ICANN

Moderator: Gisella Gruber-White
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10:00 am CT

Benedetta Rossi: Good morning, good afternoon, good evening. This is the BC Members call taking place on the 6th of June 2013. On the call today we have John Berard, Elisa Cooper, Anjali Hansen, Angie Graves, Ron Andruff, Andy Abrams, Janet O'Callaghan, Aparna Sridhar, Steve DelBianco and Mark Sloan. We have apologies from Ayesha Hassan, Phil Corwin, Stephane Van Gelder and Laura Covington.

I would like to remind all participants to please state your names before speaking for transcription purposes. Thank you very much and over to you Elisa.

Elisa Cooper: Thanks Benedetta. I'd like to go ahead and sort of review our agenda and then quickly go over a few items. We'll then move to Steve who will cover a policy update and we can some open discussion. And I've allotted 30 minutes for Steve so hopefully that will be enough time to cover some of our recently updated comments, to talk about the Registry Agreement comments, possibly to talk about the accountability and transparency review being questioned, and perhaps even discuss briefly the draft budget comments that were filed by Chris Chaplow.

Then I'll be sure to make sure we have time for John Berard to cover an update on the Council on the GNSO Council, and then we still have some additional time for any other business.

So I guess at this time I'd like to ask if there any other things that people would like to discuss in today's call and we'll get that also added to the end of the agenda.

No? Nothing else that anybody wants to discuss on this call?

Ron Andruff: Actually I'm sorry Elisa, it's Ron. Just a note that recently the Ex-Com circulated a questionnaire about members' relationships and so forth. Perhaps we could just put that on the call for a couple of minutes; just talk that through a little bit.

Elisa Cooper: Yes, I wanted to actually talk about that. Also talk about Durban - yes, we should definitely talk about that.

Ron Andruff: Thank you.

Elisa Cooper: So starting off, I did want to cover a few things before we move into Steve's update. And the first thing I wanted to talk about is the timeline - the new gTLD timeline - which ICANN published yesterday. So hopefully everybody received a copy of that timeline.

I don't know, I saw that - I think there were some comments from you Ron, but I think - I think they were from you. I guess they take away their - ICANN staff is saying that the earliest that new gTLDs could be released would be in

October. That doesn't take into account any delay that could be caused by dealing with the safeguards or even finalizing the Registry Agreement.

So I don't know if anybody had any thoughts or questions about that or if there was anything anybody wanted to discuss around that timeline.

One interesting piece of news I guess that I would like to share is that I learned from the Trademark Clearinghouse yesterday or the day before that they are saying that the maximum to process a submission to the Trademark Clearinghouse could be as long as 34 days. So the fact that we'll have the 30 day notice prior to the open of a sunrise now becomes even more important. It's very good that were able to get that as part of the Straw Man.

The second thing that I'd like to comment on is that I really wanted to thank Chris for his comments that he prepared on the ICANN Budget, so hopefully we'll have some time to discuss some of those.

Also as was just mentioned, Benedetta did send out a request for information from others about their role or interest in participating in the Business Constituency. And the only point of answering those questions is really to help others understand your perspective and others to understand, sort of, where you're coming from, and so put into some context comments that are being made members.

It's in no way meant to sort of say who's conflicted or anything like that. I've just heard from members that they often don't know why somebody is participating or what their interest is. I think also just to know who has applied for a new gTLD or who is part of that process will be helpful. Actually, even to become a resource too of information.

I don't know Ron, if there are - I guess right now would be the best time to discuss sort of the purpose of that. Nobody has to obviously, you know, provide any information that they don't want to. Obviously many members are, you know, have confidentiality agreements with their clients and can't even reveal that information, you know, can't reveal specific information. But the point is really to try to help other members understand perspective.

Any questions about what the point of sending that out? It was really so that we don't, each time we go through sort of submission of comments, we're not sort of asking people what their perspective is and why they're answering or providing comments in such a way. We're not trying to sort of put people on the spot about why they feel a certain way.

Oh, I'm sorry. I see Ron and then Aparna. So Ron?

Ron Andruff: Thank you, thank you very much Elisa.

Elisa Cooper: I'm sorry, I'm sorry. I was not looking at that.

Ron Andruff: No problem. Actually, I had my hand up with regard to the timeline. I wanted to address that first if we may and then I'm happy to come back and talk a little bit about the other document.

But on the timeline, I just wanted to make mention, I responded to your post the other day. And for those who are relatively new or have only been following ICANN from a distance, I think it's really important to understand that when staff puts forward a timeline like that or any kind of document that's got a timeline, and particularly if, you know, that this is subject to change on that document, you can be absolutely sure that that will change.

There's no question in my mind. Being part of this ICANN process for 13 years now, every time ICANN has set a date, they have missed that date. So I think for planning purposes and just for understanding what's happening, I just want to make sure that everyone understands that if in fact ICANN were to hit that mark it would be the first time in every deadline they've set for 13 years.

So I just want to adjust expectations, not to, you know, poor cold water on staff's great attempts to do something in the proper way. It's just the reality of ICANN ultimately in part at the last minute, 11:59 issue that will arrive. And believe me, another one will arrive whether it's GAC Advice or something. So that's number one.

