

**ICANN**

**Moderator: Maryam Bakoshi  
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2:30 pm CT**

Farzaneh Badii: Hi everyone. So I'm – Tony and I are going to chair this but I thought it would be a little bit more interesting if I stand here and talk (a little). I'm not following Xavier.

Actually I had this in mind before Xavier did it and – yes. So, in this segment we are going to talk about preparation for meeting with ICANN CEO and the Board.

We are specifically going to talk about the preparation for meeting with the board because there's another segment which Louise and Brian are going to co-chair which will talk about the CEO.

But if we get the time, we can cover a couple of points on the CEO meeting as well. So there was a little bit of a logistical issue. We decided, in our planning meeting, to have a meeting with the whole board about the IANA (a little) of the GAC and ICANN after IANA transition.

And we wanted to ask them questions and tell them our opinion about it, but unfortunately, they could not apparently fit the whole board and us in one room and then have lunch and talk.

So we are all at, like, separate tables talking to various board members. Now, I'm not going to tell you what to tell the board members you share a table with. But we want – Tony and I thought that it would be good to send the board a message about the role of the GAC.

Can we go to the next slide? So, basically the idea is that GAC has been gaining more power and the board has been continuously listening to GAC and ignoring the PDPs and also valuing GAC advice more than it should.

I'm not going to be funny this time so we can go to the next slide. So the – so post-IANA transition, will GAC be more powerful than ever? I think we should discuss this and I think, in my opinion, the (answer is yes). Tony, do you want to add to that?

Tony Harris: Okay. I'll do it from here. I think one of the things we should think about here is how we position this with the board because obviously now the fact that the role that NCIA had doesn't exist anymore.

What is that in terms of pressure on the board? And when they get to some difficult situations, how are they going to react? How do they feel about making up the very hard (call) when we have a unified policy and we have a view from government that is different to that or have some concerns on that?

How much weighting to the board do they put on that? And I think that's a key question that we can look for some insights out of. One of the things I think we should stress from our perspective is that I believe certainly as far as

– I can't speak for all the community, but for GNSO, I think we now go out of our way to try and be inclusive with the GAC.

And the role of the liaison from the GNSO to the GAC, it's an incredibly important role now. So one of the key questions, I believe, to answer that (probably) more powerful, is how does the board view the situation that they're in now where they're due to make these really hard calls?

And part of that has to be a question to them from our side, what do they think we can do more to try and involve the GAC because I think through the PDP process now, we do try to be inclusive.

We do ask for engagement and we're always stymied by the same situation which is they always come back from the GAC side and say that no one can speak overall for the GAC.

There are a lot of diverse opinions in there. And it makes it really hard for them to engage. But that's a problem, I believe, that they could improve on as far as they can.

I think from the SOAC side of things, we really do try now to be inclusive and the GAC liaison role is one way of doing that to be – not only to be able to answer questions that they have but to send somebody from our side that constantly goes along, provides an update, tells them what they're doing at each stage of the process.

So hopefully we can get some feedback from them as the policy is developed, not wait until the end where we have consensus policy and then they say, "This just isn't acceptable to us."

So I'm really keen to learn from the board's side, if they feel there's anything that needs to be done in terms of the whole PDP process and the involvement of the GAC that can actually help that process flow in a much better way.

But any comments on other key issues for the board on that? I'll hand back to (Osana).

Farzaneh Badii: So are there any comments? Okay, so we discussed the – go ahead.

Woman 1: I'm sorry. It's (Unintelligible) for the record. I want to equal what Tony just said because I think, like, if we are talking about empowered community, of course, after transition everyone was – every part of the community was empowered, so it is natural the GAC is going to have more power.

I want to address the point about GNSO inclusion because they made these during these GNSO strategic sessions as well. I think that, yes, we are inclusive but there is no balance here.

GAC can come to GNSO PDP policy processes but there is a lack of understanding that they are operating on the GNSO territory. That, sometimes, even surprised – like, one of the examples is (bock truck five) in (support) – gTLD (support) and (geo) names.

