

Terri Agnew: Welcome to the New gTLD Subsequent Procedures Sub Team – Track 3 – String Contention, Objections & Disputes on Tuesday, 12 September 2017 at 20:00 UTC for 60 minutes.

Terri Agnew: agenda wiki page: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_-2DRkhB&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0A1gn-H4xR2EBk&m=xAzc5LwSIPMmFNMEuP3PR-y_eM6ZMcfPoTwMby0_S_k&s=LrzTk_No_U-xc_JnrLWCVNngmPo09YaUwHmlHstdGck&e=

Cheryl Langdon-Orr (CLO): hi all,

Robin Gross: Greetings!

Cheryl Langdon-Orr (CLO): just stepping away from the screen for a short while

Karen Day: hello!

Jeff Neuman: no, you covered it

Robin Gross: 3.1.10 - Do you feel that GAC Early Warnings were helpful in identifying potential concerns with applications? Do you have suggestions on how to mitigate concerns identified in GAC Early Warnings?

Robin Gross: "There seemed to be some confusion and uncertainty about the implications and consequences of a GAC Early Warning. Several steps could minimize this confusion and uncertainty in the future: change the name to GAC Member Early Warning (or something similar) to communicate clearly that the Early Warning has not been issued by the entire GAC, but, instead, by one or more GAC members; (adopt and identify a clear timetable for action by the issuing GAC member(s) to provide certainty to applicants; (iii) require the issuing GAC member(s) to identify the national law(s) on which the Early Warning is based; (iv) have the issuing GAC member(s) designate the type of action(s) desired from the applicant; and (v) emphasize that the GAC Member Early Warnings have no precedential value." – RySG, BRG, Afiliis

Karen Day: yes

Jamie Baxter | dotgay: yes

Karen Day: we hear you

Karen Bernstein: Yes

Steve Chan: FYI, the CC2 themes document being displayed can also be viewed on the Objections Wiki page here: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_Vz2AAw&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0A1gn-H4xR2EBk&m=xAzc5LwSIPMmFNMEuP3PR-y_eM6ZMcfPoTwMby0_S_k&s=Mzt2yo295slAc7FNJONkS-JsZgKUUnnLLAQWoHPIbwg&e=

Anne Aikman-Scalese (IPC): I would say no Alan because the GAC advises on Public Policy.

Cheryl Langdon-Orr (CLO): I didn't think it was... but also not an expert here

avri doria: I do believe it was.

Cheryl Langdon-Orr (CLO): really Available?

Jim Prendergast: this might help - https://urldefense.proofpoint.com/v2/url?u=https-3A_newgtlds.icann.org_en_applicants_gac-2Dearly-2Dwarning&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0A1gn-H4xR2EBk&m=xAzc5LwSIPMmFNMEuP3PR-y_eM6ZMcfPoTwMby0_S_k&s=ZiUCb7JenXJgSw6SCmNPBFFJK3Cn9LjBIU8Y297g&e=

Cheryl Langdon-Orr (CLO): argh Avri sorry auto correct strikes again

Trang Nguyen: Section 1.1.2.4 of the AGB says "GAC EW typically results from a notice to the GAC by one or more governments that an application might be problematic, e.g., potentially violate national law or raise sensitivities.

Jeff Neuman: Concurrent with the 60-day comment period, ICANN's Governmental Advisory Committee (GAC) may issue a GAC Early Warning notice concerning an application. This provides the applicant with

an indication that the application is seen as potentially sensitive or problematic by one or more governments. The GAC Early Warning is a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application. However, a GAC Early Warning should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs (see subsection 1.1.2.7) or of a formal objection (see subsection 1.1.2.6) at a later stage in the process.

Karen Bernstein: AGB 3.1: The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

Anne Aikman-Scalese (IPC): COMMENT: It would actually be great if we could get further definition from the GAC of the terms "sensitive" and "problematic". COMMENT

Jeff Neuman: The AG also states: ". A GAC Early Warning may be issued for any reason"

Steve Chan: From that same section (1.1.2.4) A GAC Early Warning typically results from a notice to the GAC by one or more governments that an application might be problematic, e.g., potentially violate national law or raise sensitivities. A GAC Early Warning may be issued for any reason.¹ The GAC may then send that notice to the Board – constituting the GAC Early Warning. ICANN will notify applicants of GAC Early Warnings as soon as practicable after receipt from the GAC. The GAC Early Warning notice may include a nominated point of contact for further information.

