

ICANN

**Moderator: Gisella Gruber-White
May 10, 2013
10:00 am CT**

Coordinator: Excuse me, I'd like to remind all participants this conference is being recorded. If you have any objections you may disconnect at this time. You may begin.

Benedetta Rossi: Thank you very much (Kelly). Good morning, good afternoon, good evening. This is the BC member's call taking place on the 10th of May 2013.

On the call today we have Ron Andruff, Steve DelBianco, Mark Sloan, Andy Abrams, Stephane Van Gelder, Philip Corwin, Emmett O'Keefe, Susan Kawaguchi, Yvette Miller and Anjali Hansen. We have apologies from Ayesha Hassan. And Elisa Cooper will be joining us within 25 minutes. Thank you very much and over to you Steve.

Steve DelBianco: Hey thanks Benedetta and thanks everyone for getting on the third call. We're going to pick up where we left off on Wednesday.

And starting on page, let's see I think it's Page 3 of the document that was attached to today's email just below the heading that says remaining items to be discussed on May 8 and May 10.

And I think everybody but Emmett and (Angel) - I think everyone from - except Emmett is on the Adobe.

So Emmett just look at the email and you can follow along. The Adobe's got the exact same stuff.

So I'll go over this to quickly focus on the additional safeguards for category one TLDs and finance gambling professional services health and fitness center. Those are Number 6, 7 and 8 on the GAC advice Page 10.

On last week's call, sorry, on Wednesday's call BC members were well all over the map about what to say to ICANN about the GAC's advice for 6, 7 and 8.

I read the minutes and took some of I guess some editorial license to try to propose a comment that's on the screen in front of you that's in the document, try to propose comment that sticks with the BC's strong preference for integrity and safety regulated industry at the same time not wanting to pull ICANN its contract parties into the roles of regulators. That is a far cry from domain system management.

So my proposal's right on the screen in front of you. Emmett you can see it in there so I don't think I need to read it. I could explain it and then take a cue on it.

I think the BC could say the registries ought to be accountable, responsible for safeguards 6, 7, 8 but only where registry committed its restricted where the restriction includes some licensing or charter or where the registry added such a commitment to their public interest specification.

That's called Public Interest Committed specification or PIC spec. Or maybe the TLD at some point after launching decides to advertise on its Web site and in its advertising material that it only permits registered travel agents or that it only permits registered licensed health clubs.

The second element here was that any government could request a registry to add things to its PIC spec.

In other words already governments weighed in with applicants saying you need to put this in your pick speck to overcome an objection or to avoid GAC advice.

So that's an opportunity for government to pressure registry to add restrictive registration. This is responsive to some comments Marilyn made at the end of Wednesday's call indicating that any government ought to be able to petition for this. And this is one way to do that.

But for this to work after launches of a TLD ICANN's going to need some kind of a process for registries to amend their pick spec. And the pick spec as part of the registry contract.

And if it's a bilateral contract amendment I'm guessing that registries would do so in response to pressure from a government. But at this point we're way past the opportunity to, you know, to stop an application. They're already and up and running registry.

So for an example somebody running .fitness a year into it might get a lot of pressure from a handful of European governments and it only allows registered fitness professionals and chartered clubs to have domain names.

And if the government successfully persuaded the applicant to do so, the registry to do so the registry might be able to update their contract by sliding a paragraph the pick spec and then ICANN must enforce it from that point forward.

So I'll take a queue on this proposal.

All right so anybody in the Adobe I'll see your hand's up. Oh Emmett you're in there as well. Okay so Stephane you're first. Go ahead.

Stephane Van Gelder: Yes is it me first? Sorry Steve I couldn't hear what you last said.

Yes so I ahead?

Steve DelBianco: You first. This is Stephane Van Gelder who recently joined the BC. He's a longtime ICANN, an active ICANN registrar but also a consultant today. Go ahead Stephane.

Stephane Van Gelder: Hi. Thanks Steve. Yes thanks for that intro. And off the bat I'll ask for the BC member's forgiveness.

In my new capacity as a BC member I still lack experience of this group. So as some of my views may surprise you and they may lack the history that some of you have and which would help you answer some of the questions I'm going to ask.

But as businesses I'm surprised that any business with advocate for extra government intervention into the way that businesses are run.

And in this regard I understand how this has been phrased. What I don't understand is how which I think is what you've just run through Steve, how they - we could ask the registries to work with governments to enforce a government request.

So say a government comes in and says we would like Mr. Registry to see you at this, that or the other to your requirements for registrations. What happens if the registry simply turns around and says no?

Is it the view of the BC that the government in question should be - have a direct line of enforcement in being able to force such decisions on the registry which I would find surprising?

Or are we proposing that there be some kind of mediation or enforcement procedure which would help both sides to discuss, talk and come to a mutually agreeable outcome which I think would be much more favorable? Thank you.

Steve DelBianco: Stephane, a quick answer. Prior to the signing of a registry contract the government already has the power to do what you're proposing. That's in the guidebook.

If the governments aren't happy with an application they can convince their government colleagues for GAC advice against the applicant. And they did so with several applicants while we were in Beijing. So I don't think that's in question.

But what about when it's already up and running is the government may be an example...

Stephane Van Gelder: That's what I'm asking.

Steve DelBianco: All right good. So we're only talking about post-launch.

In a post-launch world hypothetically the European Commission, European government nation's are pressuring .health, the operator of .health to change to a restrictive registration.

See they already had restrictive registration. That's simply ICANN's job to enforce it within Safeguard 6, 7, 8. That's fine.

But if they didn't have it how could a government convince a registry to add a restrictive registration? That seems to be your question.