When GAC represents (it) during the first meeting, (we were) actually very much surprised that this is the GNSO PDP. What does this mean? How they operate within these.

And I think one of the ways to solve this problem, because it's not balanced, we can't go to GAC and, you know, and be included there. So we have to convey the message to them that when GNSO is inclusive, it is still PDP.

It is still operating procedures. It is still GNSO area. There is inclusion but there are borders and they have to operate within these borders on our territory.

(Simon): That's a really good point but do you feel with that, that that is still part of a one-way street because, yes, they have to operate within our procedures, but at least they can come and do that.

We can't do it the other way around. We have one linkage through which is from our GAC liaison back to them, so.

Woman 2: Thanks, (Simon). I'm sure it will, you know, I suppose reassure you or it will be of no surprise to any of you to know that this is something we discussed at a great deal of length in Council, this idea of the legitimacy and (primacy) of the PDP as regards our specific mission under – excuse me – Article 11 of the ICANN bylaws.

And you'll be interested to know that, you know, we've specifically raises these questions with certain members of the board yesterday. We invited the members of the board who were connected to the GNSO to have lunch with us as a Council, them and the chairman of the board.

And I, you know, for emphasis, raised the question, does the board appreciate the fact that the Council and the GNSO has this unique remit under Article 11, that we're the only body within the organization that is empowered to make policy as that regards to gTLDs.

And the answer that, you know, that I got from (Shareen) was, yes, we appreciate that. You know, I can assure you the board appreciates that. (And) I'm not so sure.

I thought it was very interesting that Avri put up her hand and said, “Yes, but what do we do about the fact that the GNSO hasn’t made policy on certain things and that’s an opportunity for the org and the board to step in?”

And I felt pretty uncomfortable by that answer, I’ll have to say. It – (Tatian)’s nodding so affirmatively that – (Tatiana), you and I are – yes, we’re both doing this like the little bobble-head doll.

I was pretty concerned by that so that’s maybe an opportunity for us to leverage, you know, a springboard between the discussions over Monday, Tuesday, Wednesday and – excuse me – the discussion we’re having now. Thanks.

Man 1: (Unintelligible) here. I just wanted to (sort of) address the thing about inclusiveness and how it’s a two-way street. I just want you – to make you aware of the fact that even though I am the liaison from the GNSO to the GAC, I’m not allowed to be on the GAC mailing list and I can only participate in open GAC meetings.

Farzaneh Badii: All right, so well, the question is that do we agree – do we actually agree on this point that GAC is becoming more powerful, the board is listening more and more to GAC advise?

And if we agree on that, then we should decide on sending a message to the board about this. Steve, you...

Steve DelBianco: Thank you, Farzi. Steve DelBianco. The board’s requirement to consider GAC advise and reject it has always been in the bylaws. We increase the

number of votes they have to get if it's consensus advice and we locked the GAC in forever to say the consensus is the absence of any objection.

And the GAC resisted this so strongly that it would be a surprise to anyone in the GAC to think they actually got more power. They've been locked into a single country can veto their advice and the board can veto and reject the GAC advice with just one additional vote, 60%.

But we added that other power that allows the community to hold the board accountable to the bylaws and the community itself if the board were to accept or act on GAC advice or reject GAC advice in a way that we felt violated the bylaws, the community now has a brand new tool.

We can launch a community IRP and the GAC, because of the carveout, the GAC is not allowed to block the empowered community decision to review action on GAC advice.

So let me just repeat that. If the GAC gave advice on Amazon, gave advice on WHOIS or gave advice on geo names at the top level, (Tatiana), if the GAC gave advice that the board caved in and there were three of the empowered community members that said this is a violation the bylaws, we get to bring in an independent review against the board.

And the GAC cannot get in the way and the IRP is binding. The IRP will look at whether the board followed the bylaws in terms of the limited mission and scope and if they didn't, that decision gets overturned.

