Summary Notes from SO-AC Special Meeting
Discuss the feasibility and merit of setting up a new CWG
to review the issue of Safeguards/PICs for Sensitive New gTLDs
18 March 2016 @ 13:00 UTC

Attendees:
Alan Greenberg, ALAC
Thomas Schnieder, GAC
James Bladel, GNSO
Donna Austin, GNSO
Cherine Chalaby, ICANN Board
Rinalia Abdul Rahim, ICANN Board
David Olive, ICANN Staff

Board Member: The Board Member said that the purpose of the call is to discuss the feasibility and merit of setting set up a new group to review the issue of safeguards for sensitive strings, or, if not, then have the Board suggest that existing two working groups address this very issue in the course of their processes.

The following background was presented:

- ❖ The ALAC and the GAC are not satisfied with the way the Board implemented the GAC Advice on the Safeguard for Sensitive New GTLDs, and this dissatisfaction goes back to more than a year. And if you recall, we had attempted to facilitate a couple of meetings between the ALAC, the GAC, the Registries, and the Registrars to see if we can move forward with some ideas that were proposed, and those meetings took place in February 2015 and April 2015.
- ❖ The main issue that was of concern is the absence of upfront validation and verification of registrars' licenses or credentials that may lead to potential consumer harm.
- ❖ On the enforcement of PICs, there was a concern that compliance with the PICs may not be monitored effectively by ICANN compliance and that the enforcement of the PICs may not be expeditious, particularly any complaints made by government or consumer protection authorities.
- ❖ Discussions took place on upfront validation, introducing new voluntary PICs, a proposal on the Public Interest Commitment standing committee, the idea of a Trustmark, and various other ideas. Unfortunately, none of those were pursued.
- ❖ The Board received Advice from the ALAC recently asking about setting up a new committee.
- ❖ Going back and modifying the existing PICs is not possible and nor practical, as already 1,200 agreements have been executed, and the Board would not take unilateral action to make changes to these PICs.
- ❖ Two initiatives currently going on: 1) the Affirmation of Commitments Competition, Consumer Trust Consumer Choice Review (CCT-RT) and 2) the GNSO new gTLD PDP working group.
- ❖ The CCT-RT has established a subgroup focused on the new gTLD safeguards and consumer trust. (The ALAC is well represented in that CCT-RT subgroup.)
- ❖ Looking at the GNSO PDP, the charter says that they should perform a comprehensive review of the base agreement, including whether Public Interest Commitments are the right mechanism to protect the public interest.

❖ There seems to be two options, going forward: 1) either establish a third new committee looking at the PICs issues and with a view to making a recommendation to the Board and these two existing groups, or 2) the Board takes the advice from ALAC and the GAC – and forward those to the two groups and ask them to ensure that the PICs issues are taken into account while they are doing the CCT-RT review and the GNSO PDP.

❖ We are at the junction of assessing which way to go, and it is really in the hands of the SO and AC leaders to provide guidance in that regard.

ALAC Representative: The ALAC representative noted that ALAC wants to make sure there is a very high degree of confidence that both groups -- the Affirmation of Commitment CCT-RT group and the GNSO PDP group -- will look into the PICs issue and decide whether there are strings that require special treatment and special PICs, particularly a prompt validation of registrar credentials. He said if he had this high confidence this will take place, then perhaps creating a third group, a new group, would not be necessary.

ALAC has two people on that review team and the ALAC Representative would need to talk to them about the level of confidence that this work will be done to provide information to the next round as to how to effectively categorize TLDs.

The ALAC representative has no problem with this work being done by one of the existing groups if there is a high degree of confidence that it, in fact, will get done and that the work will be done at some reasonable level of detail.

GAC Representative: The GAC Representative wanted to make clear that these safeguards are not meant to impose unnecessary burdens on the industry, nor to prohibit them from being innovative with new services. Rather, it is based on the expectations of our citizens and businesses that abuse risks are mitigated and minimized in a pragmatic way.

With regard to these two existing processes, the GAC representative would consult with the two CCT-RT representatives of the GAC, and also with other people, in order to have confidence that this group is looking into this issue in an appropriate manner as part the review process.

With regard to the GNSO PDP that is looking into this, it is important for the credibility of the GNSO's assessment of the efficiency and necessity of PICs that it is not just the domain industry self-assessing its own performance but that the voices of all stakeholders are heard in this assessment. The GAC representative remains committed to getting the GAC and the ALAC engaged in this PDP in order to have different views on the necessity of safeguards and PICs adequately feed into the outcome of that PDP.

