

ICANN

**Moderator: Gisella Gruber-White
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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 Members' call taking place the first of May 2013.

On the call today we have Andy Abrams, Steve DelBianco, Mallory Hein, David Fares, Philip Corwin, Tim Smith, Elisa Cooper, Sarah Deutsch, Gabriela Szlak, Emmett O'Keefe, Susan Kawaguchi, (Richard Freedman), Mark Sloan, Ron Andruff, Barbara Wanner, and Yvette Miller.

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

Steve DelBianco: Thanks Benedetta. Hey, great turn out for this call. Let's see what we can do in getting it done in an hour.

For those of you looking at Adobe, Benedetta is going to put up the first part of the outline I circulated. If you don't have Adobe, I put the outline in an email that went out this morning as well as an attached with email if you're more comfortable viewing a Word document. And the outline is really just a two-page summary from the GAC Advice.

It makes it a little easier to go through it in order because the GAC Advice was cut up a little bit, and right away they referenced Annex 1. And you have to go to Annex 1 to find most of the meat behind the safeguard. Here I put all the safeguards in order.

On this call what would be great is to go through those safeguards and then move on to some other items that are outside of the safeguards like singular, plural (contention) set. There are some (unintelligible) in our AA, (Ellen) to their advice.

And this public comment period doesn't ask for public comments on the rest of the GAC Advice. The way the Board puts this request out is they're only asking us public to comment over the next few weeks on Section 4B1 which includes 4-1B which includes Annex 1. So I do think we could, if we have time at the end of the call, talk about other things we can add.

Bene, would you go to the next slide and we'll dive in.

We didn't discuss this on our BC Member call last week. We used all of our allocated agenda time not on the specifics of GAC Advice, but on the general theme of what ways GAC Advice is given, the importance of keeping the GAC involved and engaged in ICANN so they don't pursue other means of controlling the DNS that don't involve the private sector.

And we used all the time on that and that's an important subject. But we don't want to use all of the time today on those background subjects. And it would be my advice that we dive into the details. But I'll take a cue, if anybody wants to give any overall comments which we could put into our written comments about the status of GAC Advice and the BC's position with the GAC. But let's keep this brief so we can get to the meat.

I'll look at the Adobe room to see if there are any hands up and background introductory comments. Anyone on the phone?

Emmett O'Keefe: Steve, this is Emmett with Amazon. Just a question as to were any conclusions made on the last call about what those introductory comments might - what we might want to see - if you could just summarize.

Steve DelBianco: Great question. Yes, great question Emmett. The only conclusion I gathered was we had to have another call. We used all the time on that.

And there were two sides, right. There was some BC Members who talked about the importance of making sure that we respectfully supported the GAC on items that the BC has always wanted and that the GAC has come through for us many times. And then there were others on the call who really wanted to push back on the GAC coming in late with some very specific changes to the registry agreement - the registry agreement which was just negotiated and posted for public comment two days ago.

So there's some timing issues, there's some maybe inflexibility exhibited by GAC. So we had two competing themes there, and so I wouldn't say that we have consensus about what the BC's introductory comments would be right now. There may not be introductory comments, it might just be that we file

comments in the background section and then get right into the meat of the safeguards.

I see Ron Andruff in the queue. Go ahead Ron.

Ron Andruff: Thank you Steve. I just want to comment on what you just noted that you're saying there is two schools of thought.

In fact, I think what we should be looking at and recognizing is that government - the wheels of government turn at a different pace than the wheels of business. And I think what we're looking at here is just an issue of synchronicity that we really want to have the GAC in line with everything that we're doing within ICANN because that is our front wall or front line of fight against the ITU, that the GAC is very much engaged with us.

So I think let's just keep the idea that it's really, you know, two wheels turning. Government wheels are turning slower than ours. We need to try to harmonize their speed with ours because without the GAC we would have big problems. Thank you.

Steve DelBianco: Ron, I think what you said is true. But now I'm going to ask you a question.

Would any of that, of what you just, said make it into our written comments?

Ron Andruff: Sorry, my mike is on and off. Yes, I think that's a very important point because the - I mean I've said it for years. That the only part of government around the world that understands who we are the GAC representatives. And so we need to be very close - work very closely with them to make sure that they understand that we are very much in their corner and - I'm sorry.

I beg your pardon - lots of open windows, too much noise outside.

I was saying that the GAC needs to understand that the BC stands very much in their corner in terms of respecting the advice that they bring us, and that we're working to find a way to provide for their needs which means more time for them while not slowing the processes that we're trying to get done in the greater new gTLD roll out. Thank you.

Steve DelBianco: Ron, I got that the first time you said it. But I ask more specifically, are you just giving us your opinion and guidance for what we do or is what you just said something that you want to see in writing in our written comments?

Ron Andruff: Both.

Steve DelBianco: All right, then I may lean on you to draft that diplomatically then. Are there any other comments?

((Crosstalk))

Steve DelBianco: Anyone else on the call that wants to comment on the background? I see Andy Mack. Anyone else? Okay Andy Mack?

Andrew Mack: Sure, thanks Steve. Real quickly - first of all, Ron, I'm happy to help with that draft, that little piece of (unintelligible) if you'd like.

I agree, I think that there are an awful lot of governments representing a lot of countries where there isn't a strong private sector representation of ICANN, and likely never will be. And so this is our chance to reach those markets.

And especially as we think of the broader questions about Internet Governance and relationship of ICU, we're really smart to try to, wherever possible, find the friend in the conversation if we can. And so I'm happy to help in any way that I can to reach out with some of those governments.

