

## **Transcription ICANN Durban Meeting**

### **BC Closed Meeting**

**Monday 15 July 2013 at 12:00 local time**

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Elisa Cooper: All right. Well, thank you to everyone for joining today. This is a closed session but it will be recorded, so please do use the microphone.

Initially we had scheduled this meeting to discuss the strategic plan and to kind of review, there were eight different areas of focus for the strategic plan and the plan was to kind of review those and identify how we were going to address the areas that were of interest to us.

That said, there are clearly a couple of other top priorities that we have and I'm going to actually turn it over to Steve DelBianco. They're primarily issues of policy that within the last couple of days have risen in importance and so I think it's more important that we spend our time on those.

If it turns we can get through those by one, you know, we have time at the end perhaps then we can go back and discuss the strategic plan and where we'll spend our time, otherwise we'll cover that in one of our regular weekly meetings.

So, are there any other - so on the agenda and Steve's going to take us through a motion that's currently at the council, as well as this discussion around GAC advice and the geographical issue.

Are there any other topics that are sort of rising to level of importance that we should discuss today because we wanted to either address on Tuesday or even take them to the public forum? If there are any other items that we should discuss, I'd be great to get those on our agenda right now.

Man: (Unintelligible).

Woman: This isn't critical for today but I just wanted to raise. I'm going to - I'm quite interested to understand how the panels will be filled, the five panels that (Fadi) has brought up?

It's clear that it's not going to be a process through the structures and that's fine but it would be interesting to understand what the process will be and get a little more detail on that at some point during informal discussions with him or staff. Thanks.

Woman: Yes, I'll - if I see him or other see him, if they can ask and let's see if they can get an answer to that, otherwise we'll have to go through more formal channel.

Man: (Unintelligible).

Woman: Yes. Steve just mentioned that we should probably do introductions even though many of us already know each other. But if we can start off with Phil? Just for a quick introduction, your name and maybe where you're from.

Phillip Corwin: Phillip Corwin VirtuaLaw LLC in Washington and I'm a consultant to various interest that deal with ICANN, matter of fact advice policies.

Ron Andruff: Rod Andruff RNA Partners, Miami Beach.

Man: (Unintelligible).

Elisa Cooper: I'm Elisa Cooper, I'm Chair of the Business Constituency and I work at MarkMonitor.

Steve DelBianco: Steve DelBianco with NetChoice and I'm the - I'm a Vice Chair for Policy Coordination.

John Berard: My name is John Berard, I'm a public relations consultant based in San Francisco and I'm one of the two GNSO councilors from the BC.

Stephane Van Gelder: Hi, my name is Stephane Van Gelder, (Rama Consultancy Company) and I'm from the BC.

Sarah Deutsch: Hi, I'm Sarah Deutsch from Verizon.

Anjali Hansen: Anjali Hansen from the Council of Better Business Bureaus.

Martin Sutton: Martin Sutton, HSBC for transparency and a gTLD applicant.

(Parnash Redar): (Parnash Redar) Google.

Fred Felman: Fred Felman, MarkMonitor.

J. Scott Evans: J. Scott Evans from Yahoo and we are also an applicant.

Ayesha Hassan: Ayesha Hassan, International Chamber of Commerce, member of the BC.

(Alyssa Tello): (Alyssa Tello) and I am European Brands Association based in Brussels but not (unintelligible).

Stephanie Duchesneau: Stephanie Duchesneau, FairWinds Partner.

Nao Matsukata: Nao Matsukata, FairWinds Partner.

Elizabeth Sweezey: Liz Sweezey FairWinds Partners.

Ron Andruff: And I'm just coming back with my information mentioned, Ron Andruff. I'm the NomCom rep - one of the two NomCom reps for the BC with Waudo Siganga. Also the chair of this SCI, which is the Standard Committee on Implementation and credentials committee for the BC.

Woman: Well, thank you so much. I'm going to turn it over to Steve so we can kind of dive into the substantive topic.

Steve DelBianco: Great.

So, the two (substance) topics we'll take up is a potential item on GAC advice. It includes a proposed BC position. This was proposed this morning. I've circulated it to each of you. It's in the BC private list.

If any of you don't have access to the BC dash private ICANN dot org, I can send it to the public list or send it to you directly. But we're going to need to have that in front of you during this meeting, for you to be able to participate effectively.

Is there anyone that has a special need to send it a different way? Fantastic.

The other topic would be that Jeff Neuman Registry Constituency proposed a motion that will be voted on in council on Wednesday and it's a motion which BC officers and many BC members have concerns about and we want to discuss that here today.

John Berard will lead us to that discussion, who's going to circulate that also to BC private very short two paragraph motion and - while we're covering the first topic.

Then I heard from (Isha) about (Fadi)'s five panels. Within the time since you made that, he's decided it's 55 panels. Things are growing fast here at ICANN. We're moving forward.

No, just kidding.

So, anything else then besides that? That's great.

So the first is if you - you can bring up the proposed position to J. Scott Evans of Yahoo and Fred Felman of MarkMonitor, both proposed. This was discussed at the CSG meeting last night, but was officially introduced for BC consideration this morning.

And I wanted to give Fred and J. Scott an opportunity to walk through the rationale for the position. We'll have a discussion period on it. and then what I could do as your policy coordinator is try to update you with some background facts -- I've attached some quotes and background of what the GAC can do -- as well as the process the BCUs is to adopt a position.

We ordinarily have a 14 day review and approval period. So we'll talk through that. We probably can allocate 15 minutes or so for that.

J. Scott and Fred, you going take it over, walk us through the how and the why.

J. Scott Evans: Well, the problem we have here is at least with some of these geographics that are trademarks, that are registered, the very countries that are complaining have granted numerous registrations for these and they also on the second level domains and the country code top level domain.