The second point I wanted to bring out was exactly what you pointed out, Elisa, is a lot of the documentation that we're working on right now be it the GAC Advice and other things, will have to be digested. And the new board committee is going to have to digest that, they're going to have to handle that in a manner that is respectful of the work and effort that's gone into it from the part of the GAC and community and all the others who have spent hours and hours, you know, combined, working on developing a set of safeguards. That will have to be then, thought through in terms of the implementation of it.

Where does it belong? Does it belong in the Registry Agreement? Does it belong in some code of conduct? Does it belong in some other place? So that work has to be done and that's really what is going to stretch the timeline out.

So I just wanted to make sure everyone on the call understands kind of what's happening with regard to that timeline. Thank you.

Elisa Cooper: Yes, that's so true. They've never hit a date as far as I really know. Aparna?

Aparna Sridhar: Yes, so I'm going back to the issue of sort of request for information. You know, we'll be sending something along and obviously we support this kind of transparency. And we hope this will sort of allow us to put those kinds of discussions behind us really.

But I just wanted to note that the questions posed in the document or in the email, they really kind of focus on only one kind or focus primarily on one kind of potential conflict which is whether an entity has a relationship with current or future contracted parties. And obviously that's an important thing to know. And people know that Google has applied for new strings in the TLD program, but there's really a lot of different types of conflicts.

So people might represent competitors of new gTLD applicants or competitors of existing registries or have other sort of interests that motivate them that don't have to deal with their relationship with a contracted party.

And so it would just be helpful if members disclosed that kind of information as well. I know that part of a capture in sort of a yes/no context or to clearly identify because it's just more nebulous, but I think that would be helpful for everyone.

Elisa Cooper: I agree. Thank you Aparna. Ron?

Ron Andruff: Thank you Elisa. So speaking to the issue of that, I really applaud the efforts of the Ex-Com to try to move this discussion forward because it can get testy from time to time when people are wondering, "For whom is one speaking."

So it was interesting to see that you have put together this document, and I agree with some members' thoughts that it may be a little too intrusive, it may be almost impossible for them to put the information in because of the non-disclosure agreements and clients' privilege issues.

So the point of the whole story is to, as Aparna just mentioned, it's about disclosure and transparency. So what I would put out for the members' consideration is that when we speak, whatever that topic might be, that we just be very forthright. So we should say, "On this particular issue, this is Ron Andruff speaking and I declare I have no conflict on this issue." Or "On this issue, this is Ron Andruff speaking and I would like to declare I have an interest in this as I'm representing XYZ."

If we could just all follow that kind of normal pattern of disclosure and respect for each other's activities, we don't need to necessarily carve in stone things that are, you know, could be seen by the client or by others as putting them in a very difficult position or putting the consultant of the client that may be a BC Member in a difficult position.

I don't think we have to go that far, but we do need to have disclosure for transparency sake when we have so many mixed representations across the board. It's not just within the BC; it's in other places as well. But this is what we're trying to get to; an institution that has transparency within too its processes and policy discussions. And I think if we can get there, we'll mature the organization that much faster.

So my thought was that some of the questions in there, even for people like myself, a small businessman, would be uncomfortable to ask or answer. I can imagine that for other players who are, you know, lawyers or whatever within larger institutions, that they would have a bigger problem with that. So it's

really about disclosure and transparency in my view, and I welcome other members' thoughts on that. Thank you.

Elisa Cooper: I agree. Look, I think it is all about transparency, and frankly, a lot of those questions are even, you know, a little uncomfortable for me to answer. But I want to be totally transparent.

And again, the point of this is not to say, "Oh, you're conflicted and you can't have a perspective." All of us are participating because we all have a perspective. And you know, we're particularly participating in the BC because we have an interest somewhere whether it's strictly as a brand owner or, you know, we're also interested in the way the new gTLD program rolls out, from a business perspective. We all have our interests.

So I think we just want to try to have that transparent to other members. And to the extent possible, I would just ask people to try to answer those questions and I will do the best that I can in answering those questions. Because you'll see of any member, you could say that I have an old conflict probably of any member, you know, in the organization given that, you know, (Mark) monitors a registrar. We're, you know, we have business relationships with many existing BC Members, we help companies apply for new gTLDs.

So you know, I want all of that to be open and transparent. So you know, if there's no question about, you know, what my interest is, that doesn't mean necessarily that I'm conflicted in terms of providing a perspective. So at any rate.

So let's see, Anjali?

Anjali Hansen: Yes, hi. I completely agree and I just find it helpful who represents who and what their perspective is.

I just wanted to, because I'm new here learning as I go, I wanted to just put out there that we can all have our perspectives, but I think maybe whenever we come to a point where we have to render recommendations or provide comments, we maybe we should just go through that BC Mission, those points, and say are we addressing the issues from what the mission of the BC which is to promote end-user confidence and to ensure the competitiveness or the registry and registrar, and to make sure that everything is technically stable.

So that while we can have our own perspectives and make comments based on those, I think we should make sure we're looking at it from the mission of the BC whenever we make a comment collectively.

Elisa Cooper: That's an excellent point.