And the BC doesn't have a position on that okay. And not - and what you see on the screen in front of you doesn't propose that.

I don't know what means the government could bring to pressure a registry to change. Go ahead.

Stephane Van Gelder: Yes just to make sure I understand the BC doesn't have a position on the methodology or the BC doesn't have a position on the fact that a government should be post-launch able to enforce - to force changes on the registry because I think the latter is extremely important.

If we are advocating that governments post-launch should be unilaterally able to enforce changes on a registry I think we're putting those businesses in a difficult situation. I fully agree with what you said earlier on that the (unintelligible)...

((Crosstalk))

Steve DelBianco: Well the word in there is request. The word in there is request not require. It's request not require. We haven't been down this road before.

Stephane Van Gelder: Right.

Steve DelBianco: Request not require okay?

Stephane Van Gelder: Thanks for that clarification.

Steve DelBianco: Got it. And it would be up to .health. The registry running .health is going to find it themselves in a mess if a handful of governments are making a big stink over it. It might be in their interest to move it ahead or they may decide to resist.

But until they changed the contract Stephane by adding something to the pick spec my guess is that ICANN doesn't have the enforcement role at that point.

Stephane Van Gelder: That's clear. Thanks very much.

Steve DelBianco: Right? The government made claims that there was an implication. It was promised in the application and now they're backing away. Well then ICANN does have a role. Until it's either in the application, until they're advertising it to the public or it's in a contract I don't see where ICANN has the role.

Next in the queue is Susan, I'm sorry Ron, Ron Andruff.

Ron Andruff: Thank you Steve. I don't recall did we get a roll call? I didn't think we get a role call on top of this so I'm not sure who's all on the call or not. But we probably should have at one point.

Steve DelBianco: We did do a roll call. We did Ron, we did do a roll call. And everyone on the Adobe list is on the roll call. I don't think there's anybody else in the phone.

Ron Andruff: Good. So Ron Andruff (unintelligible) Partners. Steve thank you for that - the pulling all this together.

We - you and I spoke quite at length on the last call about the idea of regulated industries. And I don't see anything here in the proposed BC comment.

And just for those who were not on the call what I was recommending was that in this, the initial safeguards that in fact they were a regulated industry that the safeguards would be, you know, very critical. And that was the distinction between regulated industries and non-regulated industries.

So I just wanted to bring that back on the table Steve to get your thoughts as to where you saw that going into the document.

Steve DelBianco: Thank you Ron. Thank you Ron. And I took the editorial privileges, your BC policy coordinator to not pursue that.

I do not believe that ICANN has to force everyone in the so-called regulated industry. And that means it's regulated in any planet - in any nation on the planet. I don't believe it's ICANN's role to do that.

If the government chooses to regulate an industry, that's why I gave up the example .health, right so if the government of Europe choose to regulate the health industry and they choose to want the registry to honor that regulation by adding restricted registration that government has to do that either prior to

launch through GAC advice or post-launch through other means of law enforcement, regulatory enforcement or lawsuits but only if the government successfully got the registry to adopt restrictive registration would it fall into ICANN's purview to enforce it.

So I didn't embrace that idea because I don't see how it could work. But I'm going to put the queue back to you Ron if you wanted to continue to make that case to everyone else on the call. You may end up rejecting what it is that I draft. Go ahead Ron.

Ron Andruff: Thank you Steve. And obviously when we get to the drafting phase we'll be able to, you know, write, we'll be able to bring our comments to bear in a more cohesive manner.

But the point here is simply that we are very well aware, all of us who've been participating with ICANN now for more than a decade that the government's role is primarily to put their users and their consumers interest to the forefront of the public interest.

So the issue here is if we're not suggesting that regulated industries have specific responsibilities on the Internet then we will find ourselves with government's doing exactly that through other channels.

I think this is going to be a huge missed opportunity if we didn't step up and say for regulated industries we agree that there should be some additional safeguards and therefore we should be mindful of that.

If it's not a regulated industry then we could step completely away from all these issues whether you're suggesting it might be or may be as of course it must be.

I think we can start to draw some very clear lines here and support what the GAC is trying to do because governments are clearly only interested in the public interest.

And if we're going to say that regulated industries don't have any special difference here on the Internet as opposed to unregulated industries we're just - they could put our finger right in the eye of the government. And that's going to come back to bite us. That's my argument. Thank you.

Steve DelBianco: So Ron I hope other BC members will respond to you. But make sure the BC members understand that it's not as simple as the word regulated industry. That word doesn't mean anything at all.

The GAC advice had a non-exhaustive list and it would include .retirement, .save right, .loan, .lease, .broker. It would include .fit, .fitness, .health.

Ron Andruff: No Steve regulated industries are very clear. They're insurance. They're pharmacy. They're, you know, things that are regulated. And that means in every nation they have a body that's responsible for overseeing that for the public interest.

Steve DelBianco: Ron would you clarify...

((Crosstalk))

Ron Andruff: .charity is not a regulated industry at this stage of the game. And that's why we see all the scams happening when there's some crisis happens in the world. So that's what we're...

Steve DelBianco: Great. So I think got it. Now I - so I'm going to ask you to take a minute and scan through Page 9 under the GAC advice. And maybe you could even type it into the chat. You could give us a Ron Andrus's view on which of the GAC requested strengths the BC would name as regulated.

Because clearly what - you're not actually embracing GAC advice at all. You're saying something very different which is hey GAC we'll go with you but only for a limited subset, an explicitly limited subset of the strengths that you identified.

And I think that's - that could be really helpful Ron. But I'm going to ask you to see if you can articulate which those are. And you can do it in the chat for others who are picking up on their comment. Would that be all right?

Ron Andruff: Either in the chat or in the written word, no problem.

