

ICANN

**Moderator: Nathalie Peregrine
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8:00 am CT**

Rob Hogarth: Okay, Kathy and Tony, I think we're going to get started. We've got everyone in the room, we just have some folks standing so I'll encourage folks to sit. But if you all want to get started I think we can proceed. Thank you.

Tony Holmes: Okay thanks, Rob.

((Crosstalk))

Tony Holmes: So if everyone can take their seats please?

((Crosstalk))

Kathy Kleiman: No, but we're going to...

((Crosstalk))

Kathy Kleiman: This is where we actually agree.

((Crosstalk))

Tony Holmes: Okay let's kick off this next session so we don't lose too much time. And if maintaining the GNSO's traditional policymaking leadership position at ICANN. And that's something which I think over time have started to be

challenged through the success, to some degree, ICANN and certainly the success that the GNSO has had in policymaking.

For a while, I would suggest, everything was focused around GNSO to lead on gTLD policy without anybody really coming in from the side or challenging that in any way. But the demands of the policymaking area have increased. And certainly what happens in GNSO for gTLD policy has fundamentally spurred a lot of additional activity, a lot of it spawned I think from the increase in the namespace originally and some of the impact that that had.

Also in terms of representing a very diverse community in some of the broader discussions in ICANN, which is another role that GNSO has as well and putting aside any of the various views and issues around that they've done a pretty successful job.

But there are challenges in this space and we're going to look back at some of the issues that came up this morning. But we all need to be fundamentally aware of that position the GNSO has, its role in the multistakeholder model and how it brings together some very diverse views.

Now we are moving towards an era where we've done a lot more work in CCWGs and obviously with the IANA transition, that's proved incredibly successful. But I would argue it's proved successful because everybody engaged at an early stage. It was such a big issue that everybody wanted to engage. And there was a desire I think throughout the multistakeholder model to make sure that was a success. And certainly it delivered the result that everyone was aiming for.

But we need to be very aware that if the GNSO's role in leading the policy debates are challenged, then it challenges the whole ethos of the multistakeholder model. And certainly there are a number of people around this table who work in other forums which claim to be multistakeholder and do it in a totally different way.

One of those are – well is the UN organizations themselves and those of us that have had experience in that certainly we can contribute and they do claim it's multistakeholder. But at the end of the day all of the decision making process comes down to government. So you can contribute, you can actually direct the debates but what's on the table finally four agreements is purely down to government saying yay or nay for changing things under their direction.

If you have a true multistakeholder community coming together where it's balanced than that clearly shouldn't be the case. And we face some real challenges in that area. We will come onto the issue of IGOs and INGOs in a little while.

But against that background I'll just hand over to Kathy to say a few words.

Kathy Kleiman: Okay. This is Kathy Kleiman. And the (unintelligible) the GNSO's traditional policymaking leadership position at ICANN, but the subtitle is dilution of the GNSO's role. We all spend a lot of time together, and we have some of us for many years, some of us more recently working on consensus policy.

And there seems to be a real sense - this is like our kumbaya moment I think because I think we are vested in the work that we do. And there's a sense that it's eroding from different directions. And so we are going to do - Tony talked briefly about the CCWG - we're going to do like little mini kind of talk intros.

Phil is going to do one; I'm going to do one, just to kind of keep it interesting, and then open it up for a discussion of, you know, is our role diluting and, you know, what can we do about it.

So, Phil, go ahead please.

Phil Corwin: Yes thank you, Kathy. Phil Corwin for the record. And my brief remarks will refer back to the IGO situation. I'm not going to go - I've already - hopefully everyone remembers the detail I went through very recently on it.

But just to recap, there's two separate issues for IGOs. The first, there is already conflicting GNSO recommendations and GAC advice that's on permanent protections for IGO names and acronyms in the new TLDs, where that's been outstanding for almost three years. The Board did not accept or reject the GAC advice; they did not send the GNSO policy recommendations back to Council.

They did conduct backroom conversations with the GAC and the IGO Small Group with no corresponding discretions with Council and with no real knowledge in Council of what was going on in those discussions, which came to no results other than last October Steve Crocker sending a letter to Council thing we've been having these discussions, there is no conclusion, and here's these IGO Small Group recommendations on the IGO – the CRP stuff. And we hope the working group will take them into account.

We did take them into account and there's a whole section in our report that discusses how we considered them and why we didn't adopt them. But now we have this facilitated discussion going forward with very unclear ground rules. And it raises, to me it raises two issues.

First, the Board has essentially -- and it's not just the Board, there's been some Council input, but there's going to be a discussion and it's not clear what the aim is. But if it sets a precedent that when there is Council recommendations on a policy issue and conflicting GAC advice is this going to set the precedent whereby the Board says to the Council and the GAC, you work it out and come back to us with a solution?

And putting aside the question of whether the Board is adequately facilitating - fulfilling its responsibilities under the bylaws without approach, that essentially sets the Council and the GAC as equal – co-equals in the negotiation.

Whereas my reading of the bylaws is that the Council has the primary proactive role in recommending policy and the GAC, because this is an organization that's not dominated by governments, has an important but nonetheless secondary reactive. And when you put them in essentially negotiations to decide something, in my view it's diminishing the role of Council and elevating the role of the GAC.

The other issue is on – and this is what I'm more concerned with – is that there's going to be discussions in this discussion group, which is not provided for in the bylaws, of the CRP issue. And to the extent it goes anywhere beyond just one side in forming the other of its views, to the extent that -- and I've seen emails suggesting that at least some GAC members have greater expectations than that; they expect some type of resolution to come out of it - that would be really an intervention in the midst of an ongoing PDP that would attempt to resolve the issue before the PDP, before the PDP process has run its full course.

So I'll stop there, I think that lays out the issues raised by what's going on.

Kathy Kleiman: Terrific. Thank you. Kathy Kleiman. Thank you for that intro to kind of the GNSO vis-à-vis the GAC and kind of the big questions that we're looking at now in a specific example but perhaps overall for the future when the GAC wants to enter the policymaking arena and doesn't want to participate directly, because we heard this morning that they didn't choose to participate much with the working group.

Phil Corwin: And let me just add, one, I think the fact that those discussions between the board and the GAC and IGO Small Group were going on during the course of our PDP may explain why we didn't get any participation in the PDP by GAC members or IGOs an official capacity despite our outreach encouraging them to do so.

And, personal opinion, based on what I saw and heard in Hyderabad where I had a long discussion with the Chair of the GAC on this IGO issue just explaining my perspective on what our working group was doing and what our charge was, I think frankly that there is a little bit of muscle flexing going on by the GAC where we are now in the post-transition ICANN.

We know that they didn't like some of the outcomes particularly on -what's the – Steve, what was your term? I'm blanking out on the term for – stress test – Stress Test 18, where the GAC was not fully satisfied with the requirements for the degree of consensus they must reach for the Board to be required to make a decision on their advice. And there may be a little bit of testing, you know, pushing the envelope here to see if they can expand their role in the new post-transition ICANN. That's a personal view.

Kathy Kleiman: Terrific. Before we dive into - I know a lot of people have IGO INGO discussions and this is really kind of in some ways the continuation. As Greg

pointed out we started it two sessions ago at the end and we may be continuing it here which we can certainly do. But while we are still mapping out the big picture of perhaps competitors to the GNSO and the policymaking process, I want to point out, although they're not necessarily a competitor that the At Large now has – up for public comment – has a review of the ICANN At Large community where it looks like they will be looking for a greater role in the policymaking.

So they still want to do policy advising but it looks like they'll be using their staff to draft more position papers and help their members become more involved in the policymaking process. I don't want to comment on it; I just want to alert you to the fact that this on public comment right now and urge you to read it and see, you know, see what you think, see what we think.

The other example I wanted to give, again, while we're mapping out big picture is is it possible that private contracts, particularly registry agreements with ICANN, could also be used to diminish the GNSO's leadership role and change consensus policy?

And the one example I wanted to give, although other people at this group I know have very good and strong examples which I hope we will bring up, but the one I want to give is Minds+Machines. This is dotVIP, although they've written this in to Minds+Machines at both the front-end and backend, they manage their own registries but they also manage the backend of many registries. And to the best of my knowledge, although I haven't looked at all of their registry agreements, I've looked at a lot of them and they put this in for both whether a backend and a front end.