So there's a complex set of moving parts none of which have been invoked yet. They're all new. This empowered community is really only turned on one

time and it was over a relatively rudimentary change to the bylaws that we approved in Hiderabad.

So I don't think you start with the premise that the GAC has more power because it just is not going to resonate with anybody that actually knows the bylaws that we've (implemented).

Instead, talk about the fact that the GAC is giving advice that seems to be at odds with the majority of the community and might even be at odds with the bylaws.

And if you have to come up with examples, throw out the geo names, talk about Amazon, and if you want to, the GAC gave advice on WHOIS that was relatively surprising in Abu Dhabi.

I know the NCSG was probably surprised to see the GAC insisting that ICANN maintain WHOIS, both for law enforcement and private sector access. So I think that – tee it up within the context of the board's interaction with the GAC on consensus advice only and the board's awareness that it is accountable to the community and the bylaws.

And the community has tools it can use to make sure that the board follows those bylaws when it considers GAC advice. Thank you.

Farzaneh Badii: We should then tell the board about the bylaws so that they don't say, well, if you don't do anything we are going to go to ICANN or, again, GAC to decide on policy.

But then – so – but what about the issue that's (Heda) raised because if they say – if they argue this, that there's no policy that comes from the community



about this issue and we need to take action so we just went and listened to the board, listened to GAC and to GAC advice, what would be our response?

Steve DelBianco: If I might follow up, RDS PDP is exactly the example I gave this morning. It's our fault that we don't have an RDS PDP, a replacement for WHOIS and – because it's a community-driven process.

And in the lack of a replacement that is compliant with GDPR, the board is – the management is taking action. So the answer to it is to replace their interim intervention with the policy the bylaws give us the power to create and that's why I'm saying it's on us

Tony Harris: The point that (Satian) made about GAC being more powerful, I think you could argue that with the new situation, that's probably applicable to most parties. In certain circumstances, they're more powerful.

But the only way that GAC can be more powerful, I believe, and ICANN, too, is if the board gives them that power. So the point we probably need to make to them is exactly that.

And then I think we have got the examples where we can question how we felt the bylaws won't follow in certain situations. So to make that point clear, I think it would be worthwhile doing that, making that point, getting some feedback on that.

For the second situation which is where we haven't made policy, that's quite a dangerous topic for us.

Farzaneh Badii: Yes, (unintelligible).

Tony Harris: Because we're looking at where we haven't really got our act together, certainly within the time that we need to act. And I accept WHOIS is a really difficult situation.

But are we sure we want to focus on that at this stage because, really, that's an area where we, as a community, are at fault more than anyone. So, I'm not so sure it's in our favor to go down that path and actually raise that at this stage but I'd like to hear other views on that.

Sam Lanfranco: Okay, Sam Lanfranco, NPOC, for the record. I was saving this for later so I'll just throw it out now but not to be followed up in this meeting, and that's that I think we need to have a serious review of how we conduct the policy development process.

We put in considerable time, considerable human effort, considerable money, and I've seen nuclear disarmament proceed faster. We do have to look at timelines and the efficiency and effectiveness of what we're doing.

There may be some reworking of the internal dynamics of the policy development process in the working groups. It at least needs to be reviewed so that we can see if we can move faster.

Man: So a few things. One, that was – (Samuel), that was a topic of discussion at the GNSO Council sessions this week. We spent a lot of time on that, diagnosed a lot of those same concerns that you have.

So for that, I'll just say, watch this space. More's coming on that issue. Secondly, and (Heather)'s left the room, but to give a little context to Avri's comment, she wasn't saying that if there's something that needs to be done and the GNSO hasn't done it yet, that the board is going to step it.

It was specifically within the context of we asked the question of, you know, if a PDP is going nowhere or if circumstances have changed so that the problem that needed to be solved is no longer solvable or needs to be solved, you know, what happens when we shut down a PDP?

And Avri said, well, be careful about abandoning PDPs because if there's policy that needs to be made and you guys haven't done it, then the board has to figure out what to do, right?