Under international law since the signing of the Paris Convention back in the 1890s, there has been an argument internationally in trademark about geographic indications.

I'm very concerned that if we allow the GAC to allow certain countries to obtain through the ICANN process things that they cannot get in international treaty negotiations on trade and intellectual property or through their own government, we're setting a dangerous precedent.

It may be geographic indications today, but it could very well be register or accreditation, it could be how you incorporate, it could be a lot of other issues. They're circumnavigating their own political process.

And I think that's a dangerous, dangerous precedent.

There - I made a point yesterday for those of you that weren't there, the entire treatise is written on this issue. And to allow them to do this is violation of international law. And we can't allow them to do that.

We need to tell the board that this advice flies in the face of international law and that they should reject it based on that factual basis. You know, INTA's position has generally been that if a trademark was there first, the trademark was registered and there are trademark rights and that you can't subsequently come along and claim geographic rights in it.

It's sort of like the first person.

So in other words, champagne in France as a geographic indication was there first. So, they would take the side that for champagne, that can be a geographic indication.

Also in this debate generally for you to assert geographic indication, you have to tie it to a particular product or service. You can't just say, it's our geographic indication and we own it.

You have to say, we are at Amazon, we sell a special wool from the Amazon region and it's known as Amazon wool and for that reason we get this appellation of origin. That has not been stated as one of the reasons for this. It has basically been an emotional argument.

And I just think that it's incorrect. It's against international law. But what we need to be most concerned with, it's the chipping away at a process and it's creating a super legislature out of the political process without the checks and balances that are available in the political process. That's what I think is the most disturbing thing about it and why we should have a position.

Steve DelBianco: J. Scott and Fred, would you also give us the color and context about why you feel it's critical to discuss today and at this meeting, as opposed to something we go through the regular 14 days.

J. Scott Evans: I believe that the face-to-face opportunities that we get are where we have the ability to be most effective. And I think that we need to maximize those. And if that requires that we be more nimble than we normally are, I think that's something we need to do because I think Steve, you at a microphone at a meeting with the board or you at a microphone when you're speaking with a timbre in your voice and they can see your eyes and they could see the passion from your position, goes a lot of way to convincing the silent board members, the ones that don't engage with you on side conversations, and I think that's very important.

They also watching the room to see how other people are reacting to what you're saying. And so I think that's very important. actually, and more of there's also a temporal consideration here which is there's also another proposal to provide greater protections in the second level from the origins group, which was discussed at the GAC.

So it is - it's important thing for us to engage in now as that debate is occurring.

Steve DelBianco: So we're going to take the queue, and I wanted to give some overall points.

In the note that I circulated with J. Scott and Fred's proposal, I indicated in there some quote from the guidebook about GAC advice. So we all want to be on the same page with respect to the GAC acts without any regard on what law is.

The guidebook entitles them to give advice on anything they want, on any application for whatever reason.

Furthermore, the board might cite legal concerns when they reply to and I understand that. But, the GAC is not constrained by it.

And I will want to understand better J. Scott how if GAC advice on say, registrant restriction is adopted by ICANN, does that mean that the GAC has also exceeded its legal authority by finding a way to require registrant restriction?

Your point about a bad precedent and new legal rights, it's not just intellectual property concern, it might well be a broader concern that might argue for or against your point of view frankly.

Did you want to respond to that?

J. Scott Evans: Sure. I would say that if we have legal precedent that showed that those types of advice had been rejected by the international community for 100 years, then I would take the same position.

This has a very long and tortured history that everyone in the GAC has government officials that are very aware of it. This is one of the most hard fought issues in (trip). It was also in (NASDA).

These are hard fought issues that have gone on 100 years. And if that same precedent existed for any other advice, I would be taking the same stand.

Steve DelBianco: And I'm not aware that it is, someone else could figure that out. But I think what your answer indicates that this is a special case, a special concern because trademark rights are at issue here.

I think that's your point.

For the BC members, I also included in there that - in my note to you that we have a 14 day review period for the charter. Your executive committee has many times shortened that period, as little as seven days -- at least on my tenure -- when we've been up against an edge of a comment period or we needed to reply very quickly.

To my knowledge, we've never done it in two days. And I am going to be very cautious as your policy coordinator to blow that up unless they know that we have full participation of members who aren't here as well.

We can accomplish a lot of that via email. That will be a challenge.

To contextualize it one further step and then Ron you're next in the queue, I just resent it to all of you that scorecard we prepared about two weeks ago. Remember the scorecard on GAC advice?

It's particularly useful because it delineates the fact that the GAC advice coming out of Beijing had two components we'll say. It has safeguards that were sort of in the middle section.

And then above the safeguards they had their consensus against halal and Islam. And below the safeguard, lots of other things like objections to Amazon, Patagonia and Zulu, like singulars and plurals ought to be reconsidered.

When the ICANN board put the GAC advice out for public comment, you may realize they did not ask an invite or accept public comment on anything other than the safeguard section.

So that means there has not been any public comment at all on the actual advice against Patagonia, Amazon, and Zulu. There's not been any public comment on actual advice on reconsidering plurals and singulars.

By the same token, the fourth column of my chart that I sent around, it's a Word doc. I don't know if I sent you the PDF or the Word doc, but when you open it the fourth column indicates what the board has done so far.

And you guys are probably aware that the board has simply accepted the advice on Zulu, Amazon, and Patagonia, and said we're not going to sign those contracts pending a discussion and dispute resolution.

So they're on hold right now. The NGBC and the board have not ruled to reject or accept the GAC's advice yet. So that's an abeyance right now.

And ICANN has not allowed public comment on those topics yet.

