

# Rec-11 Meeting (8 February @ 12:00 UTC)

## Attendees:

**Members:** Becky Burr, Cheryl Langdon-Orr, Eberhard Lisse, Izumi Okutani, James Bladel, Julia Wolman, Julie Hammer, Leon Sanchez, Lyman Chapin, Mathieu Weill, Olga Cavalli, Pär Brumark, Robin Gross, Sébastien Bachollet, Steve DelBianco, Suzanne Radell, Thomas Rickert (17)

**Participants:** Aarti Bhavana, Alain Bidron, Allan MacGillivray, Andrew Harris, Andrew Sullivan, Antonio Medina Gomez, Avri Doria, Barrack Otieno, Brett Schaefer, David McAuley, Erika Mann, Finn Petersen, Gary Hunt, Greg Shatan, Harold Arcos, Jeff Neuman, Kavouss Arasteh, Keith Drazek, Lito Ibarra, Louisewies van der Laan, Malcolm Hutty, Mark Carvell, Markus Kummer, Martin Boyle, Matthew Shears, Maura Gambassi, Megan Richards, Mike Chartier, Paul Rosenzweig, Pedro da Silva, Philip Corwin, Rafael Perez Galindo, Ron da Silva, Rory Conaty, Snehashish Ghosh, Stephen Deerhake, Suzanne Woolf, Thomas Schneider, Tom Dale (39)

**Legal Counsel:** Holly Gregory, Ingrid Mittermaier, Michael Clark, Rebecca Grapsas, Rosemary Fei, Steven Chiodini (6)

**Observers & Guests:** Annaliese Williams, Asha Hemrajani, Dalila Rahmouni, Elise Lindeberg, Jonathan Robinson, Konstantinos Komaitis, Luca Urech, Michael Niebel, Navid Heyrani, Nick Shorey, Olaf Nordling, Rahul Gosain (12)

**Staff:** Bernie Turcotte, Brenda Brewer, Grace Abuhamad, Karen Mulberry, Marika Konings, Nigel Hickson, Tarek Kamel

**Apologies:** Chris Disspain, Jordan Carter

*\*\*Please let Brenda know if your name has been left off the list (attendees or apologies).\*\**

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## Transcript

- [Transcript\\_CCWG Rec11 Meeting\\_8 February 2016.docx](#)
- [Transcript\\_CCWG Rec11 Meeting\\_8 February 2016.pdf](#)

## Recording

- The Adobe Connect recording is available here: <https://icann.adobeconnect.com/p1jcrbgmhi2/>
- The audio recording is available here: <http://audio.icann.org/accountability/ccwg-accountability-08feb16-en.mp3>

## Notes

TRickert - Audio Only - Kavouss Arasteh and ELisse have to stop at 0300UTC

No changes to SOIs

TRickert: on to Recommendation 11 - the world is waiting on us to terminate. Hope we will continue to avoid voting. Should the group not be able to come to consensus we may have to vote - or if no proposal with enough consensus declare no consensus. Let us continue in the spirit of compromise. Let us bring up the proposal as presented Thursday last week. The straw poll concluded that most were supportive of presenting it to their respective groups for consideration.

KArasteh: from the list we need legal clarification. Would appreciate lawyers speaking to this.

TRickert: this is what we want to do. We will ask the legal team to go through the questions from Rafael - so everyone understands all the implications of this proposal - at the end of this call we will see if there is consensus. Any questions on the approach. Holly and Rosemary.

HGregory: From a legal perspective the proposal is viable but there will be some additional details to finish implementing. The questions are not really legal questions but rather process questions - but we have reviewed them.

Who would decide if the carve out is applicable? You could determine if a person or group is applicable. This has to be made at the beginning of an escalation process. This could be a decision of the Board or some committee of the Board or the Ombudsman, member of the IRP. Board Counsel, ICANN general counsel - it could be left to implementation.

What is the standard used to decide if it applies - As we understand the proposal - need to review if the Board is making a decision in accordance, or not, with GAC advice? There will need to be a judgement call and need a person who can do this properly. Such decisions could be challenged in via the RFR or using IRP (by GAC if it applied, community if it did not).

would the GAC be able to participate fully? Need to have clear language on this. Needs more details so it can do what you want it to do.

RFei: My sense - we do not understand enough all the details as to the various types of GAC advice. What goes into the bylaws should have a certain level of granularity but will not be the most detailed - as Holly said we will need a process that can resolve the last details.

TRickert: the questions asked by Rafael cannot be answered in strict legal terms and this group needs to decide on more details but this could be left for implementation. Who decides if the carve out applies could be decided today. We should only change the ways the Board works where needed. We have GAC and Board reps and it would be good to hear from those today.

KArasteh: 2 questions - re Rosemary does it mean that the Becky proposal is not the final language for the Bylaws. Second - would any Board or GAC member comment on what is on the table.

EMann: (chat) Clarification GAC advise: If GAC Advice is based on a consensus of the GAC, it will create a strong presumption that the application should not be approved. If the ICANN Board does not act in accordance with this type of advice, it must provide rationale for doing so. If the GAC advises that there are concerns about a particular application, the ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns and provide rationale for its decision. If the GAC advises that an application should not proceed unless remediated, this will create a strong presumption that the application should not proceed unless there is a remediation method available in the Applicant Guidebook (such as securing the approval of one or more governments) that is implemented by the applicant. If the issue identified by the GAC is not remediated, the ICANN Board is expected to provide a rationale for its decision if it does not follow GAC advice.

