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BEIJING – GAC Discussion on IGO Protections

Saturday, April 06, 2013 – 16:45 to 17:45

ICANN – Beijing, People’s Republic of China

CHAIR DRYDEN: Okay, everyone. If we can take our seats, let's move to the next session.

Could we please take our seats.

Okay. I'm going to try again. If we could please take our seats. We do have some more discussions that we should have before the end of today. And the longer this break is, the later we will be here this evening. Ah, that worked. Okay. I should have said that earlier. All right.

So for this next session, we're going to discuss the issue of IGO protections, specifically, for the current round at the second level. And so, in accordance with that, of course, this meeting is open.

And we've also placed on the agenda for this part of today protections for the IOC and Red Cross. And I don't know to what extent we need to have a discussion about that or what issues there are. But, in light of the various letters that have been circulating in relation to protections for the IOC and Red Cross, I just wanted to make sure that there isn't something that we need to be updated on or consider further this week on that. So I think the first point, however, is protections for IGOs. So I will do my best to give us an overview of where we are currently, as a reminder to all in the room. And then I think it would be useful for us to have a discussion about the issue and where it stands and, as well, we

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have some of the IGOs that were part of the IGO coalition working with the GAC on this issue present. And so I would hope that they will intervene and contribute as well to our discussions on this topic.

So you will recall that the GAC issued several things to the board recently. And this, as I say, is in relation to protections for IGO names and acronyms at the second level in the current round. And so, along with a letter confirming that there were draft criteria outlined in an attachment -- oh, actually, not draft. And as well a list of IGO names and acronyms. And in response to that, on April 1st, we received a communication back from the board. So for the GAC, this is something that was first made available in hard copy to us on Thursday morning. And there are copies available up at the front, if you do not have a hard copy of it. But, in essence, the board is acknowledging that they have received this GAC advice and that they wish to seek clarification from us on a few points and that they wish to do this before they provide a more formal response to the advice that we have given on this topic this week while we're all meeting in Beijing.

So three points have been outlined here. And the first is regarding the status of the criteria that we provided to the board. And then, as well, the fact that we did not provide advice about the languages that are to be protected. So the list that we provided was, I believe, in English and listed only in English.

And then, secondly, the criteria also references prior to delegation of any new top-level domains in a subsequent new gTLD round or over three years or whichever is earlier. So that's really a point about the future and how the criteria would be applied in the future.

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And then a third point regarding acronyms for which there are competing claims. So not so much on the names part of the list that we provided, which is the main part of the list. But then seeking clarification about the acronyms that are associated with that list of names.

So we will have an opportunity to discuss this with the board on Tuesday. So, if there are questions or things that the GAC would like to raise with the board, that is our opportunity before, as I say, they provide a more formal response to the advice we have provided the following -- in the following days after that meeting. So all right.

At this point, we have some experts around the table that have been working on these issues. They might wish to comment. And so I will invite GAC members to comment. And then, if the IGOs would like to comment as well, I think that would be useful. So let me just look around and see whether anyone has any points they would like to raise on this. Ah, please, EU Commission.

EUROPEAN COMMISSION: Thank you very much. I don't have much to say because I would first like to listen to the OECD and the IGO coalition on this matter, which I think has done a brilliant job. Of course, the letter stands for itself. The languages, of course, there is an understanding that this was -- and, hopefully, we'll be able to discuss this at this moment, which languages should we try to cover? Only English or possibly the U.N. languages or in the European Union we have 23 official languages. Maybe that's to go a bit far. But this is something I think we should discuss right now.

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Then, I think the question about the acronyms, I'd rather not even comment upon that one. Because that one, I think, I would like to listen to what other ones say. Thank you very much.

CHAIR DRYDEN: Thank you. So it sounds like we would benefit from focusing on the issue of languages and perhaps acronyms in particular. So I'm looking around. United States, please.

UNITED STATES OF AMERICA: Thank you, Madam Chair.

I, too, may want to -- I think it would be beneficial to hear sort of a reaction from the IGO group itself, if we could, so that it gives us a sense of how we might proceed. I personally find the board's response, frankly, very responsive and responsible. So I do think they've asked us some fair questions. I'm not entirely sure that we will be in a position by Tuesday to have concrete answers to all of their questions. But, hopefully, we can share with them a preliminary -- the results of this preliminary exchange. Because, to me, in part, the question related to the languages would also go to how long would it take to create a list that reflects however many languages the IGOs or the GAC membership thinks would be appropriate. And what would that list look like? What would the length of that list become? I do think we need to be very, very mindful of those factors. Because, again, our window here is still fairly small. So time is of the essence. So I'd be interested to know from a practical point of view, what will it take. And then we need to look at it. How much time would it take? We need to look at it, because every

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single proposed name to be protected -- acronym, name/acronym would have to be included in the list. So we'd have to see what they were exactly. Because, from a purely practical perspective, we cannot be seeking protection for something on a philosophical basis. The list will have to be an actual list. And we will need to look at the length that the list will become, the length of it. How much larger will it become? So I would like to get a feel for that.