J. Scott Evans: Patagonia withdrew their application on Friday.

Steve DelBianco: That's right J. Scott. They withdrew outside - perhaps in reaction to what was going to happen.

All right, so we have a queue right now. The topic for discussion is J. Scott and Fred's proposed resolution and we'll start with Ron and I see that (Marie).

Ron, (Marie), (Alyssa), and Marilyn.

Go ahead Ron.

Ron Andruff: Thank you Steve.

J. Scott I just wanted to understand this. I would like to ask a question and then I have a couple of comments. Just in terms of examples, for the purpose of this resolution that you're - not resolution, but this position for the BC, the examples are you mentioned champagne was there first and therefore no one could trademark champagne.

And this - and there other...

J. Scott Evans: In the United States champagne's considered generic. That's always - but in France, (INTA) would take the position that the French government can claim champagne as a geographic indication and claim rights in that and prevent others from registering it as a trademark because champagne was a appellation of origin for a product, a sparkling alcoholic wine product since probably the 1500s.

And our position would be, well we're there first. When it came to the United States unfortunately, there was no Champagne region.

And so the US took government position that you can't come to the United States and claim it as appellation of origin here, it's a generic term like you would see in the dictionary.

But what we usually say, for instance Air Canada. INTA's position would be if Canada decided that no one could have a trademark with Canada in it anymore, INTA's position would be, no Air Canada had right going back to the 1940s and because they had those trademark rights prior to you asserting this geographic right, there it should win. It's first in time.

Amazon has registrations all over the world. They have 15 registrations issued by the government of Argentina.

They've been down there for 20 years. They have a multimillion dollar business in Argentina.

So you can't come in now and claim it as something it was never been before. And that's our position.

Ron Andruff: That's helpful. I'm glad you explained it.

I look at it from a couple of points of view. One is that the GAC interest and they've mentioned it very clearly actually in the meeting yesterday with the new gTLD process committee as well, is that their position is the public interest and that they have to protect the citizens and the - all of the aspects of their nation and their population.

So they've - that's very clear what they're doing. They're protecting their interest of the country and their countrymen.

The BC's interest are protecting user interest. So we're interested in making sure that users interest are protected.

What I'm hearing now is an argument for trademark rights. This whole discussion in my view sounds like it should be happening in the IPC, not in the BC.

And I'm saying this with respect. I appreciate where you're coming from. But I'm struggling to see how I could support it personally because it seems to me that this isn't supporting users - business users in the - well in these examples that you're proposing.

And - so I'm having trouble with that.

The other problem having difficulty with is the fact that this discussion about, well if we do this, we're going down a slippery slope and the GAC might really get carried away with themselves.

We've been here, you know, Fred, yourself, me, I look across the table I see people I've seen for the last decade working in ICANN. And the GAC has been consistent in its actions, in my view, that they've been trying to develop and work closely with ICANN.

And in fact we came to a point where we got into that scorecard situation and we watched how the GAC and the board and the community grew very close together to work collegially on resolving the issues.

So now we find ourselves in a situation where they come up with some advice and in fact the US government has stepped back from that advice and they're actually moving forward within the collegial environment within the GAC again to try to work closely with this.

We're fortunate to have members of the government that actually understand us. And we're fortunate that the GAC yearly is a - as much as they can be a hands off or a light touch, as I see it.

So, I think that it's really - you can't start saying this is a slippery slope. We've watched the GAC in action for 12 years, 13 years and they've been growing and developing with us.

And then finally, I would say the, you know, the concern that I have about trying to fast track this is that when I look around this table, I've seen about 20% of our membership.

So that's something else I'm not so comfortable with.

But I just raise those points for everyone's benefit. Thank you.

Steve DelBianco: Thanks Ron. J. Scott and Fred would you save your reply till we get at least the first five into the queue? And then we'll proceed after that.

I have (Marie).

(Marie): Thanks Steve.

I think this is a very interesting idea but I think they're also in the world of two countries separated by one language.

In European Union, a geographical indication is a set perch IPR. It has nothing to do with trademark.

Your use of champagne to me confuses the issue. What I mean is and forgive me for teaching (unintelligible).

GI in our world, in EU is something that is applied for by a government. It's an official application form that goes to the European Commission. And the commission maintains a list of those that's been granted.

Now, the moment that only perceive in drink, that there is an idea that it maybe extended.

These cover things like Champagne, Serrano ham, Parma ham, different cheeses and so on and so forth. It's a collective right for manufacturers of that product and do it in a certain way, to produce the product in a certain way. This can go down to butchering the beast in a certain way.

And then if you satisfy all of the criteria of the local professional committee for Parma ham, for example, you can then be allowed to mark your product Parma ham.

So you'll see in European Union we have things like ham from Northern Italy, but it can't say Parma ham unless it comes from Parma. It's not a trademark.

Now, Champagne is a geographical region, it's (unintelligible) France. And from what I can see, what I understand, we're talking two separate issues here because the GAC seems to be suggesting that the local town council of champagne to prevent somebody using the word champagne but it has nothing to do with the geographical indication on the European rule.

GI specific IPR under EU.

Now I'm not at this point going to make any comments on whether or not I can support immersion (unintelligible) get back to my members. But I do think that if you take this (unintelligible) to make that a very, very clear specification and separation, Air Canada, good example, but please don't touch Champagne because then we get involved in a very different debate and that's the debate that - which refer to you in the origins (unintelligible).

Steve DelBianco: Thank you (Marie). Elisa?

Elisa Cooper: So, when I originally heard about this yesterday I think it was I think my gut reaction was, let's not - I don't want to say anything or let's not say anything that might, you know, be not in favor of the GAC even if I think that perhaps it's not the right thing to do or perhaps, you know, maybe we shouldn't say anything.