ELisse: if I become absent Stephen Deerhake has my proxy.

TRickert: GAC advice register or clear mention by the Board. We could ask the Board to note if their decisions is based on GAC advice.

GShatan: Rafael's questions address the more general.. If the initiating SO or AC is stating in the Escalation process. Many of these issues are for implementation.

KArasteh: IRP complainant and defendant in this case? Is all because of 2/3rds.

TRickert: we should first address the question who makes the decision and how. Suggestion is to ask to Board to include in its rationale if its decisions is mostly based on GAC advice. As to process let us ask our lawyers.

PRosenzweig: This is an implementation problem. This applies to GAC with full consensus advice. If the community agrees with the GAC what is the probability that the community will challenge the implementation of that GAC advice by the Board. The Board can always note more information.

TRickert: GAC advice is sometimes quite broad. Some are concerned that such advice would limit GAC participation eg. if there is general GAC advice on new gTLDs does this prevent GAC from participating in any community decisions wrt this? This is why I suggest basing it on Board rationale.

KArasteh: Agree with PR that the possibly of this case is very rare.

GShatan: We are inflating the importance of this questions. How often would a challenge to Board action happen where it is not clear that it is based on GAC advice? Seems to me that when they are implementing GAC advice they are clear - we may just ask them to confirm.

SDelBianco: A simply way to implement this from rec 2. REc 2 describes the process for escalation which includes the petition - we could modify rec 2 to require that if the petitioner believes the challenge a decision that is based mainly on GAC advise then they need to say so and then the rest of the community must decide.

PRosenzweig: All good ideas but this problem is an unlikely circumstance. Also needs rules for IRP. this all process and implementation.

TRickert: good suggestion we should do so shortly. First HG.

HGregory: the GAC must say it is consensus advice, the Board must say it is following GAC advice and then the SDB proposal are all good and useful for the legal advisors.

TRickert: The carve out will only apply to GAC consensus advice. Secondly general principals provided by the GAC will not be applicable to the carve out. Suggest we do not tweak the Kavous-Becky proposal and keep the points discussed today for implementation.

KArasteh: Becky, Stev and holly getting together and propose a workable language. Change next meeting to dedicated meeting on this or allow another dedicated meeting to finish this.

TRickert: Uncertain if we need more language - no tweaks - but we capture the recommendations today for implementation.

GShatan: We need to think about the context in which this could arise. On SOAC petitions and states this is a challenge to the implementation of GAC advice by the Board. The GAC can participate in all but vote. The GAC could challenge if it determines this is the case

TArasteh: What is the final situation.

BSchaefer: Bland advice is of no concern. The standard should be consensus advice to the Board.

TRickert: We will not change the language of the proposal. The carve out would only be applicable to consensus GAC advice and not to general principals. The lawyers will be asked to clear this up in implementation.

TSchneider: Seeking clarification - there are GAC principles on new gTLDs from 2007. they are fairly basic but cover a range of fundamental issues of public interest. as this advice is meant to be the basis for all new gTLDs would this mean that there was a carve out on all public policy issues related to new gTLDs forever?

TRickert: Re general principals?

BSchaefer: this is just prudent vetting.

Becky Burr: @Thomas Schneider - the notion that the 2007 new gTLD principles would preclude GAC participation in all matters involving new gTLDs is ridiculous. no one has suggested that and the language does not support that. it is only an argument to raise discord

TRickert: Some want a more formalized approach such as SDB proposal. Steve DelBianco [GNSO - CSG]: 3-part solution: 1) GAC Advice should indicate whether the advice was approved with consensus as defined in the bylaws. 2) Board actions should include whether the action was based upon GAC Consensus advice, and 3) An AC/SO petition to start the community decision should indicate whether the petitioner wants to carve-out GAC as a potential objector.

PRosenzweig: Agree with Becky.- frivolous argument.

BBurr: 2007 general principals by the GAC cannot be used for the carve out..

SDelBianco: We have a general solution to the TS problem in rec. 2 - 21 days after the Board decision. Even If the Board decision is based on 10 year old advice from the GAC it may be applicable but it is still limited to 21 days.

TRickert: SDB's 3 step process seems to get tractions and should be included. BBurr could you draft a few lines so we can add that as clarifying language which we can include in the final report. We would have 3 components to the proposal - 1 leave the proposal as is. Add clarification the SDB approach 3 steps to the report and add the Becky response vs the lifetime of GAC advice and add the SDB comment on timing. Is this understood?

KArasteh: no objection - can you clarify what you stated.

TRickert: yes we will do this. does this compromise language stands? Any opposition?

KArasteh: MCarvell - regardless of any decision the GAC can always participate even if they cannot vote.

SBachollet: other word for community discussion.

HGregory: In light of the progress that has been made do you still want our answers in writing?

TRickert: important for the GAC members so let us proceed with you answering the legal aspects. We have a way forward and that the agreement from last Thursday is still valid. We have added some qualifications for clarification. We will put it into a document and bring it to the group in the plenary meeting. Thanks everyone for the fruitful discussion and that we have clarified questions.