J. Scott Evans: Elisa, this is J. Scott Evans. I just joined and I wanted - I don't know if I've met Anjali, but I want to fully support her comments. Because we can all file comments for our individual companies ourselves. So if we have any additional perspective that's different than the mission of the Business Constituency, we certainly have an avenue for doing so.

Elisa Cooper: Yes, totally agree.

Anjali Hansen: We've met J. It's Anjali.

Elisa Cooper: Any other comments or thoughts on the topic before we move on? There was one other thing that I wanted to bring up that was something that Chris Chaplow brought up.

And it was the fact that - just to give a little background here. When registries want to make a change to their agreement, they have to go through a process called RSEP which is the Registries Services Evaluation Process. And essentially, some of the registries have made changes to their contract by way of this process, but I don't think there's been much focus on following changes to contracts that have happened through the process.

And I think, you know, Chris brought up an issue where a change had occurred, comments had been made through the public comment forum but they weren't adopted into an agreement that was being changed by this RSEP process.

And I guess I wanted to put that out there to see if this was something that we wanted to sort of take up as an issue, and actually also ask Chris if he had anything additional to say about that.

J. Scott Evans: Elisa, this is J. Scott. I wrote the final memo document that was used by Bruce to put that together back about nine years ago. And I think it is probably a process that hasn't got much attention with regard to public comments.

I would raise my hand and ask when was the last time any public comment we know of how ICANN dealt with it. I would say 99% of the comments are completely ignored or we don't even get their analysis of public comments to ask if they've all ready put in motion the decision which is a huge problem that ICANN needs to get under control.

But this may be a way to shed some light on that problem, and I'd be happy to work with Chris or others to kind of look at that process and see how it's felt and how it's being used.

Elisa Cooper: That would be great. I see John Berard and Chris's hand raised and a comment from Steve that maybe we could cover this under the Registry Agreement which I think is a very good point.

So let's move to John and then Chris.

John Berard: So good morning or good afternoon; John Berard. One of the items on the GNSO Council call meeting is a discussion about the GNSO and UNSO Council review.

And I'm wondering just how outside the administrative line that conversation is going to go. And I'm wondering if perhaps I should promote this notion of where do comments go, what happens to them, what is the process and should not that be a part of the review just to put it forward on the table.

What would you think of that?

Elisa Cooper: Can we just take a quick vote using the Adobe Connect if you agree with that? There's a little man with his hand raised, there's like a little green checkbox if you agree with raising this issue of like where comments go with the GNSO.

J. Scott Evans: Elisa, I'm auto. I'm on vacation so I have nothing but a smartphone, so this is J. Scott, I'll raise my hand.

Elisa Cooper: Okay and it looks like pretty much a majority of people agree so I think the answer is yes John.

John Berard: All right, so I will take that up at least as one of the points that I'll make on that subject.

Elisa Cooper: Okay, I remember Chris had his hand up.

Chris Chaplow: Thanks Elisa, I'll just be brief. Thanks for your support on this issue and also J. Scott.

You wrote a quick email to the list last night and what you said is correct. I think I have the transcript but I will reply a little more meat to that.

Certainly one issue was the comment in the particular request that I was focused on. It was a very clear-cut example, but we need to do a little more research across the board to check that that was the case on the others. And what I'm probably more concerned about is the lack of ICANN supervision in the implementation phase. So I'll react - build on what you've written and make it just a bit stronger and a bit more factual. Thanks.

Elisa Cooper: Okay, so this seems like - so just the issue of sort of where do the comments go, and then I'll do issues around RSEP and where comments related to that, and implementation of those RSEP changes, look like things we're interested in sort of taking up. And as Steve mentioned, perhaps we can also add these to our comments on the Registry Agreement which are due on the 11th.

So with that, I don't think I had any other topics to cover. And we should move on to Steve.

Steve DelBianco: Thanks Elisa. I sent around an email this morning with a couple of background elements for the policy portion of this call. And Elisa, it's about

23 after, so please just watch the clock so we terminate this in less than 30 minutes.

There are three comments we submitted since our last Business Constituency call on the 22nd of May. One is on GAC Safeguard Advice on the new gTLDs. We were one of 132 people that commented on that. And these are comments that we submitted to the new gTLD committee of ICANN's Board of Directors. So everyone will be wondering what they'll do with this advice and I wanted to put that in the context of the timeline.

One thing that the Board needs to do is officially react to official GAC advice. Only a few elements in the GAC advice were consensus GAC advice; they had to do applications for DotAfrica and one other. Those are easy. It's these non-consensus GAC advice that the Board has to deal with.

It seems to me there is two paths. The Board could implement it which could create delays as the Board and staff work up implementation details for implementing the advice, and in most cases, that will mean changing the base Registry Agreement and the RAA which has just gone through multiple stages of approval. So there's significant delays if the Board accepts GAC advice in a way that causes implementation changes or agreements.

If on the other hand the Board were to reject some or all of the GAC advice, there are additional delays because bi-laws require ICANN Board and GAC to go through a process of discussion in a consultation whenever GAC advice is rejected.

So either way, pursuant to your timeline comment, there's bound to be slippage in those deadlines as the Board decides what to do with GAC advice.