Steve DelBianco: Okay.

Ron Andruff: Written document.

Steve DelBianco: Susan Kawaguchi, I am sorry to hold you up. You're up next.

Susan Kawaguchi: No problem.

So my only point is Number 6 if a registry is collecting any of that information, the charter license or credentials it's a restrictive or not, if they're collecting, you know, business license numbers for registration for example they should verify or validate that that, the entity for the individual providing those has the right to assert those - that information and use it for registration.

So to me it doesn't matter if it's a restrictive registry or not. But if they've chosen to collect the information they should make sure and validate that.

For example that, you know, if somebody asserts eBay - or excuse me, wrong company, Facebook's, you know, business license number to register as a domain name that they actually have the right to do that.

Because all of that information is publicly available for the most part and people use it freely who do not have the right to use it.

Steve DelBianco: Yes that's a great point. So whether they have restricted registrations or not you say if a registry, collects registrar and authorization charter license for other credentials than they should follow the verification steps in seven and eight?

Susan Kawaguchi: Yes.

Steve DelBianco: Got it, that's a good comment Susan. It's a little off, a little bit different than the question of which TLDs are covered. You're saying regardless of what your TLD is that you collect it you should verify it?

Susan Kawaguchi: Right.

Steve DelBianco: Got it anyone else in the queue right now? I am looking at the chat.

Woman: Can I just...

Emmett O'Keefe: Steve can - this is Emmett. Can I just ask the question? What does collect mean in that instance just to...

Steve DelBianco: Susan go ahead.

Susan Kawaguchi: I mean if they - if I'm filling out the registration form which, you know, this is more applies to ccTLDs I do it all the time, you know, I have to provide that number or a, our business license number and whatever into whatever country.

So if they are requiring that as part of the registration process and collecting it so they're doing something with it because they've asked for it. Then they should take that extra step and verify or validate. Or it could be a trademark number, you know, registration number.

Steve DelBianco: Emmett does that answer your question?

Emmett O'Keefe: I guess. But unlike on the VAT thing is that tied usually to their ability to get payment from you as you file it?

Susan Kawaguchi: No it's - I think it's more of a - they are checking to see that it's of validation point for the registry to see that yes Facebook Ireland exists in Ireland. And this is the business license number of Facebook Ireland.

Marilyn Cade: Can I - it's Marilyn. Can I get in the queue on that topic?

Steve DelBianco: Okay. But Susan is it collected through the registrars and passed along through the Thick Whois to the registries? Is that your view?

Susan Kawaguchi: Yes.

So, you know, I mean we do - and just to the ccTLD world they might, you know, the registry sets the requirements. The registrar collects those and...

Steve DelBianco: Got it.

Susan Kawaguchi:...so if the registry is saying to register a domain name here you must provide one of these credentials, restrictive or not they should verify them. Why collected them if they're not going to verify them?

Steve DelBianco: Yes I love this topic but let's not go too far off track. That's really not in keeping with trying to decide what we're going to say about GAC advice. But it's a fascinating topic. Let's try to limit the discussion on that.

Emmett you have a point about it. Stephane is in the queue and then Marilyn.

Stephane Van Gelder: Sorry yes, Stephane here. It just it occurs to me that one of the benefits I can bring to the discussion is my registrar experience. And it's clear that - and I think that the logic of what Susan is saying is hard to (fold).

You know, if you're requesting something you should at least make sure that what you're getting is bona fide.

But there are - it does depend on what data the registry's asking for. So on ccTLDs for example if Ireland's requesting a VAT number they'll check against the local database. On a global registry they'll have a harder time doing that for certain countries. And that is probably a well determined database.

There other things I know of ccTLDs that request data that don't check it until or unless there's a problem.

So just to add that to that discussion we may be asking registries to validate things that they are unable to because they don't have access to the data.

And then coming back to Susan's point in that case perhaps the question should be to the registry why you asking for this if you can't validate it? Just make sure you only ask for something that you can validate. Thanks.

Steve DelBianco: Yes and this might actually fall under the Whois discussion and have nothing to do with the regulated industry discussion. And as far as I know Whois doesn't have any of this data today. So I really don't know where this fits in. Marilyn, go ahead.

Marilyn Cade: Sorry, I just wanted to actually be - point us back to what we're trying to accomplish in terms of business user comments, not register comments, not registry comments or not brand applicant comments, not anything else but just business user comments.

So can we just go back to because I think we've only got a limited amount of time then we have to follow comments.

Can we just go back to how we make sure that what we're doing right now is tightly focused on the business user perspective and how best to advance that in the draft?

Steve DelBianco: Next in the queue, Susan I see your hand up.

Susan Kawaguchi: No, that was old. Sorry.

Steve DelBianco: Marilyn's right. Our perspective is that business registrars and users. All right so we have two topics on the table. The first topic is my proposed BC comment that all of you have in front of you.

And it's not exactly what I think Ron was asking for and I'll wait for Ron to see if he wants to come back in on that.

But I did want to get a show of hands about member support for the proposed comment in front of you.

Ron do you want to come back in before we conduct a little ballot here?

Marilyn Cade: Sorry all right can I - it's Marilyn. Can you point me to what you're talking about because I'm just having trouble figuring about what the draft comments were. And I'm looking at the draft.

Steve DelBianco: Marilyn I don't see you on the Adobe so simply look at the email I sent you today and out to the part that says remaining items to be discussed on May 8 and 10 please?

And then look underneath there in the red text if you have color. And the red text is the three part proposed BC comment.

Marilyn Cade: Well what I'm looking at are the notes for the BC comments on GAC advice.

Steve DelBianco: Yes you've got it. Scroll down please to where it says remaining items to be discussed on May 8 and 10.