This closes the call.

## Action Items

## Documents

[Rafael's Questions\\_2.pdf](#)

## Adobe Chat

Brenda Brewer: (2/8/2016 05:29) Good day all and welcome to CCWG Accountability Rec 11 Meeting on Monday, 8 February 2016 @ 12:00 UTC! Please note that chat sessions are being archived and follow the ICANN Expected Standards of Behavior: <http://www.icann.org/en/news/in-focus/accountability/expected-standards>

Kavouss Arasteh: (05:33) Hi Brenda

Antonio Medina Gomez: (05:39) good morning

Olga Cavalli - GAC Argentina: (05:48) hello! Brenda can you do a dial out to me? +54 11 48262530 Thanks and good morning!

Brenda Brewer: (05:48) Hello Olga! Yes, we will call you. Thank you.

Kavouss Arasteh: (05:55) Hi olga.

Kavouss Arasteh: (05:55) You did not comment on my mail sent to you yesterday

Rory Conaty [GAC - Ireland]: (05:56) Morning everyone.

Kavouss Arasteh: (05:56) The content of message wasm while we all appreciate verbal clarifications from lawyers, we also need formal legal view on written MEMO. once available

Suzanne Radell (GAC): (05:58) Good morning and happy Monday

Pedro da Silva [GAC Brasil]: (05:59) Hello everyone!

Becky Burr: (05:59) Hello all

Thomas Rickert, CCWG Co-Chair: (05:59) Hi all!

Julia Wolman GAC Denmark: (05:59) Hello everyone!

Mathieu Weill, ccNSO, co-chair: (05:59) Hello everyone !

Rosemary Fei (Adler Colvin): (06:00) Good morning, all.

Pär Brumark (GAC Niue): (06:00) Hi all!

Bernard Turcotte Staff Support: (06:00) hi all

David McAuley (RySG): (06:01) Good morning all

Luca Urech (GAC - Switzerland): (06:01) Hi everyone!

nigel hickson: (06:01) good afternoon

Robin Gross [GNSO-NCSG]: (06:02) What would I do at 4am without CCWG? ;-)

Andrew Sullivan: (06:02) hello, all. I have new sympathies for those who live in California. I thought these calls were hard at 01:00, but 04:00 is harder!

Eberhard W Lisse [.NA ccTLD Manager]: (06:03) Please also note that I have a hard stop at 15:00 UTC

Kavouss Arasteh: (06:03) hi every body

Eberhard W Lisse [.NA ccTLD Manager]: (06:03) Sorry, 15:00 local time, ie in 60 minutes

Gary Hunt - UK Government: (06:04) Good afternoon from London!

mike chartier: (06:04) once more unto the breach, dear friends, once more

Rosemary Fei (Adler Colvin): (06:05) Did you mean breach as a legal matter?

Aarti Bhavana: (06:06) Hi All

Kavouss Arasteh: (06:06) I STRONGLY OPPOSE TO VOTING AUNDER ANY CIRCUMSTANCES

Avri Doria: (06:08) i support going to the members for a decision if we do not succeed today/tomorrow

Kavouss Arasteh: (06:08) aVRI

Becky Burr: (06:08) time to move forward

Kavouss Arasteh: (06:08) tHE ISSUE IS SO DELICATE AND SENSITIVE, CRUCIAL THAT WE MUST AVOID VOTING

Avri Doria: (06:09) i do not think that members need to start their discussion meeting by polling, they can try to reach consensus in the smaller representative group.

Matthew Shears: (06:09) agree Becky

Luca Urech (GAC - Switzerland): (06:10) We hope that the legal advice presented here will also be distributed to the CCWG in writing. Could you kindly confirm this?

Olga Cavalli - GAC Argentina: (06:10) +1 to Luca request

Andrew Sullivan: (06:11) I think what I heard is that these are preliminary observations, and that the lawyers will prepare written remarks later

Becky Burr: (06:12) and in each case, the specific wording will matter

Brett Schaefer: (06:12) Wouldn't there actually be a communication from the GAC to the BOard conveying the advice and affirming that the advice was adpted without objection?

Becky Burr: (06:13) @Brett, the question here is what is potentially being challenged by the Empowered Community

Avri Doria: (06:14) Is it reasonable to assume that the same considitions and considerations would need to apply to any of the carves out we create

Becky Burr: (06:14) i think that is correct Avri

Erika Mann: (06:15) Probably right Avri

Becky Burr: (06:15) GAC Principles vs. GAC Advice on a specific matter

Avri Doria: (06:16) If there are no legal issues to what degree can the methods for resolving these be implementation work?

Elise Lindeberg, GAC Norway: (06:17) Avri, this is so important, - should not be left for implementation - we need to have clarety before this is decided

Keith Drazek: (06:18) Thanks to Holly, Rosemary and their teams for the quick turn under intense time constraints.

Becky Burr: (06:19) My proposal is not intended to preclude GAC participation based on general principles or advice - but where specific actionable recommendations are challenged

Becky Burr: (06:19) then the carve out would apply

Julia Wolman GAC Denmark: (06:19) Agree clarity is important

Elise Lindeberg, GAC Norway: (06:19) ok Becky, but then we need other language I think ..