After I thought about it a little bit, I really began to think, well it's not our role necessarily to blindly support the GAC. I mean we've been very supportive of the GAC and we want to remain very supportive of the GAC, but I don't think that means that in an instance where we see an issue that we shouldn't speak up, and to do it in a way that will not anger the GAC in any way but

merely to say, you know, this is if it's something that we can come to consensus on, this is something, you know, where we have an issue, and for us to do that.

Because frankly it's not in the best interest of a multi-stakeholder model for us to just be a last (aug) to them.

We have our own voice and our own concerns and we should make, you know, we should make them known and not just blindly follow.

There was something else that was mentioned about, you know, whether or not this was even sort of in our mission and in our charter. And part of our mission is to make sure that the Internet is a safe place for users and for consumers to, you know, basically engage with businesses.

And frankly, you know, Amazon I think is one of - I know it's in the top 10 most highly trafficked websites in the world, and for them to have their own top level domain where I as a consumer could engage with them and know for certain that I am engaging with a legitimate Amazon, I think would provide a lot of potential security and safety for consumers.

So, just a couple of points and just my thought.

Steve DelBianco: Marilyn's next. We wanted to note for you in the document I circulated on category 1 safeguard number 3. The GAC had said that registries have to require that registrants who collect sensitive health information or financial data, the registry would have to require them to do that.

Well, the BC did disagree. We disagreed, instead we do not support requiring a registry to monitor the actual website, the registrants.

So I'm happy to say that at least in that instance we're not a complete lapdog. We disagreed in a couple of places...

Elisa Cooper: Okay.

Steve DelBianco: ...where they didn't say so.

Marilyn?

Marilyn Cade: Thanks Marilyn Cade.

I wasn't going to open with this comment, but I am going to say it now. BC has never been a lapdog to any group in ICANN. I think there are people who wish we would.

There have been many times when we disagreed with the government and not just on the straw man but on many, many other areas and there will be many times when we will disagree in the future when we have a broadly agreed position that is taken after due consideration by all of our members.

And I am very opposed to making a shortened decision on this and I'm opposed to it for several reasons. And I'm very happy to be frank about them.

I feel that we have a number of differences of view within the business constituency both about the priority of this issue, the implications of the position we take and full understanding of it and that - and then certainly, rise to the level of calling for a vote and calling for a discussion.

And I'm not going to support a shortened vote on it. I would - I do not object to a statement which says that we urge ICANN to put GAC advice after public comment that we appreciated the unique breakthrough, we have to say that, we appreciated that previous - much of the previous GAC advice was put out for public comment and we would like to see the communiqué in the future for that for public comment.

But I do think that there's a - an issue as well, that many of us do have interest. And some of us want to declare those interest but that - we work in a world right now in ICANN where it's really not clear when the board has a conflict of interest, they cannot even be in the room to talk about the new gTLD program or whatever the conflict is.

We don't have that requirement and I'm not suggesting we do. But I think there's a lack of clarity within ICANN about how conflicts of interest are dealt with.

And within the BC, I think we could run into fairly tense discussions about differences of views on this particular topic.

Man: (Steve).

Man: I would like to suggest that perhaps a way forward would be for the BC to make the statement that we would like to have, the GAC advice put out for public comment.

And if you could use as an example this example and say, some of our membership, this is not an official position, feels X about this and you can bring that - the plurals and singular, you know, give two or three examples, use it as one, and then when public comment comes out, our members can speak for themselves.

But I think we are all in agreement that the GAC advice should have been put out for public comment to all of us and that only selecting part of it was probably not a good move and sort of stunted the debate and the necessary dialogue that needed to occur over this particular point.

Steve DelBianco: I think that's a pretty constructive suggestion but by making that, are you making that instead of the position you propose? Because if in fact the board did post for public comment, that begins a 40 day period...

Man: Yes.

Steve DelBianco: ...you would have the opportunity to hit resend...

Man: Right.

Steve DelBianco: ...and have the position...

Man: Right.

Steve DelBianco: ...be around as well as individual comments.

Let's finish the queue and the discussion and then come back around to see whether that might be the right solution for us, okay?

I also have in the queue Stefan, Ron, and (Alyssa). (Alyssa) just asked me beforehand, (unintelligible) the conflict. Go ahead Stefan, (Alyssa), Ron and I see Fred stand up.

And then it would be good to have the two of you respond to the substantive points that others have made as well.

Stephane Van Gelder: Thanks Steve and this is Stephane. Thanks for managing the queue so well. It's a difficult topic. And I think first of all, personally I'm in full agreement with what Elisa said before. She said most of what I was going to say.

I just like to step away from the issue five, you know, five minutes, just look at also the way we work as a group. And I think there's something that we should notice is that there's a feeling - seems to be feeling in the room that we in some ways have not made up positions strongly enough in the past as

a group, especially when those positions are dealing with stuff that governments have either been involved in or suggested.

I think it's important for us to let past process and just look at efficiency of results in this case. And if there is a feeling in the past we behaved in this way as a group, I'm not saying it's true or not. I mean I wasn't around and I have no opinion or historical, you know, background on the matter.

What I'd suggest as a new member that we have an opportunity here to coalesce, look to the outside community as a coherent group that has a strong interest in the public interest because I agree this is a basic public interest point.

You know, should in the context of this ambitious new gTLD program should users of I mean (unintelligible) Amazon, is the example that's being used but I think it's a more generic point. And the generic point is, should one group -- let's not name them -- one group be allowed to highjack the process. That's the basic principle here.

And if we all coalesce around that rather than talking about process, votes, et cetera, which will only, you know, slow down our ability to react to this basic principle that I can't imagine anyone in the room would be against.