Steve DelBianco: All right, so Andy and Ron, we'll count on you to try to draft an introductory paragraph. Okay - introductory section.

All right, let's move on. The safeguards are cut into several categories. The first part what the GAC said in 1B with safeguards for new gTLDs, and they reference in Annex 1. But keep in mind that it's for all new gTLDs, not just those in particular category.

And the GAC is requesting the first one on here is that every registry do WHOIS verification check two times per year. Nothing in my research and the BC indicates we've ever explicitly asked for the registry to do verification check before, which what do the others think about whether we want to take a position to support this one explicitly and what we would say about it.

David Fares: I think - Steve, this is David Fares. I think - we have said in the past - we have always stressed the importance of accurate and reliable WHOIS data. There's been an ongoing question I think as to how you go about getting that.

And so I don't think this is inconsistent with BC's past positions, and generally think that - actually consistent with those over arching goals of accurate and reliable WHOIS data.

Steve DelBianco: And that's exactly true David. And the question now is is the BC going to vote in the next two weeks on requiring registries to do checks twice a year?

Because for us to be useful and weigh in on this, I do think we should aspire to be specific.

And you're right about principle. This comes down to, well, a regulatory contractual obligation. And I take it from your comment you would support the GAC on this new obligation. Is that right?

David Fares: I should make a preparatory comment I think. These are - these safeguards are safeguards that I think many of us have been seeking in the context of at least a subset of new gTLDs that deal with copyright related issues. So we have been pursuing these additional safeguards. The GAC has chosen to apply them more generically across all new gTLDs.

So we are at least supportive of this in the context of IP focused new gTLDs.

Steve DelBianco: Great, thanks David. So I have you in support. I have Elisa and then Andy Abrams. Elisa?

Elisa Cooper: I'm fully supportive of checks for WHOIS verification two times a year of whatever. But it should probably be noted that most registrants don't ever deal with the registry. They're used to dealing with their registrar.

So that might - I don't know. I'm just putting that out there that, you know, if affiliates were to reach out to our clients, they wouldn't know that they're registry. They're used to dealing with the registrar.

Steve DelBianco: Elisa, let me just note that the way the GAC wrote this advice up is that they realize that, but they also know that all new gTLDs are thick, so the registry has it all. And these checks are not done by talking to the registrar.

What the GAC has asked for is to do a sample twice a year, weigh the sample towards the registrars who have the highest percentage of deliberately faulty inaccurate or incomplete records from the previous check. And that the registry, after doing the sample check, would notify the relevant registrar of any inaccuracies or incomplete records. And that would trigger the registrar's obligation to go out and get the right information.

Elisa Cooper: Okay.

Steve DelBianco: So I think that's why it's helpful for all of you to have access to the underlying GAC advice as well because these verification checks are done by the registry on the data. They look for incomplete and obviously inaccurate data and it triggers an obligation to the registrar.

So Elisa, do I still have you in the yes category? Do you think we should require this of registries?

Elisa Cooper: Sure.

Steve DelBianco: Okay, Andy Abrams.

Andy Abrams: Thank you Steve. Andy Abrams at Google.

I think there's an issue of substance versus procedure here. You know, I'm fine expressing general support for the GAC Advice, you know, and again echoing what Ron said earlier. I think we should start off any comment by expressing our appreciation for the GAC, their importance in the multi-stakeholder process.

And as far as the advice relating to specific strings, you know, I think that's where they were tasked to do that by the guidebook. And so I'm fully in support of that.

Or I do have some reservations with the advice is where it does relate broadly to all new gTLDs. And so that's where the substance versus procedure comes in at. You know, I think in theory a lot of the things they're saying, you know, do make sense in terms of extra protections and safeguards.

But to unilaterally sort of require them at this late stage for all the registries, that's where I have some concerns. That that goes beyond the scope of what the GAC was authorized to do. And so that's where I don't know if we want to be a little bit of a nuisance in terms of, you know, "Yes, we do, you know, think these are good ideas that warrant further discussion by the community," even possibly a PDP which would essentially create consensus policy for all registries.

Steve DelBianco: Both new and existing TLDs. So Andy, it's tough for me to translate that into an opinion.

It seems to be that you don't think these safeguards are within the scope of the GAC's powers. But most people would disagree with that because the GAC's powers aren't limited or prescribed in any way. And the GAC has quickly reminded us of that, right.

But it sounds like you have an issue on process in that unilateral and position of these changes pursuant to GAC advice is not good and that you would prefer a community development of policy development?

Andy Abrams: Yes, that's right. Especially because there aren't - there isn't real guidance on implementation, right. They just say, you know, registries should have safeguards and make sure that, you know, there's no copyright infringement for instance. Well, what does that look like?

Steve DelBianco: Well, keep in mind that if we crafted an answer that said that right up front and that we're generally supportive, we appreciate the GAC, we think all of this ought to go back to community and GNSO for PDP. That would be very - it would probably be received as completely non-responsive to the GAC.

Because on our last two or three items where the GAC has done that and the Board turned around and asked GNSO for advice, GNSO was so divided that we were able to do nothing. And I'm talking about trademark clearinghouse, protections for Red Cross and the Olympics.

Andy Abrams: Understood.

Steve DelBianco: There is a risk, there is a risk at simply concluding this needs to go to a PDP. And then Andy, what would you say then? During the PDP would we go ahead and launch new gTLDs under the existing registry agreement and obligations or does everything get delayed while the PDPs occur?