Becky Burr: (06:21) we need the final language drafters to understand the issue.

Becky Burr: (06:21) we are not drafting bylaws language

Erika Mann: (06:21) Clarification GAC advise: If GAC Advice is based on a consensus of the GAC, it will create a strong presumption that the application should not be approved. If the ICANN Board does not act in accordance with this type of advice, it must provide rationale for doing so. If the GAC advises that there are concerns about a particular application, the ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns and provide rationale for its decision. If the GAC advises that an application should not proceed unless remediated, this will create a strong presumption that the application should not proceed unless there is a remediation method available in the Applicant Guidebook (such as securing the approval of one or more governments) that is implemented by the applicant. If the issue identified by the GAC is not remediated, the ICANN Board is expected to provide a rationale for its decision if it does not follow GAC advice.

Becky Burr: (06:21) Erika - that is JUST for the new gTLD round!

Erika Mann: (06:21) My connection is not working, can't speak apparently

Paul Rosenzweig: (06:22) Good morning all

Eberhard W Lisse [.NA ccTLD Manager]: (06:22) I just lost COnnectivity, my ISP went down

Paul Rosenzweig: (06:22) Sorry to be late

Erika Mann: (06:22) Can someone read what I posted

Steve DelBianco [GNSO - CSG]: (06:22) I believe you quoted from the new gTLD Guidebook -- not the bylaws

Becky Burr: (06:22) that's not the bylaws

Matthew Shears: (06:22) this is confusing matters

Keith Drazek: (06:23) Concur with Becky. As with everything else, we're not drafting the bylaw language here. We're providing guidance to the bylaw drafters.

Thomas Schneider (GAC): (06:23) The provisions in the ICANN bylaws and the GC operating principles about what GAC advice is and how it is communicated are very general.

Erika Mann: (06:23) Exactly, this for the gTLD but this understanding is relevant for what we want to achieve

Elise Lindeberg, GAC Norway: (06:23) Agree with Becky, - this is one specific case of new gTLD's, - we need clarity for all GAC advice

Mark Carvell GAC - UK Govt: (06:23) GAC advice to the Board is recorded on an open register.

Eberhard W Lisse [.NA ccTLD Manager]: (06:23) Please note that should I loose connectivity again (and/or after 13:00 UTC) I again appoint Stephen Deerhake as my alternate/proxy.

Eberhard W Lisse [.NA ccTLD Manager]: (06:24) can this please be noted?

Becky Burr: (06:24) Yes, there is an open register of GAC Advice that is very clear

Thomas Schneider (GAC): (06:24) For many years, there has been work - in the framework of the Board-GAC-recommendation-implementation -group (BGRI) to the ATRT recommendations with a view to clarify some aspects related to this.

Mathieu Weill, ccNSO, co-chair: (06:25) Noted Eberhard. Although formal polling is not in our plans

Mathieu Weill, ccNSO, co-chair: (06:25) today

Paul Rosenzweig: (06:25) Isn't it simply that if the GAC advice is on the register?

Thomas Schneider (GAC): (06:25) It is important to note that the provision that Erika has cited is only relevant for the approval of new gTLD applications. Nothing else.

Steve DelBianco [GNSO - CSG]: (06:25) That makes sense, Thomas

Becky Burr: (06:25) But really it is actually more granular than that. It depends on what is being challenged.

Eberhard W Lisse [.NA ccTLD Manager]: (06:26) Thanks, Mathieu, I would also not like to, but the joys of developing countries...

Becky Burr: (06:26) the Board maintains a scorecard saying when it is accepting, etc. it is already written down

Eberhard W Lisse [.NA ccTLD Manager]: (06:26) with regards to stability of the Internet :-)-O

Erika Mann: (06:26) Sounds in principle good, if we have agreement on what TRicker is recommending, we can discuss this with the board quickly and circulate an answer back to you quickly.

Becky Burr: (06:26) and in any case, there won't be support for challenging something if it is based on broader community input

Avri Doria: (06:26) and yet because of the bylaw relationship, the GAC advice, if on register, would have to be seen as a final cause.

Paul Rosenzweig: (06:27) @Thomas -- has that happened before? GAC advice, as I read it, is always pretty unique

Brett Schaefer: (06:27) +1 Becky

Becky Burr: (06:27) the language of GAC advice is either specific or general, depending on the topic.

Becky Burr: (06:27) general: <https://archive.icann.org/en/topics/new-gtlds/gac-principles-regarding-new-gtlds-28mar07-en.pdf>

Avri Doria: (06:28) Sometime GAC and ALAC/At-Large have had similar point of advice

Avri Doria: (06:28) but once the GAC speaks, their advice is the dominant advice because of the bylaws.

Becky Burr: (06:29) agree, anyone who wants to invoke the carve out would have to signal that to begin with

Becky Burr: (06:29) then there would be process for debating whether or not the carve out applies

Avri Doria: (06:30) Becky, would the GAC have a 'vote' on that?

Mark Carvell GAC - UK Govt: (06:31) Agree expectation that Board makes clear if its decision is based on GAC advice is important for clarity if later there is a community objection.

