
PRAGUE – GAC/Board Recommendation Implementation Working Group

Sunday, June 24, 2012 – 11:00 to 12:30

ICANN - Prague, Czech Republic

NEW ZEALAND: Thank you for this introduction to make a brief intervention. I'd just like to point out that, stimulating and exciting and awakening as GAC meetings always are, coffee actually go some way toward assisting the proceedings. And I'd just like to make an inquiry through the chair why it is the coffee is provided in depths of the lower lobby but not on the mezzanine floor where we gather. Thank you.

CHAIR DRYDEN: Thank you, New Zealand. I have raised the question. And, once I have an answer to that question, I will provide it.

NEW ZEALAND: Thank you, Madam Chair.

MANAL ISMAIL: Thank you. Thank you everyone for being on time. We have a tight agenda. And I think we need to make some progress. So we, basically, have three agenda items on the BGRI working group meeting. We have three recommendations, recommendation 10 on GAC advice online register, 11 on board/GAC formal documented process, and 12 on early engagement of GAC within the PDP.

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We'll start by the online register. We have done quite some progress on this and we believe we can proceed very quickly with this agenda item to allow more time for substantial discussions on the remaining two recommendations. So we had a quick discussion with the chairman of the board and the GAC chair on how to proceed with the GAC online register and put it into action. We believe that it's going to be a good approach to have this into operation and then keep working on ensuring the completion and the accuracy of the data already entered over the past GAC advice. So we'll be working in parallel making sure of the completion and accuracy of the past GAC advice. But we need to be forward-looking and start putting the register in action and using it in providing GAC advice. So I hope we can agree quickly on the cycle or the mechanism of using this platform to provide GAC advice.

Jeannie has kindly put a flow chart summarizing this cycle. So, if we can discuss this very quickly and adopt it, then we will be done with this agenda item. So, Jeannie, can we please have the flow chart?

BILL GRAHAM:

Thank you, Manal. And good morning, everyone. It's pleasant to have this working group meeting here in Prague, and I appreciate the excellent attendance. As Manal said, we had a very helpful discussion I think with the board chair and the GAC chair yesterday morning. And, essentially, the two chairs reviewed where we were with the register and agreed that the best thing to do at this point is to take a look at last comments that anyone may have but, basically, to start working with the register from the -- from where it is now starting with the current items. And then that will give us real world experience with how it

works that will allow us to make any changes iteratively as they're required. But, in general, the two chairs and Manal and I feel that the register is now in pretty good shape at least to start working with and make minor adjustments as required.

Jeannie has put together this very helpful flow chart. And you've received all this material by e-mail in the last 10 days or so. So I hope you've had a chance to look at it.

But this flow chart essentially goes through the states that are involved in using the registers. So we start with the registration. The steps there are pretty clear.

The notion is that GAC support staff would enter all the pieces of GAC advice that are forthcoming, whether they be in a letter format or as part of the communique. Each one of those would be assigned a number. The GAC, of course, would have the responsibility of reviewing the entry and ensuring that it's accurate as quickly as possible so that the board can then move forward with its responses.

We were discussing the possibility of having a notice sent every time there's a new entry made in the database so that all of the GAC would be aware of any new entries so they could go in and check. And then the board would, of course, acknowledge receipt of the advice at the end of the first registration phase.

We then go into a phase of assessment where the advice would be assessed, the implications considered, policy discussions as required at the board level and next steps and action items and so forth. And all of those would be recorded.

Assuming that the advice is accepted -- and, certainly, it's the board's intention to act upon GAC advice barring some extraordinarily good reason to enter into a consultation process -- the implementation steps would then be embarked on. And there would be a final handshake to indicate that the advice has been acted upon and the process completed.

Again, the idea was to work with the register in its current form. And thanks to all those who have commented.

If any issues or improvements are identified, we can make those along the way. But I think, if I'm reading the mood correctly, we've pretty much come to a point where we feel that we've got the essential bones of the register in place and we can move forward.

