelBianco: Thank you. And Phil Corwin, were you about to say something.

Phil Corwin: Well yes. It's a new one on me. I know with the CWG and CCWG people could choose to just be observers, but it wasn't mandatory. Actually with that new TLD group they've scheduled their calls for the time I'm not able to meet them, but I get all the emails and I've never been told I can't comment if I have something to say. So I don't know where this came from.

Jim Baskin: Maybe you're listed as a full member rather than just an observer and they haven't done anything to tell you otherwise.

Phil Corwin: Right. Yes. I think I'll let that sleeping dog lie right now.

Steve DelBianco: Yes, while that sleeping dog is lying though, Phil, would you check and see what status you have?

Phil Corwin: Sure.

Steve DelBianco: Because we want to bring this to a head to understand where this rule came from, how it's going to be enforced, but we can't miss the opportunity to get another BC member up on trying to participate and listen in on these calls, because so much more happens in the calls than is apparent in the transcripts that come out.

Jim Baskin: Yes. Okay, thanks for the time.

Steve DelBianco: Thank you. Okay, now we're moving I think to the - what else? Did you want to - do you want to move to dot sucks right now, Elisa?

Elisa Cooper: Yes, unless Susan and Phil have any need for feedback for the council, yes.

Steve DelBianco: Phil and Susan, I noted in there the transcript and the motions -- the three motions that were adopted at your sixteenth of April meeting, and I indicated that the next meeting is May 21, so we don't have agenda or motions yet. So Susan and Phil, do you want to say anything about the April 16 meeting and motion?

Phil Corwin: Steve, we reported on that right after the (unintelligible) on the last BC call, so I'm not aware of anything significant happening in council since then.

Steve DelBianco: Great. Thank you. You did report on the sixteenth because your call was much earlier in the day. Susan notes in the chat that she has nothing further to add. So Elisa, with that I think we can turn in the last 20 minutes here to the dot sucks issue.

Elisa Cooper: Thanks.

Steve DelBianco: Thank you. So let me quickly summarize for those who are not on Adobe that what I indicated in the policy calendar is that the best recap of everything that's happened is probably in Phil Corwin's CircleID article. I've linked to that.

The IPC (unintelligible) property constituencies kicked this off with a letter to ICANN back on the March 27, then following up on that, Cheryl Miller circulated an initial draft letter to ICANN from the BC. A number of us commented on that, and then on April 9, ICANN started to refer the IPC letter to the U.S. and Canadian consumer protection authorities -- the FTC in the case of the U.S.

So ICANN surprised everyone with that referral. Right away, (unintelligible) J. Scott Evans offered to help with a second draft of the Cheryl Miller letter to ICANN. But they redirected the letter to the U.S. and Canada consumer protection authorities as part of that update to the draft. They circulated that on April 18, and I put some edits into it as well.

Then Marie Pattullo added her edits to that on April 27. This is the second attachment to the policy calendar. So I'd prefer to do this first. This is the

letter from the business constituency to both the U.S. and Canadian consumer protection authorities. If you'll open the second attachment we can discuss what's in that letter. It's also fair game to raise your hand and comment on whether it's appropriate for the BC to be writing to the Federal Trade Commission and Canadian authorities now that ICANN has opened that door.

The timing of this is such that the main general availability would begin at the end of May. So if either of those consumer protection authorities are to say anything in response to ICANN, we would probably need to comment fairly soon. I'll note that Marilyn Cade is not on the call, but she had somehow conveyed her feeling that it was inappropriate for the business constituency to be sending a letter to the FTC or Canadian authorities.

As your policy coordinator I don't see it that way. This door has been opened by ICANN. We're not going to make accusations as much as offer information from the perspective of business users and business registrants. And if that information can be helpful for those consumer protection authorities, I believe we take no risk at all to our status by submitting such a letter.

Now I'm not lawyer, so if any of you have a legal standing to answer what Marilyn is concerned about, this would be a great time to voice it. We'll take a queue now. I see (Stephane) is in it. This is on both the question of whether to write to consumer protection authorities, and then what to say. And I do hope all of you will open attachment two and have that in front of you. Go ahead, (Stephane).

(Stephane): Thanks, Steve. Hi, everyone. This is on - my comments are on whether to write, not what to say to get the conversation going. And although Marilyn did bring the topic onto an issue to do with our bylaws, she did so after I'd made

initial comments about whether it was appropriate or not -- not in terms of bylaws.

