



Minutes BC Members Call August 8th, 2013 11 am EDT (3 pm UTC)

BC Attendees:

Elisa Cooper
Steve DelBianco
Chris Chaplow
Marilyn Cade
John Berard
Jimson Olufuye
Stephane Van Gelder
Mark Sloan
Anjali Hansen
Angie Graves
Barbara Wanner
Aparna Sridhar

Andy Abrams
J. Scott Evans
Philip Corwin
Bill Smith
Ron Andruff
Liz Sweezey
David Fares
Richard Friedman
Marie Pattullo
Emmett O’Keefe
Benedetta Rossi, BC Secretariat

1. Introduction

Elisa Cooper:

- Elisa Cooper, BC Chair, went over the agenda items for the meeting, and took this opportunity to thank Chris Chaplow, BC Vice Chair for Finance & Operations, for agreeing to maintain his position as Vice Chair until the BC Officer election in February 2014.

2. Review of Durban Meeting – All

Elisa Cooper:

- Elisa summarized for members who were not present in Durban, her perspective of the BC meeting in Durban.
- The item that was discussed the most was the BC Charter for potential amendments.
- Due to the amount of open public comment periods and other items of relevance to the BC since Durban, Elisa has not yet had the time to work on putting a draft together to circulate to the BC list. This is Elisa’s priority.

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- Elisa opened the discussion up to members to give their views on the meeting in Durban.

Ron Andruff:

- Ron noted that in addition to Elisa’s summary of events and meetings that occurred in Durban, he would like to note the amount of work and collegial effort that went into the Durban meeting.
- Ron stated that the level of professionalism and the work that's going on within the ICANN community right now is astounding and really a pleasure to witness and be part of.
- Ron thanked all members who participated in the meeting in Durban, and encouraged members to join them in the future.

Stéphane Van Gelder:

- Stéphane noted that the meeting in Durban was his first ICANN meeting as a BC member, and that he was very impressed with the level of professionalism that he saw from this group, especially in regards to the work the Executive Committee members are doing.
- Stéphane appreciates the amount of information that is sent to members, the way that that information is prepared, and the way the BC as a group is always ready to respond to ICANN public comment periods.
- Having experience with other groups, Stéphane is happy to be a part of the BC and noted that the BC is a force to be reckoned with.

Steve DelBianco:

- Steve noted that the BC continues to build an alliance with the At Large Advisory Committee (ALAC). Their purpose is to represent At Large Internet users in a global sense and they're not part of GNSO, and they're a very powerful AC.
- At the Durban meeting the BC worked closely to put a magnifying glass on concerns about security, stability and resiliency and we invited two BC members to attend an ALAC panel on protecting the public interest in the new gTLD program.
- Steve noted that this is a relationship and an alliance that the BC should continue to leverage over time.
- Steve also mentioned that the SSAC - the Security Stability Advisory Committee - seems to be recognizing that just because they issue a report it doesn't mean that ICANN staff listens to what they require. So they're learning to lean on the BC, the ALAC and the GAC to get ICANN to pay attention to SSR concerns that the SSAC has been talking about for two years.

Marilyn Cade:

- Marilyn mentioned that for the first time the CSG managed to work out an arrangement to hold a working session on a Sunday afternoon.
- This improvement allowed the CSG to avoid rushing through the working session on Tuesday.



- Marilyn highlighted the fact that holding a CSG working session on Sunday afternoon was a major improvement and helped a great deal in the efforts to have robust, thorough conversations ahead of time with the CSG on issues.

3. Policy Update and Open Comments – Steve DelBianco

Steve DelBianco:

- Steve noted that there are currently nine open public comments. The first one is on the expert working group on the next generation directory services (WHOIS).