A third potential is that applicants could read the tea-leaves and decide if they're in the crosshairs of some of that GAC safeguard advice as a consumer protection string, that they ought to implement something to satisfy GAC advice as part of their public interest commitments or pick-back in the contract. Applicants can do that voluntarily in a way of satisfying GAC advice and presumably avoiding a GAC objection.

But it's hard to say whether applicants will do that. That might be a way that an applicant can sneak through before the end of this year if they were to simply put a lot of the GAC safeguards into their own voluntary consent.

There were 132 in total, I haven't read them all yet so I really don't know where we'll fall on that list. But those that I have read suggest to me that the BC was more specific about what we think the Board can do in reacting to GAC advice. And maybe that's a hallmark of the work we do is to try to be specific and give actionable comments that ICANN Board and staff can take and run with.

But I hope that's the case and I do hope that the GAC would appreciate the fact that the Business Constituency typically agrees with the GAC. We appreciate the GAC support and for the most part, not entirely, but for the most part we supported the GAC Safeguard Advice.

So that's just a summary Elisa. Did you want to have any discussion or take a queue on discussion on the GAC...

J. Scott Evans: I'd like to be in the queue.

Steve DelBianco: J. Scott I see you and Elisa. J. Scott go ahead.

J. Scott Evans: First of all I want to say thank you Steve for the amount of information you get out in a concise executive summary for us to keep us informed of where things are headed and how they are in the pipeline. I've been involved in other organizations and it's not as well organized, and it's great because we're all busy and you do an excellent job. So thank you very much.

Secondly, I want to say that I was contacted by some people at the DOC and they were very disappointed in some of the comments that came out from (unintelligible) owners through the various avenues with regards to the GAC Advice. And I think the biggest problem here is the fact that ICANN and the GAC are struggling with how they relate to each other and what that affect is on this process.

Because as I see it, ICANN is pushing down the highway at 90 miles an hour, and GAC sees itself as, you know, the weigh stations along for those in U.S. it's trucks have to come in and have to be weighed and stopped, get off the express way and be weighed and checked out to make sure they can operate within a certain state, that they've met the requirements. And the GAC sees themselves sort of as that function.

And they're being ignored by ICANN or at least ignored by the timeline that ICANN sets forward which is causing the applicants to react negatively to GAC Advice. Because they're like, "We're moving forward and now you're asking us to do XY and Z; it's too late."

So I think there is a fundamental breakdown in how ICANN and the GAC are working together. And they have not solved that problem and it's causing a lot of churn in the system. And I'm afraid it's going to end up in an adversarily situation if people don't come along Steve, like you said, and give very specific practical solutions and things for everyone to focus on that are

focused solution and resolving problems and getting to the end game. But it doesn't seem like we are headed that way and I'm a little bit concerned

Steve DelBianco: J. Scott, this is Steve. Can I ask you to clarify? What is Commerce upset about or surprised about with respect to brand owner reaction?

J. Scott Evans: They felt like, specifically, they felt like the brand owners' comments from the BRG were not supportive. That while they were supportive in the fact that they said, "We agree with everything you say, we worry that this is coming at the eleventh hour, and at this point it's just too late to implement a lot of these things and so we have some concerns."

And they were like, "We've always been there for brand owners, we don't understand why you would do this." And it was after a call, we said, "You understand we're not brand owners, we're brand registries." And that's a very different dynamic within the self-regulatory model and what's being asked of us. And we were also drawing into this as we advance, we get more advance within our own organizations.

People who are not ICANN savvy, right, they are business people who have business plans and business objectives. And when you start, they have this clear plan of what they want to do with their gTLD and you start throwing the ICANN model on top of it, they're not happy.

And their direction is, "You tell these people they can't run businesses like this. You tell these people we are not going to this. We've got this much money invested, we've got this business plan and we are not going to turn around and change things now."

And the answer, "Oh but that's how ICANN works," doesn't really translate very well when you're talking to the (see week). So that's what they were frustrated with. They felt like they had gone to bat for brand owners once and every time, again and again and again. And our support while it was support, it was lukewarm. And they wanted more robust support.

Steve DelBianco: Okay, thanks J. Scott. Ron Andruff and then we need to move on.

Ron Andruff: Thank you Steve. I just wanted to make a comment about the excellent work that was done by the BC Members as a whole. I commented on this a month or so ago saying there was so much activity going on that we really welcome all the voices. And please don't hesitate even if you're coming to the BC and you're relatively new, to jump in and bring your voice and bring your edits and so forth.

And I think the work on this document was really exemplary of what we've been trying to see in the BC for years. And I just want to comment that everyone who weighed in on that, even at a distance, thank you for that. And I'm happy to hear your comments Steve, that we were the most specific on actualizing safeguards because that's exactly where the BC wants to position itself. Well, within the understanding of the governments and within the understanding of ICANN. So thank you everyone for that, so that was it.

Steve DelBianco: Thanks Ron. All right, let's move on. One other comment we filed in the last two weeks was comments on the FY 2014 Draft Operating Plan and Budget. Chris Chaplow, thank you for drafting that and getting it in. There are 12 comments submitted in addition to our own.

Chris, anything you wanted to say to recap that or talk about next steps?

Chris Chaplow: Yes, just quickly, thanks Steve. Chris speaking and thanks Angie for the help with that.