And why don't I stop there, because I think the IGO presentation, your initial reactions are probably going to be helpful to all of us. Thank you.

CHAIR DRYDEN:

Thank you, United States.

So can I invite you to comment, please, and introduce yourselves.

ALEXANDRA EXCOFFIER-NOSOV:

Yes, hi. I'm Alexandra Excoffier-Nosov. I'm from the OECD, legal advisor. I'm here with David Roache-Turner from WIPO. I'd first like to thank very much the GAC and, in particular, the chair for timely providing our list and our criteria to the GAC board.

We had understood from the Toronto communique, from the board's resolution and response to the Toronto communique and from communication with the chairman of the board and the chairman of ICANN that this is what the board was waiting for, a list which is provided by the GAC with a set of objective criteria. We were -- the IGOs received, as you did, on April 1st -- I'm not going to say April fool's

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-- the response from the board which listed the three points for clarification.

From the IGO's perspective, the first two points certainly need clarification because the languages, the issue on languages we left open.

And the second point which deals with the question of the review, we -- the IGOs thought it was a valid question from the board.

However, on the third point regarding what they call competing claims, our reaction was a huge surprise. Because we seem to be going backwards before the Toronto communique. The fact that there may be what they call competing claims, basically, entities which have similar acronyms or same acronyms, this was always known. This is not a surprise. There are such competing claims for any other -- or not any other but most other names on the reserve name list, whether it's country codes or whether it's ICANN's own names, whether it's the Olympic Committee or -- but in Toronto, the GAC said that there was a public policy interest to protect IGO names and acronyms. This was confirmed in the board resolution and in its response to the GAC. Public policy interest would prevail over various interests, other interests, commercial interests and other names.

Now, we were surprised because somebody actually did the research coming up with some of these perhaps -- I'm not saying not valid. They might be legitimate. But -- so we wonder why the board took the time to do something like that.

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All of this being said, the IGOs are not concerned with misuses of our names, confusion with our names and acronyms. We're not -- we have no intention to o stop legitimate uses, non-competing uses of the same acronyms. This is why the advice -- the criteria document which the chair, the GAC chair provided to the board says that says that the IGO names and acronyms should not be registered unless there is consent from the IGO. And we certainly would not block any legitimate competing acronyms. This is our stance. This has always been our stance. We understood this is what the GAC advice in Toronto meant. This is what the GAC meant when it provided its list to the board. And we just hope that the GAC continues to support us and to support its own advice. Thank you very much.

CHAIR DRYDEN:

Thank you for those comments. So are there any other GAC members that would perhaps like to ask a question. United States, please.

UNITED STATES OF AMERICA:

Thank you very much. And I do think -- being somewhat familiar with the dot Int registration procedures, I think -- and ICANN is as well -- the fact that a lot of these names are currently eligible and have been registered under dot Int does not give rise, I believe, to the same level of question about competing claims as it would in any other top-level domain. So dot Int is quite well understood around the world, I believe, to refer to international organizations. So there is no competing claim in that top-level domain space. I think that is the distinction. At least that's how I am interpreting the expression of their question to us.

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So it is relatively easy to see well that is exactly where some of these competing strings belong because they are an international organization. So there's no question that that is not the -- you know, whatever some of these things are that they put on their list. You know, it's not the Christian Fellowship Church, for example. That's just an example.

So I do think that we need to be mindful of that, that this is now -- we're seeking protection for all of these names in every single new top-level domain. And they will not have that sort of orientation that this is purely for international organizations. So I do think we need to be aware of that. And I think we might want to think creatively. So I'm just going to throw some questions out. I do not have answers. I'm just throwing this out as a way of provoking perhaps some options.

I do think we might need to consider a range of options. And, before I say that, I picked up on something you said, Alexandra, that there are already competing names on all of these other lists. I think in one case you would not be correct. The ISO3166 list, there are no competing claims. Dot US is dot US. Dot FR is dot FR for France. There's no competition there. The three letters -- but, again, if they're on that list - - and the GAC has already gotten ICANN to agree to protect those, okay?

