



Minutes: BC Members Call on GAC Advice – Part 1 May 1st, 2013: 11 am EST (3 pm UTC)

Attendees:

Elisa Cooper	Gabriela Szlak	Anjali Hansen
Steve DelBianco	Emmett O’Keefe	Elizabeth Sweezy
David Fares	Susan Kawaguchi	John Berard
Mallory Hein	Richard Friedman	Jim Baskin
Andy Abrams	Mark Sloan	Benedetta Rossi – BC
Philip Corwin	Ron Andruff	Secretariat.
Tim Smith	Barbara Wanner	
Sarah Deutsch	Yvette Miller	

Materials for this discussion:

- **Steve DelBianco, Vice Chair – Policy Coordination’s presentation on GAC Advice:**
<https://community.icann.org/download/attachments/31162833/BC+Members+Call+on+GAC+Advice.pdf?version=1&modificationDate=1367834210446>
- **Full transcript:**
<https://community.icann.org/download/attachments/31162833/BC+May+1+2013.pdf?version=1&modificationDate=1367834176403>

1. Introduction – Steve DelBianco, Vice Chair – Policy Coordination

- Please see the outline Steve DelBianco circulated in relation to this call :
 - a. GAC advice outline where all safeguards are referenced in order.
- This public comment period doesn’t ask for public comments on the rest of the GAC Advice.
 - a. The Board is only asking the public to comment over the next few weeks on Section 4B1 which includes 4-1B which includes Annex 1.
- Public Comment page at <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>.
- Initial comments due 14-May; Reply comments close 4-Jun.
- Full GAC Communique and Advice is at <http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf>

2. General Comments on GAC Advice

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- Steve DelBianco opened up the queue for BC members to give overall comments which could be put into the written comments regarding the status of GAC Advice and the BC’s position with the GAC.

Emmett O’Keefe:

- Asked Steve for a summary of what was discussed in the previous BC call regarding GAC Advice, and what the BC would like to see from the GAC.

Steve DelBianco:

- The BC has two different schools of thought: some BC Members talked about the importance of making sure that we respectfully supported the GAC on items that the BC has always wanted and that the GAC has come through for us many times. And then there were others on the call who really wanted to push back on the GAC coming in late with some very specific changes to the registry agreement which was just negotiated and posted for public comment two days ago.
- So there’s some timing issues, there’s some maybe inflexibility exhibited by GAC.
- So we had two competing themes there, and Steve wouldn’t say that we have consensus about what the BC’s introductory comments would be right now.
- There may not be introductory comments, it might just be that we file comments in the background section and then get right into the meat of the safeguards.

Ron Andruff:

- Agrees with Steve regarding the two schools of thought, and added that the wheels of government turn at a different pace than the wheels of business. Ron noted that it is just an issue of synchronicity, and that the BC should push to have the GAC in line with everything that the BC is doing within ICANN because that is the Constituency’s front wall or front line of fight against the ITU. The aim should therefore be to harmonize the GAC’s speed in line with the BC’s because without the GAC there would be incredible issues.

ACTION ITEM: Ron Andruff and Andrew Mack will draft an introductory paragraph on the GAC Advice.

3. Safeguards

Steve DelBianco:

- The safeguards are cut into several categories. The first part what the GAC said in 1B with safeguards for new gTLDs, and they reference in Annex 1. But this is for all new gTLDs, not just those in this particular category.

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- First safeguard: The GAC is requesting is that every registry do a WHOIS verification check two times per year.
- Steve researched BC positions and did not find anything where the BC explicitly indicates that the registry do a verification check before.
- Opens up the queue on whether the BC should explicitly support this with a position or not.

David Fares:

- In support of explicit support from the BC, since the BC has always stressed the importance of accurate and reliable WHOIS data. This safeguard therefore isn't inconsistent with BC's past positions but actually consistent with those over arching goals of accurate and reliable WHOIS data.

Elisa Cooper:

- In support of this safeguard.

Sarah Deutsch:

- In support

Anjali Hansen:

- In support

Emmett O'Keefe:

- Understands that the GAC's role is to provide advice and ICANN is supposed to work out the details. But this appears to be providing advice that goes to the details in the applicant guidebook. This is advice that is not timely. The applicant guidebook was finalized, for better or for worse, and this appears to be going into quite a bit of detail on issues that were settled.

Susan Kawaguchi:

- In support of all six of the safeguard obligations on registry. For more information on Susan's comment please refer to page 19 of the transcript.