I've heard the acknowledgement and the staff responses to our comments will be the end of the business day on Friday the 21st of June which is, as I calculate, is a few hours after the reply round closes at 23:59 UTC. So unfortunately, that won't be very helpful.

I've had a quick look at the comments. Actually there is only five comments because there's a couple of - well, not comments, but a couple of - there's a couple of corrections and they're holding comments from the CSG and At Large saying they would go in the reply round.

And so there's only comments from ISP, Registry, BC, Mikey O'Connor and (Raymundo) talking about his points about the historic costs on the gTLD. I'm not sure of his point but he's definitely got a point now because he's been going on about it for so long and a duplicate comment.

Interestingly Paul Diaz and Chuck and (Tim Seltzer) commented on their own and then the identical comments came in from the Registries on the last day. And so at least, yeah, well at least BC. And we got some comments in. The ccNSO, no comments at all, which interesting, have to find out why because they're very active in this.

I haven't had a chance to do an analysis of those comments so I will do and I'll send that to the list to give us some guidance on, you know, what we're supporting, what we're not supporting and try and take our document a bit further for the 21st of June. Obviously any volunteers or help are greatly accepted on that. Thanks.

Steve DelBianco: Chris, thanks for your good work on that. And the third one that we submitted in the last two weeks was comments on the proposed final Registrar Accreditation Agreement. And a lot of great work there from Anjali Hansen and Elisa in particular. And I think Ron also contributed a piece of that as did Zahid and Susan Kawaguchi.

So those comments are in as well. There were 23 total files. This was a - presumably a proposed final RAA for 2013 so it remains to be seen what, if anything, ICANN staff will recommend they do to the agreement pursuant to the comments.

If in fact they got comments and they changed the agreement that might even require yet another round of public comments on the amended RAA. We'll have to wait and see.

All right let me turn quickly to comments that are pending right now. And I only wanted to cover two to make this call quick and easy. The first is draft BC comments on the final Registry Agreement. And in the email this morning I included a link to that.

Elisa Cooper, thanks to taking on the role of this. Elisa took a look at the comments we filed in March of 2013 where we focused very specifically on four parts of the Registry Agreement that the BC was concerned about.

Elisa was able to revisit each of our four concerns in light of how, if, I should say - if ICANN had accommodated some of our previous concerns. But, you know, to make a long story short they didn't accommodate many of our concerns.

But they did make significant changes to the unilateral amendment part. And Elisa's draft does a good job of noting that at least part of our concerns with unilateral amendments have been addressed by the process they have which allowed an operator to apply an exemption from an amendment if the amendment would actually cause the Registry to violate its own prior obligations and Registrant policies.

Elisa, we'll take a queue on folks that want to comment on yours. I did put a link - I think I attached it to the email so everyone has a chance to see that. And, Elisa, I noted earlier in the call we brought up the question on should we request in these comments that there be community input when a Registry Agreement has to change arising from an RSEP or a Registry Services Evaluation Process.

This was the comment you and Chris Chaplow were discussing at the beginning of the call. So Chris and Elisa and those others who are interested should we add to our Registry Agreement comment something with respect to the amendments due to RSEPs. We'll take a queue on that.

Go ahead Anjali.

Anjali Hansen: This is just a general point of clarification because I get so many emails it's probably been sent. But how long do we have to comment as members now? Like what is the deadline for us to give Elisa comments?

Steve DelBianco: This comment period closes on 11th of June. We are picking up comments that we filed back in March. And we're simply revisiting those that ICANN did or did not address.

So if we were to take the draft that Elisa has now I think we - I think we would submit it without an official review and approval process since it's the same comments we've submitted in the past. If we decide to take on additional topics like the one I just brought up on the RSEP we'll need the next four or five days to take care of that.

But, I mean, I would suggest to you, Anjali, that if you have something today, right now is the time to bring it up.

Anjali Hansen: I need to look at it. That's why I'm wondering how much time do I have to do that? What's the drop - like how...

Steve DelBianco: Anything new would have to be introduced today. To be fair to the drafter and all of us would have to get it approved. If it's going to be new in addition to what's been circulated...

((Crosstalk))

Anjali Hansen: Okay. Okay thanks.

Steve DelBianco: Okay. Anyone else in the queue to discuss whether we want to ask for public comment on Registry Agreement changes due to an RSEP? Okay I don't see anything on that so I don't think that necessarily - there's support to put that in here. Elisa, Chris, any comment on that?

Elisa Cooper: I understand - when those changes are added that it is posted for public comment. I just don't think many people are paying attention to that stuff.

Steve DelBianco: And therefore maybe we mention this in the ATRT, the Accountability and Transparency Review Team, with respect to whether the public comment periods are effective. It may not...

((Crosstalk))

J. Scott Evans: I think that's right, Steve. I think that's a better way to do it is to go to the ATRT with it and to really make a big deal out of it because it cuts across all of ICANN not just with regards to RSEP.

Steve DelBianco: That's good segue, J. Scott, because we can now turn to the other open public comment period. So before I do so are there any other BC members who want to comment on Elisa's draft that was circulated last week and attached to this email?