So they put in public-interest commitments, Specification 11. And in section 4 of dotVIP, it's in different places in different agreements, but always in the

public interest agreement, it says, “The registry operator,” which in this case is Minds+Machines Limited, “agrees to perform the following specific public-interest commitments which commitment shall be enforceable by ICANN and through the PIC DRP,” the PIC dispute resolution process.

And what I wanted to draw your attention to what is H, one of the elements that they're agreeing to that they've submitted on their own. And it's to prevent registration of exact matches of IGO names at the second level according to the list to be provided by the GAC as per the GAC Toronto communicate of 17 October 2012 except by authorized representatives of the IGO in question.

This is in the private agreement. So to what the IGO INGO Working Group is doing, if this provision were to be in every contract of every registry, what does that do to the GNSO consensus process? And if you want me to send out the link I'd be happy to. So a blocking of exact matches of IGO names at every second level of every, to the best of my knowledge, every Minds+Machines top-level domain, new gTLD.

So with that, I will pass it back to Tony. And I think we're going to throw it open to kind of other examples and what we do.

Tony Holmes: Thanks, Kathy. Phil, just to make sure everyone is a - we are aware of this, the level of engagement by GAC within that earlier debate was pretty minimal. The engagement appeared to come later, but there's always an issue around engagement by GAC. And I was going to ask Markus actually to comment on that because one of the things that we're often challenged with is the statement that nobody speaks for governments other than that government.

And getting GAC engagement on the same level, the same interaction that those other groups do in the multistakeholder model, appears to be a challenge because of the very nature and the way that governments operate.

And, Markus, you have a lot of experience in the government sector. Is that, in your mind, a valid response whenever we look to get GAC engagement in a similar level early on in the policy development process?

Markus Kummer: I cannot comment on what happened on this IGO on the past. I was not part of that, but obviously it's something that is not to be repeated, the whole history. But one of the problems is governments function somewhat different from other stakeholders. And it's not that easy for them to reach consensus. And also they sometimes use different language.

And we have that's when of a Board we respond to the GAC communiqué. And we have now installed sort of a post-communiqué call where we try to find out what did you actually mean when you say this and say that? And the GNSO comments actually on the GAC communiqué are also very helpful; they help also to provide context and to help us to provide an answer.

But there is a difficulty in communication because they function differently. However, and I would agree with you what you said, the IANA transition has actually proved that it is possible to work together and the CCWG has worked remarkably well. It has brought down the walls between the different stakeholder groups.

Now there is, and that came up yesterday, you know, CCWGs are not the answer to all the problems. But nevertheless it has shown that we can actually work together across stakeholder groups. And looking forward I think the way I didn't IGO has evolved is not the way to repeat it. But I think now also you

have liaisons of the GNSO to the GAC and vice versa that you establish maybe a kind of early warning system when issues come up that are of concern to the governments that you try to bring them in into the dialogue earlier.

And it is of course regrettable what happens you invite them and they don't come. And it's possible that this parallel process has prevented them from engaging. But some kind of form up early engagement. And we have a discussion, was that in Hyderabad or was it in Helsinki when we had the board and GNSO meeting and then GNSO Council members said well, if we do it together then we hit the wall earlier. But I think it is preferable to see the roadblock earlier where you may have a potential problem, than see it at the end of a process.

Here with the IGOs, I think one of the problem is – and that may then also diffuse the tension, the Red Cross issue is separate from the other IGOs. And I think that should be – we should be able to resolve that issue because there the situation is clear, and once that is resolved, it may be easier to facilitate the talks actually lead to a better understanding.

Yes, as I said earlier, we have a mismatch of expectations. Some GAC members thought that engaging in this talks would actually mean that you accept an outcome, which is not the case. The intention is just to reach a better understanding.

But again, if it the precedent? You often say, no it's not the precedent that then it is a precedent. The fact is, it is happening. But let's make sure it will not be repeated. I think let's go forward and let's learn from that I would say unfortunate IGO episode, which have been with us for far too long. And let's make sure - and let's also build on what we gain from the cooperation during

the IANA transition and find a way of working together at an earlier stage when something comes up.

That you mentioned at the beginning what the UN, now the ITU also says, we have multistakeholder. And of course they don't have multistakeholder processes because they are the governments are in charge. But within the UN framework, the IGF is a multistakeholder process.

Tony Holmes: Right.

Markus Kummer: What we learn there what works well is that everybody sits around at the same table. That is what happened in the CCWG. But the traditional ICANN process is each group is in a silo and then you have the dialogue at the end of the process which can then be problematic if the other group has a fundamentally different opinion.

So going forward I think we need to find a way of having more interaction during the process and informing the various groups what's happening and with the liaisons, it might be a step in the right direction. Sorry if I've been too long and too fussy but it is a complex issue. Thank you.

Tony Holmes: No, and thank you for that. And of course within the UN context the fact that IGF sits there but is non-binding makes it somewhat easier than some of the other policy development areas. Tatiana. Is it – or Avri? Who's speaking at the end?

((Crosstalk))

Tony Holmes: Okay, David.

David Cake: Yes, I mean, I think Markus presents sort of the situation there pretty well. We understand that the GAC, the governments, you know, interact with the policy process in a different way and have a lot of limits in the way they do it.

We've spent a lot of time over the last couple of years particularly when I was part of the leadership team of Council, we worked very hard to, you know, work out how to go forward with other PDPs and to ensure that - give a lot of mechanisms where we can get the GAC involved early, bring them into our processes in useful ways so that even if, you know, they can't individually come and sit in on a bunch of meetings they can have many opportunities to express their opinions on things.

It still continues to be rocky with GAC input coming in very late in the process sometimes and that being quite problematic, the input of the Public Safety Working Group into the PPSAI, you know, was one point where that became quite an issue.

It's an ongoing problem but we do - we're left with this sort of lingering example of how not to do it sort of sitting there, and how do we get out ourselves into this - out of ourselves into this, you know, awkward situation, you know, driven into a cul-de-sac in a car that doesn't have reverse, and now we're trying to work out how to get out.

I don't really know what we can do other than, you know, slowly carefully use what GNSO mechanisms we can to revisit things that may need revisiting. I think we do have some slightly new tools than we had when this whole thing started; the great work of the Policy and Implementation Working Group gave us a couple of those.

Yes, we really need to treat the problem – but we have twin issues of how do we move forward from here? And that’s an ongoing effort which we’ve put a lot of effort into but still continues to be less than – less than perfect in its results in the way we interact with the GAC and this lingering problem that I really don't know how to get out of and it’s just we may need to be a bit flexible, but we also need to be – bear in mind that this is a very important chance for us to make clear how the GNSO believes the process should work and why it’s a good idea to use that process and not, you know, try and sort of root around it and other things like that.

So my – I would just say we need to consider how we go forward and how we deal with this one as quite different situations and how we go forward is a big issue but we need to make sure we move with the same principles on both.

Thanks.

Kathy Kleiman: Great. Thanks, David. Klaus, you've had your raised for a while.

Klaus Stoll: Old one.

Kathy Kleiman: Old one. Okay, Greg.

Tony Holmes: One’s down.

Greg Shatan: Thanks. Greg for the record. I have a problem with the name of this particular session. This is not about the GNSO’s - you didn't have to take it down. This is not about a traditional policymaking leadership position; this is about a constitutional policymaking obligation, a raison d'être of the GNSO. The GNSO is not primarily or an affinity group, it's a multistakeholder group.

It's a support organization with a job and especially particularly the job of the GNSO Council is to manage the policy development process, not a policy development process, but the policy development process for gTLD policy; not a CCWG, not a small group, not a bilateral negotiation. There is a policymaking process managed by the GNSO Council.

Some people have heard me talk about things I don't think the GNSO Council should do. But the GNSO Council has primacy in the area of the things they should do which is to manage policymaking process for gTLD policy.

CCWGs may have showed that we could all get together in a room and talk with people. But another confusion about the GNSO is the GNSO working groups are made up of GNSO members. Now there's a certain superficial logic to that but it's actually completely absurd and it is not true, and it is not constitutionally true at all.

