



Minutes: BC Members Call June 6th, 2013: 11 am EST (3 pm UTC)

Attendees:

Elisa Cooper	Janet O’Callaghan	Emmett O’Keefe
Steve DelBianco	Ron Andruff	J. Scott Evans
Chris Chaplow	Yvette Miller	Benedetta Rossi – BC
John Berard	Aparna Sridhar	Secretariat.
Anjali Hansen	Mark Sloan	
Angie Graves	Richard Friedman	
Andy Abrams	Marie Pattullo	

Apologies:

Marilyn Cade	Jimson Olufuye
Philip Corwin	Ayesha Hassan
Stéphane Van Gelder	Laura Covington

1. Review of Agenda and Other Open Items – Elisa Cooper

Elisa Cooper:

- Reviewed the agenda for the call and asked for members’ input for the Any Other Business slot.
- Topics added:
 - Ron Andruff: questionnaire sent to BC Members regarding members’ interests & relationships
 - Elisa Cooper: new gTLD Timeline & upcoming ICANN Meeting in Durban

New gTLD Timeline:

Elisa Cooper:

- ICANN Circulated the New gTLD Timeline on the 5th of June, 2013.
- The timeline drafted by ICANN Staff states that the earliest that new gTLDs could be released would be in October. That doesn’t take into account any delay that could be caused by dealing with the safeguards or even finalizing the Registry Agreement.
- Elisa learned from the Trademark Clearinghouse the maximum to process a submission to the Trademark Clearinghouse could be as long as 34 days. So the fact that we’ll have the 30



day notice prior to the open of a sunrise now becomes even more important. It's very good that we were able to get that as part of the Straw Man.

Ron Andruff:

- Ron mentioned that for those who are relatively new or have only been following ICANN from a distance, he believes it's really important to understand that when ICANN staff puts forward a timeline or any kind of document that's got a timeline, you can be absolutely sure that that will change. So for planning purposes and just for understanding what's happening, Ron just wants to make sure that everyone understands that if in fact ICANN were to hit that mark it would be the first time in every deadline they've set for 13 years.
- Ron then stated that a lot of the documentation that we're working on right now, GAC Advice and other things, will have to be digested. The new Board Committee is going to have to digest that and handle it in a manner that is respectful of the work and effort that's gone into it from the part of the GAC and community working on developing a set of safeguards. The implementation will have to be thought through.

Questionnaire sent to BC Members:

- Benedetta Rossi, BC Secretariat, sent out a request for information from BC members about their role or interest in participating in the Business Constituency. And the only point of answering those questions is to help other members understand each other's perspective and others to understand, where members are coming from, and put into some context comments that are being made by members.
- The questionnaire is not meant to point out conflicts of interests. Members are not obliged to respond to the questionnaire, nor to provide information they do not wish to disclose. Some members have confidentiality agreements with their clients and can't even reveal that information. But the point is really to try to help other members understand perspective.

Aparna Sridhar:

- Google will submit their responses and support this kind of transparency. Aparna also mentioned they hope that answering these questions will allow members to put those kinds of discussions behind us.
- Aparna noted that the questions posed in the document or in the email focused primarily on one kind of potential conflict which is whether an entity has a relationship with current or future contracted parties. But there are numerous different kinds of conflicts: people might represent competitors of new gTLD applicants or competitors of existing registries or have other interests that motivate them that don't have to deal with their relationship with a contracted party. It would therefore be helpful if members disclosed that kind of information as well

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Ron Andruff:

- Ron really applauded the efforts of the Executive Committee to try to move this discussion forward because it can get testy from time to time when people are wondering, “For whom is one speaking.”
- So it was interesting to see that the Excomm put together this document, and Ron agrees with some members’ thoughts that it may be a little too intrusive.
- It may be almost impossible for some members to put the information in because of the non-disclosure agreements and clients’ privilege issues.
- As Aparna just mentioned, this is about disclosure and transparency. So what Ron would put out for the members’ consideration is that when we speak, whatever that topic might be, that we just be very forthright. So we should say, “On this particular issue, this is Ron Andruff speaking and I declare I have no conflict on this issue.” Or “On this issue, this is Ron Andruff speaking and I would like to declare I have an interest in this as I’m representing XYZ.”
- If BC members could just all follow that kind of normal pattern of disclosure and respect for each other’s activities, members would not need to necessarily carve in stone things that could be seen by the client or by others as putting them in a very difficult position or putting the consultant of the client that may be a BC Member in a difficult position.
- It’s not just within the BC; it’s in other places as well. But this is what we’re trying to get to; an institution that has transparency within its processes and policy discussions.
- Ron believes that some of the questions in the document, would be uncomfortable to ask or answer

Elisa Cooper:

- Elisa agrees with Ron’s points, and reiterates that this document is intended for transparency purposes.
- A lot of the questions presented are even uncomfortable for Elisa to answer, but her goal is to be completely transparent.
- Conflicts do not mean members cannot have a perspective. All BC Members are participating because they have a perspective. BC Members are participating particularly in the BC because they have an interest somewhere, whether it’s strictly as a brand owner or in the new gTLD program roll out, all from a business perspective.

Anjali Hansen:

- Anjali personally believes that this document would be very helpful to understand who is representing whom.
- All members have their perspectives, but there comes a point where members have to render recommendations or provide comments, and they should just go through the BC Mission, those points, and check that they are addressing the issues in the BC mission, which is to promote end-user confidence and to ensure the competitiveness or the registry and registrar, and to make sure that everything is technically stable.



- So while all members have their own perspectives and make comments based on those, Anjali believes that members should make sure that the priority is looking at it from the mission of the BC whenever a comment is made collectively.

J. Scott Evans:

- J. Scott fully supports Anjali’s comments. Members can all file comments for their individual companies themselves. So if members have any additional perspective that’s different than the mission of the Business Constituency, they certainly have an avenue for doing so.

Registries Services Evaluation Process:

Elisa Cooper:

- Chris Chaplow brought up this topic on the BC list, and Elisa would like to make a comment.
- As background information: when registries want to make a change to their agreement, they have to go through a process called RSEP which is the Registries Services Evaluation Process. Essentially, some of the registries have made changes to their contract by way of this process, but Elisa does not think that there has been focus on following changes to contracts that have happened through the process.
- Chris brought up an issue where a change had occurred, comments had been made through the public comment forum but they weren’t adopted into an agreement that was being changed by this RSEP process.
- Elisa opened this topic up for comments from Chris or other members.

J. Scott Evans:

- J. Scott wrote the final memo document that was used by Bruce to put that together nine years ago. He believes this is a process that hasn’t got much attention with regard to public comments.
- When was the last time any public comment we know of have shown results in how ICANN dealt with it? J. Scott would say 99% of the comments are completely ignored. This is a very big problem that ICANN needs to fix.
- J. Scott would be happy to work with Chris or others to look at that process and see how it’s felt and how it’s being used.

Chris Chaplow:

- Chris Chaplow will reply on the BC list to the email that Elisa has sent out, adding more information to the discussion.



2. Policy Update and Open Discussion – Steve DelBianco

Update on Recently Submitted Comments:

Steve DelBianco:

- The BC submitted three comments we submitted since the last Business Constituency call on the 22nd of May. One is on GAC Safeguard Advice on the new gTLDs. The BC's comment was one of 132 that were submitted. And these are comments that were submitted to the new gTLD committee of ICANN's Board of Directors. So everyone will be wondering what they'll do with this advice and Steve wanted to put that in the context of the timeline.
- One thing that the Board needs to do is officially react to official GAC advice. Only a few elements in the GAC advice were consensus GAC advice; they had to do applications for DotAfrica and one other. Those are easy. It's this non-consensus GAC advice that the Board has to deal with.
- Steve believes there are two paths: The Board could implement it which could create delays as the Board and staff work up implementation details for implementing the advice, and in most cases, that will mean changing the base Registry Agreement and the RAA which has just gone through multiple stages of approval. So there are significant delays if the Board accepts GAC advice in a way that causes implementation changes or agreements.
- If on the other hand the Board were to reject some or all of the GAC advice, there are additional delays because bi-laws require ICANN Board and GAC to go through a process of discussion in a consultation whenever GAC advice is rejected.