Brett Schaefer: (06:32) I think we are debating an issue that is unlikely to really become a problem. If the GAC policy has broader support in the community, the challenge would fail anyway.

Avri Doria: (06:32) good point Becky

Elise Lindeberg, GAC Norway: (06:33) process for process for process... If the GAC have no vote on the carve out, what is the point of that last added layer

Thomas Rickert, CCWG Co-Chair: (06:33) please mute the mike when not speaking

David McAuley (RySG): (06:33) please mute if not speaking

Matthew Shears: (06:33) would that have to be made clear at the point of the petition in the escalation process?

Brett Schaefer: (06:33) So trying to parse whether the GAC advice is the source as opposed to whether it is based on the views of the ALAC or some other part of the community that supports similar actions.

Andrew Sullivan: (06:34) "The board says so" seems like a perfectly reasonable way to move ahead to me

Greg Shatan: (06:36) We are talking about an edge case here; in most cases it will be quite obvious whether the Board is implementing GAC Advice in making a particular decision. And GAC Advice is a matter of public record, so identifying GAC Advice is not an issue.

Becky Burr: (06:36) agree Greg

Avri Doria: (06:36) not completely. If 2 are required and GAC only has one partner, the condition applies.

Brett Schaefer: (06:37) Agree Andrew, the GAC register and Board acknowledgement that GAC advice was a motivating factor should be more than sufficient.

Avri Doria: (06:37) ie. is ALAC and GAC agree.

Andrew Sullivan: (06:37) I agree too, but we can make the edge case go away by just asking the board to say, "We did this because of the GAC advice"

Avri Doria: (06:37) if ...

James Bladel: (06:37) agree with Paul's last point.

Becky Burr: (06:37) but that issue is addressed Avri by Board saying it was acting on GAC advice

Avri Doria: (06:37) I agree, once the GAC give the formal advice it owns it.

Rafael Perez Galindo (GAC Spain): (06:38) Just to understand. Imagine the situation in which the Board acts moved by GAC and ALAC advice, both advices saying the same. Would the GAC be carved out, and the ALAC would not?

Becky Burr: (06:38) no one is going to challenge GAC advice that says evaluation procedures should be developed through a bottom up process

Becky Burr: (06:38) no one is saying that - that is a preposterous reading of my proposal

Avri Doria: (06:38) as far as I understand yes, because of the formal GAC procedure which is not applied to ALAC advice.

Julia Wolman GAC Denmark: (06:38) +1 Thomas, that is indeed an important question

Becky Burr: (06:38) specific actionable advice

Andrew Sullivan: (06:38) All these issues are easily solved by the board just saying, "We did this because of GAC advice"

Avri Doria: (06:39) ALAC advice need only be acknowledged, not dealt with.

Andrew Sullivan: (06:39) Then the general advice cases and so on are really unlikely to apply

Snehashish Ghosh: (06:39) Since SO

Snehashish Ghosh: (06:39) Since SO

Elise Lindeberg, GAC Norway: (06:39) Yes Greg, most cases are not a problem, - we try to make process for the cases where GAC advice is not agreed by the some part of the community, - it happens some times...

Greg Shatan: (06:39) How often is it unclear whether the Board is implementing GAC advice?

Rafael Perez Galindo (GAC Spain): (06:40) Thanks Avri. So the criterion is the "formal procedure" with the Board, I guess?

Rafael Perez Galindo (GAC Spain): (06:41) So how the EC is going to prevent the "2 bites at the apple" problem for the other constituencies that have as well the procedure with the Board?? I would be very glad to see the CCWG tackle that issue, too, given that GNSO/CCNSO have an "agreement procedure" with the Board as well as the GAC, and that was the rationale for this Rec11.....

Brett Schaefer: (06:41) @Greg, more specifically, how often is it unclear when the Board is implimented consensus GAC advice that is supported by at least one otehr SOAC but is opposed by the otehr three?

Brett Schaefer: (06:41) edit - other

Erika Mann: (06:41) Maybe it would already help to formalise the procedures

Kavouss Arasteh: (06:42) sTILL the final language of Beckie's proposal bneed to be reviewed after we receive the written views from Lawyers

Andrew Sullivan: (06:42) The difference between "GAC 2 bites" and every other group's has been hashed to death on the list. That's not a reasonable analogy

Erika Mann: (06:43) Sorry that you can't hear me when I try to speak.

Rafael Perez Galindo (GAC Spain): (06:43) @Andrew, I cannot agree.

Becky Burr: (06:43) +1 Steve

Matthew Shears: (06:43) +1 Andrew

Pedro da Silva [GAC Brasil]: (06:43) Fully agree with Rafael. Some GAC members are still concerned with the fact that GAC is being singled out here... answers provided so far to explain the uniqueness of GAC advice haven't been sufficient

Matthew Shears: (06:44) +1 Steve

Eberhard W Lisse [.NA ccTLD Manager]: (06:44) we are not really moving much forward, are we?

Becky Burr: (06:44) I understand Rafael and Pedro, but on the two bite issue apparently we will never agree

Brett Schaefer: (06:44) +1 Steve, that is a very reasonable proposal, we would need to resolve that early in teh process anyway.