Elisa Cooper: There's just one thing that I think was very interesting that one of my colleagues actually came across and that is in the PIC specs like submitted, for instance, by Donuts, there is a clause in there that basically says something along the lines of that they basically have the right to - let me tell you exactly - they have the right to modify or discontinue their specs for any compelling business need. And I just think that's very interesting because it kind of renders those PIC specs not, you know, very effective in that.

J. Scott Evans: Superfluous.

((Crosstalk))

Steve DelBianco: ...unilaterally offered the assumption that that applicant is making...

J. Scott Evans: Right.

Steve DelBianco: ...is that any PIC spec commitment can be unilaterally withdrawn.

Elisa Cooper: Yeah.

J. Scott Evans: Yeah, but that's not a commitment, right? That's - that, as my brother in law would say, the big print gives and the small print taketh away. That's not a commitment to say I'm committing you to do what I want to do when I want to do it if I feel like I want to do it. That's not a commitment.

Elisa Cooper: Right.

J. Scott Evans: So that's wrong. I don't care if it's unilateral; that is a work that is skirting around what these are supposed to do and that is put your feet to the fire.

Steve DelBianco: All right. And the BC - the comments that we've drafted, that Elisa drafted, do include the very point that Elisa just made...

J. Scott Evans: Okay.

Steve DelBianco: ...and we express grave concern about this.

J. Scott Evans: Yeah.

((Crosstalk))

Steve DelBianco: ...recommending what ICANN do. Is there a solution that we should also recommend on that?

J. Scott Evans: Well the solution would be that language like that be taken out of any commitment and the commitment be what it actually is, a commitment. And that that all of those be read carefully and that any language that qualifies or modifies the applicant's ability to have to stick to the commitment is removed by ICANN, as not in compliance with what a PIC is supposed to be.

Steve DelBianco: Would that mean that any commitment stated now is permanently and forever more stuck on...

((Crosstalk))

J. Scott Evans: Unless there's a formal process put into place to deal with that just like the RSEP. So you would have to say we need to change XYZ and here's what we need to do. And then there's a review process of some sort. I mean, I'm one voice here, Steve, I'm just saying, you know, but I'd hate for someone to say oh you get it, they're delegated and then six months later they say oh we think the business situation has changed because you know it's going to.

((Crosstalk))

Steve DelBianco: ...public comment out on the dispute resolution process with respect to PIC specs, something the GAC was very keen about. I have not read the details but presumably that's where there's a dispute originated that suggests that a Registry is not following its own PIC spec.

I think we ought to look at that to see whether that reveals anything about the process...

J. Scott Evans: Okay.

Steve DelBianco: ...because if our TLD is accused of not following its specs it shouldn't be as easy to just simply withdraw it and avoid future problems.

J. Scott Evans: Right.

Steve DelBianco: Elisa, as the author on this one, the rapporteur, let me ask you under the third paragraph on Spec 11 do you think it's appropriate for the BC to add a sentence or two suggesting that the BC recommends a more formalized process for the amendment or withdrawal of PIC specs that have become part of a Registry Agreement that's been relied upon by stakeholders?

Elisa Cooper: Yeah, let me add that.

Steve DelBianco: Okay. And John Berard in the queue.

John Berard: Thank you, Steve. I don't think - I think we have been on record at every turn opposing unilateral action whether by members of the community or the Board. And so in this instance I would say that the PIC can be modified but there needs to be a process by which it can be done.

I'm not sure what that process is. It doesn't involve community - the whole community or is it the result of a negotiation, I don't know. But I can't believe that we should let any individual party have the responsibility (unintelligible) action without review.

Steve DelBianco: Thanks, John. So it sounds like we have agreement on that unless anyone else wants to intervene we will add a sentence or two recommending a process.

Elisa Cooper: I'll let you know...

Steve DelBianco: And we are not going to do something on the RSEP there; we'll do it in the ATRT.

Elisa Cooper: Yeah, and I'll get...

((Crosstalk))

Steve DelBianco: Great. I think that's it for the - go ahead. Go ahead, Elisa.

Elisa Cooper: Yeah, I'll get that added and send it out later today.

Steve DelBianco: Thanks a lot. All right let me turn to the final one so we can get this within our time limit here. The comments on the Accountability and Transparency Review Team that comment period closes June 9. And this is just the first of many bites at the apple of the ATRT.

We're not taking official positions. We're simply giving answers of some kind to questions that the ATRT team has posed to sort of kick off their work. The ATRT is the Accountability and Transparency Review Team. This is the second one; we had the first one three years ago.

These are required under the Affirmation of Commitments that where ICANN creates a team, the team studies a particular set of issues in Paragraph 9.1 of the Affirmation of Commitments on whether ICANN is meeting its obligation on accountability and transparency in the global public interest.

I discussed this on the May 22 call and we were able to get volunteers like Stéphane, Zahid, Marilyn Cade and we began to put together a draft for what the BC might provide as input to the ATRT as they begin their work.

All of those drafts are included in the document that I circulated this morning. Earlier on this call we discussed adding concern about RSEP changes to Registry contracts and that those, too, should be taken (unintelligible) find a place to put that point as well.

I also heard discussion earlier on this call about what happens to comments when we make a comment? Remember John Berard brought it up with respect to Council.