J. Scott Evans:

- J. Scott thanked Steve for the amount of information he sends out in a concise executive summary for the BC to keep informed of where things are headed and how they are in the pipeline. J. Scott has been involved in other organizations and it's not as well organized.
- J. Scott thinks there is a fundamental breakdown in how ICANN and the GAC are working together. And they have not solved that problem and it's causing a lot of churn in the system. He is afraid it's going to end up in an adversarial situation if people don't come and give very specific practical solutions and things for everyone to focus on that provide a focused solution, resolving problems and getting to the end game.

Ron Andruff:

- Ron commented on the excellent work that was done by the BC Members as a whole.
- The work on this document was really exemplary of what we've been trying to see in the BC for years. Ron thanked everyone who weighed in on that document.

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Steve DelBianco:

- The second comment the BC filed was the comment on the FY 2014 Draft Operating Plan and Budget. Chris Chaplow, V. Chair for Finance & Operations drafted this comment on behalf of the BC. There are 12 comments submitted in addition to the BC's on this topic.

Chris Chaplow:

- Chris has heard that the acknowledgement and the staff responses to these comments will be the end of the business day on Friday the 21st of June a few hours after the reply round closes at 23:59 UTC. So unfortunately, that won't be very helpful.
- Chris has looked at the comments, and there are actually only five comments because the others are corrections.
- Chris has not yet analyzed these comments, but he will do so shortly and submit them to the BC list to give the BC some guidance on what the BC is supporting, not supporting and try to take the BC's document further on the 21st of June.
- Any volunteers or help on this are greatly appreciated.

Steve DelBianco:

- The third comment that the BC submitted in the last two weeks was comments on the proposed final Registrar Accreditation Agreement.
- Steve thanked Anjali Hansen, Elisa Cooper, Ron Andruff, Zahid Jamil and Susan Kawaguchi for their work on drafting this comment.
- There were 23 total comments on this topic.
- This was a proposed final RAA for 2013 so it remains to be seen what ICANN staff will recommend they do to the agreement pursuant to the comments. If in fact they got comments and they changed the agreement that might even require yet another round of public comments on the amended RAA.

Comments Pending:

Steve DelBianco:

- The first is draft BC comments on the final Registry Agreement. Please refer to Steve's policy document for a link to this.
- Elisa Cooper took the rapporteur role on this comment and looked at the comments the BC filed in March of 2013 where the focus was specifically on four parts of the Registry Agreement that the BC was concerned about.
- Elisa was able to revisit the BC's four concerns to evaluate if ICANN had accommodated them. The result of this analysis is that ICANN did not accommodate most of the BC's concerns.



- ICANN did however make significant changes to the unilateral amendment. And Elisa's draft notes that at least part of the BC's concerns with unilateral amendments have been addressed by the process they have which allowed an operator to apply an exemption from an amendment if the amendment would actually cause the Registry to violate its own prior obligations and Registrant policies.
- Steve noted earlier in the call that the discussion on the RSEP could be added to the Registry Agreement comment.

ACTION ITEM: The BC will address the ATRT regarding the RSEP comments.

Elisa Cooper:

- In the PIC specs submitted, for instance, by Donuts, there is a clause that states that they have the right to modify or discontinue their specs for any compelling business need.
- Elisa thinks this is very interesting because renders those PIC specs not very effective in that.

ACTION ITEM: Steve DelBianco, following members' inputs on the call, asked Elisa, as the rapporteur on this comment, to add in the third paragraph on Spec 11 a sentence or two suggesting that the BC recommends a more formalized process for the amendment or withdrawal of PIC specs that have become part of a Registry Agreement that's been relied upon by stakeholders.