Keith Drazek: (06:44) Agree Steve. Thanks for bringing us back to the EC procedures.

Rory Conaty [GAC - Ireland]: (06:44) Steve's suggestion could address the process element.

Kavouss Arasteh: (06:44) We need to also work on Steve recent amemdments

Olga Cavalli - GAC Argentina: (06:44) +1 to Rafael's and Pedro's concerns

Avri Doria: (06:44) GAC is the only AC that get a first bite at the apple. All other advice has no bylaw protection and can be ignroed by the Board without any attemptp to resolve it.

Keith Drazek: (06:45) Correct Avri

Robin Gross [GNSO-NCSSG]: (06:46) GAC gets 2 bites, plus one of the bites is enlarged. GAC is indeed the big winner in this so-called accountability process.

Kavouss Arasteh: (06:47) Holly's suggestions is senseful and good

James Bladel: (06:47) Agree with Avri/Robin.

Luca Urech (GAC - Switzerland): (06:48) @Avri: Bite is maybe a bit a stretch, since the Board merely has to "try" to find a solution.

Kavouss Arasteh: (06:48) I suggestthe following

Snehashish Ghosh: (06:48) Since SO's have PDPs, therefore Board Decision is clearly based on the SO's recommendation. It is a fair point that the Board rationale mentions that it based its decision on GAC Advice. At the same time, the SO/AC recommendation/advise which formed the basis of the Board Decision should be excluded. GAC is being singled out, otherwise.

Kavouss Arasteh: (06:48) Beckie, Stve and holly getting together and propose a workable language

Erika Mann: (06:49) We (board members on the call) took note, we will circulate debated proposals to the board and will come back to you.

Pedro da Silva [GAC Brasil]: (06:49) +1 Ghosh

Olga Cavalli - GAC Argentina: (06:49) +1 Ghosh

Paul Rosenzweig: (06:49) @ Thomas -- slight caveat -- if the general procedural advice is itself from the GAC as GAC full consensus the community might choose to challenge that through the EC. I can't imagine that circumstance but we should reserve the possibility

Mark Carvell GAC - UK Govt: (06:49) Please also bear in mind the GNSO has a formal liaison to the GAC so public policy issues that might otherwise materialise later as the subject of advice to the Board, will be flagged early on especially if related to a PDP. This is a more transversal community-based way of working that makes the kind of two bites scenario and any necessary carve out likely to be very rare.

Brett Schaefer: (06:50) @Thomas, what exactly is meant by general principles? What is the GAC consensus advice is a general principle that has significant impact on ICANN?

Andrew Sullivan: (06:50) Please, no more delay: tomorrow is the time to make a decision

Brett Schaefer: (06:50) edit - if

Cheryl Langdon-Orr: (06:50) good reminder Mark

Paul Rosenzweig: (06:51) @ Brett -- I agree. I think that the adoption of that general principle will be the time for a challenge, not, say spilling the board 3 years later because of an implementation of that principle

Thomas Schneider (GAC): (06:51) FYI: 99% of GAC advice is consensus advice.

Brett Schaefer: (06:51) I think consensus advice should be the standard, if a general principle is unobjectionable or bland, it won't be challenged.

Paul Rosenzweig: (06:51) +1 Brett

Matthew Shears: (06:51) agree

Kavouss Arasteh: (06:53) Thomas, Pls repeat your last statement together with the final language as suggested by Steve and Holly in the CHAT

Robin Gross [GNSO-NCSG]: (06:54) Agree, Brett.

Elise Lindeberg, GAC Norway: (06:54) So every time GAC gives consensus advice, and this is followed by the the ICANN board, GAC is out of tany further process...?

Thomas Schneider (GAC): (06:54) so a question to you all on a concrete example:

Greg Shatan: (06:55) No, Elise. Only if the challenge demands that the Board does not implement GAC consensus advice.

Steve DelBianco [GNSO - CSG]: (06:55) 3-part solution: 1) GAC Advice should indicate whether the advice was approved with consensus as defined in the bylaws. 2) Board actions should include whether the action was based upon GAC Consensus advice, and 3) An AC/SO petition to start the community decision should indicate whether the petitioner wants to carve-out GAC as a potential objector.

Greg Shatan: (06:55) And only the vote. GAC participates in conference call, discussion, etc.

Thomas Schneider (GAC): (06:56) there are GAC principles on new gTLDs from 2007. they are fairly basic but cover a range of fundamental issues of public interest. as this advice is meant to be the basis for all new gTLDs would this mean that there was a carve out on all public policy issues related to new gTLDs forever?

Brett Schaefer: (06:56) No, Thoamas, I disagree with the general advice language

Julia Wolman GAC Denmark: (06:56) Good question Elise

Kavouss Arasteh: (06:57) gOOD QUESTION tHOMAS sCHNEIDER

Julia Wolman GAC Denmark: (06:57) +1 Thomas

Robin Gross [GNSO-NCSG]: (06:57) What requires GAC to do its work in a bottom-up or transparent manner?

Olga Cavalli - GAC Argentina: (06:57) + 1 Thomas

Kavouss Arasteh: (06:57) tHOMAS + 1

Andrew Sullivan: (06:58) I thought the discussion we just had \_did\_ make this clear

Thomas Schneider (GAC): (06:58) sorry, i lost my audio.

