



Minutes: BC Members Call on GAC Advice – Part 2
May 8th, 2013: 11 am EST (3 pm UTC)

Attendees:

Steve DelBianco

Chris Chaplow

Marilyn Cade

Andy Abrams

Janet O’Callaghan

Ron Andruff

Yvette Miller

Gabriela Szlak

Philip Corwin

Richard Friedman

Linda Kinney

Martin Sutton

Camille Stewart

Brad Gillen

Benedetta Rossi – BC

Secretariat.

Apologies:

Elisa Cooper

Stéphane Van Gelder

Jimson Olufuye

Angie Graves

1. Introduction – Ron Andruff

Ron Andruff:

- Ron introduced the call and announced that he would stand in for Steve DelBianco for the first few minutes of the call since Steve was delayed.

2. Review of elements discussed in previous call

Ron Andruff:

- Ron referred to the presentation that Steve put together which includes the various elements that the BC started to discuss last week
- BC members should review these elements and ensure that all members on the call are on agreement on them.
- Elements in 1B: on point two, the terms of reference, the terms of service, the element Number 3 was to be included in the terms of service in the BC’s previous discussion.
- Safeguards in 1B: BC discussed the verification of WHOIS a couple of times a year, the terms of service to prohibit malware, registry to periodically check the domains for security threats.
- How could the Registry actually do those kinds of things and whether or not that would be something that would be too much of a burden on the Registry? So perhaps that should be included in the terms of service.
- The BC then discussed the inaccurate WHOIS element and point Number 4, point Number 5, handling the complaint mechanisms, and Number 6, ensuring immediate consequences including suspension for inaccurate WHOIS. So those were what was called for by the GAC.



Marilyn Cade:

- Marilyn noted that Elisa Cooper, BC Chair, reminded BC members that in these issues BC members need to take the BC user perspective.
- On the safeguards issue: the BC has broad support for the role of the GAC in addressing public interest safeguards. So is there anything that the BC should be reflecting for specific comments to be made?
- This comment was made in response to certain BC members referring to the GAC advice in the previous call and stating that the GAC is creating new ground.
- Marilyn does not think this is accurate, and volunteers to discuss this further if needed.
- According to Marilyn, the BC position up to now has been fairly clear that would lead to general support for the call for safeguards in the public interest.

Steve DelBianco:

- Noted that the purpose of this call is to finish the specific things the BC will say about the specific safeguards that are posted.
- The BC is not asking questions of the GAC, but rather the BC is stating opinions about how something should be interpreted, how ICANN should react to GAC advice.
- BC commentary on safeguards that would be for Category 1, Top Level Domains. Category 1 which categorizes things that require consumer protections or sensitive or they were in a regulated market. The GAC put forth five safeguards for them.
- On Annex 1 of the GAC Advice, there's a long list of top level domains in Annex 1: Dot Music, Dot Capital, Dot Cash, Dot Savings, Dot Trading, Dot Green, Dot Toys, Dot Capital. A lot of different things that the GAC is including but it isn't an exhaustive list. They may decide to add others.
- With respect to that list, these are the five safeguards GAC's insisting on.
- BC Comments on these safeguards: there was widespread support that BC Members think that Item 3 on this list where a registry had to require that a registrant collecting sensitive health or financial data have reasonable security measures, that the BC should advise ICANN that should be part of the Terms of Service.
- The BC does not think that registries should take on the burden of actively policing every registrant Web site and conduct to see whether they are in fact using appropriate data security practices for their Web site. That takes way beyond the purpose of being a registry.

3. Items to be discussed on this call

- On the category of additional safeguards for these Category 1 Top-Level Domains that are specifically in the area of finance and gambling, professional services and environment health, fitness and corporate identifiers.
- For this group, the GAC Advice was to add three new safeguards that the registry had to verify and validate the registrant authorization and their charter, whether they had a license or other credentials.

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- Steve opened the queue to hear whether BC members believe that items 6,7 and 8 are appropriate for TLDs in finance, gambling and professional service.

Marilyn Cade:

- Introduced topic concerning the regulated industry or areas of sectors where government provides a consumer protection role. These include looking after the interest of children.
- Marilyn wants to be sure the BC is thinking about those consumer protection aspects where government clearly sees that there’s a public interest aspect to their involvement.
- An example is the dotKids strings.
- On the regulated industry, Marilyn believes that it makes that consumer groups that are concerned about regulated industries and about how they affect consumers are engaged.
- Marilyn would like to understand what the BC might say that would be helpful to the GAC in regards to how safeguards are developed, implemented and monitored.

Phil Corwin:

- Phil noted, speaking on his personal capacity, that from an operational viewpoint, when it says the registry should consult with National Supervisory if there are any and validate registrants credentials and periodically check on them, Phil believes this should be applied solely in the place where the registrant is domiciled and is conducting the bulk of his activities.
- Otherwise you would be asking registries to police cross-border activities that raise trade issues, law enforcement issues.