The register, of course, is -- to be complete is going to have to go back into the last 43 meetings' worth of advice and gradually confirm that all of that material is in there correctly. But I would -- and I think the two chairs also agree. It's best to work on those items that are current or outstanding and move forward from those while the older advice is gradually updated as time permits. Manal?

MANAL ISMAIL:

So, if we have any comments on the flow chart -- I personally have one quick comment, but we can open the floor for reactions. U.K.?

UNITED KINGDOM:

Thanks very much, Manal. And, Bill, of course, thanks very much for going through the flow chart. It looks excellent, very clear.

And my query -- forgive me, I don't know if it was raised at all. But is there value in having a deadline for the board acknowledgment of the advice? Is there some -- I don't know -- two weeks, three weeks? And then, as a trigger, if that acknowledgment hasn't actually been received, I'm looking really at the tail end of the registration phase. Is that a point worth considering? And likewise, at the far end on completion, can we institute some sort of timing for receipt of acknowledgment of completion? Those are just a couple of suggestions. Forgive me if they have been considered and explored previously, but I can't remember if they were. Thank you.

MANAL ISMAIL:

Thank you, Mark. This is something that we need to insert the expected time frame for each step. I believe we can easily suggest a time frame maybe two, three weeks, as you have suggested, for the entering of the advice and the acknowledgment of it. I think, within the assessment phase, there's going to be a target completion date. And this is where we have to start cross-checking. I mean, we cannot insert a certain period for the completion date of everything because I mean, it depends on whatever is going to be implemented. So some things can be immediate, and some may require more time. So it's probably going to be depending on the target date that has been identified within the assessment phase.

So Ray, please.

RAY PLZAK:

Thank you, Madam Chair.

I certainly agree with the value of what you're asking for. I think that, besides actually having that in there and to facilitate some of the rest of the processing, it might become convenient if the GAC, in formulation of its advice, includes in its operational procedures a date by which they would expect or want to hear answers with regards to certain portions. And, if that became a routine part of your operating procedure, it would, certainly, I think, help facilitate this process.

MANAL ISMAIL: Okay. Thank you. Pakistan, yes, please.

PAKISTAN: I am from Pakistan. I have to say comment in case of item 2 assessment, suppose there is some material documents at something required by the GAC advice which is to be resisted. How GAC -- how board communicate with the GAC? In the case of a registry of any advice and the board has some reservations during the assessment, board required some document, how the flow with the interaction with the ICANN board?

MANAL ISMAIL: I'm not sure I got your question right. But let me try to -- I had a similar comment, I think. In the assessment phase we have to start with a box that says something about the board decision. If the advice is accepted, then I think we're going to go through the normal flow of this flow chart. If the advice is not going to be followed, then I think we need to branch and have another flow with the consultation that should be triggered according to the bylaws.

the necessary modifications, and we will circulate it again. And, as Bill mentioned, this is going to be extended as we agree on other steps within the process. So maybe we can move to agenda item 2.

So agenda item 2 is on the board/GAC formal documentation process. And, again, ICANN staff has prepared some material. And we thank the staff for a very last-minute request that has been accommodated.

And we have here Samantha. Yes. She will walk us through the prepared material. And again, thank you, Samantha, for coming on a very short notice also. Thank you.

SAMANTHA EISNER:

Thank you, Manal. Happy to be here. I'm Samantha Eisner. I'm senior counsel. I work in the office of the general counsel in ICANN. This does flow very nicely into the conversation that you just completed on the register of GAC advice.

In the December of 2010 ICANN staff created two proposed processes for receipt of GAC -- not for the receipt of GAC advice but for the board consideration of GAC advice when it is prepared to take a decision. So there's a pre-bylaws consultation process and then the formal consultation process that is anticipated under the bylaws.

If you recall, when you look at the bylaws, we do have an issue that the determination by the board of whether an action is inconsistent with GAC advice happens at the time of decision.

So what the pre-bylaws consultation process allows is for the board to signal to the GAC that it intends to take a decision that it believes is

inconsistent with GAC advice and, hopefully, get the board and the GAC to the point where consultation is not necessary under the formal bylaws process.