Jeff Neuman: but has a footnote that states: "While definitive guidance has not been issued, the GAC has indicated that strings that could raise sensitivities include those that "purport to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)" and "those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse.""

Anne Aikman-Scalese (IPC): Thanks Jeff. This is helpful. Maybe we should take the public comment to mean that if the objection is based on "those subject to national regulation", we ask the GAC to specify the "national regulation" they are citing.

Anne Aikman-Scalese (IPC): I think Greg will clarify that there is already a definition in the ByLaws as to what GAC Advice constitutes a presumption and what vote of the Board is required to overcome it - 60 % vote I think.

Kristina Rosette (Amazon Registry): I hate to state the obvious, but the Amazon v. ICANN IRP Final Declaration has some useful guidance on these topics.

Jeff Neuman: I am talking about something very different

Jeff Neuman: I am not talking about a presumption that the advice will be accepted. I am talking about the presumption that a TLD will not move forward.

Jeff Neuman: They are NOT the same thing

Jeff Neuman: In other words the Board could "accept the GAC advice", but if the advice were contrary to what the rules allowed to reject a TLD, it would not be bound to not delegate the TLD

Donna Austin, Neustar:

There were 187 applications that received early warnings and 2 applications were withdrawn as a result.

Jeff Neuman: @Karen you are right. Some govts were hoping that applicants would withdraw knowing they would not be able to get GAC advice

Anne Aikman-Scalese (IPC): Jeff - the issue is actually your description of "contrary to what the rules allowed to reject a TLD". If it is GAC Consensus Advice on an Early Warning, then I think as of now it is "within the rule". Do you want to say that an Early Warning coming from only one country cannot delay a TLD from moving forward?

Donna Austin, Neustar: In addition, the Board received advice on specific applications affecting 23 applications, and the Beijing communique contained advice on broad categories of strings affecting 491 applications.

Donna Austin, Neustar: My data comes from page 95 of ICANN's Program Implementation Review

Steve Chan: The report Donna is referencing is available here:

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Greg Shatan: I don't see how the "board" could accept GAC Advice that the GAC can't give.

Trang Nguyen: page 96 of the Program Implementation Review Report says: "Indeed, there was some correlation between Early Warnings and Advice, but not all applications that received Advice had received an Early Warning. While only 187 applications received Early Warnings, 517 applications were subject to GAC Advice. Over 300 applications that were subject to GAC Advice did not receive any Early Warning. Based on this data, if the intent of the Early Warning process was to provide applicants with predictability, that intent was achieved in only 38% of cases."

Jeff Neuman: By the same token I don't see the board having to have a 60% threshold to overcome GAC Advice that should have never been issued or beyond their scope

Anne Aikman-Scalese (IPC): I think this is a tough nut to crack in relation to GAC Consensus Advice.

Should Work Track 5 take the position that objections to Geo Names are not objections based on Public Policy? How would we frame issues as issues that are not based on public policy?

Jim Prendergast: just because the GAC would push back doesn't mean we shouldn't go there

Kristina Rosette (Amazon Registry): See paragraphs 100 and following: "We conclude that GAC consensus advice . . . must be based on a well-founded public interest concern and this public interest basis must be ascertained or ascertainable from the entirety of the record before the NGPC. In other words, the reason(s) supporting the GAC consensus advice, and hence the NGPC decision, must be tethered to valid and legitimate public policy considerations." (Para. 103)

Anne Aikman-Scalese (IPC): Great language but how do you prove that it's not based on public policy and who is the arbiter?

Donna Austin, Neustar: I think we should acknowledge that while GAC advice was problematic, the approach of the NGPC in dealing with the GAC advice was also problematic.

Jeff Neuman: I am not saying that there could be no exceptions, but there needs to be a predictable process to deal with those

Anne Aikman-Scalese (IPC): @Donna - that is a good angle as to GAC Advice that is not Consensus Advice at least.

Jeff Neuman: Is there any GAC Advice that is not Consensus Advice

Anne Aikman-Scalese (IPC): Yes. Greg, can you elaborate?

Alan Greenberg: Perhaps there needs to be a method for the gac to object to (for instance geographic names), but there needs to be a defined process for resolving it and not depend on a somewhat arbitrary board decision.

Susan Payne: @Anne - not entirely GAC advice isn't a veto that must be blindly followed by the board. It is advice they must take on board.

