

TRANSCRIPT

Framework of Interpretation Working Group Telephone Conference

7 November 2013

Attendees:

ccNSO:

Martin Boyle, .uk
Keith Davidson, .nz (Chair)
Chris Disspain, .au
Stephen Deerhake, .as
Daniel Kalchev, .bg
Eberhard Lisse, .na
Patricio Poblete, .cl
Nigel Roberts, .gg
Dotty Sparks de Blanc, .vi

Other Liaisons:

Cheryl Langdon Orr, ALAC

Staff Support and Special Advisors:

Jaap Akkerhuis, ICANN / ISO
Kristina Nordström, ICANN
Bernard Turcotte, ICANN

Apologies:

Bart Boswinkel, ICANN
Kim Davies IANA
Suzanne Radell, GAC

Keith Davidson: It's now four minutes after the hour, so I think we should make a start and hopefully Eberhard is not too far away and can join before we get to the substance of the meeting. But Kristina, could you give us whose present on the call and apologies please?

Kristina Nordstrom: Yes. From ccNSO we have Martin Boyle, Keith Davidson, Chris Disspain, Stephen Deerhake, Daniel Kalchev, Eberhard Lisse will join in a minute. We have Patricio Poblete, Nigel Roberts, Dotty Sparks de Blanc. And from liaisons we have Cheryl-Langdon Orr and from staff support and special advisors we have Kristina Nordstrom and

Bernie Turcotte. Apologies have been received from Bart Boswinkel, Kim Davies, Suzanne Radell and from Eberhard Lisse for joining for the first hour.

Keith Davidson: Okay, that brings up the point that this call probably should not be an hour if we're all on topic and we can progress through our business. Were there any further apologies, Kristina, by anybody? Is there anyone on the call whose name wasn't called?

Eberhard Lisse: Yes, it's me. I just got in. Eberhard.

Keith Davidson: Hi, Eberhard.

Kristina Nordstrom: And Eberhard has just joined the Adobe Room also.

Keith Davidson: Okay. Confirmation for the agenda. Is there anything additional on the agenda? Is there anything that anyone wished to add not but isn't listed there? If not, we'll move on. And looking at the meeting notes for 10th of October, Bernie, is there any -- I'll hand over to you Bernie, to just sum up quickly since it's been a while since we've met, just on a month. Bernie?

Bernie Turcotte: Thank you, Sir. No, it was basically going through the points listed, so I kept it short because we had various email discussions and I think everyone can find their section numbers and what we did. So nothing special to report on this one.

Keith Davidson: Okay, thanks, Bernie. The meeting notes have been circulated for at least a week, so does anyone have any issues? Is there anything not otherwise covered on the agenda? If not, we'll proceed to item 4 on the agenda, the progress report which we are seeking approval of and time for Buenos Aires. Bernie, do you want to talk us through this?

Bernie Turcotte: Yes, Sir. I've circulated the track changes version so people see, can see it's really just a minor update to what we published for the previous meeting in Durban. So basically at the top of it changed the date, progress since the Durban meeting versus the Beijing meeting, and we talked about the FOI working group published its interim report on this topic which can be found at and we have the web address. And then we say that we will continue our topics for revocation and unconsented re-delegations, and documenting support for delegations and re-delegation requests from significantly interested parties are complete. The FOI Working Group met, it's going to be five times I believe, because I don't think I counted this meeting, so that's a minor correction. And that's it. So really just saying we published the thing for revocation and that we will be completing significantly interested parties before proceeding with some other material. So really pretty straightforward I would think. Over to you, Sir.

Keith Davidson: Okay, thanks, Bernie. Eberhard is asking if the document could be made scrollable and maybe sorted. Kristina, if you could make --

Kristina Nordstrom: Sure, is that okay, Bernie?

Bernie Turcotte: Always ok.

Keith Davidson: Okay, any questions or comments? Any errors or omissions noted on the progress report? If not, last chance. With the amendment to say that we've met five times, then Bernie, I think we can accept the report and pass it through for publication. Thank you very much. Item 5 on the agenda is the review of responses to public consultation on revocation and I don't think we have Bart on the call, but Bernie, are you aware that we've had any responses at all?

Bernie Turcotte: As of yesterday, I had not seen any.

Keith Davidson: Never sure whether that's a good sign or bad sign. Okay, so let's look at building an agenda for the Buenos Aires ICANN Meeting. I think we have a reasonable amount of time dedicated to our tasks for the ccNSO members meeting and for the GAC ccNSO joint meeting. And it's possibly also going to be a topic for raising between the ccNSO and the ICANN board. I guess as we get closer to the end of our work on the working group that it becomes more important to have the framework familiarized to other constituencies in ICANN. And so I think Buenos Aires provides the new impetus for us to socialize the framework.