EWG (WHOIS):

- BC member Susan Kawaguchi (Facebook) is on this expert working group which is an example of a top-down group created by ICANN's CEO, making significant progress and it might be that progress that led the CEO to launch five new top-down strategy groups at the Durban meeting.
- These comments are closing on August 12 and it's not a traditional comment period that has both a comment and a reply. Instead it's just an initial comment period. And the comments are going to the expert working group and not necessarily to ICANN's board or staff.
- Steve submitted the latest draft comments yesterday and commended the different BC members who commented specifically on this draft: Laura Covington who worked with Susan Kawaguchi, Elisa Cooper and J. Scott Evans.
- There are three issues in that draft that need to be discussed on this call.
- Marie Pattullo submitted a new compromise language which was an attempt to express the concerns that Bill Smith (PayPal) raised about security, stability and resiliency on a fully centralized WHOIS.
- Steve opened the discussion to BC members to see what their thoughts are on Marie's language.

Bill Smith:

- Bill noted that PayPal is happy to accept Marie's language but with some reservations. If this language is the will of the BC group PayPal will go along with them, but may submit comments separately as well.
- Bill addressed BC members PayPal's concerns about this topic:
 - a) Any proposal for a centralized Internet service requires or demands special attention by the BC as a group and not just as business advocates but as people who care about the Internet.
 - b) Any aggregation of data for ease of analysis for one purpose facilitates its use for other purposes.
 - c) Individual vetting is an extremely expensive and time-consuming process if done properly, and if it isn't done properly there's no reason to do it.



- d) Global ICANN policies for international scale for vetting and gating access will invite intergovernmental action especially if law enforcement is included in this. So that's something that Bill believes that if not the Business Constituency, ICANN needs to consider or the community needs to consider.
 - e) PayPal is unaware of any similar system that operates at the scale of the proposal and believes this is going to be an extremely expensive walk into uncharted territory.
- Bill commended Susan and all the other members on the EWG for the work that accomplished. The output of this group is a step forward, but PayPal cautions changing a system that while has lots of problems has in fact functioned, especially if it is replaced with one that will require considerable time and money both by those who operate it but also by those who have to use it.

Steve DelBianco:

- Steve responded to Bill Smith noting that the BC has the time for Bill to specifically suggest changes to the paragraph at the bottom of Page 2 of the comments proposed by Marie Pattullo.
- He also noted that a lot of BC members look at this relatively to the current distributed system both WHOIS, where each and every vendor runs it differently. So members are attracted to the standardization one achieves with a centralized system, whereas Bill is citing the voice of caution that there are vulnerabilities associated with being centralized.

Stéphane Van Gelder:

- Stéphane proposed that the BC could try to feed into the document or the compromise solution by adding some language that would suggest that the new model could not be simply introduced as a direct replacement or swap of the current WHOIS model but rather phased in and that would be a recommendation perhaps from the EWG.

J. Scott Evans:

- J. Scott noted that he disagrees with Bill's points and with Stéphane's suggestion. He stated that the business community and the IP community have been fighting for this for 14 years, so to now state the this is something that we don't want because nobody else does it is inconsistent with 14 years of advocacy that the business community and the IP community has worked very hard to do.
- J. Scott asked Bill to check with the FBI and government representatives because it's his understanding this is something they've been fighting for as well.
- J. Scott will not agree to any kind of consensus that gives ICANN a way to scuttle this effort and he believes this is exactly what this type of language does.
- J. Scott is however in favor of Marie's compromised language because it states, like with anything we do at ICANN, we need to proceed thoughtfully and with caution and we need to consider that everything has certain ramifications and those all need to be considered in the implementation.

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Marilyn Cade:

- Marilyn sympathized with some of the concerns that Bill raised and proposed a different rationale for why we need to come up with some solutions that are going to meet the BC’s needs broadly and the needs of registrants.
- Marilyn noted that a highly distributed thin WHOIS environment is also very vulnerable. It has its own form of vulnerabilities just as of course a centralized approach would.
- Marilyn believes the BC should support asking for SSAC-supported studies.
- Marilyn also noted that the BC needs to be careful about thinking that they can distinguish between the fact that a noncommercial site may actually be a private citizen or may be a state site. Some sites mask themselves as noncommercial for nefarious purposes so maybe the BC needs to modify their language about asking for a bright line test and just saying that criteria that can be verified should be established.