Andy Abrams: I think in favor of going ahead and launching. And again, I'm splitting up my opinion between the specific strings and sort of the broad advice for all new gTLDs.

I think the GAC is well within its authority to talk about specific strings. I think we should support those.

Steve DelBianco: Got it.

Andy Abrams: But including specific items like WHOIS, singular, plural, you know, where they do...

((Crosstalk))

Steve DelBianco: Got it, got it. And ICANN didn't ask us to weigh in on that at all. They did ask you because you're an applicant. And as applicants you guys can weigh in on all the GAC advice.

But those of us in the so-called public who aren't applicants, we're only supposed to be weighing in on the safeguards under 1B.

Andy Abrams: Right.

Steve DelBianco: Let's go to Sarah and then I see Ron and Anjali.

Sarah Deutsch: Yes, I just wanted to echo that we should be supporting the GAC on what they've said. I understand in some senses they had to give broader advice on categories of names that raised problems, but I mean they could have individually listed each new gTLD that fell in that category. But that seems a little procedurally difficult. I mean why should they have to do that?

And I think the fact that they raised concerns across the broad categories was exactly what they were supposed to do including on some of the, you know, closed generic thing. That they needed to show that to prove they're in the public interest is exactly, you know, what we've been talking about in the BC. So I think we should be supportive.

And I understand that some of their advice at this point needs to be flashed out and somebody - something - someone needs to implement it. But you know, if it does go back through a PDP process, then I think it's incumbent that these TLDs be delayed. We can't just roll them out and then hope that something, you know, gets through that process because as you noted, nothing gets through.

So I think either the board will need to take that advice, or if it goes through the PDP process then we need to, you know, everything needs to be slowed down until things get worked out.

Steve DelBianco: Okay, thanks Sarah. I'll note for you that the GAC did list specific TLDs, but they did it for the next thing which is Category 1. What we're on right now is B, and on B they didn't list any because it applies to them all in this case. But thank you for that comment.

Sarah Deutsch: Oh, okay. Yes, well I still had no problem with them - I think they were doing their job as best and most efficiently as they could.

Steve DelBianco: Okay. Ron Andruff and then Anjali.

Ron Andruff: Thank you Steve. I just thought it might be of value to Andy and others who have just joined the BC or maybe just been more active in ICANN in the course of the last couple of years, and to just look at this a little bit more historically.

The GAC will never come back and say, "You need to do X, Y and Z and then we'll be happy." What they do is - that's not their job. Their job is just to say that there's an issue here, "Now you ICANN-ites, you go back and figure out how to make that issue get resolved. And if it gets resolved then our next

communication is going to say we appreciate the work of ICANN to resolve the issues we talked about.”

So the point here is that the governments will never prescribe - the GAC will never prescribe exactly what they want to do unless it's to give some more or less some direction to what they're looking for. But after that, the statement is intentional.

And so the reality here is the governments are trying to sit in parallel to the ICANN meeting. And why we're deterring away at our ICANN stuff, they're kind of observing and watching and weighing in with their thoughts and comments. And traditionally it will come back always in a more vague format.

So it's not their job to ever give specific guidance. And their scope is as broad as governments chose to make it.

And so I just wanted to give that little bit of a background to those who are kind of joining us new and in understanding the relationship between what the governments do and what ICANN does.

So this is the - this work right now that we have to do is basically to say, “Okay, they're looking for safeguards. What are those safeguards?”

We need to sit down and hammering out safeguards, safeguards, safeguards, and then put them into the program and watch it go through when the governments don't have any problem with it because we've put safeguards in place. So that's really the message I wanted to bring out; thank you.

Steve DelBianco: And Ron, this is Steve. I mean I might note that even if Andy considered himself educated, that the GAC doesn't limit its scope. Andy might still say

he prefers this go to PDPs leading to implementation and it not delay the program. I still think that's Andy's point even if he might...

((Crosstalk))

Andy Abrams: That may be - I'm sorry Steve, I beg your pardon. I'm talking over you.

That may be so, but the fact of the matter is, as soon as we start talking PDP, there will be delay. Let's not kid ourselves.

There's no question that when we start doing that, you can't run these on parallel tracks. You can't launch a program when the other half of the cake is still in the oven. So I think we have to be realistic about that.

Steve DelBianco: Well, at a technical matter they could, but it would not be pretty. That's for sure.

((Crosstalk))

Andy Abrams: Sorry - just really quick. Steve, I do agree with you and Ron. Thank you for the clarification.

Steve DelBianco: Great. Anjali and then David Fares.

Anjali Hansen: Yes, I just wanted to also reiterate that I think we should strongly support the GAC's advice. I'm not going to get bogged down into all the, you know, procedure issues of ICANN because frankly, I'm not sure I even follow what - how you would parse that out.

But I just - I think it would be - I would support that the BC makes a strong statement in favor of the safeguards and in particular because I think that's going to have an impact on the business community in general. You know, we represent several hundred thousand businesses just in terms of our accreditations, and consumers. And I just think these safeguards are so imperative, so I would rather we just make a very strong statement in favor of them.

Steve DelBianco: Okay, David Fares.

David Fares: I just want to remind everybody too that the GAC has consistently asked for additional measures to protect consumers from fraud and intellectual property owners throughout the whole guidebook process. And I guess that they have felt that they didn't get what they've been asking for, and so they felt they needed to be more prescriptive in the advice that they've offered and that's why we're seeing this.