Sorry, Bernie is just commenting on Skype that he can barely hear me. Are other people having trouble hearing me?

Eberhard Lisse: Bernie is much louder than you as usual. You are a little bit -- I'm saying, it's not a problem, but if you have a moment and dial back in, maybe it's improved the situation.

Keith Davidson: Okay, I'll hang up and dial back in. So Bernie, do you want to take control of the meeting while I'm gone and I'll be back in two minutes.

Bernie Turcotte: Yes, Sir. I -- just to be clear, I just double-checked the comment page this morning on the revocation public consultation and there were still no comments. In a way, this does not surprise me because we did go in rather deeply and there's a lot of material on this, so I don't, like Keith, I don't know if that's a good thing or a bad thing, but we do not have any comments.

Agenda for the Buenos Aires meeting, I believe that the first topic is going to be review of comments, if we have any by then, and I would hope that we will have a few. If we don't, our next topic of conversation in the priority queue should be to finish off significantly interested parties.

Nigel Roberts: Bernie?

Bernie Turcotte: Yes, sir?

Nigel Roberts: Sorry to interrupt. A little housekeeping. Can somebody let me into the Adobe connect room please? It's Nigel.

Kristina Nordstrom: Hi, Nigel. I don't see a request. Can you please reload and try to come in again?

Nigel Roberts: Okay.

Keith Davidson: It's Keith, I'm back again.

Bernie Turcotte: Keith, you're back, so I'll hand it over to you. I was just saying that first order of business for Buenos Aires will be reviewing any comments if any on the revocation public consultation. If there are none, I guess the next topic in the priority queue will be starting back in on significantly interested parties to finish that up. And that's where we were at. Over to you.

Keith Davidson: Okay, thanks. And I think a priority for us to consider, too, might be just how we engage or get reengagement with the GAC and to make sure the ICANN board is also not, or is able to be familiarized with our work quite strongly. And I'm hoping that I'm a bit clearer and a bit louder now?

Bernie Turcotte: Well you are for me.

Keith Davidson: Good. I see Eberhard has his hand raised, so Eberhard?

Eberhard Lisse: As you may or may not know, I'm a lurker on this program work and therefore I'm privy to some discussion how difficult it is to engage the GAC. This is not something that only relates to our working group. However, we have two members of our group are of the GAC, they don't reach out ever or they don't say they're not involved, I'm sorry, there is only limited sympathy on my side.

Keith Davidson: Sure. But remember, Eberhard, that our plan is that if the framework is agreed and approved by the ccNSO, then we would take it with the GAC's approval to the ICANN board as a sort of way of getting binding commitment from ICANN which doesn't require a policy development process because it would become advice from the GAC. So it is important that we have them alongside us on the way.

But I'm suggesting that perhaps Vicky, Bernie and I might meet with either Suzanne and Frank and see if we can actually stimulate their interest. I think while we've been stuck on this topic of revocation for quite some time, it's probably been quite fair that they may not have considered this their top priority for the GAC. But now that we're getting close to the end, it's probably quite timely that we do reengage.

Nigel Roberts: Keith?

Eberhard Lisse: Your hand is not up Nigel.

Keith Davidson: Nigel is not in the room, so I'll give him the courtesy of the floor since he started speaking. Nigel?

Nigel Roberts: Yeah, unfortunately I am not able to access the Adobe Connect today for some reason. It normally works fine, I have no idea why. A couple of things. And I know that at least one of the GAC members does listen back to the transcripts of this. We want the engagement of the GAC in this process. They have in the past been quite helpful parties in some of the earlier stages of this process. They've been distracted, as we know, by the new gTLD stuff. Nonetheless, the work that we've been doing, particularly the part on revocation, is not only the most important part of the work that we've been doing, it's also the part of the work that the GAC in its early days was most interested in of anything in ICANN. Possibly a number of modern GAC members don't know that, but the original meetings of the GAC in ICANN Berlin and so on were of a quite different tenor and focusing exactly on revocation. So when it finally comes around ten years later that ICANN is dealing with it, it's slightly curious that they're not as involved as I might have expected. But maybe they're very happy with what we're doing.

What I don't want to see happen is that we spend a lot of time and effort and we have actually had -- they've literally had seats around the table, and then the rest of the GAC that's not been involved, perhaps different countries that have different attitudes towards how ccTLDs should be run, all of a sudden start howling and screaming and wanting a completely different approach and that we end up throwing away two or three years' worth of work. I really don't want to see that happen. I don't think it will because I think we've done the job right, I think we've engaged with the GAC at the right opportunity. But we need to have this visible as well as to know it intuitively. Does that make sense, Keith?