Steve DelBianco:

- Final topic open for comment: the Accountability and Transparency Review Team.
- That comment period closes June 9.
- The BC is not taking official positions, but simply giving answers to some questions that the ATRT team has posed to kick off their work.
- The ATRT is the Accountability and Transparency Review Team. This is the second one; we had the first one three years ago.
- Under the Affirmation of Commitments it is stated that where ICANN creates a team, the team studies a particular set of issues in Paragraph 9.1 of the Affirmation of Commitments on whether ICANN is meeting its obligation on accountability and transparency in the global public interest.
- Steve discussed this on the May 22 call and several BC members volunteered, like Stéphane, Zahid, Marilyn Cade and we began to put together a draft for what the BC might provide as input to the ATRT as they begin their work.
- All of these drafts are included in the document that Steve circulated.
- Earlier on this call, members discussed adding concern about RSEP changes to Registry contracts and that those, too, should be taken into account.
- John Berard also mentioned that he brought up a topic with the Council regarding what happens to comments when comments are filed?

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- This is a perfect issue that the BC can raise in Accountability and Transparency Team since it focuses on transparency and on accountability: are our comments being listened to?
- Steve opened the queue for members to either comment on the draft or volunteers to help finish the draft and circulate to the BC.

Elisa Cooper:

- Informed members that the ATRT will meet with the Commercial Stakeholders Group in a Webinar which will happen in a week or so.

Steve DelBianco:

- Noted that the ATRT members are very disappointed that there hasn't been more attention paid to the critical questions they evaluate.
- This is the review team who reviews not only the ATRT at ICANN but it reviews whether the other affirmation review teams have had their recommendations implemented
- Steve highlighted the importance of drawing these comments to a close and asked for members to let him know now if there are any substantive comments on the text circulated.
- Steve asked members to avoid coming in last minute with significant changes. He will now take the work done by Stéphane Van Gelder and by himself, and circulate it as a comment later today.
- That's an appropriate place for BC members to make edits that are relatively minor but the time has passed for major substantive points given that this is due on the 9th of June.

3. GNSO Council Update – John Berard

John Berard:

- The GNSO Council meeting is June 13.
- John noted that the most interesting aspects of the upcoming meeting are not among the motions but among the discussion.
- There is a conversation to be had on the upcoming reviews of the GNSO and the GNSO Council.
- Zahid Jamil is on the group aimed at helping to organize the Council's thinking. John will ask him to be the official voice for the BC to know what is going on.
- John, as a Council member, feels that this might be an opportunity to get on the table some of those matters that seem to be perennial points of irritation not the least of which, the contentious nature of what is known as the Non Contracted Parties House.
- Personally, John would like for the organizational structure of ICANN to be modified, removing the Non Contracted Party House, and allowing the CSG to have more say within the GNSO and the Council.
- The other discussion that's on the table right now which is about the Non Commercial Stakeholder Group request for reconsideration of the plus 50 decision by the Board with regard to the trademark clearinghouse.

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- This request was denied, and the Council meeting is an opportunity to have a conversation about that subject and the thinking by some councilors, led by Jeff Neuman, that there would be some direction, some position that the Council would offer up to the Board before it takes that final vote.
- The discussion is going to focus not as much on the subject of the decision as the method and the process of the decision. And so not to suggest that the Council is seeking to overturn the plus 50 although there are many on the Council who would like to do that.
- One of the items on the GNSO Council call is a discussion about the GNSO and UNSO Council review. John is wondering just how outside the administrative line that conversation is going to go, and if perhaps John should promote this notion of where do comments go, what happens to them, what is the process and should not that be a part of the review just to put it forward on the table.

ACTION ITEM: BC members voted on the call and on Adobe Connect. The majority of members on the call agreed, so John will bring this issue up on the Council Call.

4. Conclusion – Elisa Cooper

Elisa Cooper:

- Elisa thanked BC members for joining the call, and reminded them that the next call is scheduled to take place on June 20th.
- Elisa adjourned the call.