And the GAC asked for safeguards 6, 7 and 8. And based on discussions I drafted a three part BC comment.

Marilyn Cade: Yes okay I'm looking - okay thanks.

Steve DelBianco: Okay great. Anyone else in the queue on this? Some of you are weighing in the chat. Not everybody is on Adobe so Andy Abrams, anyone else who wants to weigh in and then we'll just do a straw ballot of (unintelligible).

Ron Andruff: This is Ron. Steve I'll just jump back in then.

Steve DelBianco: Go ahead Ron.

Ron Andruff: Thank you please. So I'm just - I followed your advice. I'm overlooking at Page 9 and I'm seeing a number of elements that - a number of words let's put it that way, a number of terms.

And if I start going through this I see .hospital, .medical, .pharmacy, .surgery, .dental, .doctor, . dentist, .broker, .exchange, .finance, .financial, .investments these are what I call regulated industries and that - and the list goes on. I could go through it.

But the point I'm making is that if we go back and we say that we to the GAC advice no wait we don't accept any of this, (you can say) that's a different place and therefore we don't need any of these safeguards I think we'll just - in the long view are really hurting ourselves.

We may be, you know, going down a very - a path where we're just trying to kick this can down the road.

But I think to go back to them and say on these types of names yes we agree that there should be - there's some very - it should be looked at more closely. There should be some very specific safeguards to the public interest.

And I think that's saved us all a lot of headaches and a lot of problems and it moves us in the right direction.

I think to ignore it right now and just say well we don't need it, you know they - why bother I think that's foolish. And I think what's going to - what we're going to find is more pushback from the GAC.

If the interest is - if the interest on the whole is to move this program forward about the leg then we should be giving some ground here.

If we're not able to get some ground we're going to be seeing more delay. And I'm going to make my...

((Crosstalk))

Ron Andruff: I'll make my comments on the list and I'll bring these other words that, you know, I think would be interested in this regard to the list for others to review. But I think it's a foolhardy on our part not to address this in a more efficient manner than we are right now. Thank you.

Steve DelBianco: Thanks Ron. Neither your proposal or mine accepts GAC advice. And either your proposal or mine ignores it.

My proposal is to accept the GAC -- one moment please -- is to accept the GAC advice on these brand-new safeguards six, seven and eight.

But my recommendation is we apply then only those three instances, those three cases where the registry has committed to it.

And therefore it is up to the governments to pressure the right string, the right applications and the right registries to commit if they want to regulate that industry. And we have proposed mechanisms to do so.

So it is not ignoring the GAC advice at all.

In either case you're not accepting GAC advice on all the strings they've asked for. But you're narrowing it to a handful of strings where you do want to give ICANN a role of requiring the applicant to do so.

So we're actually not that far apart because if you believe the .hospital ought to be regulated industry if a government agreed with you, any government, that government can take the steps now to ask the .hospital applicants to (add) your restrictive registration.

And there's a mechanism for that. I'm saying that if they take the steps to do than ICANN should enforce six, seven eight.

Marilyn (unintelligible)?

((Crosstalk))

Marilyn Cade: Yes...

Steve DelBianco: Or Ron did you want to - let's give Ron a chance to respond to what I said and then Marilyn. Go ahead Ron.

Ron Andruff: No I am happy to have Marilyn bring her comments to the table. Thank you.

Marilyn Cade: So Steve it's Marilyn Cade. And I want to say that I want to be really clear that I've looked at all of our leadership and our participants. And I know that many of our participants wear dual hats. And I respect that that we must reflect the business user perspective.

And that puts all of us in a unique and challenging situation. So I'd like to be - that on the record and have that associated with my name in what goes into the public comments because what I'm going to say next may be a little tough.

Really we cannot ask governments and I prefer we don't ask governments to be prescriptive.

I think the GAC has given advice that allows applicants and the community to provide suggestions on (big parts) that are going to be less onerous than if governments themselves and less time-consuming than if government themselves come up with a solution. And I'm just going to give a couple of examples.

Years ago I helped catalyze the online privacy alliance. And had we left it to governments we would've had a highly perspective piracy law in the United States for the online providers.

We avoided that because the industry came up with a code of best practice and used a self-governance model including participation from the government side of the business providers online, the civil society of the NGOs and their advice to governance.

And we actually kicked the can down the road on prescriptive privacy legislation for the online providers by about ten years.

Now we did that with best intentions and best accountability. And governments and civil society NGOs and business collaborated on that.

If we leave this to the governments and say, you know, if you don't like a particular application give us a prescriptive solution then many of these strings are never going to see the light of day.

If we can come up with a different approach with that thought what - is what Ron was proposing which is why can't different parties propose the safeguards?

And ICANN supports and enforces safeguards. That allows certain strings to go forward, not all but certain strings to go forward.

But certain industries do have public interest implications. We can't ignore that. And as business we shouldn't ignore that.

Steve DelBianco: Anyone else in the queue?

Ron Andruff: That's - this is Ron speaking. I mean that's basically where I'm coming from. I mean Marilyn articulated it quite right. We have to step forward...

((Crosstalk))

Steve DelBianco: All right so Ron and Marilyn. So Ron and Marilyn could you try to push put in words as I did with my proposed comments on the screen in front of you? Because I honestly don't understand your proposal in terms of creating a new

advisory group that would propose something different than six, seven and eight? That's the notion of what's there.

But you also have to articulate which industries are covered. We suggest that it's all the strings in the docket or it's the regulated strings that's Ron's been researching on the call or is it any string in government law (affecting)?

Steve DelBianco: I have to just confess I don't understand how to put in words what your proposal is.