The GAC Representative said what is needed is a factual assessment of the abuses of the risks that actually have occurred, because some risks that were anticipated in our GAC advice may have been overestimated while others may have been underestimated or not even been thought of. The first thing is to gather some facts-based evidence about what has happened so far, including highlighting good practices with gTLDs that have put voluntary PICs in place.

The GAC representative did not think the GAC would insist on creating a separate track, if there was confidence that the two existing tracks would thoroughly look into the PICs issue. And maybe, instead of creating another formal structure, it may be useful to establish -- as chairs of the GNSO, ALAC, and the GAC -- an informal group to monitors

how the discussion is going in these two processes and to comment or input into these processes.

The GAC representative noted that it is actually in the interest of the industry to gain more trust by users and by others to actually use these new domains, and through showing in whatever way that abuses and risks are minimized would actually help the industry get more traction for these new TLDs with a common interest to build on that for a better takeoff of the new TLDs in the future.

GNSO Representative: The GNSO representative said he does not speak for the entire GNSO, but can give a sense of the conversations that the GNSO had during our wrap-up session at the end of the meeting in Marrakesh. He said that launching a CWG or chartering a CWG to examine the issues of safeguards would probably not be supported by all of the GNSO because it is redundant to existing work streams that are currently underway, specifically the CCT and the PDP on subsequent rounds. There was also concerns that a CWG would draw from the same pool of volunteers potentially and create significant degree of overlap, both in material and substance and volunteers, not to mention the costs associated with setting up these other groups. He thought that there needs to be a compelling reason why these other two work efforts would not sufficiently address the issue and why a third effort would be the only viable path forward.

He said that every PDP puts a burden potentially on industry, and industry representatives participate in PDPs, and nearly every successful outcome of a PDP represents new obligations, new contractual requirements, that will affect the business models of the commercial and industry participants. He noted that industries regularly and consistently voluntarily adopt new burdens or obligations to improve the model, the multi-stakeholder model, and the health of the DNS and the health of the industry -- that's an important component of self regulation.

He stated what is necessary from the perspective of probably both the PDP and the CCT is some sort of objective data or evidence that there are harms occurring due to the absence of safeguards and that safeguards are required to address those harms. And noted that unless and until we have something like that, we are speculating that there is a problem or we are solving for a potential problem and not something that is actually occurring or being measured.

He said he has confidence that the PDP and the CCT will objectively review and consider the issue of safeguards and that any particular outcome or decision or conclusion will be up to members and participants of these particular groups. In the GNSO PDP, he said that the issues will receive objective and comprehension consideration because the PDP is structured and obligated to take such issues and put that them under the microscope and have a better discussion of them.

ALAC Representative: The ALAC representative suggested that it would be reasonable for the Board to send a letter to both the PDP and the CCWG identifying the problem. We need to make sure for the next round applicants do understand that they may be proposing a string which will require additional levels of verification and they have a responsibility to consider that and it will be judged after the fact. It is important to not just look at potential harms related to TLDs that have not been subject to validation protection, but to study the TLDs where the applicant has implemented controls over and above those required by the Board.

GNSO Representative: In response a proposal for a letter from the Board, the GNSO representative said he is not opposed to the idea of the Board sending a letter to the PDP and the CCT highlighting the concerns that have been expressed by the GAC and the ALAC and ensuring that they are taken up by those groups. He added that we want to be sure that we respect two separate processes for a PDP and a review team and that they have the ability and the autonomy to consider these issues on their own without prescriptive guidance.

GAC Representative: The GAC representative supported the idea of the Board sending of such a letter to the PDP and the CCT RT and said that we have the time, for instance, until Helsinki, to see how things are developing, and then use one of the emerging community exchange events in Helsinki to discuss, at least, with GNSO, ALAC and with the GAC, and see where we are with this in Helsinki. He said this is definitely something that he would see as a pragmatic way forward for the time being.

ALAC Representative: The ALAC representative summarized both the ALAC and GAC concerns as follows: "The ALAC and the GAC are concerned that GAC-identified TLDs, if implemented without suitable registrant credential verification/validation or other similar controls, might result in possible consumer harm. It is essential that any future rounds do not result in post-application concerns such as raised by the GAC following the first round, and that potential applicants understand that some sensitive TLDs may require additional protection.   A study of the TLDs identified by the GAC, and how applicants address their unique needs may help ensure no such problems in the future."

Board Member: The Board member summarized the call:

* ❖ Prepare a summary of the call. (David can organize the summary.)
* ❖ Consensus by the three SO and AC Chairs that at this stage a formal group is probably not the right way to go. It may be reviewed later on, in/after Helsinki or another time.
* ❖ What is required is a letter from the Board to both the CCT-RT and the PDP groups highlighting the ALAC and GAC concerns and ensuring that they are taken up. The Board should recommend a review of these concerns but must not recommend a solution.