GNSO policymaking working groups are for the entire community to come to consensus, community consensus, on a policy development set of recommendations which then go to the Council. If we want to have people sitting around in a room from the entire community making gTLD policy, they come to a GNSO PDP working group.

Now I understand why some groups like the CCWGs because they are also chartering organizations which means they get an up or down vote on the end product. And the GNSO is the only Council that gets an up or down vote on the end product of gTLD policy. Why? Because that's their job; because that's within the bylaws.

You can start throwing the bylaws out like used tissues. You know, this is -- we've just gone through - we paid \$14 million to corporate governance legal

experts. We could pay them another 2 cents, and they would tell you what I just told you. So this is so basic.

So we really need to look at what's going on here. You know, this is about -- this can't be about power-sharing of power that is uniquely delegated to the GNSO. Now it's important to manage a process that is open and inclusive and that brings people in. You know, we can look at the PDP process, but the end result of the process is the policymaking recommendation that goes to the Board and the bylaws are quite explicit about what the board should do with recommendations that come from the majority or supermajority votes of the Council.

They completely have not done that in relationship to the first IGO INGO set of recommendations. We are halfway into the second policymaking process. But the small group is really supposed to be about the first process from which there are temporary recommendations of the GAC, which overrode the unadopted recommendations of the GNSO policymaking process temporarily for the entire first round of the new gTLD program.

To question what temporary means, it's like saying something is temporary for the duration of the war. So this is - so something is amiss here. We need to get away from the idea that CCWGs have anything to do with gTLD policy. We need to get away from the idea that we're going to have something like the empowered community that does gTLD policy. We might as well just disband the GNSO or say - we ask why are we here, CSG and NCSG, that's why all these groups under some single umbrella, the answer is because they are support organization to develop gTLD policy.

That is the one thing. That is the one ring. It's the one true piece of work that we have to do. And that's what we have to guard, not jealously but so carefully because we have been entrusted with the. Thank you.

Tony Holmes: Yes, Greg, I totally agree with what you say. The bit where it gets a little bit hazy is when you look at the advisory role and what that really means, because certainly if it works the way you explained it, and it should work that way, and you get early engagement of all the parties it shouldn't be an issue. The problem that came I think from the situation that Phil took us through was partly we didn't get that engagement and then on the back of being able to have an advisory role later it was coming into the process late.

And not only that trying to have it would claim not only a second bite but a third bite at the whole thing again. And that's where it gets really messy and really mucky. Renata.

Renata Aquino Ribeiro: I want to bring a few stories which are - which I thought initially were non-related but, actually some quite interesting. The new countries that are not on the GAC like Boliva for instance is not on the GAC. There are a huge number of fellows coming from Bolivia and being structured this - their participation on the GAC. And also fellows from civil society have come to me and said -- and I already spoke to (Dave) and Avri about this -- we need to learn about the GAC because the GAC is influencing ICANN.

So there's an outside perception about the power of the GAC which I believe is changing in sort of a new movement that the GAC is doing to or influence ICANN. And also and I believe this is very important we used to say no, things are where they are. We are here GNSO and the GAC is there so we're not really following along all the sessions of the GAC and things our civil society would be interested in and CUC and NPOC issues or since you are

interested in the GNSO follow the GNSO. That's not really happening anymore

People are doing this sort of - and by people I mean the new fellows, people who are coming to ICANN now. There is an increase in dialogue but, there's an increase in perception of influence and also that there's an observer group in the GAC that used to be something impossible to get in because it was a small observer group to the GAC. But now theoretically everyone wants to get in this group and join the GAC sessions and see what how the GAC is (unintelligible). I'm not sure this was a transition effect or what but, it's very again it's external to the discussion and these are my impressions from fellowship coaching. But I thought it would be interesting to share.

Tony Holmes: Thank you. Steve?

Steve DelBianco: Steve DelBianco. Renata the GAC is maturing as any institution is want to do once it begins to gain experience. It's maturing and it's finding its place in ICAAN. It's also raising its voice and that's not new. It's been happening for the last few years. We saw it most evidently in the .amazon situation. It was that that drove us I mean, in particular to event Stress Test 18 is the very first thing we need to do with the leverage acquired through the IANA transition and that was to ensure that the GAC couldn't just switch it rules to majority voting or something less than full consensus.

And the other thing was to make sure that the GAC was carved out of the empowered community decisions making process should we in the community decide to challenge a board decision to implement something that the GAC has asked for. So I only say that to you in that that's new with the bylaws but in fact there are new mechanisms in the bylaws specifically

designed to contain. That's the word, to contain the power of the GAC so I think we're in better shape than you think.

And then I - Greg brought up this notion of not liking the name of the slide. You can leave it up there but it - it talks about traditional policy-making leadership. And there are probably 2/3 of the people here don't even remember or know that the word policy with a capital P was GNSO's unique power. It's almost unheard of in circles other than ICANN, this notion that contract parties, registries and registrars would acquire a contract that has a special clause in the middle of it that says that I know you've signed this contract. The terms are all locked down. You're going to invest a lot of money to develop this space in your business but, at any time the community can develop a policy. And if it fits within the consensus policy within the picket fence you have to follow the policy.

You don't get more money. You don't get to change things around. You just have to follow the policy. Now that's called consensus policy, not just policy but consensus policy. It's only been done a dozen times in ICANN's history. Many of you remember they got rid of domain name tasting through the add grace period through that.

And we ought to exercise that muscle more frequently. It is the ultimate way that the community of registrants and users who are the only people on the planet that matter in ICANN. They're registrants and users. Everyone else is a vehicle to serve registrants and users. But anytime the registrants and users want to have a traditional policymaking leadership position we know what we have to do. GNSO develops a consensus policy that drives through the picket fence. And nobody else has anything to say about that. There's not a cross-community working group. It's GNSO's job to drive that.

Now getting that through a council where half the votes are contract parties is going - is challenging. And that's one of the reasons there've only been a dozen times that we could drive a piece of policy through the picket fence. But that particular kind of policy is often what contract parties here when we talk about traditional policy-making.

But, there's a whole different policy that we're also discussing, a policy like what's going to be in the guidebook. We think of that as policy too. What are - how we going to handle the special rules for IGO and NGO? That is also policy but it's not consensus policies driven through the picket fence. They're just policies that effect the way ICANN is working around the edges of its contractual relationships. So we have both kids, the traditional consensus policy and all the new evolving ways that we do it. But Greg's absolutely correct when it comes to the gTLD space GNSO owns that. Others may participate but we own that and we're not in danger of losing it.

Kathy Kleiman: So Steve this is our super power? Just joking.

((Crosstalk))

Kathy Kleiman: And Renata's had her hand up and we've got a question from Stephanie in the chat room. But just a question for Steve for later which is as we go into what can we can do some of the new mechanisms that you talked about in the bylaws maybe we can discuss those in greater length later on in the session. Thank you. Renata, thank you for your patience.

Renata Aquino Ribeiro: No problem, Renata speaking. It's a fascinating discussion and I can say that as a board member it's never a happy occasion for me to receive letters, advice from different parts of ICANN community opposing policy or aspects of policy that have been submitted by policy supporting organizations.

It's not a happy day. It causes headaches. It causes a lot of heartburn within the board itself. And then there's the issue of how do we deal with each situation.

My preference and I think I can speak for my board colleagues it is our preference that we do not have such a situation but it repeats along the way. And so the question is what is the problem within the policy development process itself that doesn't make let's - let me use the GNSO as the locus and forum for policy development. Why is it that the stakeholders who are the affected parties not converging there?

And some of the problems have been highlighted by the last GNSO review. And recommendations have come up to help address some of those challenges. Then amongst the stakeholders involved there are some limitations on the structural like the GAC. We know how they're not able to engage. And so, I think if you want the GNSO to be relevant as the focus and locus of policymaking some flexibility in how policy is developed needs to be accommodated.

And I think what I'm hearing is that you are open to this because you're talking about GAC early engagement and so on and so forth. And I think I see also briefing sessions with the GAC at some ICANN public meetings. I see there are meetings where you talk to them about issues. And I think that's a good thing.