Commercial vs Non Commercial:

Steve DelBianco:

- Steve addressed the second question regarding this draft: how should the BC address the distinction between commercial and noncommercial. This is contained in the draft at the bottom of Page 4 and the top of Page 5.

ACTION ITEM: Steve asked members to look at the language in the draft and make specific comments about that language.

Bill Smith:

- Bill noted that PayPal respects Yahoo's right to express the strength of its opinion, but finds surprising however that Yahoo seems to fail to understand the issues that they’ve presented. Bill also addressed Stéphane Van Gelder’s suggestion to phase in this approach and noted that PayPal does not support this since the concept as presented, according to PayPal, is flawed.

Steve DelBianco:

- Steve, in response to Bill’s comments, noted that he senses that a strong majority of BC members want the SSAC study risk mitigation measures to the centralized access and the centralized vetting.
- Steve proposed to ask the SSAC to come back with risk mitigation studies in the order of months not years. So if the BC starts them right away with a comment like the one they are anticipating then Steve does not believe it would contribute to a delay, but should identify the risk that Bill is concerned about and ideally ICANN would then take steps to mitigate some of those risks.
- You can’t mitigate all of the risks, but Steve does not sense that asking for studies is going to create delays.

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David Fares:

- David commented on the commercial versus noncommercial issue.
- David posted to the BC list raising concerns regarding the distinction between using commercial and noncommercial as the basis to determine whether or not information should be made available or whether people should be able to utilize a proxy service.
- As David mentioned in his email, some sites may not have a commercial intent in that they do not seek ads in gaining revenue and they do not engage in e-commerce. However they may provide content that actually competes with commercial enterprises and therefore has a commercial impact.
- David does not think that people should be able to hide behind what we would constitute to be illegal activity by using a proxy service and disguising who is the actual operator of or the registrant of the site.

Steve DelBianco:

- Steve invited David to look at the draft he circulated to the BC list and look at the section he is referring to. Steve proposes to discuss this section as a two-step and that wherever the BC draws the line between commercial and non, David wants to have strong relay and reveal rules for when that has to be done.
- The BC may not be able to make strong recommendations, but may at least raise it as a two-step process.

Aparna Sridhar:

- Aparna addressed David Fares’ comments and asked him to clarify the following:
The term commercial effect can be quite broad. Aparna noted that almost anything can have a commercial or economic effect.
- Aparna will comment further once the draft is circulated by David, but wanted to note her concerns regarding what seems to be a potentially broad characterization.

Steve DelBianco:

- Steve agreed with Aparna and asked David for a hardline rule for who can use privacy proxy but commercial effect can be among the criteria, among the justifications that relay and reveal is required by the privacy proxy provider.
- If a privacy provider is shown, a proxy provider evidence of actionable harm which includes commercial effect we are looking for ICANN rules to require the privacy proxy provider to reveal.
- So that’s what Steve means by the second step of the two steps.
- Steve volunteered to help David with this draft.
- Steve moved onto the next topics out for public comment and flagged the proposal to mitigate name collisions risk from the new gTLD delegations. This is number seven on the list Steve circulated.



ACTION ITEM: Steve asked for BC volunteers to help draft these comments since it’s the general business community that is most likely to be impacted by internal name collisions and internal name certificates.

Other Public Comments:

- Steve took a queue on levels of interest on any of the other eight comments listed on Steve’s document.

Locking of UDRP & Name Collusions:

Marilyn Cade:

- Marilyn asked for further discussion of item number 6 (UDRP) which has been of high interest to the BC in the last few years.
- Marilyn also volunteered to help draft a comment for the name collisions issue.