Ron Andruff: No problem Steve. This is Ron. I'm happy to take a shot at that, bring it to the list for the benefit of the members.

And again it's not - we're not - we are not determining what regulated industry is. The regulated industries are already self-described, enshrined in law in all of the various countries we're talking about. So we know what they are. Steve you (don't) have to pull them out.

And my point here is if we say for those absolutely, for the rest not so much. That's all we're trying to do is deflect the prescription of governments on all of these. That's how I see it. Thank you.

Steve DelBianco: Which is exactly - and Ron that is exactly what my comment says that any government that believes .hospital, any government that believes .hospital ought to be a regulated sector can make that request right now and say - and say to the GAC there needs to be a public interest commitment on restricted registrations for .hospital. And if there isn't I want my GAC colleagues to pursue the GAC veto on that string.

Ron Andruff: Okay...

Steve DelBianco: And what we've described - so I can't understand how we're actually different. I think I hear Marilyn. Go ahead.

Marilyn Cade: Yes but so let me see if I can - I think what the governments are going to misunderstand Steve, I spend too much of my time with governments don't I?

I think my - what the governments are going to misunderstand is if we say if any, you know, we have to be careful not to say government who just spent X number of weeks just go back and do it again and convince your friends to support you. I think that's a concern that I have.

But I think the governments think they did a lot of this work and they identified the - you know I might not have put every word, every string that the government's identify into the regulated categories.

But I do think we need to be careful in our language and not to say back to the governments do it again, do it again, do it again okay? That's point number one.

Point number two I just want to go back to a clarification because this came up in the last call.

I never suggested an uber-regulatory decision authority. And I want to be careful that that's not what I'm interpreted as saying.

If the governments are saying a particular industry sector .insurance, .children -- something of that nature where they're very concerned needs safeguards a centralized ICANN oriented entity cannot solve that problem, that problem

needs to be developed, that solution needs to be developed by the applicant for those strings. I just wanted to clarify that.

Steve DelBianco: Okay and would you suggest that ICANN require that .children come up with a restrictive registration policy?

Marilyn Cade: I would if they expect to get governments to say .children is an acceptable string.

Steve DelBianco: We already have a mechanism for that. So that's already at work.

Okay I'm going to have to just wait until I see what Ron and Marilyn have in mind because I have to do my best folks but I don't understand it yet.

So we're not going to vote on anything right now. We'll have to postpone that discussion.

I think Stephane is still in the queue and then we'll quickly move to exclusive generics which is coming up next.

Stephane Van Gelder: Thanks Steve. Just to say - sorry.

Steve DelBianco: Go ahead Stephane.

Stephane Van Gelder: Thanks. Just to say that this is Stephane again. I share your assessment but I don't think there's strong disagreement between us, the two positions that are being expressed.

I certainly agree very strongly with Marilyn that we don't want to take this back to governments and ask them to do it all over again or to have to keep on doing it again. I think that's very true and would be not good.

On the other hand I agree with you Steve that what you've written so far doesn't - seems to be in line with what's being requested so just to say that there is an element of confusion there. And if Ron's willing to provide some more - an extra draft that would certainly be really helpful. Thank you.

Steve DelBianco: Phil Corwin.

Philip Corwin: Yes thanks Steve and I'm going to be very careful here because I'm speaking only for myself. And I'm trying to just help BC members try to think through how best to respond for the interest of business users here.

You know, I'll agree with I've seen comments filed and articles written, one I think rather characterize the GAC advice as stupid. In my own article I was quite clear that a lot of the GAC advice isn't fully thought through in terms of specificity.

But I think what we're dealing here with is there's a couple of - one I think there's a requirement here to try to define or refine what the GAC has asked or try to figure out what their concerns are, you know, if one views their concerns as expressing general public concerns.

I think their main concern here is that certain strings by their very label connote to the average consumer that are registering at this string is going to be authentic.

So for example if you go to .lawyer you're going to be - you're going to see Web sites from real lawyers and not people pretending to be lawyers. Because if you've got a .doctor they're real doctors at - so I think it's - they're in a consumer protection mode I think on this.

And they're not very specific. You know, they say some of these strings may require these for their safeguards in these categories but then you - there's some when you look at them you say yes definitely that would tend to imply that message to consumers yet others where you'd say I don't think so but who knows what they think.

But I think for business users in the end there's two big issues here.

One, my own personal view is that despite some of the confusion in the GAC communiqué and the fact that it's come at this point in time it represents a very - basically a validation of the new TLD program by governments.

They're basically embracing it and embracing the ICANN process but they want some additional protections. Yes they're weighing in late but that's what's going on.

Second I think there's a real danger here if ICANN and individual constituencies just kind of come back and say, you know, too late, not specific enough, can't deal with it, come back and we've got to be careful what we ask for.

If we come back and say being more specific, one you can a risk a lot of GAC members just saying I don't need to spend a week, you know, working on these things if they won't be taken seriously and disengaging from ICANN.

But the other is what if the European community says okay ICANN you didn't, instead of coming back with the narrow more refined response to our concerns you didn't do anything, let's just pass along the European community that no - it's illegal to operate a domain that a top level domain associated with a regulated industry or profession unless it meets these standards.

So failing to respond within the ICANN process could bring much more inflexible and harsh prescriptions from legislators.

So I hope some of that make sense and that it's of some use as we try to figure out what the best response is here.

Steve DelBianco: All right so if in fact the GAC advice had been more explicit - they left it very open. On Page 10 about six, seven and eight the GAC sentence for 6, 7 and 8 there's the word the additional safeguards below should apply to some of the strings in those sectors some of the strings in those sectors.

I think the GAC would have eliminated all ambiguity if they had simply enumerated which are to use Ron and Marilyn words which are the regulated strings.