So that already exists.

The problem we have with one of them, as I understand it, CAN, that does create a problem because it's already on a pre-existing list.



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So it's up to us to get creative to help them figure out how to implement the list we're seeking protection for. At least that's my perspective.

So I just throw out a question. I have no idea whether this is workable. But whether, as you consider other languages for some of these kinds of acronyms, would it help if they were presented in another language? So, for example, you, the OECD, are OECD in dot Int. You are not -- (speaking language other than English) Would it make a difference for some of them if they were presented in the alternative language that that organization already uses itself? So that's just a question I would put to all of you. We would certainly welcome your thoughts as to the languages again and as to the timing of the review. Thank you.

CHAIR DRYDEN:

Thank you, United States.

Would any other GAC members like to comment or perhaps OECD, the IGOs? Would you like to respond?

ALEXANDRA EXCOFFIER-NOSOV:

Yes, thank you. We're happy to be creative. Like we say, we -- we understand that yes, the board has already said yes to the country names. This being said, the -- we understand that perhaps you consider IGO names slightly less important than country names. But, still, there is an advice from the GAC that there is a public policy interest similar to protection of country names, similar to protection of ICANN's own terms of the Red Cross and the Olympics.

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And we're happy to be creative. Again, there is a consent process that, perhaps, can be clarified a little bit, similar to how it works for country names. Perhaps that's the way to go.

On what you say about the acronym being in a different language, the acronyms we presented are those which are used by the -- the main ones used by the organizations themselves. So I think that's a solution that would be a little bit more difficult. If we start talking about, which I suppose we will, protecting several languages, we'll probably end up having those acronyms. Plus, we can't necessarily know which -- again, in codes, competing claims there might be. We did a -- somebody in ICANN did a Google search. But that doesn't guarantee that that's all there is. The same for ICANN's own names and country codes and IOS. So I'm not sure the solution is quite there. But, again, I'm open to discussion. I think it's a good thing that you're bringing up all these suggestions, and maybe there are others. That's what we need to a little bit brainstorm on. Thank you.

CHAIR DRYDEN:

Thank you. I have Denmark next, please.

DENMARK:

Thank you, Chair. And thank you to the OECD for your thoughts.

I personally think that we should not start up a whole conversation or discussion about competing claims. And I think we should go back to the basis here which is that we were seeking protection for IGOs. And this is a process that started when we discussed the Red Cross and IGO protection. And we were trying to develop objective criteria and a list

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based on that. So that is the purpose here. And we should not -- I think it will be too complicated to start a whole discussion about competing claims because the objective here is the protection of IGOs. Thank you.

CHAIR DRYDEN: Thank you, Denmark. Portugal, please.

PORTUGAL: Thank you. Well, only to say something about this thing of the competing claims. I think it's very unfortunate. Because, regarding IOC, if you Google, you can see Inversion of Control, Intergovernmental Oceanographic Commission, Institute of (indiscernible) -- so it's exactly this. So, if we start the competing claims in this way, it's exactly the same for the IOCs. So it makes no sense. So, if the board has a problem, I think that we should discuss that in another way, because this one was really not very diplomatic. Thank you.

CHAIR DRYDEN: Thank you, Portugal. I have Iran, EU Commission, and Switzerland.

IRAN: Thank you, Madam Chairman.

Madam Chairman, we understood that the dot Int is the list of international organizations which are protected. In the list sometimes there are not some of those which are already dot Int. For instance, Asia Pacific Telecommunity is ending with dot Int is not on the list. Is it understood it is protected or not? That is the question.

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The other question is the valid point raised by OECD that we should not get into the dilemma of translating the acronym in different languages. It should appear in the same acronym languages which is taken by the organization. For instance, we should not translate CEPT in different languages. CEPT is the French acronym that concerns telecommunication. We should not start with the European Commission on Postal Communication. It entirely becomes different things. So that is an important issue that we really should look at. Thank you.

CHAIR DRYDEN:

Thank you, Iran.

EU Commission.

EUROPEAN COMMISSION:

I think it's been said a little bit about Portugal and Denmark before what I was going to say. I think we should concentrate on the two questions which are discussable and which we should discuss with -- here, first of all, and possibly then later with the board. And that is the also Iran has just told us, you know, what languages should we try to protect. And, obviously, also the other question that they had which was relating to the revision of the list and the three-year span. The list that has come up, the third list, I don't think even is -- has to be discussed. Because maybe I'm overreacting when I think that -- and all due respect to Japanese music. But, when you compare the European Patent Office to a Japanese singer, then I'm starting to not following what we're doing here. And I think it's far away from what was the GAC advice and the

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response from the board. So I would rather oversee the last part of the letter. Thank you.