Another thing that you could add to it which is already experimented upon is that ICANN has a middle meeting which is the policy forum. And if you could use that more extensively to engage the various stakeholders in policy discussions that could really help in making sure that there is overall

consensus across the stakeholder groups on gTLD policy coming out. That's just a perspective.

Kathy Kleiman: Although with respect - this is Kathy. If the invitation is issued and not responded to that does make things difficult. But go ahead.

Renata Aquino Ribeiro: But do you know why that they don't respond to it?

Tony Holmes: My hope is that that's something that's really been historical and why it happened I can't explain. And from the conversations I've had with (Phil) it was never really understood in the early days of the ING debates. I hope it will get better but at the same time we may be in a situation where we still have to address that situation when it occurs which I agree with you is a really difficult one and there isn't an easy way out of that situation no matter what the issue is.

Renata Aquino Ribeiro: Agreed. And from what my understanding is from board discussions is that if such a situation were to happen we would just encourage the GAC and the GNSO to talk to each other more and to understand what the problem is and see how it can be overcome.

Tony Holmes: But when you say the problem is that the problem where they didn't engage or the...

Renata Aquino Ribeiro: Yes.

Tony Holmes: ...actual issue?

Renata Aquino Ribeiro: Yes exactly...

Tony Holmes: Right.

Renata Aquino Ribeiro: ...because that's the start of it and then you can move further into solving the policy aspect.

Tony Holmes: Okay, thank you.

Kathy Kleiman: We have lots and lots of...

Tony Holmes: Well Stephanie's raised her hand in the chat room. And Stephanie are you able to come in online?

Stephanie Perrin: I think so Tony.

Tony Holmes: Yes, you're there. You have the floor. Thank you.

Stephanie Perrin: (Unintelligible) muting. Thanks very much, Stephanie Perrin for the record. I have a number of points I want to make so please bear with me. In response to what Renata had to say it's my view -- and I worked in government a long time -- that the GAC is one of the most unique assemblages of government folks working internationally out there. I don't know how people understand it without a primer. We had a very good session on how we need a primer on intellectual property law. I think writing a primer on the GAC would be extremely challenging. I think we should give that job to Markus Kummer because he's much more diplomatic than I am but I think understanding it is important because they do have a role as has been stated. They are flexing their muscles. And I think what I am deeply concerned about is forum shopping on the part of the GAC. They have repeatedly said they don't have the resources to join PDPs. So I think that continued invitations to engage

early are not going to result in too much in the way of input. But I could be wrong there. Maybe I'm being pessimistic.

Recent experience in securing their cooperation in getting the data commissioners to come to Copenhagen has not made me particularly optimistic. At any rate I'm concerned still about the episode of GAC overruling of PDP over the privacy proxy services accreditation. That's a concern. It's still working its way through the implementation and review group. And I would hate to have these things proliferate because we don't have the bandwidth to keep up with managing them.

The other thing that I think I'd like to get back to is what do we do about these what I would call forum shopping, these bilateral arrangements with new registries? I was concerned enough about the GAC's influence over the registration accreditation agreement and how that doesn't go through the kind of policy process that I would expect it to. But this is even much more concerning. If the individual registries are starting to just self-adjust to different policies then ICANN is setting through its PDP process then we might as well all quit and go home. Thank you.

Kathy Kleiman: Thank you Stephanie. Let me just recite the queue, share the queue based on where I think people are raising their cards. Vicky, Erika, Susan, Ed, Avri and David.

Greg Shatan: Got my card back up.

Kathy Kleiman: And Greg. Vicky are you - is that your card raised?

Vicky Sheckler: Okay, thank you. I think that it is a fact of our life that we are going to have to deal with the government whether it's via GAC or some other form, question

which one we want. And we ought think about that and that the GAC I don't practically can work within the GNSO contract because of the timing. It's (unintelligible) of, you know, the constituencies that they have at least based on my limited understanding of it.

So I'd like to echo what David said maybe an hour ago. I'm not sure how long ago it was that I don't know what the answer is either but I think we need to try to find a constructive way to move forward to either sensitive the GAC representatives to where we're going in our PDP process outside of a - you know, a formal having them work in the group or trying to develop more practical approaches to at least hearing out the concerns that are raised instead of saying they're too late, we're not going to listen to them or, you know, forgive me Greg, you know, we're the fun loving people that get to decide everything, wish that was true but it's not. It is a reality that we have to deal with. And I would love to hear brainstorming in this group about how to engage with the GAC in a way that we hope will be constructive and to support the PDP process. Thank you.

Tony Holmes: Just a comment on that. I mean we have tried to build some bridges there. Certainly we now have a liaison from the GNSO to the GAC that should help bridge some of the issues there. And of course whenever there's an ICANN meeting then GNSO meet with the GAC there's a lot of discussion about the way they craft their agenda but it's also a two-street if GAC want to ask any questions about any stage of any issue that's under policy development that's an opportunity to do that.

So it - I thinks the basic steps are there. It's actually a case of getting them to engage from their side as much as anything else. So, you can take a horse to water but making it drink is difficult. Vicky?

Vicky Sheckler: From my limited experience it has often been that the GAC members don't even know what's going on and that...

Tony Holmes: Yes.

Vicky Sheckler: ...the don't know when they're going to care because they don't know when the issue's coming up.

Tony Holmes: Yes.

Vicky Sheckler: So for the issues that I care about I will reach out to the GAC members and not just my own say are you aware of this? Is it something that you want to weigh in on? And whether they do or not is a different story. But it may help preempt a problem on the going forward because as an example. Like I don't know if that's the best solution. That's what I do.

Tony Holmes: But any dialogue is always helpful but we shouldn't rely on informal dialogue to bridge that. There has to be something beyond that. And the hope that the GAC liaison helps establish that I think was a (unintelligible) of the thinking that went in there. Erika?

Erika Mann: I mean the GAC is a strange animal. It's part of the process but at the same time it wants to stay independent and only wants to get involved in their own particular way. Governments like to communicate. And it's even more particular in the ICANN environment than I'm typically used to. So I wonder what we can do to foster to become in a more coherent way part of the official process?

And I wonder if we shouldn't just each time notify them because that's something they're used to. They're used to notification procedures in a

government. So if their PDP opens we just notify them, they will way what are they doing. We're not part of it. We don't care.

But we tell them what we do. This is the process. It's here. You have time to intervene. They will say but we don't want to intervene. Okay. We say, oh okay you don't intervene. It's up to you but that's the process. From our point of view it's totally observation from our angle.

And it might at least then force them to see a communication channel and they might take it or they might not take it. At least it's us giving them a kind of agenda because otherwise we are frustrated because we see beyond the other and we don't have the opportunities we would love to have and then we face conflicts. So I would turn it a little bit around and taken - take this as an opportunity for us to introduce an agenda.

The second would be I don't think it would be wise to for a bit informal debates and informal channels because this is important and sometimes you need this. But, again I think if the GAC wants to have an informal discussion about a conflict or topic with the board I think there should be an obligation to notify us so we are informed. We then still need to figure what we do together but, at least it's not something that was just happening and then we are confronted with the reality we don't want to be confronted with.

So it's again something I think we have to do. And I had another point. So my plea would be to formalize agendas a little bit more to make clear what we expect and what we want. And if we don't get what we want we shall express that we are not satisfied and we should express it totally clearly. We don't have to be shy or polite. I mean that's just part of our business reality and the way we are working together.

On the advice part I think this is still a tricky part. And I was just trying to review again. It's very clear what advice means although we have fought in the - on the board many times about what advice even from a GAC means. But I think it becomes in the post transition period maybe even more problematic. And I think we should again review what actually - we don't have the DNS or I'm (unintelligible) for it we don't have the same possibility of - as advice, at least not to degree like the GAC then use it. So the question what is analog actually to it? I leave it to you.

Tony Holmes: One of the excellent things that the ICANN Policy Staff produced before ICANN meetings now is a brief on all of the issues that the GNSO are working on. It gives the basic tenor of the debate and it brings you up to date where you are. So when you get to ICANN you can actually pick up on the straights really quickly. I'm not sure whether that is copied to the GAC. I don't know whether anybody...