I would tend to agree with you, Steve, that I don't think that there's any bylaw - there's any problem with the bylaws, and that the BC is able to write these letters to these agencies if it wishes to do so. I think the issue that I stated is - and my concern is that we are a GNFO constituency. We're part of ICANN.

I'm part of this community because I believe in ICANN and I, you know, I'm a defender of the ICANN model. And I'm wary of doing anything too out of the way which might really hurt ICANN, and I believe that writing to these agencies directly is a - may possibly weaken ICANN as a whole because we are clearly sending the message that ICANN is not able to handle this matter itself.

Now I understand that ICANN staff has already opened that door. I believe that's a very serious mistake on their part. I've seen - nowhere have I seen any explanation for why this decision was taken -- as so often happens these days in a unilateral manner. But perhaps we may not want to jump on that bandwagon and further their mistake.

Now that having been said, once again I'm talking about the way, you know, who we write to. As to the content itself or should we be talking about dot sucks -- I believe we should -- the letter that I saw and the draft that was put together, the content of that seemed very apt to me, and I don't really have a comment on that.

So really it's just a matter for me of can we - what do we think is better strategy-wise? Should we write to the board, ICANN legal, or whomever, and

copy these agencies? Or should we write to these agencies directly? Thanks for listening.

Steve DelBianco: (Stephane), thank you for being so precise. The very end of what you said though, are you suggesting that while you're against writing directly to the FTC and Canadian authority, that you would support us writing to ICANN and copying those same two?

(Stephane): That's absolutely right, Steve.

Steve DelBianco: I'm glad you clarified that. Thank you, (Stephane). Okay we have a queue. David Fares and then Phil Corwin. Thanks.

David Fares: Sorry, I had you on mute. Thanks, Steve. (Stephane), I understand your concerns, however as you mentioned, ICANN has already put itself in the situation where it has referred this issue to law enforcement agencies. And I think we can address your concern about perhaps undermining the ICANN model by simply stating that we continue to support ICANN in the private sector led model, and we are engaging ICANN directly on this issue in assessing if there's something we can do to address this issue within ICANN.

But since this has been referred to you, and we are the representative of the business user community within ICANN, we wanted to convey our views to you. Because I think if you just - I actually think the substance of the letter to ICANN might be somewhat different than the substance of a letter we would send to the law enforcement agencies.

So I think a separate letter is appropriate, and I think we can caveat it at the outset like I said, which would hopefully address some of your concerns. And they're concerns I share, so it's just we've been put in a difficult situation and

we - I don't feel we should be constrained in our advocacy efforts as a results of ICANN's mistake in referring this.

Steve DelBianco: Hey David, this is Steve. Thank you for that. I would invite you to look at the second paragraph of the letter where we say, "Given that ICANN has taken the extraordinary step of seeking consumer agency review" that we wanted to offer a comment. That would be where you might add a substantive statement backing up our view that ICANN is the place to resolve these matters. But that would be helpful if you could do so in the next couple days.

David Fares: I'll do my best. I've got a lot of travel coming up.

Steve DelBianco: All right. Thank you. Phil Corwin?

Phil Corwin: Yes. Thank you, Steve. Three quick comments. One, I think this is the exception that proves the rule. I generally would not favor the BC writing the government regulators anywhere, but we're in a situation where we're aware that ICANN has asked them to look at this. And we want to provide them with additional information and perspectives from a constituency with ICANN.

So I think it's appropriate in this case. I do think we should be copying the board on the letter we send to them with a copy of the letter we send to the regulators. That's the way the CC should work.

Second, in regard to any concerns about legal liability, I don't know what they would be. I don't know what liability would come from informing government regulators that there's a consensus view that something unsavory and perhaps unlawful is going on, and encouraging them to look into it -- which is what the letter does.

And last, in the letter to the board I think the last paragraph is weak. I think it should be stronger. In my article I suggested two approaches that ICANN has right now to taking action against dot sucks, and I think we could mention them or at least we could be more forceful about asking them exactly what is your legal staff doing in terms of analyzing your contractual enforcement powers here to curb this activity.

They've said they're looking into it, but you know, with ICANN we may never hear anything further unless we ask them point blank, "Have you looked at this and that? And when can we expect a final word on what you're doing here?" Those are my comments.

Steve DelBianco: Phil, let me ask you, when you're flying to your next event would you see if you can add the points that you wish as an edit to Ellen Blackler's draft -- and this is the ICANN letter. If you add that and circulate it to the list when you land we'll have an opportunity to see what you're talking about there, okay?