Safeguard 2: Applicable Law

David Fares:

- Noted that it probably works in industry's favor that there's a lack of clarity because then we as companies can identify, based on the conflicts of law analysis, which law is applicable to us and define that on our own terms.

Elisa Cooper:



- Noted that the BC needs to be cognizant of the fact that we should be preparing comments on behalf of business and not necessarily on behalf of the applicants.

Steve DelBianco: Asked whether BC members wanted to address any of the safeguards specifically. No responses so the safeguards will be commented on as a whole/group.

Safeguard 3:

Elisa Cooper: There are some uncertainties about how a registry would do Number 3.

4. Safeguards for Category 1 gTLDs:

Steve DelBianco:

- This is a set of safeguards that solidified only to what are called Category 1 TLDs. They invented a new category.
- Category 1: gTLDs that are associated with regulated or professional sectors. And they gave us a non-exhausted list on Page 9 of the GAC advice where they broke down the category of things that looked at children, the environment, health and fitness, finance, gambling, charity.
- In each of those subcategories they would list several TLDs that they think fit there. But they call it a non-exhausted list and to the rubric of those that need consumer protections.
- The GAC says that for whichever strings are going to fall into Category 1 - so it's a definition of question. Is the GAC asking ICANN to figure out who should be in this category? They probably are.
- But if you are in the category, the GAC is asking for five additional safeguards beyond what we discussed for all new gTLDs above. And these five additional safeguards are related in some way to the fact that there are special laws, obligations and regulators associated with these different industries.
- Steve took a queue to see what the BC thinks about these additional safeguards.

Susan Kawaguchi:

- Facebook is not an applicant, therefore has no registries, but from the standpoint of the Facebook business Susan doesn't see how a registry could implement Number 3 and 4. Susan noted that the questions are very broad; how would you define reasonable security measures?

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Jim Baskin:

- Number 3: This requirement seems overkill. Second level domains can be registered by anybody; by a college student, a retiree. They can use it as a hobby, they use it just to set up their own email.
- Jim doesn't see a requirement for a particular level of security associated with that to be something that the registries or many other people have to deal with. If it's in an industry where security is important, then there are other ways to require that those industries - that those businesses comply with good practices. But Jim doesn't think it would be up to the registries.

Steve DelBianco:

- In response to Jim's comment, asked whether it is sufficient that if you do Number 1 you do not actually need to do number 3, as it seems to imply?

Jim Baskin:

- Agreed with Steve, but added that there may be a lot of nuances there that aren't covered. But the idea that the registry has to be concerned about the security about every single second-level domain, even if it's in somebody's basement as a hobby, is beyond reasonable.

Steve DelBianco:

- Asked BC members on the call how should we interpret the word require? Number 1 just said that the terms of service had to have these things in it and that's just the document, and each registry would have its terms of service posted someplace and registrants would have to indicate that they read it. But Number 3 says required. Does required just mean putting something in the terms of service or does it carry some affirmative obligation to go police the registrant's domain to see whether they have security measures?

Ron Andruff:

- Believes that the BC should approach this by saying that the BC applauds the GAC advice on the requirements for terms of service that comply with applicable laws including privacy consumer protection etc, and leave it at that. Ron believes the BC should support what the GAC is saying leave it as vague as they've put it.

Steve DelBianco:

- Agrees with Ron, and proposes for the BC to say that we support what you have in Number 3, but it should be assumed that what you already have in Number 1, that the only requirement is that the terms of service indicate applicable laws that are applicable to that TLD. And not create any new affirmative requirement to police security measures.
- Steve proposed this approach as Vice Chair for Policy Coordination, and opened up the queue to see if there was consensus.



Please refer to pages 33-39 of the transcript for members’ interventions on this particular approach.

5. Conclusion:

Steve DelBianco:

- The BC at this point drafts a written document, puts it out for member approval and review. And in that document, Steve is trying to understand what the consensus is for BC members. If BC membership says, “These should not be affirmative policing obligation,” it’s up to the GAC to agree or disagree. But the BC can’t nail the GAC down on anything.

ACTION ITEM: Steve will summarize the notes and start to draft what the BC would say about the safeguards for all gTLDs, what the BC would say about safeguards 1 through 5 for the Category 1.

ACTION ITEM: Following this draft, Steve will host another BC members call next week on the rest of Category 1 and then the exclusive generics.