Woman: (Unintelligible).

Tony Holmes: ...can answer that. But that might be something that would be useful for them as well to realize where exactly the issues are positioned. Erika?

Erika Mann: But a notification is something else. I think you trigger a moment in time where you say we notify you. And please be aware, you know, this process started and we expect from you. Why not even saying we expect from you?

Tony Holmes: I think that's something to follow-up on.

Erika Mann: Well we don't expect or...

Tony Holmes: Okay, thank you. Ed?

Ed Morris: It's - sorry, (unintelligible) get this. Yes thank you Erika. I think a notification process is trying. But, I'll tell you I don't have a lot of hope. I don't want - I hope none of us are trying to criticize (Thomas) and the work he's done on the GAC because (Thomas) has done an amazing job in my view of opening up the GAC, the public markup sessions. But he has a problem.

If we want to have a liaison to the GAC to be effective we need to have 100 plus liaisons to every GAC member because it's hard to impossible for the GAC members to speak without consulting back home and then coming together. It's a difficult environment for them and we have to recognize that and I think there has to be a lot more one on one conversation. Notification not to Thomas but to the GAC members themselves individually. That might be worth it and it'd be a good idea. Oh, it's - then let's do it. Let's bring it forward and try to make that happen.

Erika Mann: (Unintelligible) yes.

Ed Morris: Well we're in council together so we can sort of make that happen. All right. I want to talk a little bit about the GAC advice which I've heard is some concern. And Steve mentioned something that Steve it's probably been our little secret we can share. We're going to let you in on something though that those in that knows as well and those of us...

Man: (Unintelligible).

Ed Morris: You know, I will take credit in the NCSG and we show how we work together. We were most of us well, except one or two of the NCSG members in accountability were really upset with the increase in GAC powers.

Kathy Kleiman: Yes.

Ed Morris: And Steve and Becky worked with us and we came up with this wonderful little GAC carveout. And so Renata what I want to say is the GAC carveout is largely us initially that others picked up on because we were just entrancing it on the government power. We were going to stop to transition if they get it done more power.

Kathy Kleiman: (Unintelligible).

Ed Morris: And we were listened to and we had a great working environment on the accountability project large. I - at least I believe we did. And so here's the little secret. The GAC has less power now than they did before. You know, don't tell anyone. It's a little secret. They can't change their unanimity requirement for GAC advice. They can hop up and down but one little government out there can stop the trigger of the most important part of the GAC advice.

And so I'm not too concerned about the GAC's increased powers. I'm definitely concerned with what Kathy brought up earlier. ALAC is turned from an advisory group...

Kathy Kleiman: Yes.

Ed Morris: ...to this. I don't think it's the monster we may think they are but, I think they think there's a monster. And I think they have a perception that gee whiz, we're now more in the policy than the changes allow them to be. So I think that's something we have to try to communicate respectfully because I've noticed when you deal with ALAC people they want respect. We want to be

respectful towards them. But we need to make the point that Greg pointed out that we're policy guys here.

Kathy Kleiman: Yes.

Ed Morris: At least for the (main) line. And it welcomes you in our working groups but they're not welcome to head our working groups. Well actually they are but they're not welcome to do the PTPs, make the proposals and run it. They don't have a final vote. That's where we come in. We have different areas of responsibility just like I think sometimes in the GNSO we're stepping a bit out of our bounds and giving advice where maybe we shouldn't be giving advice. It's something we may want to think about.

But I do think that we have given ALAC more power, 20%. I mean, I was upset when I first came into this this was a done deal. ALAC is an equal participant. They'll have 20% of the vote largely in the empowered community. They are about half the size if not more so than that of the NCUC which is a part of the NCSG which is a part of the GNSO.

And so in terms of representation I hope that their review will make them more representative and can bring more people in to justify their 20% of power. But again in terms of the I - most of the conversation is concerned the GAC advice again our little secret of, yes, don't worry about it and can we - do we have a transcript? Can you sort of submerge this power? We don't want to let them n- we don't want them to know. Thank you.

Tony Holmes: Remind me not to share anymore secrets with you Ed. Can I just remind people to introduce themselves as well? Susan?

Susan Kawaguchi: Susan Kawaguchi for the record. So I am concerned about the GAC advice.

And we saw that with the PPSAI, you know, that working group. (Ellie) barely showed up and didn't say enough. And then, you know, we got to the, you know, IRT and GAC had calmed down and agreed to participate more on the IRT not that they could go back and change the recommendations or make new policies within the IRT but, there's definitely a lot of nuances they could have - they could provide in the IRT.

And I'm not - I'm participating in that and I'm not seeing that. I've reached out several times to (Ellie) and, you know, trying to get some sort of balanced engagement and it just doesn't seem to be happening. So if we backed up and looked at the GAC advice they gave on all the PPSAI even if we had agreed with that and everybody on the working group had agreed with that -- and I'm not saying we did at all but still just having a set of GAC advice to be inserted into a PDP wouldn't work. There's too many nuances. There's too many compromises. There's too many ways of, you know, of it needs to be discussed sometimes more than other issues.

And so, you know, GAC advice is great if we - so we understand their mindset but it doesn't work to just say here's our GAC advice, implement this. And because we would have had a zillion questions. We would have had to go back to them and do a working group just with the GAC. So that is not going to work to develop policy. And I would hope we are not going to run into this situation again. I mean we have the INGO NGO issue right now and but going forward I am one of the leaders on the - a vice chair on the RDS. And we are as the Leadership Team we are very conscious is GAC showing up? Who's here?

And we do have one or two (David) you know, that - and but I know that's something that we sort of look at and probably haven't sort of really checked

in the last couple months. But, are they engaged? Are they showing up? Are we going to run into a problem? So, hopefully if every working group sort of keeps that in mind and goes back and say, hey, hey, hey, you know, there's a process here and we're not changing it for the GAC, you have to sort of fit into our process or we agree as a community and as the GNSO that we will change our process but as far as I know we haven't decided that a PDP is not the way we develop policy.

And, you know, Renata you said they can't engage. I'm not sure that's true. I think they can engage and I'm not a GAC expert. I never worked for the government but I think they should engage the same way we do. I mean I show up on a working group. I have, you know, I step out of my role as a BC counselor, as a member of the BC and say this is my independent, my Facebook view. But I also go back to the BC and say is this the view that the BC wants represented? And so, you know, we go back, you know, and sometimes that view is not truly what I would argue for for Facebook.

Tony Holmes: Right.

Susan Kawaguchi: You know, I may narrow that or broaden it. And so I think they should be able to do - I just don't understand why they can't do the same thing, go back and talk about it as the GAC so, and use their own liaisons.

Tony Holmes: Thank you for your...

Renata Aquino Ribeiro: Just a comment.

Tony Holmes: ...remarks.

Renata Aquino Ribeiro: Tony it's Renata. I just have to say I didn't say they can't engage. I said that there are structural limitations that limit their ability to engage in the way that other people do. And the explanation for that is representation. Can someone who represents a government from Finland speak for someone who represents the government of Malaysia? And they need to have some kind of agreement beforehand to do it. And I think they're having challenges internally in figuring that out.

Tony Holmes: And that was exactly why I asked Markus to come in on that point. It was really that issue. But your remarks Susan certainly about how any advice is then interpreted really gets to the nut of the whole issue. So we'll swap back from side to side. Tony?

Tony Harris: Tony Harris for the record. I'm going to take us back only a few years to something which points to GAC intervention and which I don't think the GNSO was aware of what was going on. As an applicant most of you know I applied for a TLD which has geographical implications. It's .lat. So obviously I was monitoring the Applicant Guidebook very closely when we got to the point in Singapore where it was announced that the new round was finally going forward to the - to my joy and of several others and the not so much joy of some other people.

But eventually what I'm trying to get at is overnight exactly overnight from that announcement and next year I look at the Applicant Guidebook and the GAC had a clause introduced where it said the GAC advice could be taken on any new gTLD and that if the advice suggested the TLD should not move forward ICANN should respect that and it was technically would be the end of that application. I think there were a couple of instances which I've already noted that happened as a result of that possibly Amazon and Patagonia.