So I don't think this is in anyway inconsistent, again, with anything the GAC has been saying, it's just more explicit as to what they're asking for because they've must not have been satisfied with what they've gotten throughout the process.

Steve DelBianco: Right, so it's really not fair to say it's late if the GAC looks back to 2007 documents that we asked for seven years ago; good point.

I have Elisa, Emmett and then Sarah's back in the queue. Elisa.

Elisa Cooper: I fundamentally agree, generally, with sort of where the GAC is going. But I wonder if we can ask that on some of these things that we point out like that the registrars are now going to be doing some of this. So for instance having a

point of contact for complaints about inaccurate WHOIS or other issues, like that's now part of the - or it will be part of the RAA I hope.

And also the fact that there are some consequences now as part of the RAA. I wonder if we should sort of identify that. And I'm just putting that out there.

Steve DelBianco: Elisa, would your recommendation - is your feeling that the GAC misunderstands things? That they're attributing - that they're asking for obligations on the WHOIS gTLDs and that they don't understand those are all ready in the RAA? We have to be very delicate with that, so.

Elisa Cooper: Yes, I mean I would just say, you know, we would just like to note that we are supportive of the RAA which now has, you know, penalties, you know, better defined penalties for inaccurate WHOIS and has now required that abuse point-of-contact that registrars are now required to provide information a lot. You know what I mean?

So some of the things that I think the GAC is concerned about are not...

Steve DelBianco: Right.

Elisa Cooper: ...are actually (unintelligible) the registrars. And maybe we can just mention that in our comments.

Steve DelBianco: All right, I think do - I think we'll be delicate about it. It may be the GAC is wanting (unintelligible) and suspenders, because of (unintelligible) WHOIS they want a lot of this to be the obligation of both contract parties.

Elisa Cooper: Right.

Steve DelBianco: I think next is Emmett O'Keefe with Amazon.

Emmett O'Keefe: Yes, this is Emmett with Amazon. I'm a newcomer to GAC and so please bear with me everyone on the line who has a lot more experience in the ICANN world than I do.

But you know, I go back to some of the structural issues that were raised by others. My thought here is that, yes, I understand GAC's role is to provide advice and ICANN is supposed to work out the details.

But this appears to be providing, you know, sort of advice that goes to the details in the applicant guidebook. This is advice that is not timely. It's, you know, for better or for worse, the applicant guidebook was finalized. And this appears to be going into quite a bit of detail on issues that I thought were settled.

So I have an issue of the timeliness of it.

Steve DelBianco: Thanks Emmett, that's all true. If you had to though, what would Amazon say about whether a registry should have to do verification ample checks twice a year on WHOIS - as a substantive matter?

Emmett O'Keefe: As a substantive matter I probably wouldn't quibble with it. But structurally, is it appropriate for GAC advice to come in at this late date to sort out this level of detail? Isn't it...

((Crosstalk))

Steve DelBianco: It's really tough...

Emmett O'Keefe: Isn't it something that the larger community has worked out?

Steve DelBianco: Right, but this is what we were discussing at the outset of the call. The GAC has done so before, the Board has given them what they've asked for in terms of the number of items on the scorecard in Brussels, and then on Red Cross and the Olympics. So they did change the guidebook unilaterally at the Board level, and then asked GNSO to come up with a policy on it.

So it's a mixed bag, but at least they have the power to do so. They have been able to affect in a top-down way what's in the guidebook.

And keep in mind that not all of these are guidebook changes. I sent a note around the other day that the GAC didn't say that they want these safeguards to be in the guidebook or necessarily in the template contract. It could be that an applicant could amend Specification 11 - that's where you put your public interest commitment.

So if it didn't show up in the GAC Advice, one option is that an applicant like Amazon could put some of these safeguards into your (fix back) as part of your contractual submission. I realize that means you have to amend your contract after the date that's presumably closed. But you don't necessarily have to change the guidebook or standard contract to satisfy GAC on this advice.

I think I see Phil Corwin - no. Susan Kawaguchi, you're next.

Susan Kawaguchi: This is Susan from Facebook.

John Berard: Steve, this is John Berard. Can I get in the queue?

Steve DelBianco: Sure John. Go ahead Susan.

Susan Kawaguchi: I think the registry obligations are good. And you know, I have not read the full GAC advice, so I appreciate the fact that you put this call together.

But I think what they're trying to get at is to sort of please the registrars. And that's something that, in the dot com space, we need desperately. So I mean the large registrars are good, but you know, I would venture to say in my experience, 75% of the registrars I run into do not run, you know, they are not running a registrar well - to put it mildly.

So you know, in some ways all of these things - the registries - and I'm not looking at the dot brand, that may be a whole different issue because you may not have registrants in this way and as many registrars.

But in some ways I think what the GAC has done is said, "Okay, let's make the registry responsible for some of these registrars out there," because they have the information. And most of these things they could do fairly easily. It's always amazed me that we have vast databases that nobody looks at for quality of data.

You know, a bank wouldn't do that, you know. Most companies would not assume the data was okay. But in the WHOIS world we just, "Oh yes, it's correct."

So I can agree with most of these. I'm still a little bit concerned about the applicable law. But in some ways this just gives the registries a little bit more responsibility to only do business with the good actors and not the bad actors.

Steve DelBianco: Sorry Susan, so I take it that you support all six of these safeguard obligations on registry.

Susan Kawaguchi: Yes, I do.

Steve DelBianco: (Unintelligible) Facebook, okay. In the Adobe room, it looks like after Susan is David Fares and Phil Corwin and then John Berard. Go ahead David.

