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LOS ANGELES – GAC Meeting: WHOIS
Sunday, October 12, 2014 – 14:00 to 15:00 PDT
ICANN – Los Angeles, USA

CHAIR DRYDEN: Good afternoon, everyone.

Let's get started.

We have about 30 minutes to discuss some WHOIS matters before we have our session with the GNSO at 3:00.

As far as WHOIS is concerned, we have a brief to support us in our discussions. And as with the other documents, there are hard copies available for you at the back, and these briefs have all been circulated to you in advance of this meeting.

So if you recall, at our last meetings in London, we had asked, in preparation for those meetings, for an overview of the various areas of work under way on WHOIS matters. And this was simply to get a sense of what are those streams of work, what are they to talk about, and what is the timing around those various efforts.

So really just to get a picture. And once we have a good picture, then the thinking is that we are able to direct our attention towards more pressing matters or particular issues that colleagues here would place priority on.

I'm not sure that we have the degree of clarity about that overview that we would like to have, but we are beginning to identify what are the different strands of work. And you can see them listed in the agenda.

So, we also will be having as a community a session on WHOIS on Monday, and if we can talk a little bit about how we might participate in that discussion considering that we haven't really had a chance to get into the substance of all these different issues that are raised, privacy and proxy services, conflict with national laws, and so on.

We did ask that there be a community session on WHOIS, and so it's a positive thing to see that a session has been set up. But there is meant to be this panel. And as I say, the GAC has been asked to participate in that discussion.

So, one note about the Expert Working Group. And I see the last item in our agenda refers to the Expert Working Group. If we could write out all the acronyms all the time for clarity, please. There are just too many acronyms for us to remember.

The Expert Working Group was formed in order to reinvigorate or hit a reset on the WHOIS discussions that have been taking place in the community over a period of several years. And that report now is meant to form the basis or be fed into a policy development process, a new policy development process to look at WHOIS issues.

So one thing I'm aware of there is that the NGPC and the GNSO are having some sort of discussions again in the small-group format to find a way to bring that report from the Expert Working Group back to the GNSO to begin a policy development process. And the idea here is that you want to significantly change things. You want to have some kind of reset so that you don't simply repeat the process that was undertaken earlier that really got bogged down and was unable to get the kind of

progress that many, I think, in the community wanted to see coming out of that.

So that's a note about the Expert Working Group, to be aware that there will be a policy development process on WHOIS, and specifically, the issues that were identified by the working group in their report.

And then there are these other streams of work that may be happening in a working group at the GNSO. I think primarily that is the way in which these other areas of work are getting discussed.

So that's the landscape, and again, because there is this panel tomorrow, I suspect that we will all want to attend that, and we also need to think about how the GAC might participate in that panel discussion.

We have some colleagues in the GAC that have been paying particular attention to WHOIS issues. So I'm going to look to you now to give us a sense of what your thinking is about these next steps for the GAC and how we approach all these different areas of activity that we are aware of taking place.

So can I invite colleagues to comment?

United States. Please.

UNITED STATES: Thank you, Madam Chair. Really appreciate the opportunity.

Also want to thank the secretariat for their very helpful WHOIS briefer for us. I think it raised -- it certainly captures, I think, where we are now.

There are a few minor little tweaks I would propose just so that colleagues are aware of that.

In the second bullet, conflicts with national law, we should all be aware that ICANN staff have proposed the creation of an Implementation Advisory Group to move forward. Again, my understanding is this may go straight to the GNSO as a policy development body. And one suggestion I'd like to float and see whether colleagues would share my assessment is that this is an issue that perhaps the GAC would want to take up with the GNSO. Our next session, of course, is GAC/GNSO consultation working group. That certainly when it comes to an issue that has an explicit reference to national law, which this one certainly does, that we could consider this to be a natural topic for joint work. So that there's no disconnect from the beginning, that we would want to ensure that whatever is undertaken as a work program to develop further work on this conflicts procedure, that we could ensure that the GAC would be engaged at the earliest possible moment.

And that's just as a personal view, I should think this might be helpful to the GNSO, if we can identify triggers, if you will. So anytime there is a policy proposal that, in fact, refers explicitly or would necessarily entail an understanding of national or international law, that that would trigger an automatic outreach to the GAC at a very, very early stage so that we can engage collaboratively right from the outset.

On page 2 of the ACIG secretariat's briefer, I just wanted to draw attention to a small omission, if I may. And that is the lack of reference to the GAC 2007 WHOIS principles, which are seven years old now, if I'm counting properly, seven and a half, and represented an enormous amount of good will and collaboration among the membership of the GAC. And I think that still stands.

So the value of the GAC WHOIS principles perhaps need to be drawn out again and drawn attention to tomorrow at the public session to remind the community that the GAC has actually been on record for many, many years now identifying, first of all, a range of what we would consider to be completely legitimate uses of WHOIS data; that we would not want to have those legitimate uses undermined in any way. And of course the principles also acknowledge that WHOIS data policy needs also to comply with relevant national laws, including privacy laws.