But the thing is this was not in the guidebook the day before the announcement came out in Singapore. It was there an hour after the announcement. And I don't think that went through a public comment process or any of the usual ways we - the community looks at this. But effectively the GAC got power of veto because if you read it it's in Module 3 and Module 1 of the Applicant Guidebook that's easy to find. It gave them power of veto.

They could say about any application, any string that was applied for we don't like this and that was more or less the end of that application. And it seemed a little excessive because they had other things built into the application such as specifications of what you could not apply for. It was a United Nations list of names which had - which they've considered needed to be protected with two and also three characters. These were specified in the guidebook. But this was in addition to that and it gave them power of veto. I think that's a dangerous precedent and an example of where somehow that appeared in the guidebook and I don't think it went through the community quite honestly. I didn't see it anyhow.

Tony Holmes: Thanks Tony, just picking up on a comment that was made earlier from Marilyn Cade who made the point that government reps often require not just notice but also invitations in order for them to get authorization within their own governments for travel and permission to engage so just something else about the level of engagement there. David?

David Cake: Yes David Cake. So there is a real - I mean there is a - dealing with the GAC had definitely got - first I want to make one statement which is we have been talking about the GAC and this is very much the case. This is about the - I mean I think this is really - the conversation we're having here is about the GAC's relationship with the whole ICANN policy process.

ALAC and SSAC and so on they just turn up in GNSO working groups and play their part and, you know, there are occasional big rumbles that most part that system works fine. So it really is about the GAC processes rather than the GNSO ones. The dealing with the GAC's definitely got better but that's coming from a pretty low point. Dealing with the GAC via GAC policy advice I mean the thing that the GAC are not really aware of how different policy advice and policy are. And the advice mechanism is very frustrating. Sometimes it's like - I describe it as a bit like you're trying to have a conversation with someone who will only communicate by periodically erecting a billboard. And that gets very frustrating. And sometimes the - and often when that isn't working out the GAC response will be to just sort of offer, you know, a stronger advice.

We really mean it and which - and often that comes across - what we need is much - what we need is much more detailed because, you know, that's what we build. We build something much more detailed and more complex and it's very hard to get that information from the GAC or to have a conversation where you can discuss details of what, you know, they really want and bring it down.

And sometimes, you know, you say, you know, that the GAC sort of gives you more angry or more emphatic policy advice and it's a bit like someone sort of going, "Look, I told you to build me a house." And we're like, "What - well, can you comment on the blueprints? We really need to know where the - you know, where - how many bathrooms you want." They're like, "No, no, build me a house." You know, it's very frustrating getting what you need.

And that has got better but the GAC still really seems to find that the engagement, level of engagement we need. And I mean a good example is in these IGO - INGO things that great. Well we've got a huge pile of legal

advice. Can you tell us why it's wrong? And they're just like, "No, we don't like it, you know, is sort of where it seems to be at the moment." We, you know, a detailed critique or response would be something that we take very seriously but just saying and like it is not something - is very hard for us to deal with that sort of level of advice.

The really problematic thing is it not even - may not even be the GAC as a whole but also the way - and the way that it is resourced really does make it very hard for them to contribute. And in - and the GAC may in fact be really under sourced or with the wrong sort of resources to be a policy participant in the way they would like to be. And we need to find some mechanism which I think focusing on the GAC may actually be leading us astray. We really need to focus on government and how we can get, you know, government participation and then keep the GAC in the loop of how that's going on.

I - it - maybe rather than sort of getting, you know, the - whoever it is that comes and sits in the GAC for a week, what we really need is for them - is rather than them participating in the PDP, we need for them to go out to government and go, okay, Office of Privacy, maybe you should, you know - we need to find somebody to monitor this process. We need to put our channel in - where even if - you know, even if they were able to find some way to get - you know, official responses to things.

The government can't be - is not under-resourced but the GAC may be in the sort of resources we need.

Perhaps we need to sort of entirely - so maybe we need an entire change in thinking but the real difficulty is the people who - it may be the GAC that needs to really do that thinking about how they participate. And we can just

sort of be - we are left in a situation where we're a bit frustrated waiting for them. Okay, sorry about that.

Tony Holmes: In terms of the queue, going to give the opportunity to these people who haven't spoken so far. So Matthew, Avri, Poncelet and Joan. Matthew.

Matthew Shears: Yes, thanks. Matthew Shears for the record. So thanks, Phil, for now giving us two briefing on this issue. What really struck me - no, I mean that sincerely. What really struck me in this latter one was something that came through that I really...

Phil Corwin: I can give a third if you really enjoyed it.

Matthew Shears: No, no, that's okay. That's okay. Was the issue that at the same time -- if I got this correctly -- was the issue that at the same time as there was a PDP going on, there was parallel effort initiated by whoever to try and address some of those issues that had been outstanding and not been resolved?

This really points to a significant undermining of the primacy of the GNSO policymaking process and the PDP.

The reason why that's important I think is because as a number of people have mentioned so far, we are dealing with a new environment in which we have an empowered community. And we have communities within that community that are trying to exercise or flex their muscles or seek additional powers, particularly when it comes to policymaking.

So from my perspective, what, just an observation, it means or should mean that the board should exercise significant caution when it comes to trying to help address situations like this as they arise and really think twice or more

about trying to provide help that actually becomes a hindrance that then undermines the process.

And I think we all need to be very aware of this in this new environment. Thanks.

Tony Holmes: Thanks Matthew. Avri.

Avri Doria: Thank you. I think except for what Matthew just said, I'm probably going to end up in part disagreeing with just about everything that's been said.

I think we've got a perspectival problem. I don't think the problem is the GAC. I don't think the problem is the GNSO.

I do think that the board has led us astray. I do think that the board is the problem and I'll say it quite bluntly. I'll never be on the board so I don't need to worry about it.

Part of the problem is the board has put us in the position of organization versus organization that basically we're looking at GNSO recommendations. We're looking at GAC advice. We're looking at ALAC advice. The fact that the advice comes from the GAC doesn't really matter.

What really matters is were the ideas that were presented in that advice thought of, were they addressed. Did the recommendations that came cover those points? If it covered those points, end of story. If it didn't cover those points with explanations of why or why not, you send it back.

All the tools that we need are in place. There are the notifications. There is the early notification. They can participate. They can comment.

If they don't decide to - I sometimes can't participate because it's too late at night for me or because I can't stand the other people, lots of reasons for not participating. You know, the people in my family would say no, no, no, you got to talk to us not them. So there are lots of reasons everyone has for not participating. They don't matter because it's one meeting. It's one time.

They have plenty of time. It takes how long to do a PDP, a couple years? They certainly have time to go back to the capital and get their opinion on an issue.

And so we've - if we need another tool, we can make a tool. There may be a problem with teaching folks how to use tools. Not everybody is a tool user. Some people, you know, they haven't gotten to tool usage yet.

So - but I think the real problem is that we're looking at organizations instead of the ideas, instead of the recommendations, instead of the topics and the content.

And so the board's responsibility is not to look at GNSO, GAC, oh that doesn't work but basically to say okay, what do they say about this point, did they discuss that point, when discussing that point, did they actually cover the issues that the GAC is bringing up?

If they didn't, well then send it back to the GNSO and say you know, the GAC has talked about ABC and you never addressed ABC so address it and come back to us.

And there are even tools for, you know, the follow-on to a PDP. When some issue was forgotten and there was an implementation and then all of a sudden something else comes through, there are the quick PDPs. I forget the proper name for it. But all of that exists. We're not really using a lot of that.

But I really think that the board has to be the one to solve the problem and stop looking at organization versus organization. Stop playing the organizations against each other and say we're the board, we got the GAC here so we're not going to do what the GNSO says. We got the GNSO but we're not going to do it.

But basically look at the content and deal with the content of recommendations and go from there. And I really think that's more a direction that needs to happen than, you know, suffering over whose process is good, whose process is bad.

Tony Holmes: Thanks for talking to us, Avri. Poncelet.

Poncelet Illeleji: Poncelet speaking for the records. I just wanted to get clarity on ALAC within their 20% rule in the PDP process and how we engage them because Ed raised an issue that they have 20%. I didn't get that clear, yes.

Woman: (Unintelligible).