So it wasn't a direct threat to the idea that the GNSO Council is the traffic cop on policy development. So just (detempering) that comment a little bit. And then what I really wanted to talk about when I put this up has to do with whether or not the GAC is more powerful or not.

There certainly could be disagreements about whether or not they gained more power or not during the transition. And we'll leave those where they, you know, where they are.

They're arguments from two years ago, not for today. But importantly, however we address this issue, it needs to be, in the very surgical scalpel kind of way, not a bludgeon.

We've just invited the GAC to join us in work track five. And we are trying to figure out how to very carefully thread that needle to where the GAC members that are participating get listened to, the other community members that are participating get listened to.

And hopefully we end up with an outcome that everybody can believe in and we can avoid putting the board in a pickle again between GNSO Council

advise or GNSO policy and GAC advice like we have put them in a pickle on Red Cross and other things, right.

And so I just think we need to play it a little cool because we do have this great experiment. But if we complain too heavily with a blunt instrument that they're super powerful and (world pressed), right, and all this stuff, we're going to – that will get back to them and that won't be good for work track five and the other experiments of inclusion that we have going on right now. Thanks.

Tony Harris: Yes, if I could go back to Paul's first comment, I wasn't here earlier in the week when that discussion took place at Council. But if we talk about areas where we haven't delivered on PDPs and the role of the board, isn't that exactly the concern we had over SSR2 where weren't supporting what the board did in any way?

So isn't there a conflict there between our views on SSR2 and accepting that if we don't deliver there's somebody else who picks up the reins and just does what they think, be it the board or whoever?

Man: So review teams aren't exactly PDPs, right. So I mean it's – I guess we can, you know, we can analogize from one to the other a little bit. But yes, you know, obviously we all have concerns about the pause button that the board has that we didn't know about. We're also all concerned about the apparent lack of un-pause button that...

Tony Harris: So I like your answer on that and what you're saying is we should make sure that we don't mix up those two issues because one is a PDP process. Just focus on that. The review issue is a bit broader and it leads us into some difficult areas.

Man: Yes, it's a bit of a different animal.

Tony Harris: Yes, okay.

Farzaneh Badii: Just to go back to – so what's – one of the concerns I would say is that the board and ICANN (org) legitimize its decision by getting the support of GAC and having, like, showing GAC advice as something that approves of its actions.

And then I think if we – we can be critical of ourselves and say, okay, so we are slow and we're not pushing the PDPs forward but also the board could come to our group and say, "We need this to be done."

And they can ask us without – so, for example, for the second letter domain names that correspond to the ccTLDs, the GAC advice was not – there was no consensus, first of all, on the – for GAC, but the board went ahead and implemented that advice so – and then they started allocating their second level domain names and new gTLDs that correspond to ccTLDs to the assistant TLD managers.

And so – and the governments was allowed to ask for – to actually get these domain names before anyone else – ccTLDs – yes, I'm talking, yes. So, and this was not a consensus based advice.

GAC did not come to a consensus but the board listened to (it). And did they come to us and ask us and say what are you doing? We don't have a decision on this?

Or did they just go and took GAC advice and implemented it? I have raised this question several times. The board is really fed up with me over this. But I have raised this question several times because this is overreach to our generic domain name policymaking at GNSO.

And – but they said – one of the answers was that, well, we have to – we had to come to a compromise over an advice that was not consensus-based. So, I wonder if they should have come to us or if they should have just – or if they are allowed to just implement the GAC advice.

Paul McGrady: So, Paul McGrady again. I don't want to hijack this conversation. I apologize. Two things – one, you talked about slowness within the PDP and the board could – you know, what could the board do to speed those up?

And the board could come to us and say we're not funding any of the current PDPs that are on the table passed, you know, 2019. Hope you get it down, right?

That would speed it up, right? So the board has powers that they can do to affect the process and we should keep that in mind. It's not a free-for-all. And a lot of what they're going to – what we talked about this past week, with them, was how can the policy development process become more efficient, right?