So Jeannie has projected up on the screen the pre-bylaws consultation process. It's fairly detailed. But the highlights are, first, the board makes a pre-identification of a potential inconsistency -- inconsistency with GAC advice it has already received. Once the GAC or once the board makes that designation, it then also appoints representatives to liaise with the GAC during that entire process.

Essentialness is a provision of written notice to the GAC of the action that the board intends to take that it believes is inconsistent with GAC advice provision of the board's interpretation of that advice if it's necessary to explain why the board believes that action may be inconsistent. And that notice can also include a clarification or request for clarification from the GAC about that advice. And, finally, a request for the GAC to inform the board whether or not the board's determined action will actually be inconsistent with GAC advice.

Under the process, it's proposed that the GAC would have a period of 30 days to liaise among itself as well as with the board representatives to determine if the board's intended action is consistent or inconsistent with GAC advice.

And then, if it's determined by the GAC that the advice -- that the board action would be inconsistent with that advice, then the GAC may provide what we call in here a GAC response that clarifies the advice that it has previously given, if that's necessary, but also requires the GAC to provide a rationale for why the board's actions would be

inconsistent with the GAC advice received and also identifying any potential harms that could result if the board proceeded with the action even if it's been identified as inconsistent with GAC advice.

At that moment, that then creates another 30-day time frame called the preconsultation period, and that identifies -- that allows the GAC and the Board to attempt to identify a proposed resolution for the inconsistency.

After this period of time, the Board will then meet to consider whether or not it intends to further proceed with an action that would still be considered inconsistent with GAC advice.

One of the results out of this preconsultation period could be that the Board and the GAC determine that the Board's action would not be inconsistent with GAC advice or the Board has modified its action in reaction to the preconsultation period.

But the Board would then meet to determine whether or not to approve the action that it wishes to undertake, and at that period it would provide the notice with -- it would provide the GAC with the notice of determination.

And this -- this is for the potential that the action would still be considered inconsistent with GAC advice.

And so the GAC would then have a 30-day period after this determination from the Board within which to object to the Board's actually taking the action under -- that's under consideration or to note its nonobjection. And then if the GAC issues an objection at that point,

we then turn to the consultation period that's required under the bylaws.

And so all of this happens before the Board actually has taken an action in the sense of a final resolution that would be enacted. But all of this happens on the record, and so both the Board notices to the GAC and the GAC responses to the Board are anticipated to be publicly available documents, and we would likely find someplace near the registry to collect all these documents to maintain transparency.

So then we come to the point where the Board then determines that it is taking an action that the GAC and the Board have both identified as inconsistent with GAC advice, or it could be that there's an action that the Board determines to take that it understands is inconsistent with GAC advice. It hasn't had to seek any clarification from the GAC, and for some reason has not instituted the pre-bylaws consultation process.

But in either event, the Board has to provide direct notice to the GAC through a -- through staff, and in a written form, that would then state that the Board is taking the action.

And the GAC is then given a 30-day period within which to provide a written statement to the Board very similar to the statement considered under the pre-bylaws consultation process, but would provide a rationale for the GAC advice as well as an analysis of why the advice would be inconsistent, and the potential harm that is anticipated if the Board considers with its intended course of action.

At this point the GAC could also provide clarifications to the advice that it has previously provided.

The Board would then have ten calendar days after the reception of this notice which is called the GAC statement within which the GAC -- the chairman of the GAC and the chair of the Board could confer as appropriate to identify a meeting time for a face-to-face consultation. There is a time limit on this. That consultation is anticipated to be at the next scheduled ICANN public meeting, and it should be no later than 60 days after the Board chair and the GAC chair meet to determine the conference for how the consultation should proceed.

So, in full, this is basically within 70 days of the GAC provision of the statement of its clarification of advice.

To form the bylaws consultation process, the chair of the GAC and the chair of the Board are to jointly determine the agenda for the consultation, and particularly if there is no ICANN public meeting scheduled within that time period, the Board chair and the GAC chair are to agree as to whether the consultation shall proceed telephonically or in person.