I think it's also worth noting there are other applicable laws beyond privacy. For example, certainly in the United States, consumers have the right to know with whom they are doing business. So if I flip that the other way around, businesses have a responsibility to identify who they are when they engage in commercial activities over the Domain Name System.

So I just think it's important for us to sort of signal the GAC has longstanding, deep-seated interest in this issue, and that we would want to send a signal to be engaged at very early moments in any kind of policy development process.

I think the other helpful thing about the document is that it very usefully sort of lays out the range -- it fleshes out the range of current WHOIS-

related activities under way in ICANN, which we flagged both in Singapore and then again in the London communique. And I think this is a great opportunity tomorrow that we will be given an update, I think a status sort of overview, of each of these discrete pieces.

What I think would be helpful for us to signal tomorrow is that what we also still really need, though, is a better understanding of how all of these different WHOIS-related activities relate to each other. You know, presumably if we called WHOIS a puzzle, then they're all individual pieces of that puzzle. And I will confess certainly from our perspective in the United States, we are a little bit at a loss as to how digest all these different pieces to know where they stand, where are the opportunities for comment, how would we collaborate here inside the GAC room as colleagues to develop consensus shared positions to the extent we can.

So right now, I think that's kind of a step that we still don't have great clarity on. So I would urge that that be an issue highlighted for tomorrow.

Thank you.

CHAIR DRYDEN: Thank you, United States. European Commission, please.

EUROPEAN COMMISSION: Thank you very much. Hello? There's something wrong with this.

Sorry. Now I think is works better. Thank you.

All right. First of all, of course, we do agree completely with the United States on what has been said before. It's important that we have a proper overview and that we actually know the different strands and how they all connect with one another.

As it comes to the -- to the Expert Working Group report, the commission does welcome this report as a good effort to actually set up a new policy. I think there is a number of challenges, still, though, there.

I think it is important that this report, which will set up a new system or which is the basis for a new system, in line with what the U.S. said, needs public consultations and consultations also with GAC before any policy development is developed by GNSO. So we think it's a little bit premature to develop a PDP yet.

When it comes to the content, I think it's important that the Expert Working Group also takes into consideration the WHOIS Review Team's recommendations so that there is a connection between the two strands. And also, of course, GNSO privacy and proxy study.

At a later stage, I think it's also important that we actually get comprehensive policy on these issues. Bearing in mind, of course, that national and international legislation should be maintained.

Stop at that. Thank you very much.

CHAIR DRYDEN: Thank you, European Commission. Okay. So we have a few points here about needing to highlight national conflicts with privacy law. In terms

of referring to the GAC principles, there is item number 2 on page 2 where it does outline that the GAC 2007 principles are there and perhaps may need to be revisited. So we have captured that in the brief to the point made by the United States about that still being an important and relevant document for us to refer to.

But the suggestion as well that we signal that for any policy development process that the GAC would want to be involved with that. So that's a suggestion to us.

To consider. And that in terms of participating in the panel a proposal that we would want to signal to the community that we still do not have clarity about how the different streams of work relate to each other. And to make clear, along with that that this makes it difficult for us to focus, to dedicate some time and attention to this issue if there isn't that degree of clarity. Regarding putting forward the Expert Working Group report, the thought that it may be a bit too early to move it to a policy development process -- so that's something as well for us to think about there. And that there's further consultation needed before doing that. Okay. So we have some useful points here that we're gathering up. Would really like to hear a reaction from other colleagues about that. And I will note as well that on Tuesday we will have another discussion about WHOIS. Another brief session. So we have 30 minutes there. So we'll have our discussion today. There will be the community session tomorrow. GAC support will then take the key points and sum them up. And then bring them back to the discussion that we will have on Tuesday at 12:00. And we can kind of do a bit of a stock take about where we are on WHOIS issues. But we need to be realistic about really

what to do and how we can really usefully engage when there is so much work underway.

Okay. Do I have any other requests to speak? European Commission, please.

EUROPEAN COMMISSION: Just for the record, to answer Suzanne's remark on the 2007 Lisbon principles, having been part of the work on the Expert Working Group, these principles have very much guided the question of permissible purposes in the working group. So it's not something that's been falling by the wayside or was in some historic archives.

CHAIR DRYDEN: Thank you.

Any other comments or suggestions? Okay. Questions? All right.

Thailand, please.

THAILAND: I fully agree with United States on the issue that there are so many acronyms and we overflow really the information about WHOIS. Like, for example there is the final report that have been done on the community about the RDS, registration data services, which will put to the PDP process. And there is a meeting on that. And this looks like it will be successor of the WHOIS, which proxies and privacy issues. And again, it's very technical that we do not know that it does need to be told by the GNSO what this RDS is about. But from you read the final

report have anonymous that we go through for using in gTLD which cover a lot of privacies and proxies. One other aspect that we're looking at in the final report, 166 technical -- that's one new entity coming up called validators which may lead to the local dealing with the raw enforcements and handling the privacies legal aspect as well. So that might need to clearly define with the against what are the RDS will be implemented and when.