Because they already have guidebooks out to say the following strings, hospitals, the following strings, lawyer. They can simply say the GAC advice is clear. You need to be restrictive where we advise against delegating the string.

The GAC can already do that. And it stopped a little bit short of that by leaving it vague.

Once the GAC has captured strings that it says need to be restrictive I believe the BC should support the idea that if a string is restrictive they ought to have safeguard six, seven and eight.

Our whole debate is about which strings must be restrictive. And the GAC simply used the words some of the strings in those sectors. And we can politely say and we support six, seven and eight but we have to explicitly indicate which are regulated.

The BC could go further if we came up with our own list from their list of which we felt ought to be regulated industries that ought to be required to be restricted.

Marilyn Cade: Right.

Steve DelBianco: So that's one other way around that.

Marilyn Cade: Steve it's Marilyn. Can I just had a thought to this if you don't mind?

Steve DelBianco: Yes. And we have Elisa and then Ron in the queue after Marilyn. Go ahead.

Marilyn Cade: So if governments were perfect we wouldn't need citizens. I hope everybody laughs or smiles at least when I say that.

In certain countries, New Zealand is one where I happen to be a member of the (unintelligible). Some issues that aren't regulated in the US are regulated in New Zealand.

And in particular, you know, I think one of the challenges for the government as I understood it from talking to governments in the (Nena) region -- and I

was in (Nena) for the (Nena) ICT week before I came to ICANN, they're trying to learn from their colleagues. Some of them are just now enacting laws. Environmental issues are regulated heavily in Europe but not so heavily in other countries.

I'm kind of thinking what we're dealing with is a GAC that is very diverse and some and maybe not in a position to be totally consistent because some governments regulate certain sectors in certain industries. And I'll waste, e-waste as an example.

E-waste is regulated in Europe but not regulated yet in all African countries.

And so I'm not trying to take us into details. I'm just trying to give an example here. Can we...

Steve DelBianco: All right thanks Marilyn. Elisa?

Elisa Cooper: Hi .Okay so this is - I have an idea that I don't think it's something that's been discussed before.

And so, you know, what if we asked instead of - I think there's clearly this requirement that we need additional details in order for registries to even comply with these safeguards.

What if we were to ask that ICANN staff develop the necessary detail sort of giving these safeguards and to develop the details so that the registries can comply? That way we're not asking that the GAC do the work but we ask staff to do the work and then basically allows the GAC to do that and either accept it or not? So and just an idea I'm putting out there.

Steve DelBianco: No it's great Elisa. And I anticipated that in my proposal. (Unintelligible) to propose how to do six, seven and eight is a slam-dunk. That's a natural. It would have to be done as implementation.

So the real debate Elisa is who does it apply to. But that's really the point of contention right?

Elisa Cooper: So right. Can we ask...

((Crosstalk))

Steve DelBianco: So that's more than the (how).

Elisa Cooper: Can we ask staff to try to identify based on what they believe the GAC is saying to do the work to identify who it's applying to?

Steve DelBianco: Oh, I thought you meant how to do verification, validation and consultation...

Elisa Cooper: Basically it...

Steve DelBianco: ...checks.

Elisa Cooper: So yes well for all of it frankly. So to provide the...

Steve DelBianco: Oh all right.

Elisa Cooper: To provide the necessary detail can we ask staff to do the work that we can't ask the GAC to do?

Steve DelBianco: All right so ask staff to identify using legal -- and this would be a legal thing.
Ask staff to identify “regulated industries?” Is that what you’re asking?

Elisa Cooper: Yes. Let them do it - yes.

Steve DelBianco: Okay got it. Good idea. Ron Andruff in the queue?

Ron Andruff: Thank you Steve.

I’m coming back to your comment about the GAC not being specific enough.

Again I think we’re just not understanding what’s happening here.

Governments in the world and the IT and all those levels we all know are trying to steal back the Internet for their control.

We have a body called the Government Advisory Committee that works with us who know that. Who knows us. And so they are being very gracious and getting giving us so wide-open field here. They’re giving us clean canvas to paint on saying here please give us what we need.

So we should take advantage of that. That’s the point here. We can’t be upset that they - they’re not specific.

And I think the issue here is you mentioned it and I think it’s exactly the right way. The BC should come with its own list.

And Elisa if I push back on what you’re suggesting, staff is not responsible for coming up with these things. This is the community work. The GAC says to the community you tell us what you think.

Staff's responsibility on this to make that - turn that into a document that makes sense that from a legal perspective so it's really up to us to do it.

And it's about the idea of us coming up with our own list is exactly where I'm coming from. And I'm going to draft language around that.

But please let's be very clear about the GAC. They've given us their opportunity. They're not trying to put a stick in the spokes of this thing.

And yes it's taken longer for them to do it but that's what governments do. That's the nature of government.

So please let's all get on the right page here guys. We've got an opportunity. It's not GAC being unspecific so that it caused a lot of problems.

They're saying please help us to find. So that's always should be doing bringing paper to - pen to paper and a finding of for them and getting consensus within our community and hopefully getting others in the CSGs entwined with us to bring these things forward to keep this program moving forward in a rapid way. That's what we're trying to do.

Thank you.

Steve DelBianco: All right thanks Ron. We'll look forward to your list. (Benny) would you please advance to the next page?

Great. So what's in front of you now is the other topic for today's call which is under the GAC advice the GAC is saying that exclusive generics - we used to call them closed but exclusive's a better word because exclusive says it's

not only closed for some registrants, it is closed to everyone else except for the registry owner.

So closed generic and they did a list. And it looks like again it's a non-exhaustive list on the screen in front of you. So we don't know what others would apply.