And this consultation shall also be moderated by an individual selected and mutually acceptable to both the chair of the GAC and the chair of the Board.

Each -- The Board and the GAC will have a representative appointed to give presentations at the consultation in order to set forth the party's perspective position on the disputed action, and there will be an opportunity for both sides to ask questions of the appointed representatives as well as the moderator in order to facilitate discussion between the GAC and the Board.

In addition, both the GAC and the Board have the opportunity to provide additional written statements for presentation and consideration at the consultation with the requirement that those are provided at least three weeks in advance of the consultation to allow for adequate time to prepare.

At that consultation, the Board and the GAC would then try to follow the bylaws to meet a mutually acceptable good-faith solution so that the Board can then take an action that is not inconsistent with the GAC advice. And the document contemplates that compromise solution should be considered.

After the conclusion of the consultation, the Board would then consider whether or not to affirm or reverse the disputed Board action, or if there's any other appropriate mitigating action that the Board could take in order to remove the inconsistency, if one does exist.

And then if the Board reaffirms the disputed action, the Board would then issue a statement to the GAC setting forth the reasons why the GAC advice was not followed. This is currently specified within the bylaws. The Board has done this within the resolution or within the rationale to the resolution, both with the ICM decision as well as with the new gTLD decision, where it provided information to the GAC at that point about why the Board proceeded in contravention to the GAC advice.

And the Board also could determine to reverse the disputed action, and at that point the Board could conclude all consideration of the disputed action or could then move to implement a compromise action based on the consultations.

And as with the preconsultation process, all communications and documentation created within the Board/GAC consultation process are considered to be part of the public record and would be posted publicly.

So those are the two processes that were provided in December 2010, around the time that the Board determined to take the action on the ICM agreement, and that's what really necessitated the creation of some proposed processes to help guide the Board and the GAC, at least through the first such consultation that we experienced.

BILL GRAHAM:

Thank you very much for that, Samantha.

One question that Manal and I were discussing here. How long -- Assuming that both of the preconsultation and the bylaw consultation were invoked, how long would that total process take? It looks to me like something in the range of 180 days. Is that correct?

SAMANTHA EISNER:

I think that that calculation is correct. And I think it could go even longer, depending on how long the Board would take between the preconsultation and the consultation period if there's a need for additional information.

But I think that six months is probably the minimum, assuming that all of the maximum time frames were hit. Bill Graham thank you, Samantha. That's very useful.

So for the purposes of this working group, I'd point out that neither one of these documents from December 2010 have yet been approved by

the ICANN Board. So these are really -- really discussion documents as to how the consult- -- the formal documented consultation process would occur if there was disagreement between the Board and the GAC and the Board determined not to take GAC advice.

In a certain sense, we're talking about a worst-case scenario here, and the documents are very detailed.

Clearly, as they are not approved yet by the Board, what we need now from this working group is feedback on these two discussion documents, and then a discussion between the GAC and the Board about the recommendations from staff.

Ultimately, this would -- after we've had a discussion about whether these processes are appropriate and adequate, this would become a work item for the Board to clarify this.

What I'd like to suggest is, today, we take some quick questions, primarily for clarification, if possible. And then that the GAC have a discussion among itself as to its views of these processes. We would have a similar discussion on the Board side, have an exchange by e-mail between now and the Toronto meeting, and we could -- depending on how that's going, we could have an in-depth discussion of the two items at that time.

Does that seem like a good solution, Manal?

MANAL ISMAIL:

Yes, I think.

So we're going to very quickly take quick reactions. I saw Norway and U.S.

Norway, please.

NORWAY:

Thank you.

Thank you for the presentation.

This has been mentioned before, so I think you probably heard it, more comment than a question. It's just this process is very thorough and it is very thick and it is long. We just want to underline the importance that you don't lose track of the original wording of the GAC advice in this process.