David Fares: Great, thanks. Just in response, Susan I know you raised an issue regarding applicable law on our BC call last week. And one of the things that popped into my mind when you raised it was the fact that many times when they disagree as to which countries' laws apply, they just kick that can down the road and say, "Applicable Law." And they basically agree to disagree.

So I'm pretty sure that's probably what has happened here because you're going to have privacy laws, etcetera, and you're not going to get agreement as to whose laws apply on the Internet necessarily. So I think that that was more of a (fudge) and probably worked in our advantage rather than having them try and prescribe a methodology for determining which country's laws apply in any particular situation.

Steve DelBianco: So that's a great point David because the second item of the safeguard - and this is a really tough one because they're saying that the registries have to ensure that the registrants terms of service for the TLD are prohibiting things that are illegal or anything that's contrary to applicable law. And the GAC did not say what applicable law was - I'm talking about Number 2 on the screen in front of you.

But what should I write down as the essence of your point on applicable law?

David Fares: Me?

Steve DelBianco: Yes.

David Fares: I actually think that it probably works in industry's favor that there's a lack of clarity because then we as companies can identify, based on the conflicts of law analysis, which law is applicable to us and define that on our own terms.

Steve DelBianco: I got it. So the ambiguity could work to business advantage, okay.

David Fares: I believe so. And then the other point, I just want to reiterate the last point. There have been reiterations that this detailed advice is coming late.

But again, GAC has been talking about additional protections to protect consumers from fraud and additional IP protections from the very get-go. And they must not have been happy with what they got throughout the guidebook deliberations, and therefore felt as though they were required to give more detail and advice.

And so I just don't think that we're in a good place to say this comes too late. I think they might be feeling frustrated that their long held advice has not been followed.

Steve DelBianco: Right.

David Fares: And it goes to the issue of we need to support the GAC because we have intergovernmental bodies who are trying to step into their place.

Steve DelBianco: Thanks David. Phil Corwin, John Berard, then Elisa. Phil Corwin.

Maybe we lost him. Let's go to John Berard.

John Berard: Can you hear me Steve?

Steve DelBianco: Yes.

John Berard: Yes, sorry I'm out and about.

The - one of the things I'm concerned about is what requirements, if the GAC Advice were to be followed to the letter as you have suggested or at least I've heard on this call, it could lead to applications needing to be amended. We are past the point of amendment. Amendment froze the sequence out of its order, and also has costs for the applicant.

And so I would question whether - with regard to those things that would require an amendment to the application, I would argue that the GAC probably is a little late, late to the party in that regard.

I appreciate that they've been asking for safeguards, but the fact of the matter is that there are more safeguards today than there were six months ago and six months before that. So it's not as if they have gone unheeded, they have just not been listened to the letter.

And you know, that's where I think the decision has to be made is have the changes gone far enough. And we can decide if they haven't and then we can wrap ourselves in the flag of the GAC and suggest that it needs to be improved, extended and perhaps the program even be delayed. But I would argue against that point of view.

The other thing that I find a little odd is the GAC did ask for the public interest commitments to be made and not everybody did that. And yet there doesn't seem to be any penalty for those applications that did, or any benefit or advantage to those applications that did. And you know, I just wonder if there's an opportunity for the business constituency to offer aid...

((Crosstalk))

Steve DelBianco: Right. You should note John - I'm sorry John. You should note that Item 5 in the GAC Advice is all about the (six facts) and the GAC's advice is a bunch of questions for ICANN about how to amend the (six) where the registry failed to make them but should have, and enforceability. So it's not part of what they've asked us for public comment on, but the GAC...

((Crosstalk))

John Berard: And in fact, this is where I think the GAC didn't go far enough. Now I will be totally open and above here and use myself as an example.

So I am connected with one of three applications for the extension (dots us). The requirements that the GAC asked for in the (pic) that would certainly cover those three applications, we're all ready embedded in the application that I am attached to. And all I had to do was cut and paste pieces of my application into the (pic) because they were all ready things that we had planned to do.

Neither of the other two applications have those commitments, neither of those other two applications offered those commitments. And yet, you know, why wouldn't there be some recognition that there are registries that are

seeking to operate in a customer friendly way and why shouldn't that be an advantage?

Now that's a blatant commercial and I apologize for that. But it's an example of how I think in some instances, the GAC advice didn't go far enough. And I'll go back on mute.

Steve DelBianco: Yes, I think it's a great point. I mean because the (pic) set is a wide-open place and all six of these items on the page could be put into anybody's six pack if they wanted to check that box with the GAC.

It's all ready twenty of, we've been on the phone for 40 minutes. We're only in the first section. So we're going to turn to Elisa, she's in the queue next.

But please try to focus on the six items on the screen in front of you. And if there are items in there that need special mention like if you thought that it was ridiculous to do Number 4 for maintaining statistics. Let's call out as specifically as we can if we think there's some of the six items that should not be applied to all, or some of which we do want to support enthusiastically. I'm trying folks, I'm trying.

Elisa, you're next.

Elisa Cooper: Very quickly. I just think we need to be cognoscente of the fact that we should be preparing comments on behalf of business and not necessarily on behalf of the applicants. So when we're preparing our comments I think we just need to keep that in mind.

Steve DelBianco: You're absolutely correct. Our charter requires that that perspective be here, even if some of us are also applicants. Because the only perspective that's

appropriate in the BC is that of registrant and users in the business community.

Phil Corwin, I understand, is back on. Phil?