Poncelet Illeleji: Okay, thank you.

Ed Morris: I actually don't understand the question, sorry.

Tony Holmes: It was the reference to your remark about the ALAC and 20%.

Avri Doria: In the empowered community.

Ed Morris: Oh yes. In the empowered community, I think it's 20%. Let's see, five groups, 20% each in terms of power. No? Where am I going wrong?

Steve DelBianco: Would you like me to address that?

Ed Morris: Yes.

Steve DelBianco: There are five groups who have thus far decided to join the empowered community but when the empowered community makes any of the 12 enumerated decisions, we developed a rule that said that unanimity is never required.

Ed Morris: Oh, they lose three out of four (unintelligible)?

Steve DelBianco: And - no, one block - one group cannot block them.

Ed Morris: Right. But IA block is a group that (unintelligible).

Steve DelBianco: Each of the groups has equal power which is similar to what - without necessarily implying there's any wisdom here -- it's similar to what happened on the ICANN board, right? GNSOs two, CCNSOs two. You understand how that was all laid out. And then somehow eight for the non-COM or whatever that...

There were - each of these groups were given equal representation on the board and that was echoed in the EC.

Ed Morris: But some of us, if we were involved at the beginning would say that ALAC because of its reduced numbers per se as representation but more importantly because it's an advisory committee that is now involved in policy through the empowered community perhaps should not have had an equal say, the 20%, as

the GNSO. We argued that in the NCSG ad infinitum -- we lost -- for ALAC to have a reduced power and for the ACs to have reduced power. And we lost.

Steve DelBianco: At the time the CCWG had a bunch of ACs -- the SSAC, the RSSAC, the GAC and the ALAC -- and they were all part of a CCWG handling the transition. And demoting the ACs below the SOs was a nonstarter. We wouldn't even have had the votes to do that Ed.

Ed Morris: We wouldn't have had but we did try. For those in the NCSG, for those who in the NCSG who weren't there, Dr. Mueller in particular, we - (unintelligible) did this incredible statistical compilation of how much power they should have in the empowered community if we duplicated all sorts of variables. I mean, we did try. We had no chance but we did try.

And so we have the situation where in terms of voting power, we are the equal of ALAC and they are the equal of us. And that's just the way it is.

Tony Holmes: Okay thanks. Joan.

Joan Kerr: Thank you. Joan for the record. I just want to go back to the issue of contacting the GAC. I've been listening to a lot of - that there - you know, it's almost like they're the bad guys, we're the good guys, it's them and it's us. And I'm always sensitive to language like that.

So I thought I would suggest a course of action because we know what our process is, which is the PDP, how we make policies. But it may not be their process.

So I always think of, whenever I want to work with someone, how do they work, what is their process and dialogue with them how best can we work together.

And I was thinking that I know a former GAC member, and there must be lots of them that come to ICANN meetings. Maybe we can have a session with them and ask them how best can we work with the GAC.

Instead of telling them, inviting them to something that we're doing, maybe there's another way of inviting their interaction and - but knowing that from someone's who had worked within that process they can help us to organize that. So just a suggestion.

Tony Holmes: But you're not suggesting we change the process to take account of that in any way.

Joan Kerr: No. Just to get to know them.

Tony Holmes: I think Phil. Was it Phil or Markus? One of you have been waiting for a fair while.

Phil Corwin: Yes. You know, I think that the GNSO - you know, being on council and working with that liaison, we really have reached out and tried to understand the GAC process. I mean, I wish I could come up with a really clever, inventive way to make the relationship work better.

But I want to make two observations. One is that it's not our process - switching to a CCWG wouldn't make it any better. And I refer to the jurisdiction accountability subgroup that Mr. - that Greg is co-chairing.

And that's a painful process where - at the request of the GAC representative from the Islamic Republic of Iran who -- as opposed to most GAC members who seem to have very little time to devote to ICANN, seems to have - I know he's on every PDP and every working group and every CCWG I'm part of and probably involved with every one I'm not part of. So I think he is the exception that proves the rule.

But at his request, that working group, just to get answers to some very basic questions, has extended the time for answering to 30 days beyond the Copenhagen meeting which is swallowing down that CCWG, you know, working group subgroups' work because of the contention that GAC members need to go to Copenhagen and first hear these issues and then need to go home and have an additional month to think about it to get an answer together.

And my - and that just reinforces an impression I've had for several years, which is that most members of the GAC do not have decisional authority. They report to the decision maker or maybe there are two or three lawyers now for the real decision maker that ICANN is just one small part of their total portfolio.

And they really - many of them really only focus on ICANN three times a year, when they're getting ready to come to a meeting and when they're at the meeting and then kind of let the ICANN stuff... I don't know if the GAC has regular calls or anything in between ICANN meetings.

But trying to accommodate the GAC's internal process, in my -- based on my observations over the years -- will do nothing but slow everything else down within the rest of ICANN.

And so - and I also want to say, Avri I agree with you, some of this is that - the problem is that the board, rather than making decisions when there's conflicts, just doesn't make a decision. Part of that on the IGO stuff may have been about not wanting to alienate governments during the transition. But it really needs to change.

And I'm hoping that whatever the input we get on the IGO - and our initial report is based on... If nothing else, we were very careful to base our initial report on addressing the charter questions and basing our recommendations on everything we can to understand, on existing law.

And I hope that the response from GAC members and IGO representatives -- to the extent that they provide formal comments on our initial hope, which I hope they do -- is saying... I have no problem if they say hey, you got - your expert got the law wrong or this is how it really works. But if the response we get is what we asked you - we gave you this advice and you didn't give what we asked for, that's not helpful.

So I'll stop there. But it is frustrating with the GAC that they - the GNSO has really done a lot of outreach to try to get the GAC more involved with the process.

But they seem to have some internal institutional limitations which really seem to put brakes on their entire ability to respond in a timely manner to anything that's going on, whether it's in a GNSO PDP or whether it's in a CCWG group or subgroup. Thank you.

Tony Holmes: And I think we would all agree with you, Phil is that I think we all believe the GNSO has really taken a lot of effort to try and resolve this. But taking it a step further to actually fix it is going to take other engagement with the GAC

and with Avri's point as well, I think at the board level as well, the recognition that there are issues there. Greg.

Greg Shatan: Thanks. Greg Shatan for the record. We're really talking about I think basically two problems. The first problem is how does the GAC engage and participate in the GTLD policy process which is run by the GNSO but not limited to members of the GNSO. We haven't found a good answer to that question yet.

To some extent, this reminds me of Aesop's fable of the fox and the stork, where the fox invites the stork over for lunch and serves soup in a bowl which the fox laps up and the stock dips its beak in and can't get a damn thing out of it.

So then there's the return - he returns the favor and the fox comes over. And lunch is served in a tall vase with a very long, narrow stem. And the stork reaches all the way down to the bottom - reaches into the liquid at the bottom and drinks it all up. And the fox can't get his snout anywhere near it. Of course he could have knocked over the long vase but that's, you know...

Man: And then he eats the stork.

Greg Shatan: And I think he eats the stork or it's - but whatever. We do have a mismatch. So we do have to try to figure out if there is a way -- Phil points out the problems with finding a way -- to bring the GAC into the house as a participant in our groups. And Steve's story of why we couldn't demote the ACs tells us why they would prefer to do it in a CCWG because then we have 20% of the vote over GTLD policy and we just have completely obliterated ourselves.

So we need - so we can talk -- not now, we have ten minutes -- about how we find a way for the GAC to be engaged. And Susan is exactly right, they can't just like issue us a paper or an advice. Consensus process is this long, messy, interactive, subtle process which we did see in the CCWG.

So -- putting aside the issue of who votes at the end at - in the balance -- that's an example of the way it could work if they came in and participated that way. So there's a model. But how do you get that in under the GNSO policy process? So that's the first problem we're talking about.

The second problem is really the one that Avri I think gave a very good precis on which is what if we get - that this is an - what if we get to the end of the road, there is conflicting GNSO recommendation, GAC advice, there are powers in the bylaws which deal with almost every situation.

So it gets - but they - it requires the board to make some tough calls and to really kind of - and the board seems to prefer -- maybe it's - I can see why -- prefers kind of soft diplomacy to hard decisions. And the problem with that, sometimes that works but it isn't working here.