And they're going to want to hear from us our ideas about how the process can become more efficient. But to your second point, with regard to the specific issue, I don't want to address the specific issue, but I will call out that the basic fundamental problem that causes that problem exists, right?

And it's baked into the bylaws and it's not going away and I've heard of no one indicating that it was going to go away. We are, as GNSOs, a consensus-driven, you know, everybody works together, everybody ends up with something that they're not completely happy with but it's rational enough.

Here it goes. Here's the policy. The GAC doesn't operate the same way. The GAC has things handed to them and then they ponder it and then they write advice about it, right?

That disconnect is not going away. Essentially we find ourselves in a bicameral situation and this is why I think that the GAC is stronger after the transition than before, because we were in a bicameral situation where essentially the GNSO has the first say.

The GAC has the second say and then the poor board has to make the decision. But we're not talking about the Senate and the House of Representatives who operate, you know, in similar ways.

We operate very differently and we come to the conclusions very differently. So unless we go back and take a look at the structure, which we rushed through to get the transition done before the deadline that everybody had in their heads for whatever reason, you know, that problem's not going away.

So we have to live with the practical problem of we have to find ways like work track five to bring the GAC in sooner, earlier. Make them feel listened to. Compromise with them on things we can compromise on so that hopefully when we get to the point where the GNSO Council votes yes on the policy, people in the GAC aren't surprised and they don't rush over and give – you know, give anti-advice to it, right?

That's sort of the new reality and that's why the GAC has more power, because we have no choice but to include them in the beginning or else every single policy we pass from now on is going to be Red Cross policy.

It's going to stick the board right smack dab in the middle of the problem. So we have to deal with the new reality – the GAC has more say.

Woman: Just a very short comment and it goes towards what Paul said and you said before. When you suggested that we write a letter, make a statement that, yes, we are slow and whatever, no, we are not slow.

We are inclusive and this actually is the reason for not being quick enough. But this comes back to the point about inclusivity. So I don't believe that we are – I mean, we might be slow but it's fair to say that we are inclusive.

Farzaneh Badii: Okay, so – yes, if I'm not wrong, we ran out of time. Oh, that's a shame. I like this topic. So, okay, so I just – I'd like to know if we have a message to send to board because we were thinking it might be more effective (if we) actually have something on the paper that they should respond to.

So if we can send a message to board and talk about this issue that we talked about. But it seems like that we have to be very careful in how we word it and how we approach it.

But if we agree, we can draft up a message, like, three, four sentences and just send it to board for correspondence. And also we can send a message tomorrow during, like, the beginning of lunch, we could just relay the message and tell them what we think.



But I did not feel like we have anything concrete now. So if everyone agrees, we can work on the message or we can postpone it. Tony, do you want to say something?

Tony Harris: Yes, for me, I think we still have key question to ask the board, and that is for us to make that point that we've been involved in the PDP process. We're making it as effective as we can.

We're making it work in the right way. We're looking to enhance the liaison role in terms of making sure, not only do we answer questions from the GAC, but we make the point that, along the process, they're aware of developments to hopefully get some feedback from them in the whole process.

And to ask the board or to make the point to the board that that still places the board in a position where they feel they have to make choices at times on things.

And we can point to some examples where they've made choices which, from our community, we think that are wrong choices, because we have basically consensus policy and that they shouldn't be looking at that in any other way than viewing it as consensus policy.

But asking them what they feel can be improved on our part so that they're not in those positions, what is it that's missing that leaves them in a position where they feel they can just make a judgment?

And very often it doesn't – well, it doesn't matter what that judgment is. One of the other parties is going to feel disenfranchised. So, from our point of view, we should be seeking back from them how they feel we can help them get out of the process.

And from that answer, we may then be in a position where we can go back and give some follow up on that.

Farzaneh Badii: I will draft up this question and then I can share it on the mailing list and we can discuss it. Perhaps if we can come to a conclusion we can just send it to the board and, yes, and time is up. So we can go to the next session.

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