But that is another perfect issue that you would raise in an Accountability and Transparency Team since that's big transparency and also on accountability, are our comments being listened to? So I would think that both of those can be added as paragraphs as well.

So I'll take a queue on input on any of the draft text that is included in the email as well as any other volunteer help to help us get this done and circulated for BC input later today or tomorrow. I see Elisa in the queue, why don't you go first?

Elisa Cooper: I just wanted to let people know that the ATRT is looking to meet with us as a CSG by a Webinar and I expect that'll happen in the next week or so that we'll make sure everybody has plenty of notice so that we can meet with them as a group.

J. Scott Evans: Thank you.

Steve DelBianco: Thanks, Elisa. And in addition to notice let's be forewarned that the ATRT members are very disappointed and upset that there hasn't been more attention paid to the critical questions they evaluate.

This is the review team who reviews not only the ATRT at ICANN but it reviews whether the other affirmation review teams have had their recommendations implemented so it's sort of an uber-review. And I know that in Beijing Brian Cute and members of the team were really upset that there weren't more comments filed.

So let's make sure that we can draw these to a close. Are there any substantive comments on the text you have before you? Great. And I will then say that don't come in at the last minute, please, with big significant changes. I will take the work that Stéphane and I have done here, fold it into a draft comment that I'll circulate later today.

That's an appropriate place for BC members to make edits that are relatively minor but the time has passed, I think, for major substantive points given that this is due on the 9th of June.

Elisa, I think that's it for the policy section and I'll turn the agenda back over to you.

Elisa Cooper: Okay great. Thank you so much. And I'll just reiterate what others have said. I think, Steve, you just did an awesome job and I'm really happy and really, dare I say, proud about how we were able to complete all of these comments. And I know that there were some rough patches but I think we should all be really very happy with the end results.

With that let's move on to John to cover Council activities.

John Berard: Good morning. The meeting is June 13. And I would say that the most interesting aspects of it are not among the motions but among the discussion.

There is, as I noted earlier, a conversation to be had just on the upcoming reviews of the GNSO and the GNSO Council.

I'm probably speaking a little out of turn; there was a call for volunteers to participate in a group to help organize the Council's thinking on that and Zahid did volunteer for that. I know he's on the mailing list for it. And so I will yield to him as being the sort of official voice of what's going on.

But unofficially, and as a member of the Council, I feel that this might be an opportunity to get on the table some of those matters that seem to be perennial points of irritation not the least of which, as we have discussed on these calls, the contentious nature of what is known as the Non Contracted Parties House, that perhaps there are organizational changes that should be considered (unintelligible) create a more appropriate or table of organizations.

I apologize for being so oblique in that personally and that's why I'm being oblique organizationally because personally I'd like to see the Non Contracted Parties House blown up and allow what exists as the Commercial Stakeholder Group to have more of its own legs under it within the GNSO and at the Council. That is something that is a story yet to be written.

And so if there are things that have bothered us about ICANN that are rooted in its organization perhaps this is an opportunity to get those on the table. So I'll ask, is there anything beyond the treatment of public comments, as we discussed earlier, that you think might be good...

J. Scott Evans: John?

John Berard: ...to be brought up here.

J. Scott Evans: John, this is J. Scott Evans. I think that - and I talked to Steve Crocker about this some time ago - I think that somebody needs to have a discussion with Debra Hughes because Debra was brought in by the Board of Directors to sort of bring in some more professional and different perspective to the Non Commercial Stakeholders Group.

And what was done to her both personally and professionally by about four or five of those individuals on blogs and on things was horrifying. And the ICANN Board basically stuck this woman out there and her organization and then completely abandoned her.

They now have some crazy set up where non profit organizations that apply have to be approved by the very people that the structural changes were brought in to sort of muffle their voices and give different perspectives. And they have turned down 501c3 organizations because they sell t-shirts on their Websites claiming well that's not a non profit.

Now Milton Mueller and Robin and Avri aren't the IRS. And under the US law a 501c3 is a non profit under the federal laws of the United States of America. So they don't get to say oh well we disagree because they sell t-shirts. And I think we need to shine a light into this rat hole and drive these rats into the sunlight. And the ICANN Board is letting them get away with this.

John Berard: So I cannot claim to be expert on the day to day on this, J. Scott. But I do understand that the Board has exerted some degree of pressure to break that log jam in terms of membership.

It was pretty clear that the legacy members of the Non Contracted Stakeholder Group were not open to having new members who might become councilors

which seemed to be a bit odd. And I believe (unintelligible) the membership process has been addressed. I believe it is. But I don't know.

So it might be that, as is often the case, reputation lags reality that maybe there's more...

((Crosstalk))

J. Scott Evans: I just think there needs - this needs to be looked at in depth and there needs to be some sort of vetting of this. It needs to be out in the open. These are the very people who stand up and say that corporate America and businesses are trying to shut everybody out and they're doing this I saw this same group of people make a woman cry in Paris in 2008. She was a law professor from Brigham Young University that was very concerned about children.

Now she's extremely conservative. I get it. It's not necessarily my cup of tea but she has a right to have a voice. And the voice that she sought to have was in a non commercial group that says that they speak for all the unheard. They made this woman cry publicly. And you can verify this, Cheryl Langdon-Orr was standing right there with me.