Greg Shatan: (06:58) The carve out applies to a challenge to the Board implementing GAC advice, so that the result is that the board does not follow GAC advice.

Kavouss Arasteh: (06:59) Thomas Schneider question is very valid one and must be fully taken into account

Mark Carvell GAC - UK Govt: (06:59) @ Elise; GAC will have made its case to the Board underpinned by rationale and can subsequently still provide advice to the community at every step of the escalation process.

Greg Shatan: (06:59) Thomas, do you think that every challenge to Board new gTLD decisions is a challenge to the GAC general principles? I can't see how that's the case.

Becky Burr: (06:59) @Thomas Schneider - the notion that the 2007 new gTLD principles would preclude GAC participation in all matters involving new gTLDs is ridiculous. no one has suggested that and the language does not support that. it is only an argument to raise discord

Andrew Sullivan: (07:00) I agree with Becky



Steve DelBianco [GNSO - CSG]: (07:00) 3-part solution: 1) GAC Advice should indicate whether the advice was approved with consensus as defined in the bylaws. 2) Board actions should include whether the action was based upon GAC Consensus advice, and 3) An AC/SO petition to start the community decision should indicate whether the petitioner wants to carve-out GAC as a potential objector.

Paul Rosenzweig: (07:00) +1 Becky

Kavouss Arasteh: (07:01) Beckie, if Thomas Schneider is not right pls provide legal answer to that

Elise Lindeberg, GAC Norway: (07:01) GAC consensus advice loosing its power ...

Greg Shatan: (07:01) In any case, the carve-out needs to be invoked in the process of invoking a community power. At that time, the GAC can say that the Board action is not an implementation of GAC advice.

Kavouss Arasteh: (07:01) Thomas Co-Chair,

Julia Wolman GAC Denmark: (07:01) @Becky I think the issue is that there is not enough clarity on the consequences

Kavouss Arasteh: (07:01) I repeat my question that we need a formal resume of what we have discussed

Kavouss Arasteh: (07:02) Pls do not rush

Kavouss Arasteh: (07:02) Allow GAC to digest the matter

Olga Cavalli - GAC Argentina: (07:02) +1 to Julia, it is important to have clarity about consequencesw

Andrew Sullivan: (07:02) We are not rushing. We are out of time

Kavouss Arasteh: (07:02) Dear Co-Chair,

Andrew Sullivan: (07:02) the GAC needs to digest now

Thomas Schneider (GAC): (07:02) let me give you one example: 2007 GAC advice demands protection of geographical, cultural and other names. this is an issue of importance still...

Kavouss Arasteh: (07:02) Let us see the final language

Greg Shatan: (07:03) This is not a legal question. At best, the question is whether the result of a challenge to a Board decision will result in blocking the Board from implementing GAC advice.

Pedro da Silva [GAC Brasil]: (07:03) Agree with Kavouss that we need a GAC specific discussion on this issue since the GAC is the constituency specifically being "target" here

Eberhard W Lisse [.NA ccTLD Manager]: (07:03) I have my hard stop now, Stephen Deerhake is on line.

Izumi Okutani (ASO): (07:03) I think the way Paul described it makes sense on how 2007 new gTLD principles be handled

Erika Mann: (07:03) We lost recording, can someone check what is going on?

Paul Rosenzweig: (07:04) +1 Becky

Kavouss Arasteh: (07:04) Becjkie, this is what you claim to be the case but put the final language to address that issue totally

Paul Rosenzweig: (07:05) @ Thomas. The specific principle is settled. If GAC tomorrow, issued advice to reject an application for .swisscheese because of this concern and if the Board accepted that advice and if the community thought it was unreasonable advice and began the Empowered Community process then at the very end of the process the GAC could not vote. It is not the principle that is at issue, it is the advice on .swisscheese.

Andrew Sullivan: (07:05) @Kavouss: that is true of every single piece of what we've been doing

Andrew Sullivan: (07:06) since we haven't written bylaws

Brett Schaefer: (07:06) [Exact.ly](#) Becky, a general principle would have to lead to a specific decision in order for it to elicit an EC challenge.

James Bladel: (07:06) +1 Becky.

Andrew Sullivan: (07:06) We know what the principles are, and the language is perfectly clear on intent

Keith Drazek: (07:06) +1 Becky

Asha Hemrajani: (07:06) +1 Becky

Kavouss Arasteh: (07:07) Thomas Co Chair,\$

Kavouss Arasteh: (07:07) We need to see the final language

Matthew Shears: (07:07) + 1 Steve

Paul Rosenzweig: (07:07) +1 Steve as well

Thomas Schneider (GAC): (07:07) @Steve: but what you just said actually makes my question even more relevant...

Brett Schaefer: (07:08) Yes, support Steves three step proposal

Erika Mann: (07:08) Someone needs to check, we don't have PRosenseig: and BBurr on record

Erika Mann: (07:08) Last comments they made

Becky Burr: (07:08) of course

Thomas Schneider (GAC): (07:09) finally @Becky: in case you alluded to me: i am NOT trying to raise discord, i am trying to understand.