Donna Austin, Neustar: Anne: I believe it was all consensus advice as it was provided in communiques

Anne Aikman-Scalese (IPC): @Donna - but maybe that changes after the Accountability work? Couldn't we point out that an Early Warning from only one country is not Consensus Advice and NGPC equivalent should treat that differently? (Maybe that is not possible if the full GAC endorses that Early Warning and it is "tit for tat".

Greg Shatan:Early Warning is not advice at all, consensus or otherwise.

Donna Austin, Neustar:Anne: I don't believe GAC Early Warnings were considered by the NGPC.

Kristina Rosette (Amazon Registry):@Donna: They did for the .AMAZON TLDs. Can't speak to others.

Donna Austin, Neustar:@Kristina, after .amazon was subject to GAC advice or before?

Anne Aikman-Scalese (IPC):Agree with Cheryl that a diplomatic approach is preferable - especially in terms of new EC

Kristina Rosette (Amazon Registry):@Donna: After. https://urldefense.proofpoint.com/v2/url?u=https-3A_features.icann.org_gac-2Dadvice-2Damazon-2Dand-2Drelated-2Didns&d=DwIFaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0AIGN-H4xR2EBk&m=xAzc5LwSIPMmFNMEuP3PR-y_eM6ZMcfPoTwMby0_S_k&s=mljXJ8U2OIMYBhGMJqw4hov5qZopOfcxM3-uMy7psko&e=

Anne Aikman-Scalese (IPC):ByLaws were revised. They do govern as far as I know. See 12.2 (a) (x)

Cheryl Langdon-Orr (CLO):especially if Gac has actively contributed now to the development of such guidelines @Donna, and I also doubt that there could be a 'waiving of any right to give Advice ' but a greater predictability and benefits from any ensuin post application processes

Anne Aikman-Scalese (IPC):New by-Law dfines Consensus Advice as "the practice of adopting decision by general agreement in tehe absence of any formal objection ("GAC Consensus Advice")

Cheryl Langdon-Orr (CLO):that is a good example of a good or potentially beneficial 'new' process @Jeff

Jim Prendergast:I like the idea of an applicant having a chance to respond directly to the board about advice issued agains them. adds an element of due process

Kristina Rosette (Amazon Registry):Para. 94: "Thus, under the facts of this IRP, the procedural fairness obligation applicable to the GAC, at a minimum, required that the GAC allow a written statement or comment from a potentially adversely affected party, before it decided whether to issue consensus advice objecting to an application. The Board's obligation was to see that the GAC, as a constituent body of ICANN, had such a procedure and that it followed it."

Jeff Neuman:@Anne - would you support the right of an applicant to provide a response to the Board on GAC Advice?

Kristina Rosette (Amazon Registry):On our next call, I'll be happy to recite the IRP Panel Final Declaration from memory. (kidding)

Jim Prendergast:was the concept of EW as a prerequisite explicitly addressed in previous round and if so, why wasnt it implemented?

Anne Aikman-Scalese (IPC):@Jeff - absolutely. Board has discretion to override GAC Advice by 60 % vote.

Cheryl Langdon-Orr (CLO):exactly @Susan

Anne Aikman-Scalese (IPC):@Jeff, right now I think there is no individual right of reply but why not?

Jeff Neuman:@Anne - Because the Board historically has not allowed anyone other than ICANN staff present to the Board

Anne Aikman-Scalese (IPC):Indeed - they would normaly just rely on GNSO policy advice. But you asked if it would be theoretically possible.

Jeff Neuman:@Anne - I am not even just talking about in cases with Policy Advice. Its also this case with contract amendments, approval of registry servivces, etc.

Jeff Neuman:The ICANN Board should always allow parties that may be adversely affect be able to present to the Board

Donna Austin, Neustar:@Jeff, not the case. reconsideration requests have been allowed to speak directly with the Board.

Terri Agnew:Next meeting: New gTLD Subsequent Procedures Sub Team – Track 3 – String Contention, Objections & Disputes will take place on Tuesday, 26 September 2017 at 15:00 UTC for 60 minutes.

Gg Levine (NABP):I agree that applicants should be given the opportunity to respond to GAC advice.

Cheryl Langdon-Orr (CLO):good discussion I'm today's call more to discuss on the topic though... 🙏🙏🙏
bye for now... thanks everyone...

Jeff Neuman:In a few Reconsideration requests, but not all

Anne Aikman-Scalese (IPC):Thanks Robin

Susan Payne:good call robin

Karen Day:thanks all