We work very hard on the wordings in this committee. We try to make advice as clear as possible, and we work on trying to agree on the actual wording on the advice we give. So in this back and forth process, just always have in mind the original wording of the GAC advice. Because we cannot change that in the process, let's say on topic leads on the e-mailing list, or whatever, between face-to-face meetings.

Because it is a small danger that you will have a blurring of the original advice in this process.

Just a thumbs up on that one.

Thank you.

MANAL ISMAIL: Thank you, Norway. An important point, indeed.

U.S., please.

UNITED STATES OF AMERICA: Thank you very much. Thank you for the presentation. It's helpful to have the overview. And, Bill, thank you for your clarifying comments that you're not expecting us to provide comments today; that we would do further consultations.

I can tell you, I don't know about colleagues around the table but I did a bit of a file search and I actually came up with several different dates on several different versions of these documents. And I had come across one with tracked changes, which suggests to me that the GAC at one point had attempted to provide feedback.

So I have three different dates: January 2010, which I think meant to be 2011; 25 February, 2011, and 17 December 2010.

So if we could clarify, perhaps recirculate, which are the texts that the staff has drafted that we are now being invited to -- I trust what you have done, Bills, is you are inviting comments. So you are asking us that if we do have changes, we would provide them, track changes, proposals to perhaps clarify the language.

They are fairly dense documents, and I think it would be helpful to give us the opportunity to seek a little bit more clarity. So I certainly appreciate that.

Thank you.

BILL GRAHAM: Thanks for pointing out the version issue, United States. That's very helpful.

We will explore this off-line and try to get the most recent version rather than duplicating efforts.

Thank you very much.

MANAL ISMAIL: We have U.K., Germany, then Denmark.

So U.K., please.

UNITED KINGDOM: Thanks very much, Manal. Thanks very much for going through a very detailed, complex pair of documents. Certainly will need time to look at these and consult with colleagues hear.

I just have a very worrying concern that this really doesn't take into account how we work, actually.

For example, the pre-bylaws consultation process, step 3, 30 calendar days is 20 working days. Within that period, individual GAC members are likely to have to consult at national level, and then get back to the GAC. We may need to take legal advice as well as experts' advice back in capitals, and then we need to reach some kind of consensus as the GAC.

I just wonder if proper count has been made of the practicalities of how we work. 30 calendar days, that's 20 working days, I read that. And it's an incredibly tight approach.

So I just want to flag that worry up now. But I don't have any other points of clarification, but I -- as I say, I think my point is I hope proper account is taken of how we work. We don't reach decisions, you know, on the hoof, especially if it's something critical like this where there is a potential divergence between the Board and the GAC. These kind of problems need thorough examination, extensive consultation. And the processes have to allow for that.

Thank you.

MANAL ISMAIL:

Thanks, U.K.

Germany, please.

GERMANY:

Yes, thank you.

First of all, I want to thank you for preparing this paper in the working group. I think it's quite valuable. And I also would join the positions of the colleagues from the U.S., Norway, and U.K. These are also issues we are concerned of.

And allow me two additional observations in the process.

I think one issue is, in some cases, the GAC may make clear that it accepts -- anticipates a bylaws consultation process if a certain decision

of the Board is anticipated. I do not think in this case we would need an additional preprocess because the GAC advice in this situation would be rather clear that we anticipate a bylaws consultation process if the Board does not follow our advice.

I think in previous discussions on introducing new gTLDs, we had the situation where we really gave advice and clearly stated that we anticipate this kind of bylaws process.

And secondly, we now have in this process GAC representatives with a role, and in a very sensitive issue, whether or not bylaws consultations should take place.

Normally, GAC members speak on behalf of their own and behalf of their governments and not on behalf of the GAC, the entire GAC. In my view this is not so easy to delegate this responsibility to two or more delegates. But this is something sure we should consider in the further discussions. But these are issues that really sudden be reflected thoroughly.

Thank you.

MANAL ISMAIL:

Thanks, Germany.

Denmark.

DENMARK:

Thank you. And thank you for the presentation, and also for the opportunity to comment on these drafts at this point.