Phil Corwin: Okay. Sure.

Steve DelBianco: Thank you. J. Scott Evans.

J. Scott Evans: First of all I want to second what David Fares had to say. I completely understand and share (Stephane)'s concern. I have been committed to the ICANN process since it's conception in 1998, and I understand. But we didn't toss this to the FTC and the committee and the authorities. ICANN did.

So I think advocating to a board that has abdicated it's responsibility for this is powerless. And I think that we can provide information to these bodies about how we feel in an informative manner. And I support going into that

paragraph two and shoring it up with language about how we support the model.

The one thing that Susan Kawaguchi had brought up before we drafted this letter -- and I would put forth again that I think we should talk about dot sucks, but I think we should have a paragraph that talks about this is not the only registry that has been up to nefarious activity.

Donuts has some issues that I would like to address -- the fact that they arguably have participated in a false advertising campaign regarding the DPML. I think Susan identified another couple of people who charge erroneous fees, you know, egregious fees for their premium names or their sunrise names, and I think it should all be called out.

I think also I would say that we should copy Danny Marti -- the new IP Czar in the Obama administration -- on this. (Unintelligible) has written a letter last week I think I circulated to the list where they specifically told him they want him to get involved and find out what the hell is going on with these registries and registrars.

So I think that the time is right for us to put a little pressure on ICANN to do its job. It keeps saying it doesn't want government involved, and yet it shirks its responsibility. And so I certainly support Phil Corwin's point about being very aggressive in our advocacy to the board, because I think they're just not doing their job, personally.

I don't think we have a problem going to the FTC and informing them. I think that we need to broaden the letter to talk about touch points of other registries so it's not -- I think we'll handle one of Marilyn's concerns -- focused

specifically on one registry. And I think we need to stand up for businesses who are plagued by this.

With regards to Donuts, I know that there are 57 other top brands that bought DPMLs that their major marks were registered in registries that were supposed to be covered by the DPML because when Donuts sold the registry after signing the contract through ICANN, they didn't pass on that obligation. And I think that's a big problem.

Their advertising indicates that they would not have all 311 registries because they might lose some in auction. They never disclosed that they intended to sell a bunch of them on the secondary market and not pass along this obligation. And I think that that is a major point that advertising laws at least in the United States requires that you disclose to a purchaser because that affects the value of that coverage.

And I think they're not the only one, and I think we should collect a couple of other examples and just talk about it in general with three or four examples of how this is bad practices that are being allowed in this marketplace.

Steve DelBianco: J. Scott, it's Steve. Before I go to the next in the queue I noted that you support what David Fares said about addressing (Stephane)'s concern. I realize (Stephane) has not yet indicated whether a modified paragraph to - assuages his concern. J. Scott, I welcome you to work with David Fares on how to fix paragraph two. I think copying Danny Marti...

J. Scott-Evans: I was going to suggest that I try to quickly type out a couple of sentences with David and send it to you since your travel schedule - I'm already at my destination.

Man: That would be great. Thank you.

J. Scott-Evans: And that would save you time and then you could just wordsmith it.

Steve DelBianco: Thank you, J. Scott. J. Scott, with regard to your idea about adding other registries other than dot sucks, I want to note that we're at four pages now on this letter. It has been difficult enough to gain close to consensus on what is in it when we address what's truly unfair and deceptive practices that affect consumers -- and consumers include registrants and users.

And while I have no doubt that there's a plethora of awful stories we could put in here, I just have a gut feeling that says we ought to stick with dot sucks in this letter at this time. I'd like to see what the rest of the BC thinks about the idea of expanding it beyond dot sucks so we know whether to, you know, pursue a dialog on that and maybe do some drafting. I don't want to ask you to do all the drafting if BC members would prefer to stick with dot sucks.

Can I see a show of "agree", "disagree" with J. Scott's suggestion that we expand this beyond dot sucks and go after others. So just hit the agree or disagree button with your little green checkmark or red X.

Susan Kawaguchi: Steve, this is Susan. I'm confused on whether I'm agreeing or disagreeing. Could you restate that? Sorry.

Steve DelBianco: Click the green agree button if you agree with J. Scott that we ought to expand dot sucks.

Susan Kawaguchi: Okay.

Steve DelBianco: Click the red X if you think we should leave it with just dot sucks. Thank you. Strangely enough, hardly any BC members are voting. I don't understand that. Those of you who don't vote don't care or don't understand the question. I'm not sure.