So, perhaps (Joe Stock)'s suggestion is a good way forward, but I'd certainly like to support the basic principle. Thank you.

Steve DelBianco: You said highjack the process and yet the guidebook is supposed to be the process book and guidebook says the GAC can advice and oppose any string for any reason.

So at some point, you'll have to reconcile (unintelligible), how them following the guidebook letter by letter, high-jacks the process. Maybe the guidebook was wrong.

Would you come back to that? So - yes, please explain that and we'll go to Elisa, Ron.

Stephane Van Gelder: I don't want to go into too much detail. I know lots of other people want to speak but I think the issue there Steve is has the process been followed? A lot of people feel that the guidebook's been an evolving set of rules and that the initial set of rules are not the ones that we have today, including the set of applicants where applicants have to deal with when they went into the process and the set of rules that they're having to deal with now, and obviously the GAC advice has - was a lot of what's happened since the GAC advice came out, people feel that the process is in some ways has not been kept to.

And I would actually push that further to say that the GAC feels that the process hasn't been, so, you know, I'm looking at both sides of the argument. I've had very irate GAC members wonder why there's a comment period on their advice in the first place because there's no process around.

Steve DelBianco: Great. No, I simply ask you...

((Crosstalk))

Steve DelBianco: ...and try to figure out - yes, (Stefan Von Blendo) we're going to call him, I would ask you to think about so you can explain the codes at some point, how it is that them following the guidebook letter by letter highjacks the - because you haven't done so.

I have Elisa, Ron, and Fred.

Elisa?

Elisa Cooper: Very quickly to clear my conflict. Amazon is a client of MarkMonitor, but I would have made these statements and I feel the same if they were not our client.

Steve DelBianco: Ron?

Ron Andruff: Thank you Steve.

Yes, just to - a quick - there was two things actually. One is, I'm just - you were very kind to send around the applicant guidebook information, I'm looking at it right here, so the GAC advises ICANN, there - if there are concerns about particular examples, thought examples, the board is expected to enter into dialogue with GAC and understand the scope of concerns and it goes on.

So, it's quite clear that the guidebook spells out - what it spells out exactly what's happening.

But I wanted to come back to J. Scott and ask you just a quick point of clarification because I'm not sure I understood what you said. You said that in your second proposal, that you will - will you go and make a statement that we want to have a public comment on this.

But you said, not all of the advice was put out for public comment between the board and the GAC. I'm just not quite sure what you meant. Not all of the - because it seems to me that the GAC advice came out and public comment period happened and we've gone through all that, the BC filed response, so I'm confused a little bit.

J. Scott Evans: Thank you Ron.

Ron Andruff: No, I would like Fred.

Man: (Unintelligible).

Ron Andruff: Sorry, because - just get clarification from that. I'm just trying to understand it.

Man: Yes

Man: Not every issue. I mean, we didn't get a chance to comment on the plural, singular issue. The safeguard positions, we got - they only allowed us to comment on certain aspects of what the GAC presented to the ICANN board.

And rather than letting us have a holistic comment to everything that was in the document, and that's my point.

And some of those - this is one of the points that we did not - were not put out for public comment, the singular, plural wasn't and those were issues that still are bubbling up and bothering a lot of people throughout the community, not just BC.

And I had sent everybody an email with INTA's historic position so that you can see what their geographic indications expert has to say.

Man: (Unintelligible).

Man: Yes. And I - but this is international organization and it's their position on this sort of thorny issues that you can all read from the expert, rather than me trying to filter it for you so you can just read it and interpret it on your own.

Man: Yes, point of clarification is that all of the applicants were free to comment on all of the GAC advice. But the public comment - did not invite public comment and anything other than the safeguard.

Fred?

Fred Felman: All right. Starting with Ron's issues which I think were three, which is, does this represent our users? Two, what about cooperating with the GAC? And three, you know, not enough people represented to actually move and I think there was a similar comment from Marilyn.

So, first of all, I think this is a business user issue and before I do get into addressing these, we do have a conflict in that we do represent Amazon as a registrar.

We do not represent Amazon with respect to their extension and we actually derive minimal income from that. So, we don't have a conflict with respect to their application just to make that very clear.

So, first of all, I think this is a business user issue. If you think of any large brand, let's say for example today a country decided to declare that a mountain was called IBM and ask for a geographical recognition of that, that would be a problem for a very large brand.

So, I think this is a business user issue and we don't want to set a precedents. It is outside of the law as J. Scott has mentioned.

Next, with respect to, you know, showing respect and collegiality with the GAC, I think actually commenting does actually show respect for the GAC. In fact, in our conversations with various GAC members, they've asked us to comment on this and other items because they feel like they didn't have a chance to actually express some of the dissent that they wanted to and they actually want to hear from the community.

So I think we have an opportunity to actually help the GAC understand business's point of view, which I think is our role in the (GNSO).

And - see, what was the last issue? I understand that we're not well represented here and there's a small percentage of our membership here.

And I would say as J. Scott has and it seems like others may support which it could be a good idea for us to say, we'd like an opportunity to comment on this and some of the other issues that are of importance to us and the business community and I think that'd be a good compromise.

So, that I think covers the issues that I've heard to date. I don't know if I'm missing anything.

Man: (Unintelligible).

Steve DelBianco: Stephane is in the queue.

Stephane Van Gelder: Just on the point on your question Steve about, the fact that the GAC followed the process. I don't have the guidebook in front of me, so this was just speaking from memory, but I don't remember in the guidebook -- (Neil) correct me if I'm wrong. I know you know this stuff pretty well.

There was an opportunity to associate geographical, you know, marks of...

Steve DelBianco: Geographical objection?