I think it would be very helpful to understand to what extent these drafts have been discussed in the Board. I understand that these are papers prepared by the staff. And so how much discussion have there been in the Board about these draft, and what are you -- what kind of process are you expecting from here? That would be very helpful in our analysis in commenting on this draft to know where are we in the process right now.

Thank you.

BILL GRAHAM:

Thank you, Denmark. And thank you also to -- for those other comments which are helpful. I recognize some of these comments as ones I've heard before on other issues, and they are understood. We'll obviously need to take into account those working methods and timelines of the GAC.

As to how much consideration this has had by the Board so far, I have to confess I am too new to the Board to be able to answer, so I'll ask Chris Disspain if he could let us know.

CHRIS DISSPAIN:

Thank you. I'm happy to be corrected by anyone in the room that's been there longer than you and I, Bill, but my understanding is none.

Ray, can you recall this being discussed by the Board? No. Okay.

So we think not. Sam, do you -- Sam, you might know.

SAMANTHA EISNER:

So there was a small amount of conversation about this at the Board level.

It's important to keep the timing of the creation of this document in context. This came up after the Board determined to act on ICM, and also in the precursors to the New gTLD Program.

And so if you note the timing of this draft as well as many of the dates, Suzanne, that you mentioned, these are really before the Board and the GAC engaged in consultations. And so we do have -- we went from presenting a process and realizing that we could get very caught up in trying to negotiate the process as opposed to moving forward to actually figuring out how to consult on the substance.

And so I think that, if I recall, there was not substantial Board conversation about the specifics of the process when we determine that it might be a better use of everyone's time to move forward on the substance and figure out the process for a later time.

So I'm not sure there was much advancement, but I think we can all consider how the new gTLD consultation process went as well as the ICM process went in figuring out how this may be -- how this process may be outdated and how I think that we, from the staff side, and not trying to speak for the Board but I think we have learned a lot about the GAC processes through the new gTLD consultations that we've undertaken.

So we can take those back and consider them as well.

BILL GRAHAM:

Thank you, Sam. I think those are good suggestions.

So what I'm concluding here is that both the Board and the GAC are roughly in the same place with regard to these documents. We need to talk about them among ourselves, and then get back together with the key points.

So the take-away, I think, I have from this is to find the most recent tracked changes version that I think the United States has drawn attention to, make that available, obviously, to the GAC. We'll schedule discussion of this in the Board.

And I think, Sam, your suggestion that we look at these in the light of the experience that both Board and GAC have had since the documents were initially drafted and think about how they can be modified so they become really useful documents. I think this will also fit into a discussion of how we can more effectively consult Board/GAC, but also with the other ACs and SOs to avoid a situation where we're into these very formal consultation processes.

So I see this as being part of a continuum, and I hope we can all look at it in that light as we move forward.

But, Manal, I think -- unless there are other preliminary questions or comments, maybe that's the way to move forward, and we could move to the third agenda item.

MANAL ISMAIL:

Yes, perfect.

So moving to the third agenda item, Jeannie, please, if you can put the presentation on the screen.

Again, Jeannie has collected some information with regards to the GNSO and the ccNSO PDPs in light of the questions that were posed by work group members. The material was circulated on the mailing list, but we assume that not everyone had the time to go through the whole document, so we tried to highlight the key points in a couple of slides to facilitate our discussion.

So very quickly, as we all may know, the GAC is an advisory committee to the Board. Normally the Board notifies the GAC chair in a timely manner if an SO or an AC is seek being public comment on a policy proposal that affects public policy issues.

The Board is required to, and we're quoting here, "take duly into account any timely response to that notification prior to taking action."

As per the bylaws, the bylaws establish a consultation process and reporting requirements if the Board decides not to follow the GAC policy advice.

Very quickly, the importance of early GAC input in PDP. It's important to have the GAC input considered in the final recommendations. It avoids reaching final recommendations that might contradict a GAC advice, and at the same time it saved time and effort, seeking GAC input at the final stage when the recommendations are already being presented to the Board.