Keith Davidson: I think it makes absolute sense to me. And I think with noting Chris's comments on the chat in Adobe Connect thing, that the GAC may have some difficulty focusing on this or anything else while they have some continued issues with the new gTLD process which has been a major distraction to them. But I think perhaps if we look for say Vicky, Bernie and I to meet with three from the GAC and actually discuss how we see our engagement

going forward, that might be a quite useful thing even if it's just a brief meeting to make sure that they're not losing any focus on this topic. And I agree, we don't want to have wasted our time because we can't get the GAC to agree with us. But there's no -- we can't force the GAC to agree with us either.

Anyway, Eberhard has his hand raised. So Eberhard?

Eberhard Lisse: With regards to GAC and approval, I was not aware that our charter means that our work is contingent on approval. I recall some discussion if they don't approve, we go ahead anyway. Of course I'm not saying we shouldn't engage, I'm not saying we should not seek approval.

Keith Davidson: Oh, I thought it was quite clear that our work is to provide color and depth. If we want it to become -- if we want the framework to become binding on the ICANN board to follow, then we only have two choices. We either convert it to a policy development process within the ccNSO which would then make it -- the final policy would be binding. Or we, and I think we had opted for the easier option that if the GAC agreed with the ccNSO's framework, then the GAC and ccNSO would jointly provide it to the board. And because it was coming from the GAC, that would essentially create a binding advice for the ICANN board. So it was seen as the softer option since the GAC was largely in agreement and in sympathy with what we were doing.

Eberhard Lisse: Can somebody refer me to documents where this has been discussed with our charter? And Nigel wants to put his hand up but can't.

Keith Davidson: Okay. Nigel?

Nigel Roberts: Yes, there's an important point here and I want to say it quite loudly and clearly to provide a bit of a motivational boost to everybody on the team. But at the same time, it's really important. I think what you said, Keith, is wrong. Technically, it is wrong. To become binding on the ICANN board, we don't have to have a PDP nor do we have to have approval from anybody, nor do we even have to do anything that we haven't already done. The reason I say this is this. Is that we haven't created any new policy. I've been banging on about this at every time that I think there's a danger of that. What we've done is interpreted existing policy. ICANN is bound to follow existing policy. So unless it disagrees with the interpretations that we have come up with, and I don't see any evidence of them even paying any attention to actually going down the road of trying to provide alternative routes, then they've got to follow the existing policy. And the best statement and the best guide to existing policy is in plain words the policy plus the output of our two working groups. So they do have to follow it, in my opinion.

Keith Davidson: Yes, I guess the problem with it is if you carry on working down that path is the GAC could provide contrary advice which would be binding on the board. So we would --

Nigel Roberts: No, I disagree totally. The GAC cannot provide contrary advice if that advice is not a correct and true construction of the policy. You can't just suddenly turn around and say black is white, so we're now going to follow, do black even though we know that white is the policy.

Keith Davidson: Okay, that's debatable, but I have a speaking order. I've got Chris and Eberhard and then I'll return.

Chris Disspain: Can you hear me?

Keith Davidson: Yes, thanks, Chris.

Chris Disspain: You can hear me, good. Two things. One, I just want to make it clear that it's not correct to say that the board hasn't been paying attention. I can assure you that a significant number of members of the board are paying significant attention to the work of this working group. Steve Crocker amongst them. And secondly, I just want to pick up on the point that Nigel just made. Nigel, I think you're taking refuge in semantics in practical terms. If the GAC decided to revisit the GAC principles, if they decided to provide advice on delegation or re-delegation, we could scream and moan about it as much as we'd like. But at the end of the day, it would go to the board as advice. I'm not suggesting that the board would necessarily accept it, but it would go to the board as advice.

The only thing we can do to trump that is policy. Now you're right to say that all we are doing is interpreting the current policy. The reality is that we have interpreted the current policy in ways that are significantly enhanced to the way that they have been previously looked at. So anyone who disagrees with us or anyone who thinks that we've gone too far is likely to raise a flag and we need to be very careful. If there's a way that we can cement what we have done more firmly than simply providing a color and depth, then we should do that. And the only way to do that is either to have the GAC go with us, in which case as Keith has already said, it has their info and mantra and therefore is much stronger. Or do our own policy. And if you remember, this may not be written down anyway, but the bottom line for this was always that we did enough work in enough detail to enable us to do a formulaic policy development process fairly speedily if we have to.

Nigel Roberts: I agree with the second bit.