Phil Corwin: Yes Steve, yes, my phone had cut out. Real quick, I think what the GAC has done here is kind of a completion of a journey of four years from the end of direct U.S. oversight to the GAC kind of coming into its own. And I know it takes a long time, but governments have their own time clock.

Second, I would hope the BC would say something about the GAC. You know, they had opened their meetings for a while and now they've gone back to closed meetings all the time. I think they'd be better off if some of what they were doing was visible to the community and there was some interaction, some ability for the community to raise at least technical points like is this the right role for registries, isn't that all ready covered in the RAA - as they do their work.

And third, in terms of implementation, I thought about your (pic) suggestion but I think that has two problems. One, that would lead to a completely disparate approaches to these safeguards rather than uniform approach. And second, whatever time would be involved for ICANN staff to draft whatever changes might need to be made to incorporate whatever GAC advice the Board accepts in whatever form, it would be nothing compared to the job of reviewing 1900 (pics) as indeed every applicant is going to be required to put one in, and someone is going to need to check whether it really implements the safeguards. Those are my thoughts.

Steve DelBianco: So I think it's a very valid point about having every registry implement this advice with its own language and its own (pic spec). It will be talked in the

GAC and evaluated, but then it's also hard for ICANN compliance department to enforce it. Because the whole point of the (pic specifically) is it becomes ICANN's job to enforce compliance and that's why it needs to be more standardized.

I don't think we are going to make, in written comment, recommendations that the GAC open their meetings. I think you were editorializing a bit there. It doesn't make sense for us to put that in this particular comment round.

I have - I hope we are getting close to the end of the queue on this. We need to get to the next section. I think the queue looks like David and then Elisa again. Is that right? Go ahead.

((Crosstalk))

David Fares: No, that was stuff from the last time; sorry.

Steve DelBianco: All right, that's great.

So we haven't dove into the details of two through six. We've been treating this whole set of safeguards as a group. Last call; is there any of these six on the screen - this is the first section of all - that there's any specific comment from the BC, or do we just sort of wrap them up in the general comments that have come so far?

Going once - thank you. If you go to the next page - sorry, go ahead.

Elisa Cooper: I hate - I feel like I'm monopolizing the call. I guess I do feel like things like farming and fishing actually have nothing necessarily to do with domain

registration. And I'm wondering why the registry would basically be responsible for searching for that.

Steve DelBianco: Elisa's talking about Number 3 on the screen in front of you. This is an affirmative obligation on the registry to periodically do a technical analysis to discover whether domains in the TLD are being used for farms, fishing now wearing (unintelligible).

It can be done. People like the APWG, they do this.

Elisa Cooper: So it can be done. Yes, I mean...

Steve DelBianco: But it's a new obligation, yes it's a new obligation.

Elisa Cooper: Yes, right. Farming is like where you compromise caching servers and that doesn't have anything to do with the registry. And fishing often occurs with spoofed names, and so the names that are being spoofed - I mean why - yes. I just - I don't know. It's a lot to ask and I don't even think it's under - it's something that the registry has control over.

Steve DelBianco: Yes, it's something a vendor would no doubt step up and offer. But are there any comments to respect with what Elisa has said, that there are some uncertainties about how a registry would do Number 3. I think that's the extent of Elisa's comment.

Phil Corwin: Steve, Phil here. I have a quick comment on that for both Number 3 and Number 6.

I think the notion of the registry of engaging in an immediate suspension of a domain, I think that's a hot button issue. You know, the whole (peep soapa)

debate and the big Internet resistance last year was about domain suspension or blocking without adequate due process. And if you're going to talk about registries having the right to suspend domains, you got to bill it in due process for it or else I think it's going to (unintelligible) is that the GAC is encouraging Internet censorship.

Steve DelBianco: Any other comments on this section? I've got that down Phil. Let's go to the next page - (unintelligible) please.

This is a set of safeguards that solidified only to what are called Category 1 TLDs. They invented a new category.

And by Category 1, it's gTLDs that are associated with regulated or professional sectors. And they gave us a non-exhausted list on Page 9 of the GAC advice where they broke down the category of things that looked at children, the environment, health and fitness, finance, gambling, charity. And in each of those subcategories they would list several TLDs that they think fit there. But they call it a non-exhausted list and to the rubric of those that need consumer protections.

The GAC says that for whichever strings are going to fall into Category 1 - so it's a definition of question. Is the GAC asking ICANN to figure out who should be in this category? Straight they probably are.

But if you are in the category, what the GAC is asking for is on the screen in front of you. They're asking for five additional safeguards beyond what we discussed for all new gTLDs above. And these five additional safeguards are related in some way to the fact that there are special laws, obligations and regulators associated with these different industries.

So let's take the queue and see if we can discuss what the BC thinks about these additional safeguards.

I see Susan K, you're in the queue.

Susan Kawaguchi: I had not read this one until now, and this is overwhelming. How could a registry even do this? I mean as a company Facebook has hard time interpreting each, you know, country's law and figure out how to comply with it in the best way.

So especially 3 and 4, you know, that is just going above and beyond unless I'm misunderstanding what they're asking here.

Steve DelBianco: Okay, so Susan, Facebook (unintelligible)...

Susan Kawaguchi: I would not support...

Steve DelBianco: Right, but again our perspective here is Facebook is not an applicant, right. So I know you don't have any registries, you don't have any TLDs. But you're suggesting from the standpoint of the Facebook business you don't see how a registry could implement Number 3 and 4. Again there...

Susan Kawaguchi: Yes, I mean I just...