So it's a very quick introduction that's due before we get into real substance, so....

Again, the outline is -- goes along the questions that were posed on the mailing list, so the first question was are SOs required to proactively seek GAC advice? And if yes, when?

So under the revised GNSO PDP process, there is no requirement for the GNSO to seek GAC input, yet the PDP manual encouraged PDP working groups to solicit the opinions of and should seek input from ACs, including the GAC.

As for the ccNSO, under annex B of the bylaws, the ccNSO Council chair is required to formally send to the GAC chair inviting GAC opinion or advice upon the receipt of a final report.

And, again, I'm not sure here whether "final report" here means later into the process rather than earlier. But....

The second question is are there any rules for handling GAC input into PDP processes. For the GNSO GAC, the response we got GAC public policy input is not treated differently from other stakeholders. And, other than provide either direct or indirect response, there are no formal consultation required if input is not followed. So, basically, the GNSO responds normally to all the input it receives, whether in a summary consolidated response or a direct response. And, again, if the GAC input is not followed, there are no formal consultations. As for the ccNSO, no rules are in place. And, yet, the GAC has been involved in the fast track process and the framework of interpretation working group. And GAC-supported endorsement is required and was required for submission of recommendations to the board as per the relevant working group charters.

So it's within the working group charters. It's not within the bylaws or such. But, again, in practice, it has been followed in the process for the fast track and the framework of interpretation working groups. So finally, in summary, are there any differences between the ccNSOs and the GNSO's processes? Two primary differences, the ccNSO is required to invite the GAC chair to offer an opinion or advice upon receipt of a final report; whereas, the GNSO PDP team is encouraged or should solicit input from other ACs including the GAC and other SOs.

Under the charters of the ccNSO working groups, if the GAC does not support or endorse the recommendations of the working group, the ccNSO so will not support the recommendations to the board. Whereas, there is no such requirement for the GNSO to follow the GAC advice.

So this has, basically, summarized the past two slides, the previous two slides. And I think we can open the floor for discussions or comment. Chris, yes, please.

CHRIS DISSPAIN:

Thank you. Just maybe, if it's helpful, to give you a little bit of context, that last bullet point that's under the charters of the ccNSO working groups, that's a choice. We choose to do that in our charters. We're not obliged to it. And there are obviously things that the ccNSO does that may be of no interest to the GAC at all. It's just that the stuff that we've done happens to be of interest to the GAC. I just wanted to draw a distinction between the bylaws and what actually happens in practice. Bylaws are generally very dry and make broad sweeping statements.

In practice, the way this works best is by having cooperation between the relevant SO and the GAC. And, to take a simple example, the ccNSO bylaw requires us to seek GAC input into a final report. Well, frankly, that's way too late. We've done all our work, and then we come to you and say what do you think? And that just doesn't work. So we recognize that. We're very happy to have that requirement in the bylaw as a backstop. It's a backstop for the GAC as much as anybody else. But it would, frankly, be foolish of the ccNSO to enter into a policy development process without coming to the GAC and engaging them from the very beginning.

Now we recognize, the CCs recognize that the GAC have different working methods to the way that the ccNSO operates. And we've tried - - and I think in the main succeeded -- to bring those two working methods together. It's a bit of a fudge because there is no -- there's no law about this. But what tended to do is to accept the GAC's view of the world, which is that you can't create and don't create subcommittees and you don't have people specifically involved in our PDPs.

So what we've done is we've said all right, let's open to the -- and the FOI working group is a classic example of that. It's open to anybody on the GAC to be on the calls. But in practice that is not what happens. What happens is a number of people take a real interest, come on to the calls, and then come back and brief you as and when necessary. And we make sure that the ccNSO -- or the ccNSO make sure they brief you as well.

So I think it's important when looking at this to be looking at what both the bylaws are and also what you can actually do in practice to make this -- these things operate as smoothly as possible. Thanks, Manal.

MANAL ISMAIL: Thank you. Italy.

ITALY: Okay. Thanks, chair.