Stephane Van Gelder: Yes. Which is not one of them.

Steve DelBianco: You're right. We actually didn't get the email today. I quoted that section.

The GAC may provide advice on any topic and it's not limited to the grounds for objection enumerated in the public objection resolution process and there in where the geographic is.

So, the guidebook goes so far as saying the GAC objections don't have to be among those that are described in the public objection, which is geographic.

All right, so where we are in this now is that J. Scott and Fred have laid the groundwork for making the case. But J. Scott then just a few moments ago withdrew for the time being the proposed position and instead suggested that the BC make a public comment at the public forum asking for the board to put for public comment the parts of the GAC advice which were not previously posted.

And - so I'll take that as an under position. It is not a BC position. It's procedural matter.

We often just ask for public comment periods, we'll raise point of order with respect to public participation. And I would rule that that does not require that the BC vote on it.

Like to discuss it because I know there are some with a different point of view. But I am appreciative of you being flexible with that knowing you can reenter the position if in fact public comment comes up.

So for the timing, let's take a queue on the new proposal. J. Scott you can speak and then Marilyn.

The new proposal which is to simply ask the board at the public forum to post for public comment, understanding that we would give examples of why, including the singular plural about which we are passionate and the notion of GAC advice against trademark terms that have geographical significance etcetera.

So, we'll take a queue on just that proposal and we want to leave time for (Isha).

J. Scott, go first.

J. Scott Evans: No, I - yes, I was going to ask that you clarify that you're going to use examples because that's where my compromise comes from and I'm fine with you saying, this is the BC position. We have certain members who are disturbed and we've heard from our - some of our members.

And that (unintelligible) the clarifications that does not represented, are not thrown under the bus for something they - they're not willing to sign up for.

I'm perfectly happy with that.

But my compromise requires that you use the geographics as an example and the public comment so that it gets before the board they hear that.

Steve DelBianco: Thank you. Marilyn?

Marilyn Cade: I actually wanted to - I thought J. Scott also wanted to include and I certainly support the idea that we ask for further GAC advice that will come out of any future communiqué to be posted for public comment.

Steve DelBianco: So it's - in this instance for the portion we have not yet been invited, as well as asking for the precedent for future.

You okay with that? Great. I have Ron Andruff in the queue. Anyone else?  
Ron, Elisa.

Ron Andruff: Thank you Steve.

I'm comfortable with that also as long as we make sure that the language that we actually speak at the microphone does not give the intonation that the BC wants to (fight) on this argument, until we have enough members that raise their voices to say so.

So I just want to make sure that we wordsmith that safely Steve, and I know that you will but I just wanted to put it on the table.

Thank you.

Steve DelBianco: I'll jump into (Heather)'s lap before I say it.

Woman: It might make sense for us to work on a potential position. I agree we'll move forward as planned but - in conjunction and - not for this meeting, but with our normal 14 day period I would propose that we work towards a potential position on this.

I would also, you know, just as a possibility, when we meet with the board, if there is time during that section, let them know that we are planning to make a public comment on this particular issue, just a kind of heads up.

Woman: No.

Ron Andruff: Steve, may I?

Steve DelBianco: Ron.

Ron Andruff: Yes, I'm sorry...

Steve DelBianco: J. Scott?

Ron Andruff: ...I'm sorry I think that maybe we're missing - we've crossed each other in the night.

What I'm saying is there's not enough of us here in this room to have that conversation and there's certainly not enough of us to start drafting.

There's lots of opportunities, and as much as there's positive comments towards this opposition towards it, I guess I'm not comfortable with that.

Steve DelBianco: I thought that all that Elisa said was that we would - I thought that what you said is that on our meeting with the CSG and the board you were saying that - to let the board know we would be asking them to post the rest of the advice for public comment, yes.

Elisa Cooper: Right.

Steve DelBianco: Right. Okay.

So, it's not to give the board a position on Amazon, Ron.

Ron Andruff: Right. No, but then what - and clarify what you just said, I thought you said we should start working towards drafting language and 14 day comment. I...

Steve DelBianco: Well, we would have to do that if any member propose a position, they start the clock. Any member can hit the send button on J. Scott's email. He's withdrawn it for now, but that is not something you can govern.

We would begin the period of discussion and I don't think it's necessary to tell the board that we have. I don't think that was...

Woman: No, that's not what I'm asking.

J. Scott Evans: What I will commit to do is I will commit to supply you with some historic information. (Heather Dryden) has written a book on this particular matter.

Man: (Heather)...

Woman: Not (Heather Dryden).

J. Scott Evans: I'm sorry, not (Heather) - (Heather Forrester). I'm sorry. Cold medicines.

But anyway, she's written a book on this, and she could do a small executive summary briefing, would at least give you the historical background so that you would feel like you're coming at there with some context to understand what's been going on in the past.

I just want to supply you with facts. So I'll commit to do that to get the ball rolling, to get you some information so that you can begin sort of thinking about where you would want to go when we do have that discussion.

And I'll commit to do that, probably won't be till we get back to the States, but we'll get it to you and to the private list so that all our members will at least have some working materials to begin thinking about. And those that have to go back to large groups can use those materials to help inform how they're going to communicate that to their groups.

Steve DelBianco: J. Scott, I'll ask you then, that we're not going to start the 14 day and - we're not going to restart the proposal until you can put a package together because - I mean for one, I'm completely unconvinced about the precedent, now I'm more confused than ever whether it does create a precedent.

That's the point I think you're going to really address with some background. That'll be very helpful and that will start the clock and I'll be sure I (unintelligible) for everyone.

Okay, so we have anymore speakers on this topic? (Isha)? Chris Chaplow on this topic and then we're going to end. That's it then. (Isha) then Chris.