John Berard: All right well I will pursue that in - as a sidebar. I probably don't feel smart enough about it or comfortable enough about it to bring it up at the Council meeting. But if I learn something between now and then I'm quite willing to rattle the - any saber that anybody would be foolish enough to put in my hand.

So I would say that that'll be an interesting one and officially you should drive most of your comments through Zahid because he's a volunteer member of the working group.

((Crosstalk))

J. Scott Evans: Did you see what they did to Jennifer Wolfe when she asked a question at your wrap-up session about what was the motion process? Because, you know, that meeting went to shit in about 5 seconds and she wanted to know as a non voting NomComm appointee what the process was because she thought it was broken. They attacked her. Milton and Joy went after her.

So the point that I'd - a member of the audience, who's a friend of mine who'd never been to an ICANN meeting, said, do you all actually allow people to treat others that way?

John Berard: No, I was sitting near her at that point and in fact just at the break before had complimented her on how, as someone so new was able to bring so much value by being able to draw upon her business background. And then the whole (unintelligible) episode arose.

And she was bewildered by it all. I haven't had much of a chance to talk to her about it since but I think it made her more resolved to participate, not shy away from things. So...

J. Scott Evans: Yeah.

John Berard: ...it's pretty clear that people who have been a part of ICANN for a long time and those who are new (unintelligible) the failing of the way it has organized - the GNSO has organized itself. And this may be an opportunity to get at some of those who have been perennial problems. So we'll see.

But, anyway, I'm anxious to hear not just, you know, not just in terms of the public comment or the public behavior but, you know, any aspect that is a problem for us that is linked in any way to the table of organization.

You know, the - this links to the other conversation, the other discussion that's on the table right now which is being - which is the discussion about the Non Commercial Stakeholder Group request for reconsideration of the plus 50 decision by the Board with regard to the trademark clearinghouse.

You're all aware of course that (they) made that request, that the request was denied. The decision to (unintelligible) the Board for a vote on the 27th. Our Council meeting is an opportunity to have a conversation about that subject and the thinking by some councilors, led by Jeff Neuman, that there would be some direction, some position that the Council would offer up to the Board before it takes that final vote.

The discussion is going to focus not as much on the subject of the decision as the method and the process of the decision. And so not to suggest that the Council is seeking to overturn the plus 50 although there are many on the Council who would like to do that.

So I would say that those are the two most interesting aspects of the Board - of the Council meeting. The motions - there are two, maybe a third, that are (unintelligible) with regard to policy, this procedure. That's nothing that I think is going to take too much time or draw too much controversy.

And then there will be a discussion about what it is we're going to do in Durban which is always interesting because I worry that sometimes those face to face meetings take on a pro forma aspect as opposed to a progressive policy format.

But as you probably can hear in my presentation I'm - I worry sometimes that the Council is justifiably criticized for being slow to act and I'm willing to see the forest (or) the tree. But that's pretty much where we're going to be. Those are the issues that I think are of interest for next week's meeting.

Elisa Cooper: Well thank you.

John Berard: Now having said that and having heard nothing in response I will float a notion that I had discussed with Steve a while back and that is that perhaps the BC should begin to be more aggressive in terms of offering motions to deal with some of these problems not just be satisfied to get them on the table.

I don't have any that I want to suggest but I would encourage people as they think about the way ICANN operates if there are issues reports that might give value to making our point that could lead to new policies that would get us out of some of these ruts.

I'd be more than happy to take a more aggressive posture at the table. I mean, at this point we play a lot of defense. If there's an opportunity to play some offense that would be great too.

Elisa Cooper: John, I mean, would it make sense to think about asking for an issues report on the way in which comments are handled? Is that something that's even been done before?

John Berard: You know, I don't know. So my first step is either send a note to Glen and Marika and ask what...

J. Scott Evans: No.

((Crosstalk))

J. Scott Evans: John, the best person that's going to know that is going to be Kristina Rosette. I would just reach out to her personally because this has been a bugaboo for her and she was on there for six years. So I would suggest you talk to her...

((Crosstalk))

John Berard: Okay. I'll - yeah, that would be a perfect - that would be a good conversation to get started in. It could lead to a - to a policy development process that could change things for the better understanding of course that in the process of the process there will be - it will wind up seeming longer than it needs to be so I don't want to suggest that we be the architect of our own misery in that regard but just understand that it's more (unintelligible) or if at all.

Elisa Cooper: Right. All right are there any other questions or comments or things that people would like to raise before we close the call? All right well I'd like to thank everyone for today's participation and all of your patience and input and everything over the last couple of weeks. I think it's been really great.

    We are scheduled to have another meeting on the 20th so perhaps we can take up this discussion we've just started about whether or not we want to bring to the Council this issue about the way in which comments are handled so perhaps we can continue that conversation next week, I'm sorry, in two weeks.

    So with that if there aren't any other questions or comments or things that people would like to raise I would like to thank you for joining and say that I look forward to talking to you all in a couple of weeks. Thank you very much.

J. Scott Evans: Thanks, guys.

Woman: Thank you.

Woman: Thank you.

Elisa Cooper: Thanks.

Benedetta Rossi: Thank you, (Michelle). You can now stop the recordings.

END