Elisa Cooper:

- Elisa noted that if John Berard, GNSO Councilor, believes that the BC should be happy with the locking of the UDRP the BC should draft a quick comment to be supportive of it.
- In terms of seven the name collisions report and the recommendations, Elisa believes the BC should submit comments on it as well as the mechanics related to the rights protection mechanism.
- Elisa volunteered to help draft comments on points number seven and eight.

Ron Andruff:

- Ron finds it very strange that the proposal to mitigate name collisions risks is coming up very quickly when the risks are so intense and so significant.
- Ron believes that it’s being driven too fast.

Elisa Cooper:

- Elisa noted that the BC will have another meeting prior to the deadline for the initial comments of the proposal to mitigate name collisions.
- Elisa proposes to spend more time on that meeting discussing the contents of the reports and the BC comments on them.

J. Scott Evans:

- J. Scott volunteered to work with Steve on the name collision issue.



Geographic Indication Issue:

J. Scott Evans:

- J. Scott then mentioned that he will submit a draft the following week regarding geographic indication which will focus on a proposal for more work, setting out the rationale for what J. Scott has been talking about in writing and has said verbally so BC members can see it in writing and a discussion can follow to attempt to come up with a consensus position to provide to the larger group.
- Stéphane Van Gelder and Sarah Deutsch will work on the draft with J. Scott prior to circulating to the BC list.

Steve DelBianco:

- Steve noted that this draft comment is not part of the public comment, but an initiative driven by the BC in response to the GAC advice on geographical indicators and TLDs.
- ICANN has not posted GAC advice for public comment so there's no place for the BC to log this in.
- The BC will therefore submit a letter to ICANN if an agreement is reached within the BC.

Centralized contracts for URS:

Phil Corwin:

- Phil raised by email to the BC list that he will draft a letter for review by BC members during the weekend.
- Phil noted that on the day after the Durban meeting ended ICANN put out a UDRP study of which there was no notice. There was no board involvement and there was no public announcement, making it hard to even know they had done it.
- This is a staff document saying that no type of agreement with UDRP providers is justified.
- Now that's contrary to establish the long-standing BC position that the BC just reiterated in regard to the Arab Center for Dispute Resolution.
- At Steve's suggestion, Phil checked with Mahmoud Lattouf to make sure that their position that they had no problem with a standard agreement and would abide by any that was established in the future.
- The other concern in regards to this issue is that if and when there's a PDP on the UDRP is that this is an issue that should be on the table for the community and not dictated by staff.
- Phil is therefore going to work on a draft letter raising some of these issues to get some responses from ICANN.



4. GNSO Council Update – John Berard

John Berard:

- John noted that the special council meeting which occurred was based on casting a single vote for the motion on the creation of an implementation review team on the locking of the domain name.
- It was a fairly tactical initiative delayed only because of the timing of its initial offering. There wasn't any opposition to it therefore it passed. The next meeting is in early September.
- John noted that one thing he believes is important for the BC and its members to pay attention to is the call for members of the policy implementation working group.
- This is the group that will advise the GNSO on the proper balance between policy and implementation.
- John encouraged BC members to participate.

Elisa Cooper:

- Elisa noted that J. Scott Evans has volunteered for this working group.

J. Scott Evans:

- J. Scott confirmed that he has received acknowledgment of being on this working group. J. Scott is on the list and has contacted Jeff Neuman who is the liaison on the group and asked when they are getting started.
- J. Scott has also volunteered to chair the group.

Steve DelBianco:

- Steve invited other BC members to join J. Scott on this group, with J. Scott's support since the work load on this group will be heavy and it is an incredibly important issue for the BC.

5. Conclusion – Elisa Cooper

Elisa Cooper:

- Elisa thanked Steve DelBianco and John Berard for the discussions, and noted that the policy issues that Steve brought forward on this call need to be addressed by the BC at length.
- Elisa also thanked BC members for their participation on the call and apologized to Marilyn Cade and Chris Chaplow for not having the time to address the CSG Update and Finance Update. If there are particular items that Marilyn and Chris would like to relay to BC members she urged them to submit them to the BC list.
- The call was adjourned.