(Isha): Thanks Steve. Just to be very clear, I will not be able to go back to my membership and build consensus to give BC input. So this is not about what ICC might come in with or take a position on this because we just won't take positions.

But just listening to the discussion, I wanted to clarify, are you also going to refer to other GAC advice at some point and around you also mentioned singulars and plurals.

Okay, thanks.

Steve DelBianco: Chris Chaplow.

Chris Chaplow: Thanks. Yes, I was just going to support the discussion on the core issue here, on the actual - the rights to understand it because I'm confused as well and would find probably knowing which way to vote on this.

Thanks.

Steve DelBianco: Thanks Chris. J. Scott, Fred and everyone thanks for that discussion. That was constructively moved along.

(Isha), next topic is yours on (Fadi)'s five part plan.

(Isha): Thanks Steve.

We had (Fadi) mention the five panels yesterdays and he mentioned it again this morning. And it's clear that some leadership roles have been assigned for the panel.

But besides that, there was not a lot of information detailed about how the community will fill the seats on those panels. And I'm curious, I mean I think that this is an interesting initiative, but I'm curious to know if informally this week we can get more information about how the panels will work or what the thought process is there.

And also I wanted to bring it up to here what members of the BC think about this approach in general so that as we're having discussions this week, we're keeping those perspectives in mind.

Thanks.

J. Scott Evans: My perspective is, if that's a question you want to ask, you write a letter and you ask the question and the correspondents, because you want to make sure you get back something in writing and you're clear on what's going on.

I think hallway conversations especially with (Fadi) who is very enthusiastic about his plans, but sometime have not been pushed down low enough with then his organization on an implementation stage, can lead to misunderstandings and hard feelings.

So if that is the question you want to ask, it's a simple, short letter. It's not in any way criticizing. It's asking for information so that you can get a written response back, that we can understand and then decide if that's how we're going to plug in or if we want to have comment on that. That would be my suggestion.

Steve DelBianco: J. Scott, while that is all true, I wanted to ask something. If we want to stimulate others to ask the same questions and raise the same concerns, then if in fact there are concerns lingering in your mind, I'd like to hear more about that (Isha), because if it's more than just I have administrative questions on how it's going to happen, if behind that you have concerns, talk about them now because those concerns are things that you could surface in a public forum and that would in fact provoke others to send the same question and to get an answer.

Otherwise, one body asking one question may not really warrant the kind of reaction that we need back. So quickly, J. Scott...

J. Scott Evans: I'm happy to bring it up at the (RG) meeting and say that you've raised concerns and that I raised this issue about a written and see if they would also put something there as well.

Steve DelBianco: Don't know what that is.

Woman: Brand registry group.

Steve DelBianco: Brand registry group? Okay. But (Isha) do you have concerns that are hidden behind the question?

(Isha): Well, I would say I would not like my question to be characterized as concern. I don't know enough, there's not enough information out there.

So what I'm bringing this up for is - because I think we should be asking questions so we get more information. I can't be concerned about something until I know what the plan is.

So, if you are going to bring it up elsewhere, please make that, you know...

J. Scott Evans: I'm not going to say - I'm going to say we want clarification and information about how these will be populated.

(Isha): And one thing that is in the back of my mind is, that there may not be clarity yet.

J. Scott Evans: Yes.

(Isha): And so, then in turn is there some dialogue or exchange whereby we may be able to contribute to the thinking?

J. Scott Evans: Yes.

Steve DelBianco: Okay. Without actually...

(Isha): And really want to contribute to the...

Steve DelBianco: ...surfacing concerns then. It isn't something I think makes sense to bring up at the public forum. It probably does lend itself to an inquiry that will invite (unintelligible) fly, if it's simply you're looking for clarifications.

Because we won't get an answer at the public forum as the board up there, (Fadi)'s on the board. The board's not involved in the five panel. It's a management initiative.

So it may not really work in a public forum, but by all means let's work on a letter and we could submit it from the BC. I have in the queue Marilyn and Ron.

Marilyn Cade: I too don't know enough to know if I have concerns or not. But I want to use it as an example of the - and I think that there's fairly widespread support for the idea that we need to hit the go slow button on a few initiatives that are not so critical that they have to happen tomorrow.

And I'm not making a comment about the new gTLD program. I think that when we get into a discussion about the security and stability issues, we may find that there are other operational issues, we know that there's a huge gap on something that we ask for, inviting. We ask with the intercessional. We ask for staff and support to the registrants who have to use the RPMs for instance.

And there's a whole lot of operational stuff that's missing. I'm not going into that. My only point is, that has to happen.

But I think some of these other top down driven probably very, very well meaning conceptual approaches of how you accomplish things in the

corporate world are just - they're just burdening us all down with, you know, I used to hire all those people and fire all those people. I miss those days.

But they're burdening us with doing too much. And so, maybe we could think about a collaboration with different groups about a kind of can we hit the go slow button on a few things, that's consistent with our request that we talked about in the CSG on public comment periods.

That would also give time then to learn more.

J. Scott Evans: Well even (Fadi) himself said that the staff is taking sort of a restful period between now and the end of year. Did he not in that speech? That's what I heard.

Steve DelBianco: And he told us on Sunday morning. He said his first review with the board.

And the board, criticized -- no. Told him they were concerned that it was moving too fast, and moving staff and management way ahead of the community.

J. Scott Evans: Okay.

Steve DelBianco: And he promised he would slow down...

J. Scott Evans: Yes, his speech today he said that like all mountain climbers, you have a base camp and that ICANN staff is on base camp until the end of the year. No more climbing.

And I - if you check the transcript, but I think that's what he said.

Steve DelBianco: Ron?

Ron Andruff: Thanks Steve.