((Crosstalk))

Susan Kawaguchi: ...they're completely out-of-bounds with this one.

Steve DelBianco: Okay, keep in mind that 3 and 4 are not affirmative obligations to go out and do stuff as much as what we discussed above. These say that the requirements

that you give to a registrant, they're collecting sensitive health and financial data, that they have to signify that they have reasonable security measures.

It didn't strike me, and when I went to GAC Advice, it didn't strike me that they were requiring the registry operator to go out and police whether every registrant had reasonable security measures.

Susan Kawaguchi: But I mean - okay, how would you define reasonable security measures? I just think this is just really, really broad.

Steve DelBianco: Okay.

Susan Kawaguchi: And if I was a registry I wouldn't want to have anything to do with this. We're not going to be a registry. But this is just completely over doing the requirement.

I mean they might suggest something, but even that. That would put a registry into a whole new business and take on responsibilities that, you know, why should they have to do that? There are agencies out there to do that. Governments have spent a lot of time and resources on that.

But why would the registry? I just, you know, you know. If somebody's paying, you know, \$9.99 for a domain registration, that's a lot of oversight they'd be getting by the registry.

Jim Baskin: This is Jim Baskin. Can I get in the queue?

Steve DelBianco: Ron Andruff and then Jim Baskin. Ron?

Ron Andruff: Go ahead. Let Jim go first, I'm happy to see and then I'll take after Jim.
Thank you.

Jim Baskin: Yes, hi. I came in a little bit late but I've been listening.

As far as this requirement for registries to be sure that there's this adequate security, I guess it is, it seems that that is overkill. A person - second level domains can be registered by anybody; by a college student, by, you know, a retiree. They can use it as a hobby, they use it just to set up their own email.

And I don't see a requirement for a particular level of security associated with that to be something that the registries or many other people have to deal with. If it's in an industry where security is important, then there are other ways to require that those industries - that those businesses comply with good practices. But I don't think it would be up to the registries.

Steve DelBianco: Is it possible Jim that Number 1 is what covers it? Number 1 says that the terms of service of that TLD - let's say it's for the Dot Loan TLD - that that terms of service would have to inform registrants that they have to comply with applicable laws. And if they're subject to, let's say United States law, they would subject to (unintelligible) if they are collecting any financial information, and full disclosure that they are bound by applicable laws.

Is that sufficient in your mind that you don't need to also do Number 3 if you do Number 1 right?

Jim Baskin: Yes I think so. I mean there may be a lot of nuances there that aren't covered. But the idea that the registry has to be concerned about the security about every single second-level domain, even if it's in somebody's basement as a hobby, is you know, a little bit beyond I think - a lot beyond reasonable.

Steve DelBianco: So let me ask people on the call. You can read the GAC document as well as I can. How do we interpret the word require?

You see Number 1 just said that the terms of service had to have this stuff in it and that's just the document. And each registry would have its terms of service posted someplace and registrants would have to indicate that they read it. That's it.

But Number 3 says required. Is required just mean putting something in the terms of service or does it carry some affirmative obligation to go police the registrant's domain to see whether they have security measures? I mean that's what Susan is saying seems ridiculous, but I don't even know if that's what the GAC is asking for.

Thank you Jim. I think we have - go ahead. We have Ron Andruff and then Andy Abrams and Sarah.

Ron Andruff: Thank you Steve. I just wanted to kind of follow on where you were going with this.

It seems to me that what we're talking with what the GAC is saying here is these are, you know, requirements in so much as they are in the terms of service these things need to be stated. And I think that's good.

The issue though that - pushing back a little on what Jim said - and Number 3 speaks very clearly about, you know, registrars collect sensitive health or financial data have to have reasonable security measures. That should be part of the terms of service.

I don't see that there's any policing being done here. It's just that what they are saying is if you have a space where there is no terms of service or no reference to this, or you have a space that has terms of service and references to it, it's better than the former. So I think that's what they're alluding to. It's just to put some structure in place as opposed to policing.

And I think that we should approach this from that point of view saying that the GAC or the BC applauds the GAC advice on the requirements for terms of service that comply with applicable laws including privacy consumer protection etcetera, and just kind of leave it at that. I think we should support what they're saying and kind of leave it as vague as they've put it, we can put it back vaguely.

But I think it's a good thing to have terms of service that do speak to the various issues that come up.

Steve DelBianco: All right, so where I think that Ron and I are going is that the BC would say that we support what you have in Number 3, but it should be assumed that what you all ready have in Number 1, that the only requirement is that the terms of service indicate applicable laws that are applicable to that TLD. And not create any new affirmative requirement to police security measures.

So I'm proposing that as your policy coordinator to see whether I can get some consensus around that. You can use your voting buttons in the Adobe Connect or comment on that.

I think in the queue is Andy Abrams, Sarah and then Phil Corwin.

Andy Abrams: Yes Steve, I completely agree with that notion. I think with sensitive strings it does make sense to add some structure and to require general guidelines in the

terms of service. But I agree with respect to actually going out there and policing second level domains. As Susan was saying, that's a bit much to put on the registries.

I do think - and this is where applicants do have an opportunity to respond to the GAC. You know, again, this is sort of a nuance issue where when you're talking about pure open registries, I mean I agree. It's very onerous to make the registry go out there and check up on what every second level domain registry is doing.

But there are certain cases where the registries are proposing either closed or restricted registries with a specific business model that might involve the medical profession or something, you know, a regulated profession. And for those particular registries, I do think it does make sense to have additional safeguards.