I think that this one is easy for us because the BC has weighed on this several times over the past two years.

So my proposal - and I'll put it out there. You can shoot at full of holes like we just did, my proposal is four parts that we agree with number one. That's easy (parents) I think this fits in the guidebook.

But with respect to number two the GAC said that exclusive registry control should be there if it serves the public interest goal.

And I believe that the registry code of conduct was already written with that in mind. It's TLD operators are given away to obtain exemption to a code of conduct, the two-page long exemption and it specifies the paragraph in the code of conduct Paragraph 6.

It says to get the exemption they have to demonstrate that it would not be - or ICANN can deny an exemption that they feel would not be in the public interest to let them have exclusive control and avoid the use of all registrars.

And the BC has asked for over a year for ICANN to clarify what is the process of asking for the exemption? Does it involve public comment period? And what is the criteria that ICANN would use to determine whether to give a TLD operator an exemption from the code of conduct?

And again the exemption permits two things right now. It exempts - allows them to own exclusively all the names in the TLD. And number two it allows them to avoid the use of all registrars.

And so I've - I'll close this by saying in the criteria I propose is that the BC has previously said that public interest within the context of ICANN is about maintaining the integrity and the availability of registrations and resolutions.

Integrity is notion of being able to trust that a TLD does what it says it will do. Availability means that it's available to those who are entitled to access for registered names in the TLD.

So I'll take a queue on this proposal. Elisa you're first.

Elisa Cooper: Well I just wonder how we can position this given what we've said in the past in our most recent comments on this which was we said nothing because we had members of the BC on both sides of the fence on this. And so we've not had any position on it.

So I'm wondering whether or not we need to not say anything about this?

Marilyn Cade: Can I get in the queue?

Steve DelBianco: Marilyn. Andy Abrams you had your hand up I think before Marilyn spoke so Andy Abrams first.

Marilyn Cade: Yes I think we should...

Andy Abrams: Sure thanks Steve. H. Andy Abrams from (unintelligible). I tend to agree with you. I think we finally need to find out what the public interest means.

Right now it's been said in a couple contexts. You know the GAS has said, ICANN has said in the guidebook. I would really be interested to hear what ICANN has to say on this and if it requires a public comment and perhaps we do that.

You know, I will say one thing. I tend to agree with you. I think public interest has to involve something like the integrity availability registrations.

I don't think it can relate to exclusive registrations because then that would swallow up the rule right? The GAC advice says you can have exclusive registration as long as it's in the public interest.

But if the public interest essentially is interpreted to mean that you can't have exclusive registrations then that statement doesn't really logically make sense.

But I think I'm generally with you that we should go ahead and try to use that (means).

Steve DelBianco: Yes. The word availability Andy Abrams, the word availability is different than what you're saying, because in the BCS screen the in writing said that ICANN's public interest means integrity and availability.

And if I want to have a DelBianco .book and I want that to be available to me because I'm book publisher and then the BC you're supporting the general notion of availability that doesn't mean it would rule out the .book shouldn't be exclusive.

But there ought to be some other way that I could get access to domains that are appropriate for a book publisher.

Marilyn Cade?

Marilyn Cade: So my comments are actually Steve going to take us back. And I'm not diverting us but I just want to make comment about what it means to ICANN to act in the public interest.

I was on the President's Strategy Committee for three years and the work that that strategy committee led to the affirmation of commitment and led to the creation of the review team.

And we did actually talk about what it meant for ICANN to act in the public interest so my comment's not so much specific as general and I hope more about, you know, taking us back to not debating our personal interests on whether or not we're an applicant or a brand applicant or a business user but the broader issue of acting in the public interest and what ICANN's role is.

I think - my personal view is we need to be really careful as business users to think through what that means because that issue protects the rest of ICANN's role.

If we lose that I can write the seven words. I've already done that that would get every registrar and every registry regulated in every country of the world asking for authentication, authorization or licensing. We don't want that.

We want this acting in the public interest role of ICANN to protect against national legislation.

So this - my comments not so much about the particulars but about the general and how we make sure we are protecting ICANN's role in lieu of more onerous solution.

Steve DelBianco: Thanks Marilyn. I pasted into the chat a link to the BC's last comment on closed generics. That was really in response to a board request to say should ICANN create a brand-new category called closed generics?

We felt that was an inappropriate question. The BC said instead the relevant question is if somebody wants to run them as exclusive or closed generics how do they follow the code of conduct?

And the BC was - did a not come up with a strong position to say that they should all have to follow the code of conduct. They did not try to interpret their words for their own purposes.

The BC did not change or create a position with that comment, the one I'd linked to. So Elisa was right about that.

But this is an opportunity and to either do so or punt on it Elisa.

So I guess because we've had three one hour calls and I - we'll try to circulate this for review this is a chance for us to say okay GAC you've got it. We've already anticipated that in the guidebook. We just haven't told people what the code of conducts really entails and ICANN needs to be clarify.

The biggest ambiguity in the code of conduct is under 1B where it says that you can own your own names if it's for the purpose of your TLD.

And if that purpose is broadly interpreted to be anything you want well then I guess you don't need the exemption. It's described four paragraphs later.

I'll take any other final queue on that.

Philip Corwin: (Unintelligible).

Steve DelBianco: Just before you spoke Phil I heard somebody. It might've been Elisa. Go ahead Phil.

Philip Corwin: Well Steve I wanted to point out both in regard to your second point here that the registry code of conduct says TLD operators must obtain an exemption to the code.

Is there an argument about that? You also said the word purpose. The word purpose, the code of conduct was amended in the new RA. The word purpose is gone and it's been replaced by a new permission for TLD operators to register up to 100 names for themselves for operation and promotion of the TLD.