Ron Andruff:

- In response to Phil’s point, Ron noted that we should be looking at applicable law and industry standards.
- Industry standards should be applied in all cases because the Internet is outpacing law the courts, and a lot of laws don’t necessarily apply to the Internet.
- Unfortunately, a lot of different elements have not created a legal regime or a legal structure to meet the needs of the Internet.
- So Ron believes that applicable law coupled with industry standard would make a lot of sense. But I’m just putting that thought out there that (unintelligible) from Phil.

Martin Sutton:

- Noted that he is an applicant for DotHSBC, but that on this call he is addressing these issues as a business user.
- Martin’s question is: how can this be implemented on a practical basis?
- It’s hard enough getting an industry to come together in one country let alone globally. This could actually prevent some of these registries from taking off.

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- Martin believes that there needs to be a balance between the fact that some of these will have already embedded within their policies and criteria of running the registry, distinct sets of criteria that will be supportive of that industry that will protect consumers.
- And that needs to be certainly weighted against some of the other applications.

Marilyn Cade:

- Proposed for the BC to ask ICANN that registries set up their own global advisory board modeled on an industry self-regulatory group to fulfill the GAC Advice.

Steve DelBianco:

- II. Asked BC members whether they think that the mere use of a string that’s included on the GAC list carries the obligation of only allowing chartered, or is it something that registry professes for themselves?

Ron Andruff:

- Regarding point on licensing and chartered: this means every registry is going to establish registrant eligibility policy to say, you know, “This group of people can have a TLD in my space that I’m managing.”
- In that case, what is needed is a proper advisory board that incorporates all the members of that community to then make this decision on fair rules for who can register and who cannot and under what conditions.

Steve DelBianco:

- Noted his proposition which is similar to Ron’s point: it should be optional, if the TLD sets itself up to create a restriction, a registrar restriction policy, that only then does it fall into this safeguards. And then you’re adding on that there also should be an advisory group with multi-stakeholder representation that would help to resolve the details behind that.

Ron Andruff:

- There must be an advisory body that incorporates the entire effected community, and from there you can do those things.
- But there has to be that advisory body that all affected parties are on that advisory body because that’s where the policies are going to be drafted.
- And that will stop anyone from trying to create legislation through their TLD.

Martin Sutton:

- From a business perspective his concern is the open commercials.
- Martin is worried that we could be putting far more onus on these categories on the back of GAC Advice which according to Martin is late.
- So on practical terms this seems to be very heavy handed on those applicants or registries that are proposing to be very restrictive in what they do.

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- Is a global body necessary? Martin believes that the idea should be to actually engage, but until they've got it engagement might not exist. So perhaps some of the GAC Advice needs to be tempered with the idea that this has got to be over a period of time rather than prior to any acceptance launch of a TLD.
- Martin also raised another question: on a practical element who decides what falls into this category? Because we're going to have all sort of variations, language variations, interpretations, who is going to be the judicator to say what string falls into that part.

Linda Kinney:

- Addressed specifically the intellectual property related strings, speaking on behalf of The Motion Picture Association (MPAA).
- In the situations where you have IP rights at risk, and there maybe some illegal activity and use of the domain for pirating content, that's a special category of strings.
- And in that category there has to be some sort of mandated group or requirement.
- One of the things that the GAC sets out is to establish a working relationship with that relevant industry and then figure out through that how to develop a strategy to mitigate possible risks of illegal activity.
- To Linda, in that particular group which the GAC identified, it needs to be required that everybody follows whatever the industry advice is.

Andrew Mack:

- Noted that he is generally supportive of the desires that the GAC has, but he is wondering about the practicality of it, if we're trying to do a lot of mandating.
- Who is going to determine all of the credentialing of all of this? And since credentials are different from country to country and change over the course of time as people come in and out of the system, how are we going to do that?
- Supports Ron & Marilyn's idea regarding the advisory group, but is concerned about questions such as: who would be on the group, how big would it be?

Andy Abrams:

- With respect to Steve's question about elective or mandated, Andy thinks it depends on the string. I think for strings that directly relate to regulated industry for instance, Dot Bank, Andy is fine with having these mandated extra safeguards.
- But Andy is seeing a lot of strings on the list that do not fall into the same category (Eg. DotAir, or Dot Diet).
- Default to elective on restrictions, and if you have restrictions you are mandated to check on every global government, every charter organization around the world for every registrant. But there may be other strings in this batch that would also be mandated to also allow chartered registrants.
- Andy believes that the advisory group – yet to be made – would determine which of the strings fit in.



Marilyn Cade:

- Noted that in previous years, community facing TLDs actually did this kind of validation and could be used as historical evidence to learn from (Eg. Dot Museum, Dot Travel). Marilyn doesn't think that the BC should be voting on what strings belong in one category or another category. That would be too time consuming and not a good use of the BC's time.

ACTION ITEM: Another call will be scheduled to finish the discussion on the BC's comments on the GAC Advice, and it will take place on Friday, May 10th, 2013 at 11 am EST.