We have four disagreeing - five disagreeing with J. Scott and two agreeing, plus J. Scott makes three. So it's a five to three right now. Six to three. Going once, going twice. All right, we had six to three against the idea of expanding it, J. Scott. So I would conclude maybe we don't expand it in this letter. But I you have the kind of evidence that you talked about, we definitely should gather it now while it's fresh and have it ready to go -- especially if the FTC decides to weigh in and begins to look at the broader picture.

Right, next in queue is Andrew Mack.

Andrew Mack: Thanks (unintelligible). Thank you very much for this and thanks for all the people who have done so much work to try and give us language. A lot of it makes sense. I have kind of a practical question which is, as someone is (unintelligible) involved in this one, what do we think is going to be the practical difference of sending a letter to the authorities directly versus sending it to ICANN and CCing the authorities. People who are more than - know it better (unintelligible) - what (unintelligible) differently about that? Because that will inform how we go forward. Does that make sense?

Steve DelBianco: Yes, a direct letter will get more attention. More importantly, the content that you raise in the direct letter is mostly about protecting consumers and registrants versus the letter to ICANN which is mostly bitching about them not following their own procedures. So it becomes a different subject matter and it gets a different level of attention if it's a direct letter into the FTC.

Andrew Mack: Well, I certainly think as a citizen of the U.S. - as citizens of these countries it wouldn't seem inappropriate for me - for us to be able to raise a letter directly if we decide to do that.

Steve DelBianco: Thanks, Andy. Phil Corwin?

Phil Corwin: Yes, Steve. I support (unintelligible) noting that it is a more extreme example of something that's going on on a lot of registries with targeting trademarked clearing house registered terms for excessive registration fees. I wouldn't mention it in this letter, but I do want to mention there's another abuse going on that I'm seeing a lot of examples of. (Mike Birkins) at the domains has written about the thousands of robo registrations at dot science daily at 49 to 99 cents per domain. These domains have nonsense names. They're being used for phishing and spamming.

Steve DelBianco: So we have two minutes with dot sucks.

Phil Corwin: I'm getting the same from dot ninja. So there's a lot of problems with this problem -- a lot of abuses going on.

Steve DelBianco: I'm sorry to interrupt, but we have two minutes and we need to figure out what we're going to do on dot sucks. Let's stick to that, please. (Stephane)?

(Stephane): Thanks, Steve. You asked me a question. I will go with the way the majority goes. I remain worried that we are opening Pandora's box, and I, you know, and if the majority wants to put in extra wording that says that we support ICANN.

I just want to say very quickly, I'm, you know, on J. Scott's idea of including more stuff in there on Phil's comments just now, in general I think we are

increasingly negative about a program that we all supported. And although there are abuses I think if we want to be credible we need to quantify those abuses, and when we, you know, point those abuses out, we've quantified them very precisely and we stay on point.

So in this case we're talking about dot sucks. Let's not throw everything in the same frying pan. Let's just talk about dot sucks and in this instance I will support whatever the majority supports. My preferred choice would be to do what I've suggested, but I understand the other arguments and I value the people that have been making them. So I will support whatever the group decides. Thank you.

Steve DelBianco: Thank you, (Stephane). I appreciate that. Let's wrap this call up with a straw poll at least of the members who are on the phone. And I will ask to clear all your "agree", "disagree", and I'll ask the question this way. How many of you support the BC continuing down this track of a direct letter to the FTC and Canadian anti-trust authorities? Signify a green check mark if we continue to draft a direct letter. Green check mark please.

Red X if you think we do not do a direct letter, but only a CC. Getting a lot more votes this time. Thanks, everyone. (Stephane), it is overwhelmingly in favor -- as you can see from Adobe -- overwhelmingly in favor of a direct letter. So we'll continue to pursue the direct letter.

Ellen turning to the letter to ICANN, we need some drafting on that. Phil Corwin will take a look at Ellen Blackler's first draft. This is the ICANN letter. And so we'll be pursuing that over the email list over the next several days. That's all I've got for now. Back to you, Elisa.

Elisa Cooper: Thank you so much. That was really great and I think this was a great call. Thanks so much everyone for joining. As always, be on the lookout for an invitation for our next meeting. Also be on the lookout for requests for what you would like to talk about and discuss in our BC meetings in Buenos Aires. With that, I bid you all a good day, and we'll talk soon. Thanks so much.

Man: Thank you.

Woman: Bye-bye.

Man: Thanks, bye.

Man: (unintelligible).

END