CHAIR DRYDEN: Thank you. I have Switzerland next, please.

SWITZERLAND: Thank you, Madam Chair. First of all, thanks to everybody who was working on this issue, because it was complex. And I think we actually have made very good progress. And I think the task of the GAC and the IGOs is fulfilled in -- as they have been or as we have been asked by handing over the criteria and the letter. I think a good job has been done there with regard to the questions asked by ICANN. I also agree with those that say we should concentrate on the first two questions because they are relevant questions and leave the rest aside.

I think the proposal made by the U.S. with regard to the language is a valid one, because there are some organizations that work in several languages where the acronyms and names are equally important. So the OECD, if I'm not mistaken, has two working languages which is English and French. So I think it makes sense to use these two languages and acronyms for the protection and stop there. Others might have only one. U.N. organizations might have maximum six. But that's it.

And I think that would give an objective criteria also with regard to the languages. And I think, if we would agree to something following deadlines as proposed by the U.S., I think we might have quite easily dealt with the language question. And then it's just a question left

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about the future review, which is not a very complicated one either. And then I would consider this problem solved in terms of who benefits from protection.

What is not yet clear to me is the question what actually the protection is in terms of how this protection does look like? Do they have a veto right, or do they have to be -- are these names blocked, which I think is not the idea if I got this discussion right. Maybe we should -- or I don't know. ICANN or whoever is in charge of taking that decision should -- I would be interested in having a clear knowledge of what that protection actually entails. But I think the rest is more or less accomplished, and I'm quite happy with that. Thank you.

CHAIR DRYDEN:

Thank you, Switzerland. And I think, to your last point, that's a question that, you know, I would invite GAC members, if they have an answer, to answer. But, if not, we can certainly keep that in mind for when we meet with the board. And we can ask them about that. I think I saw a hand to the right. IGOs, please.

DAVID ROACHE-TURNER:

Thanks very much, Madam Chair. Just in response to the two suggestions by the EU and also by Switzerland, I think from an IGO perspective, the practical proposal that was just made by Switzerland on the issue of language would be workable from our perspective such that IGOs would be able to qualify for protection of their names and acronyms in the working languages of the relevant IGO up to a maximum of six as proscribed by the U.N. languages.

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The other aspect is just to recall that the terms of the GAC advice to the board, of course, was a prohibition against third party registration of IGO names and acronyms and that this, of course, holds open the possibilities of the use of these domain names by the concerned IGOs themselves if they would want to do that. And also, as Alexandra mentioned, subject to the capacity of those IGOs to consent to use of those names and acronyms by other third parties. And, in terms of functional proposals for building a mechanism around the way that the notification of giving and giving of that consent might operate, there is a precedent that has been discussed that exists in respect of country and territory names. And that's a mechanism that provides for the obtaining of the relevant government. And perhaps that mechanism could be adapted in a similar fashion to provide for the obtaining of the relevant consent from a -- from the concerned IGO. And perhaps there are notification aspects of that proposal that could conceivably be routed through the trademark clearinghouse, for example, when it comes to questions of practical implementation. Thank you.

CHAIR DRYDEN:

Thank you. That's very helpful to us in our discussion. Okay.

Are there any other comments or questions that GAC members have about this? Barring that, I think we have some emerging thoughts about how to deal with the languages issue for the names and the acronyms. Up to six is the proposal. And the ones that the organizations would be making use of in practice could be used. And then we have some questions about the particular mechanisms. So would an IGO be able to use them themselves based on the actual

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mechanism that would be implemented with regard to giving permission or a third party use of the acronym?

So I see no further requests for the floor. Okay.

All right. So please reflect on this further before we meet with the board on Tuesday. And, if you can develop your thinking a bit more and perhaps look to others in the community as well to help advise us on this. And we will keep in mind some of these points and questions to raise with the board.

So, as I mentioned, the next item that I had proposed for us to touch upon at least to see whether we need to discuss it or do anything further was in relation to protections for the IOC and Red Cross.

And here I'm at a bit of a loss. This is not something I am expert in at all. But I know we have had leads in the past. I think the United States and the U.K. in particular. So is there anything that you would like to bring to the attention of GAC colleagues and to -- yes. Okay. So I see some nodding from the U.S. and U.K. possibly. Okay.