I wrote a piece on that at the domains. I read that as in fact eliminating the ability for closed generic applicants to point to the word purpose and say we just have to declare that being closed to their purpose to avoid to get a public interest exemption. And others start the other way. Others think that the amendment changed it.

But getting passed on that I think it's a good idea to - for the BC to say it's time for ICANN to define what the public interest is on exclusive registrations. And I was glad to hear Andy make the same point.

Elisa Cooper: Yes (unintelligible).

Steve DelBianco: Elisa?

((Crosstalk))

Steve DelBianco: Elisa you're next and then Marilyn.

Elisa Cooper: Yes some of that I was going to say something that Phil was.

Some of that language has changed. And there's also aside from the specification there was also a change in the actual contract language. I'll send it to everyone so you can see what I'm talking about.

Because I think now they make it - it's fine for a registry to be the registrant. But I know the question here is about single registrants.

Steve DelBianco: Marilyn?

Marilyn Cade: Originally visually reserved names were limited. And then we went through a period where .biz and .info had probably thousands reserved names. And they used the reserved names to actually auction names. They weren't - we went through kind of weird situations.

So I think one thing we should kind of think about at the BC is what's the purpose of while some registries want to put what I'm going to call vanishing names into a special category and then auction them to special feeds.

I'm not suggesting the BC - I don't know if the BC cares about this or doesn't care about it. As business users you might care about it if it's a set of names in industry user areas that you care about.

But some of these conditions in the registry agreement and registrar agreements have implications for business users that aren't necessarily well understood.

And I think that's probably more even if we can't dig into the details of those implications we might want to think about different categories. So...

Steve DelBianco: Yes.

Marilyn Cade: ...(unintelligible) .brand streams that are only going to reserve names for their own use, industry phrases that need - that fall into the regulated area, you know, maybe we need to - and we may not even get this done.

Steve DelBianco: Yes this isn't - this doesn't cover brands. This is the GAC advice is only on generics, not on brands.

Marilyn Cade: Yes the point is just we may not get everything done. We might just even think about asking some additional questions.

Steve DelBianco: Okay fine. Got it. Got it.

Elisa, Phil you're right and I'm sorry that I didn't bring that up. The code of conduct has been changed in the latest registry agreement.

And it looks to me and if ICANN closed the loophole and resolved the ambiguity. It removed permission for registry to own any and all names if it's

suit its purpose. That's gone. This is - we (unintelligible) what Phil just said and I've paste it into chat the new language.

So for the BC this means that the new language says that the code of conduct exemption because much more important for anyone wanting to run an exclusive generic TLD. They will it looks as if they want to run an exclusive they will have to get the exemption.

If that's the case the exemption doesn't become important. And I think the proposed comment I have in front of you is even more valid.

Phil Corwin and Elisa you still have hands up.

Elisa Cooper: I'm sorry...

Philip Corwin: Yes Steve Phil I just want to make one quick general comment which relates to the amendment of the RA and also the pending, you know, RAA that's out for comment.

And just I think the BC ought to ask in general going forward that when ICANN staff's posts these very extensive documents and which contain very extensive revisions that they be required to provide some kind of section by section explanation of what the amendments are aiming to do.

It's very - this is a clear example. You can argue different ways on the amendments, the code of conduct what the purpose is supposed to be.

And ICANN staff gives absolutely no guidance if this was a federal agency in the US and this was a revision of a proposed rule it'd be extensive explanation of why the changes were proposed and what they were trying to accomplish.

So with ICANN you just get this did data dump of documents, long documents with extensive revisions with absolutely no explanation from staff of what the revisions are intended to do. And it makes it very difficult to understand the - some of the changes (unintelligible), comments on them.

Steve DelBianco: Phil I don't agree. In this case they did publish an extensive 31 page summary of changes to the registry (unintelligible). I'll post a link to that in the chat window.

I'm not saying that the explanation...

Philip Corwin: (Unintelligible) okay.

Steve DelBianco: Yes I'm not saying the explanations are going to be satisfactory but they're there.

((Crosstalk))

Steve DelBianco: We need to all look at that. Yes I've got it. I've posted it in the chat.

All right folks we're ten minutes, seven minutes over. I don't see any other names in the queue. Can I get a show of hands for those who would support a draft comment in front of you non-definitive vote to a straw poll to know whether I should bother to draft it up? You can use the Adobe to indicate yes or no just with respect to the exclusive generics.

Marilyn and those of you who are only on the phone just signify by speaking up whenever you wish.

Okay so I'll close it there. It's Ron, Andy, Phil, Susan and Elisa had indicated yes. And if any who feels...

Elisa Cooper: I forgot. I need to recuse myself form this. I'm sorry.

Steve DelBianco: Okay Elisa. And anybody who wants to say no loud and clear please indicate a no vote (and) understand whether others are indifferent or opposed. Any no votes? Marilyn?

Marilyn Cade: No (unintelligible).

((Crosstalk))

Steve DelBianco: Okay got it. So I'll just take a straw poll that we had no opposition and only about a half of the members on the call indicated support. The others were silent.

All right everyone thank you. I think I have enough now to move ahead with a little bit of draft. So my proposal will be over the weekend. I'll come up with what I think are BC comments.

But Ron Andruff I desperately need for you to put pen to paper, give me something I can put in here as an alternative for the members to consider with respect to the Safeguard, 6, 7, 8 and the regulated industries.

Ron Andruff: Will do Steve. I'll see if we can get something to you over the weekend.

Steve DelBianco: Okay everyone. Only two more working days till Monday so talk to you next week.

Man: Thank you.

Steve DelBianco: All right.

Man: Thank you.

Steve DelBianco: Bye now.

END