Steve DelBianco [GNSO - CSG]: (07:10) GAC advice such as principles are eternal. It is action of our board that is subject to challenge. And there is a 21-day deadline to begin a community petition based on a board action

Izumi Okutani (ASO): (07:10) Clear to me

Mark Carvell GAC - UK Govt: (07:11) Can th etext make clear if there is a carve out, the gAC can still provide advie to the community and that should be a clear process of receipt of that advice and that it is responded to.

Brett Schaefer: (07:11) +1 Steve

Andrew Sullivan: (07:11) I think this entire issue has been crystal clear for some time, but if it helps people to have additional clarifying language I don't oppose it

Rory Conaty [GAC - Ireland]: (07:12) +1 Helpful to clarify that engagement with community would not be precluded.

Julia Wolman GAC Denmark: (07:12) Good point Mark

Brett Schaefer: (07:12) Mark, I think that is clear in the current proposal. GAC can advise an participate even if they are excluded from voting under this limited circumsance.

Becky Burr: (07:12) correct, we've confirmed that numerous times

Keith Drazek: (07:13) GAC can provide advice to anyone at any time on any issue.

Becky Burr: (07:13) this is not an attempt to gag the GAC

Greg Shatan: (07:13) The proposal says: " In such cases, the GAC remains free to participate in community deliberations in an advisory capacity, but its views will not count towards or against otherwise agreed thresholds needed to initiate a conference call, convene a Community Forum, or exercise a specific Community Power. "

Kavouss Arasteh: (07:13) tHAT WOULD HELP CONSIDERABLY

Steve DelBianco [GNSO - CSG]: (07:13) GAC may also advice the empowered community on its exercise of a power. That is already anticipated

Greg Shatan: (07:14) Is that not clear enough??

Izumi Okutani (ASO): (07:14) I have the same understanding as Brett on Mark's question - as seems to the case for the others

Matthew Shears: (07:14) agree good for clarity

Paul Rosenzweig: (07:15) +1 Sebastian ... and more to the point each individual government can participate when and as it wishes ....

Keith Drazek: (07:15) Very good point, Paul.

Mark Carvell GAC - UK Govt: (07:15) Thanks for repsonding to my point. Need absolute clarity on the role of the GAC as advisory to the community procees of takign decisions.

Greg Shatan: (07:15) Agree with Sebastien.

Olga Cavalli - GAC Argentina: (07:16) yes please we need them in writing!

Kavouss Arasteh: (07:16) tHE ANSWER IS YES AS IT HELPS

Paul Rosenzweig: (07:16) @ Thomas -- they are not legal question ....

Keith Drazek: (07:16) It's not a legal question. We've been told it's legally viable.

Olga Cavalli - GAC Argentina: (07:16) we need to cosult with our national colleagues

Becky Burr: (07:16) they are not legal questions, as previously indicated

Megan Richards, European Commission: (07:16) could be useful for all those not participating in this chat

Paul Rosenzweig: (07:16) Disagree ... asking our lawyers to write a policy paper is a waste of their time and our money

Steve DelBianco [GNSO - CSG]: (07:17) Might be better to have our lawyers assess whether our 3-part plan and clarifications are legally workable

Matthew Shears: (07:17) focus on legal issues is appropriate

Becky Burr: (07:17) keep in mind the budget issues

Julia Wolman GAC Denmark: (07:17) Thanks Holly, much appreciated

Mark Carvell GAC - UK Govt: (07:17) @ Sebastian: GAC has a wider advisory role now followign ATRT1 and 2 e.g. strengthened GAC-GNSO consultation process.

Kavouss Arasteh: (07:17) WE HAVE SPENT A LOT OF MONEY PLS DO PUT ANY OBSTACLE NOW

Greg Shatan: (07:18) If this puts questions to rest, and defines their scope as being "not legal" (and thus ours to deal with) that is money well spent.

Kavouss Arasteh: (07:18) sTEVE,

Greg Shatan: (07:19) Even if it is "belts and suspenders"....

Kavouss Arasteh: (07:19) pLS CLEARLY REITERATE mARK'S SUGGESTIONS IN WRITTING

Keith Drazek: (07:19) Thanks all

Paul Rosenzweig: (07:19) @ Greg -- fair enough -- but you assume that this will actually put this to rest for the GAC objectors. It wont

Izumi Okutani (ASO): (07:19) Thanks all

Cheryl Langdon-Orr: (07:19) Talk more on the morrow then... BYE FOR NOW>>> Thanks everyone

Pär Brumark (GAC Niue): (07:19) Thx all. Bye!

Annaliese Williams (GAC Australia): (07:19) thanks all

Markus Kummer: (07:19) Bye all

David McAuley (RySG): (07:19) Thanks Thomas, all

Andrew Sullivan: (07:19) bye, thanks for moving ahead

Paul Rosenzweig: (07:19) Bye

Brett Schaefer: (07:19) bye all

Olga Cavalli - GAC Argentina: (07:19) bye thks

Stephen Deerhake (.as): (07:19) Bye all.

Robin Gross [GNSO-NCSG]: (07:19) thanks, bye

Matthew Shears: (07:19) thanks good call

Julia Wolman GAC Denmark: (07:19) Thanks. bye

Erika Mann: (07:19) Thanks

Martin Boyle, Nominet: (07:19) thanks& bye