A bit of nodding from both. All right. So who wants to lead us in? U.S.? I think the U.K. is looking through notes. So -- over to you.

UNITED STATES OF AMERICA: Thank you very much. Thank you, Madam Chair. I'm happy to. It's just a bit of an update for colleagues around the table who were not able to participate in one of our GAC preparatory conference calls, which at this point I literally cannot remember when that was. But I believe we did



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put the question to ICANN staff at the time if they could clarify the status of the language in the revised registry agreement.

So you will all recall that that was posted a while ago. A month, 6 weeks. I can't remember that either. Very sorry. And there were placeholders. If you looked at the track change version of the registry agreement, you would see that the board has inserted placeholders for the IOC Red Cross protections that the GAC has been seeking since June 2011 and a placeholder for the IGO list.

And we had posed a question, because the language just seemed to be a little bit vague. To the best of my knowledge, the response that we have back -- or at least this is my understanding of the response. And, if ICANN staff are in the room, I certainly welcome their intervention to correct me, if need be.

My understanding is that, until such time as the GNSO approves recommendations in their ongoing policy development process and the board adopts those recommendations, the board's resolutions on the protection of names for the IOC International Olympic Committee and the Red Cross/Red Crescent remain in place. So there have been several such resolutions to keep track of.

And, as noted, I believe, in the board's response to the GAC Toronto communique, the board believes that the creation or maintenance of protections to apply to all gTLDs note that that's -- I didn't use the word "new." It's to all TLDs is an appropriate topic for policy development within the GNSO. So the board has clearly recognized that.

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And there is an expectation, I'm told, that the GNSO workshop is -- the PDP working group is expected to take the GAC's advice into account.

At the present time, this particular PDP process has not yet resulted in the issuance of a report, a consensus document. So, therefore, it is premature for the board to take any further action at this point. Because there's nothing for them to act on.

So, of course, when and if any such policy recommendations by this GNSO policy development working group actually do emerge, then the board will be obligated under the ICANN bylaws to take GAC advice into account in deciding whether or not to accept and adopt the policy recommendations coming from the GNSO. So that suggests to me we might need to simply flag our strong interest in confirming these protections before any new gTLDs are delegated so that we can at least confirm that, going forward, in the new gTLDs, such protections will be applied for both IOC Red Cross and for the IGOs, rather than held pending the outcome of a policy development process whose results are not yet known. So I do think it might be worthwhile having the GAC flag that with the board during our Tuesday exchange. But I'm -- you know, I'm certainly open to other views should people feel otherwise. Thank you.

CHAIR DRYDEN:

Thank you for that. U.K., do you have anything to add to that?

UNITED KINGDOM:

Thank you, Chair. Only, really, that, as the U.S. indicated, that the wording in the text of the proposed registry agreement does sound a bit

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sort of uncertain. I mean, it talks about initially reserving the Olympics and Red Cross names at the second level. Where, really, we're seeking absolute clarification that these names are going to be reserved at the second level for the first round. I mean, that's -- that's one point that I think we -- we could usefully state. You know, the text -- to quote, the text is, "The following names shall be initially reserved at second level within the TLD." So I mean, "initially," as far as we are concerned, is not absolute enough. I mean, we would like that word "initially" taken out. These names are to be reserved in the first round. What we're also conscious of is the fact that we could be seeing the first gTLDs coming through later this month. The board has set the target date of 23rd of April. So this is coming up right now. So the registry agreement has got to be absolutely clear on this point, in our view, that these names are protected. Thank you.

CHAIR DRYDEN:

Thank you, U.K. It sounds like we have another question to put to the board on Tuesday.

Okay.

So I don't see any other requests to speak. So, with that, I think we might finish on time. We're meant to conclude at quarter to 6:00. And that's about the time. So thank you, everyone. And thank you to the IGOs for commenting and providing your inputs on the issue of IGO protections. Lebanon.

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LEBANON: I just want to make sure that the outcome of this last discussion was that this gathering, this committee is saying we should push to make sure that it is those two names are protected. Correct?

CHAIR DRYDEN: Yes.

LEBANON: Thank you.

CHAIR DRYDEN: Yes, that's right. The concern is around the use of the word "initial" -- initially protecting in the registry agreement. So it's seeking clarification, really, I think, from the board.

So I think we are going to finish on time. Thank you to everyone. And please, GAC members, we start at 9:00 a.m. tomorrow. So we'll see you then and have a good evening.

Thank you.