Actually, you know, the stage of the game, there's so much going through my head, I'm not sure if I heard this. But for some reason, and that's why I'm throwing this up, I thought I heard something like seven people on these committees...

Woman: Yes.

Ron Andruff: ...did say - any others here, seven?

Woman: No.

Ron Andruff: Seven people on each one of these committees and five committees. So then, what it kind of look to me like you've got the golden seven and you know, who gets - who is that and how were they selected and you know, that could be easily kind of games.

And on the other hand, I don't know how many constituents and stakeholder groups we have in total, but maybe it's one from each and that kind of thing. Maybe one from the CSG, the same kind of thing that we have happened before.

So, I fully support this. But I did hear, I thought seven and that's a pretty small number on such an important committee.

Steve DelBianco: So Ron, would you work with (Isha) to draft this question that we would be sending in writing? All right?

It doesn't have to happen this week.

Ron Andruff: Yes.

Steve DelBianco: It's better if it does.

Ron Andruff: Yes.

Steve DelBianco: Did you guys work on that? The questions?

If you ask the questions and it turns out that in the framing of the questions, you uncover significant concerns, we'll discuss it on our Wednesday afternoon meeting, when we prep for the public forum. If the concerns are widely shared by the BC colleagues, then one of us would raise into the public forum.

All right, I think that's the end of the queue on that topic. Any other topics (Isha)? Elisa? Marilyn?

Woman: I asked Elisa if I could do this because I know you guys are all terribly jealous of my jewelry.

So, it turns out that if you go next door to the booth, you can pick your invitation to the - and be sure you do that because they are - it's really - the host is - treats this is as a small gift and they're really appreciative.

So for anyone who hasn't stopped to get it then...

Man: (Unintelligible).

Woman: ...it's just right next door. And - the booth that's right next door.

And they're quite nice little things. But (unintelligible).

Woman: Okay. Well, thank you everyone for attending today's session.

We did not cover the issue around this motion but we will discuss it in our meeting tomorrow because I think it's important that we do that.

So, thank you so much for this meeting and...

Steve DelBianco: One closing topic. We know we have a reception, a business reception tonight at 6:30 in the (Arena) which is in this building. And I did want to remind that it's 2 o'clock today.

Zahid and I are both on a roundtable with the ALAC to discuss consumer trust, consumer choice and competition and the new gTLDs. We will be giving perspective of that group that the BC had so much influence on.

(Isha) has - that is in four - sorry, (2AB) at 2 pm. (2AB) at 2 pm.

Man: (Unintelligible).

Steve DelBianco: Business reception is in the (Arena), it's called. (Hilton Ballroom).

All right and I just had it wrong. So it's (Hilton Ballroom) at 6:30. Thank you.

Man: (Unintelligible).

Steve DelBianco: Phil?

Phillip Corwin: Yes. I just had a question.

I came into the tail end this morning of the meeting of this At-Large Regulatory Issues Group just because I wasn't aware of it and want to see what's going on.

I saw some of you in there and then I see two - from two to four, there's a meeting of the At-Large multi-stakeholder policy roundtable and I'm just - if anyone can educate me as to whether those two groups are the same or related and what the objective is, I'd be interested in hearing that.

You're at the one this morning. Yes, the At-Large Regulatory Issue Group.  
No?

Man: (Unintelligible).

Phillip Corwin: That was for you. Okay.

Well I guess no one knows what these groups are, don't they?

Woman: I'll take a look and see what I can find out.

All right. Thanks everyone. We'll see you tonight. I think Marilyn just wanted to mention something quickly.

Marilyn Cade: And (Isha May) as well. But in the Internet Governance session, Jimson Olufuye will be participating remotely, our member from AfICTA. And I think there's someone else.

Woman: And Jeff Brueggeman a BC member is on the panel.

Man: Okay.

Marilyn Cade: And during the reception this evening, please do come. There's about 30 people who have been identified from the local community in one way or another who say that they are affiliated with business, plus all of us, and (CIPTIL) will give an award to (Badi) for his contribution to the - his focus on Africa and the use of ICT for social and economic growth.

And they'll be board members there. (Badi) will be there as well.

J. Scott Evans: Just another thing I think you should know that's going on, I don't think you all can come, but I'm going to be on the panel on security issues, in the ccNSO,

because of all the breach - data breaches that have been occurring in the small ccTLD.

Yahoo has agreed to help fund with ICANN hopefully regional workshops with the small folks to not just talk about security issues but talk about how to compete in a bigger ecosystem and bringing marketing people and security people and a lot of things.

So we are looking out for the business users in those ways. And thank you to MarkMonitor for all their help and help coordinate that. We're out there fighting those battles for you as well and we are trying to push that forward here at this meeting.

Woman: Steve just wanted me to remind you and I should remind you, we have our breakfast, tomorrow's Tuesday, so we have our across constituency breakfast.

J. Scott Evans: What time?

Woman: That is at 8 o'clock.

J. Scott Evans: And the location?

Woman: I want to say it's (2H) but...

J. Scott Evans: Yes, that's right I think. Yes.

Man: (Unintelligible).

Woman: It's in the (Arena)?

J. Scott Evans: In the...

Woman: Okay. It's in the document that (Bena Deta) sent to you.

Man: Know this.

Man: (Unintelligible), yes the (Arena).

Woman: Okay. It's in the (Durban Arena).

Man: (Unintelligible).

Woman: It is in this building.

Woman: And remember, if you're a French speaker and you identified yourself as a French speaker, you need to look for the - one of the cards that says BC dash French.

Woman: Okay. So, we'll see you tonight for drinks and then tomorrow for - starting off with the breakfast and then there's a series of other meetings.

Thank you guys.

END