And I think, you know, if we interpret the GAC advice to mean that these additional safeguards should be put in place and that there should be terms of service as opposed to going out there and proactively policing, then I'm all in favor of that.

Steve DelBianco: Thanks Andy. Let's see, who's next in the queue?

Sarah Deutsch: Me, Sarah.

Steve DelBianco: Sarah Deutsch. Thank you Sarah, go ahead.

Sarah Deutsch: As somebody who has practiced privacy law, I think three probably goes beyond its terms of service. It's not just telling registrants that they need to abide by these laws, but if you're a practicing company collecting sensitive

health or financial data, there are a whole rubric of states, federal and international laws that require you to have reasonable security measures.

In the U.S. there are 50 different states with security breach notification measures. In India, there are rules regarding the reasonable security measures.

So I mean they don't - people may not like it, but even if it just said that registries who collect this data have to comply with applicable laws in the privacy space, it's different than a monitoring obligation. But those laws do exist all ready and there is all ready liability for companies who don't comply.

I think they're just stating the obvious. It's just we may be reading more into it than what it's intended to do.

Steve DelBianco: So Sarah, would you agree then that the BC is recommending that any of these security requirements be noted in the terms of service under Number 1?

Sarah Deutsch: But the terms of service apply to the registrants and these are the registries who have to comply with these laws.

Steve DelBianco: No, that's not true. This particular item is only about registrants. Number 3 GAC Advice says, "Registry operators will require that registrants who collect data have implemented reasonable and appropriate security measures." So it's only about the registrants, not about the registries.

Sarah Deutsch: Oh, well I still think the registry could be liable as well since it's going to be in the collection process. But the registrants - yes. I mean they're going to have to - if it's the registrants, they are all ready subject to these laws anyway, so.

Steve DelBianco: Right, right. So what's the obligation of the registries? Simply remind them and note that? Because you see if you're running (Dot Loan), you might have specific knowledge of the applicable laws in applicable countries certainly where the registry is incorporated. And maybe there terms of service simply remind registrants that you may be subject to laws governing financial transactions, data security, security breach notification, and etcetera.

Sarah Deutsch: You can remind them but, you know, I think registries operating in this space need to be worried about their own liability as well.

Steve DelBianco: Their own liability for data they collect or data that registrants collect?

Sarah Deutsch: I think both are going to be in the chain together.

Steve DelBianco: Wow.

Sarah Deutsch: It's a very strict area.

Steve DelBianco: Has that ever happened? Okay, interesting. I meant to go back to you to expand on that because I think there is a gathering consensus we would move three up into one. But if you wanted to expand on it to create obligations on the registries beyond that, I think I need to get that from you so we can present it for members to approve.

I think Phil Corwin you're next.

Phil Corwin: Yes, thanks Steve; some quick remarks.

On Number 3 when you're talking about health and financial, I think people should be aware we're not just talking about strings in the health and financial sector. For

example, in professional services, registrants of Dot Doctor or registrants of Dot Realtor are probably going to be collecting health and financial data. So this goes beyond those two identified sectors.

Second, when you read Number 3, I'm trying to figure out what if any proactive obligations it puts on registry operators. One, I think that has to be clarified because then if some registrant as some domain commits a massive fraud, there's going to be questions about, "Well, why didn't the registry do more?" It's going to be read that way after the fact.

But then when you look at Number 4, it requires the registry operator to establish a working relationship with relative regulatory or industry bodies to mitigate risk of fraudulent and other illegal, which the other synonym for illegal is unlawful activity.

So it loops back and that requires a very proactive outreach by the registry and regulators in what country? Every country that your registrars may be located in or may be doing business in. This could be very broad. So I think this has to be nailed down.

Finally, I just want to note your summary has a typo. Number 5 requires registrants to be required by the registry operators and in your paper it says registrars. So there was a mistype there about who the obligation is placed on for a single point of contact.

Steve DelBianco: Right, good point. Thank you.

All right, Phil I noted that Number 3 and 4 you would want to clarify there is not affirmative policing obligation associated with Number 3 and 4. I think that was your point.

Phil Corwin: Well I think we need to nail it down because I think after...

((Crosstalk))

Steve DelBianco: Well by nailing it down...

Phil Corwin: And those regulators, what strategy are they going to require the registry operator to implement? It's not going to be a (unintelligible) strategy.

Steve DelBianco: I'm sorry, but you can never nail down the GAC. We've tried that; they will not be nailed down.

So the BC at this point drafts a written document, puts it out for member approval and review. And in that document, I'm trying to understand what the consensus is of our membership.

If our membership says, "These should not be affirmative policing obligation," it's up to the GAC to agree or disagree, right. But we can't nail the GAC down on anything. That's what I'm trying to clarify what Phil Corwin's position is on this.

And we are now out of time for the hour, I'm pretty optimistic. We've got more than half way through this GAC Advice and I think one more call would probably do it.

What I'll try to do is summarize the notes. Benedetta will send me the transcript - and start to put some meat on the bones of what the BC would say about the safeguards for all gTLDs, what the BC would say about safeguards 1 through 5 for the Category 1. And then we would probably have a call next

week on the rest of Category 1 and then the exclusive generics; we could be done.

Are there any closing comments from other members on the call?

Thanks everybody. Amazing participation and attendance; I'm inspired.
Thanks everyone and we'll send around summary notes and set up another call probably for next week, same time.

Group: Thanks Steve.

Steve DelBianco: Thanks everyone.

Man: Thank you.

END