So, you know, the board can get - if GNSO advice is rejected by a supermajority, it gets sent back to the GNSO which can affirm or modify. If it modifies it to look like the GAC advice, everybody's happy. The GNSO was less happy because they've bent. The GNSO can affirm and then the board is stuck with GAC advice and GNSO recommendations that clash.

The GAC advice can be rejected by a vote of the board and then they have the mutually acceptable resolution consultation or the GAC can be informally consulted and see if they will informally mutually accept the final resolution that matches with the GNSO advice. That's hasn't worked.

So here we are with a GAC advice that the GAC won't change to look like the GNSO recommendation. And we have a GNSO recommendation that -- I don't want to predict the future -- but the GNSO will not... First of all, the vote hasn't occurred so there's not a formal obligation to modify on the part of the GNSO council.

But assuming the board did actually reject that piece of advice, GNSO could modify and mollify the GAC or affirm and put it right back on the board which then has to either finally reject the GAC or finally reject the GNSO recommendation. And then somebody's unhappy.

But that is the way it's supposed to work and that's a hard road. But that's what boards are for. If this was easy, we'd all be doing it. So, you know, I don't - and it's hard. You have a hard job there. And I understand why you try to avoid it under almost all circumstances but this may be that circumstance.

And it's over a comparatively trivial point but it is precisely because, you know, there's a chance for obliteration of the GNSO's role if there's no will to modify that particular thing at that time. So it's a problem.

And those I think are the two problems -- engagement and collision. We have to solve them along the way as the organization matures. But the solution is not to blow up the GNSO as a policy management body. Thank you.

Tony Holmes: Greg, thanks. We've got two hands up in the chat room, Stephanie and Marilyn. But before that, let's turn to a board member, Markus.

Markus Kummer: Well let me start by reassuring you that the board is aware of the primacy of the GNSO in policymaking.

Let me also take a step back and look at the GAC and - as a success story. You know, 20 years ago I don't think the people would have thought that some 150 governments or so would engage in an advisory capacity with a Californian not-for-profit organization.

And I do remember at the beginning of this is I went to China and the Chinese told me this is not normal, governments are in charge, they're not advisors.

And, you know, let's accept that and let's also make sure the governments stay in within ICANN and don't go away from ICANN as some of them would like to take it to another organization. So, I mean, this is the overarching story. And it is a success. Let's celebrate that.

Now we do have a kerfuffle with this IGO but let's look at it as an opportunity how we can improve the process. And I heard many good suggestions during this session.

I think there is a sense that we need to improve the engagements but we do realize it's difficult because as many of you explained, governments have a different working rhythm, different working methods. So it's a difficult match to match the GNSO with governments. But we have to look for how to do it.

And I liked some of the concrete proposals that we need to pre-empt the problems by having upstream discussions. Yes, we have the methods in place but they don't seem to work sufficiently. So let's work and engage better and make more upstream.

And I also agree with Avri, yes, we need to look at the substance. And in this particular case, the board thinks that it can solve the Red Cross problem

because it's slightly different from the rest of the IGOs. And that could actually then defuse also the tension.

But yes, I agree completely, it will be a hard decision. And sooner or later the board will have to decide. But we are engaged in this facilitation process. And again it was a suggestion coming out of the GNSO to do that, have this dialogue. Let's see how it will play out. But I'm fairly confident that we should be able to find a solution to the Red Cross part of the problem.

And ICANN is a work in progress. And let's keep working on this progress. Thank you.

Tony Holmes: Thank you, Markus. We're getting very tight on time. So we've got two people in the chat room. And Jimson also hasn't spoken. So we'll get through that. Could I ask the people who are in the queue now to try and keep it a little brief to take account of that? So Stephanie, if you're online, please come in.

Stephanie Perrin: Thanks very much. Stephanie Perrin for the record. I'll try to be brief. I raised my hand a while ago because I just wanted to nuance something that David Cake was saying about how the governments did not know policy.

Governments actually do policy all the time, much more than the stakeholders that assemble at ICANN do. So they do know policy.

I think part of our problem is that we're talking in code when we talk about the GAC. The group -- as Markus just said -- it has been a success. It's a miracle that we have so many countries coming to assemble at ICANN to provide advice. But that's the point. They're not doing policy here. I don't actually think they have an interest in doing policy here.

And the power that they've had from the very beginning, power being quite different from policy, is this advice which acts - can act as a trump card. And this then punts the problem.

And when you get this many countries who are not doing policy who have not necessarily consulted thoroughly at home on each and every nuance, the best you're going to get out of them in advice is the communiques that we have seen over the years. And they've gotten better I would say.

But they're very much of a more-work-needed yes/no basis. That means that the board has to deal with a rather awkward situation, that they're getting advice in the form of yes/no, do more work.

How to get around that? I mean, maybe a little group should be struck. We're trying the GNSO liaison but this is a very hard problem to get past. Let's be aware of that. But let's not say that governments don't do policy. The group that come to GAC aren't doing policy at GAC, in my view. Thanks.

Kathy Kleiman: I just want to say the word "trump card" has a whole new meaning now. Jimson.

Jimson Olufuye: Thank you very much. This is Jimson for the record. I support all the views that have been put forward but clearly Avri and Markus. There has been significant progress made in engaging government in ICANN.

Being a representative in the CSTD working group of enhanced cooperation, I recognize that we've really hit a lot of milestones and we need to sustain the momentum.

Developing countries have challenges really. David Cake mentioned earlier that they have resources. No, no, no, they don't have resources. Human resources, financial resources is a challenge. So they're maturing. The process is maturing. But we need to give this time. And we need to engage continuously.

Maybe you can look at the possibility of a summit, GNSO-GAC summit or something, an opportunity for a longer time engagement, you know, because we need them.

And as (Margo) said or (Oda) said, they - they just see themselves as (unintelligible) in order to be in control. But we are seeing progress. They are coming in, particularly (unintelligible) of Iran. He has been a voice for ICANN -- it was not so before -- has been a major voice, positive voice for ICANN among government.

And we need - based on this, we need to continue to nurture the process so that governments can see the GNSO and us but our stakeholders as partners indeed in progress. So a summit would be something we could look at. Thank you.

Tony Holmes: Okay. Thanks, Jimson. I believe Marilyn is typing in her comment because of difficulty coming in online. So Kathy, did you want to sum up?

I have one, just one point that I think came out of this that would be really useful. There is a GNSO call tomorrow. And one of the points that was made here was that maybe we should have some discussion about formalizing the notification process at each stage of the PDP and not only formalizing and telling GAC where we are but also asking them to act, whatever that action should be.

And maybe that's something that those councilors that we've got here today can actually factor into the discussions in council, as to how we could take that forward. I think that was a positive step.

And we've heard a lot about improving the process. One of the disappointing things here is that we don't have GAC here because I think those of us around this table certainly are committed to trying to improve the process.

It's been very useful having some board members here whilst we've had that dialogue. I'm sure that they will take onboard what they've heard here.

But I think it's beholden on all of us to actually go back into our various stakeholder groups and work within the GNSO, the GNSO Council and our interaction with the other people involved in this, both board members and GAC, to try and resolve it.

There's a lot of good stuff and a lot of good points that have come out of this but there's still a lot of work going in to resolve it. And I think if we all subscribe to abiding by the ICANN bylaws that we've all committed to, then maybe there are some clear pointers in there as to what direction we should take.

So with that, Kathy, did you want to add anything?

Kathy Kleiman: And I just wanted to add -- because I know we're at time -- that one of my takeaways is that there appears to be a common vision, at least in this room, of what we're supposed to be doing and the work we're supposed to be doing and the powers frankly that - the role we play in this process and the responsibility that we have.

So it will be very useful to do more bridge building, as Vicky and Joan and others suggested. But at the end of the day, somebody has to make the decision. Thank you. Thanks for a great discussion.

Tony Holmes: Thank you. Rob, back to you.

Rob Hogarth: Thank you, Tony and Kathy. You're now on break until the top of the hour at which time Steve and Joan will be our co-chairs. Thank you. We'll see you back here in a few minutes.

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