And second, the other working groups that we engaged in the beginning the translation and transliterations, the draft report will be finalized during this L.A. meeting. So we schedule the meeting tomorrow. We engage in the early stage of the draft of the Expert Working Group that also relate to the international data on the aspect of translation and transliteration for a country that are non-ASCII.

CHAIR DRYDEN: Thank you very much, Thailand.

So this reinforces the point that there is a lot of work underway and that we need to be paying attention to. And a reminder about the translation and transliteration work that's underway.

Okay.

Do I have any other requests to speak on this? European Commission?

EUROPEAN COMMISSION: Sorry, again, for taking the floor. But since nobody else wants to say something, of course we have other issues. And you know that we have just got the pilot report on the WHOIS accuracy report system. And that

just arrived before this meeting. And we would, of course, like to study this a little bit more. We do note as a preliminary that it's a little bit short on certain issues. For instance the validation part is not really covered very well. And it would be interesting to hear a little bit more tomorrow possibly on the report and what the prospect is on this issue. Thank you.

CHAIR DRYDEN: Thank you, European Commission.

Okay. So I think it's clear we have some questions and points to raise in the discussion tomorrow. And I've added this last point about the report of the WHOIS accuracy system to a kind of list of things that will be useful to raise when we have the community session tomorrow.

Regarding how the community participates including the GAC, we do have a request for the GAC to sit on that panel. Is that something we want to do or would we rather contribute from the floor? I believe the request is for two from the GAC to participate in that.

Okay.

I don't see any volunteers. All right. So let's ask our questions from the floor. I can see there's a lot of interest in this topic. And we have more questions than we do answers. So please do be in attendance. And raise these points. I've taken note of them. So I will help us to raise them in that session. And then we will, as I said, be able to get a summing up of that from our secretariat. And then we will come back to this on Tuesday to touch base and identify, hopefully, some next steps with all these different areas of work ongoing. We will need to

find a way to prioritize and clearly we can't participate in multiple streams of work effectively if, in fact, that is what the GAC needs to do.

All Right. So we're a little bit early for our next session so we have about ten minutes before the GNSO will arrive for our joint session. Iran.

IRAN: Yes, Madam Chairman. Not on the substance of the issue, but on the way forward. I think if it is not done or perfectly done or appropriately done, for any item we have underway that we need to, each meeting, to update that where we are, who are following that, and have some timeline for the completion. It should not be -- it would not be appropriate that we start an issue again every meeting, continue to discuss that and a little bit, and still we don't know how much work remains. So we should have some sort of, let us say, critical path diagram to know when we start, when we stop, and what is (indiscernible) and who is behind that. I think we have to work a little bit systematic. Maybe this is a message for the new chairman, whoever it will be, to be a little bit more in line of what I have suggested. That would give us a better way because our workload is starting to be more and more and we have uncompleted issues, many, and every meeting we come back and we deal with a little bit of that and take it again at our next meeting, same subjects. So I remember many meetings of specifically dealing with this issue. Thank you.

CHAIR DRYDEN: Thank you, Iran. So a critical path, and in order to come up with that, we really need guidance and information from ICANN and other parts of ICANN. We can't find a way to prioritize our work and come to grips with all these different streams without the right input. And I think the concern I have is that no one's really thinking about this in terms of an overview, in terms of the bigger picture. And perhaps they believe that the GAC will simply just begin participating in all these different streams of work and somehow be able to do that in a coherent way and be effective. United States?

UNITED STATES OF AMERICA: Thank you, Madam Chair, and thanks for giving me the floor again. I did want to -- you've actually said a lot of what I was going to say in response to my colleague from Iran. I think the challenge we have with this set of issues, we use one label, WHOIS-related issues, and I think the challenge we're facing is that there are so many of them. And they're all ongoing at the same time. And they raise a range of different kinds of public policy concerns. Some are interrelated. Some might not be. And I think that is -- we're at a very, very critical point in our work, being able to map out next steps. So if I could make a suggestion, if -- if the Chair is hinting that she would be willing to speak from the floor to give a sense of the GAC's thinking, then perhaps we add a -- as a request, that we could be given a roadmap. And I would have to imagine that there are other parts of the community that might be finding sort of staying abreast of all of the WHOIS-related activities just as challenging as we are finding it. That if the ICANN staff could actually help identify a roadmap and timing, it's really, really critical for us to

understand where all of these things stand and what are the next steps, so that we can create a priority sort of work plan. Thank you.

CHAIR DRYDEN: Thank you.   Okay.   I think that's a good place for us to end that discussion for now. And I see our colleagues are here from the GNSO. So if I can invite the GNSO, I can see Jonathan, to come up to the front, we will begin our joint session. Thank you.

[END OF TRANSCRIPT]