Keith Davidson: Okay. Thanks, Chris. Thanks, Nigel. Eberhard is next on the speaking order. Eberhard?

Eberhard Lisse: I don't have a problem but I refuse to accept that our work is subject to GAC approval. That is not written in the charter. I challenge it.

Keith Davidson: I don't think --

Eberhard Lisse: Sorry, I posted it into the wrong chat. Let me post it into this -- I posted it into the chat. Section 4 and 5 clearly state that if the GAC doesn't want to endorse it, we'll need to note. That said, it's of course better if it gets GAC endorsement. Not even approval, endorsement.

Keith Davidson: Okay. Well I see that as one and the same thing, but anyway, I think we're all violently agreeing that it would be better if the GAC had agreement or was agreeing with us. And it's a stronger case going forward for us if that's the case. So disregarding the exact wording and semantics, if we agree that conceptually that's what we want to do, then I think reengaging with the GAC in Buenos Aires is going to be a very much key element to that. And it looks like from Chris's suggestion that we may not get a lot of face time with them in Buenos Aires, but we should at least start the pathway forward and make sure that they are up to speed with where we are from here on in. And I have two hands raised. Chris, is it because you didn't put your hand down, or do you want the floor again? Chris's hand has gone down. Eberhard?

Eberhard Lisse: I still want to say, in the program working group, we sort of tried to say we can talk to our own GAC representatives. That means I will speak to, I know the Austrian and the German one reasonably well, so I will talk to them. And others, if you speak to the New Zealand and Chris to the Australian and so on, what I'm saying, so we get a feel of the people that we know interested in that something is coming.

Keith Davidson: Yes, I think that's --

Eberhard Lisse: Because I think the problem is not so much the GAC as itself, but the GAC is unwieldy to manage. The secretariat has got issues and so if we get a few people of the GAC already sort of warmed up that something is coming, maybe they are more interested in engaging as a committee.

Keith Davidson: Yes, I think rather than spending too much time on this now, I think that's a really solid suggestion, Eberhard. And let's draw that up as part of the battle plan for after BA, before Singapore, how we might approach our individual GAC groups and so on. Let's put that on the table for discussion at our meeting, the framework of interpretation working group meeting in Buenos Aires and how we should approach that with our own GAC representatives and so on.

Thanks for that and I see Patricio has his hand raised. Patricio?

Patricio Poblete: Yes, I'm a bit surprised that there would be a discussion so late in the game about what happens with the final product of our work. Whatever we decide, we should be aware that in the past we have made plans for this and made them public. And reading our presentation for Prague, there is a process described there and in the final part of that it says that there should be GAC and ccNSO support for the final report. It says support from both communities required. And then the next bullet point says that permission of the board, the ICANN board by ccNSO includes confirmation of the work by GAC and ccNSO and report with recommendations.

Keith Davidson: Yes, I've always had it in my mind that we were quite clear in that regard. But obviously it wasn't clear to all of us. But however, thanks for bringing that to our attention, Patricio. And I think we are in fairly strong agreement on this. Anyway, can we move on and look at other items for our agenda in Buenos Aires? Obviously we're going to have to set up a schedule for our future meetings and look at what our future work will entail in order to produce the glossary and the implementation aspects of the framework. Other than that, is there anything more that we should have added to our agenda for Buenos Aires?

No comments? If nothing else -- oh, okay, Patricio has just posted a link to the report he just read from for anyone who's interested. Okay, so nothing else for the Buenos Aires meeting? I think we've already had item 7 to the extent that we've had some initial discussion of the schedule for Buenos Aires and perhaps talking to our individual GAC representatives might be part of that. I also think that some ongoing dialogue with the ICANN board might be at least offered by us. Would that be a good idea, Chris, do you think? We lost Chris. I think we might have lost him.

So let's put that on the agenda, too, for discussion, GAC engagement, ICANN Board engagement and other SO and AC engagement within ICANN. Okay, if there's nothing else to add to that, we look like we'll have a fairly solid agenda for Buenos Aires meeting which is on the 25th of November at 9:00 AM local time. And if there's nothing else, no other business, I think we can consider ourselves very lucky and a very short 30 minute meeting tonight. Does anyone have any other business to raise? Eberhard?

Eberhard Lisse: Only if it's not transcribed for all you guys, be aware that my son has been operated. He has had his spleen operated on and they did it laproscopically and he spend about 1.5 days in hospital and is doing very well. So I am coming to Buenos Aires, I'm not going to be with him.

Keith Davidson: Okay, that sounds truly fortunate or unfortunate as the case may be, Eberhard. Nothing else, anybody? Okay, thank you for your participation and I'll declare the meeting closed. Thank you. Goodnight.