So I think the point of the GAC being involved in the early phases of the PDP production is a really important issue that has to be also advertised to the external world. Because I'm following some list of those that are not real friends of the ICANN model in general. And they keep saying that the GAC is too weak. First, because it has no veto rights to the board but then because it is not involved in the preparation phase of the public policy issues. And this is not true since several years now. And we have to finalize this and then to advertise outside.

Because, to conclude, my impression, after being the senior GAC member, is that this committee has a great competence and also influence in the decisions and relations with the board compared to other governmental representations that are -- that have not such inside competence on all the issues that are in the agenda.

So we are not following agenda items of the GAC board every time. But we have to make clear in the outside world, especially in view of the rules at Dubai conference, that in the ICANN model, actually, the

governmental representatives are involved well in advance in public policy issues. Thank you.

MANAL ISMAIL: Thank you, Italy. Do we have any more reactions? Questions? Comments? U.K., please.

UNITED KINGDOM: Thanks. Just a general comment that I think we're all conscious of the risk of an SO initiating and steaming ahead with a policy, a PDP process oblivious to possible, you know, public interest angles.

And so I very much agree with Chris on, you know, the practicalities of how we all engage and consult and -- so that we're not stuck in silos and information flows readily across the community and to the GAC about what is happening elsewhere and potentially where the GAC might say ah, hang on. Have you thought about this? You know.

So we need to make sure that it's not left to the SO to decide, ah, there's an issue here, we'd better consult the GAC. Because, actually, the GAC might identify something that the SO had not actually picked up on. I don't know how remote an instance that might be.

So I think just, as a general comment, the main thrust here, I think, is right in the sense that there are ways and opportunities early on which need to be sort of clearly understood where the GAC actually could help and pick up on something that an SO had not identified. And the earlier that is the case, the better.

But this is preserving the multistakeholder processes. It's not like the GAC wanting to take charge of anything. It's just actually a matter of cooperation, awareness, engagement, helpful, constructive working methods across the community that this kind of issue of where you bring in the GAC and the role of the GAC and so on can be readily understood by all. Thank you.

MANAL ISMAIL: Thanks, U.K. We have U.S. and then Australia.

UNITED STATES OF AMERICA: Thank you very much. And certainly the Power Point is extremely helpful in sort of focusing our attention on the different types of policy development processes.

I did just want to sort of comment at the outset that there is a connection -- Peter very helpfully has the text on his screen. There is a connection here we might want to revisit or at least not forget about if we have to defer to the next meeting, between recommendation 10, which sort of identifies that the board would establish a more formal documented process by which it notifies the GAC in writing of matters that affect public policy concerns. So it could go to the point just raised by the U.K. that you wouldn't necessarily want to burden the SOs with trying to determine that on their own in a vacuum, that there are two different sources, whether it's the GAC individually, but it could also be the board. I didn't want us to lose sight of recommendation 10, which I don't think we've fully covered that one point.

But then, if I could, I wanted to touch on some ideas -- we all have experience, we don't have enough time here, regrettably, to review it but we might want to consider for our next session it would be helpful to identified a case study in its experience with the ccNSO and the GAC's experience with the GNSO. But I do think we all talk about our different working methods. And maybe what we need to do is put meat on the bones of what we really mean and how that affects our ability to provide input in practice. So that we have a lot of experience in engaging with the community. The GAC and the GNSO, likewise, with the ccNSO, we've been meeting face-to-face for several years now. We have informal contacts. We have outreach with each other. And yet, at the end of the day, we need to also respect that we, the GAC, are here with a very discrete membership. The ccNSO and GNSO have very discrete memberships and their own rules and procedures. And I believe, in the case of the GNSO, those rules involve voting. So not being a formal member of that process means we have no status, which we understand completely.

Complementing that is the fact that, under the bylaws -- if we had a white board, we could probably I do some interesting diagrams. And we may want to think about that. Under the bylaws we are structured to provide advice straight to the board. So we have a lot of dotted lines between the GAC and the SOs and the ACs.

And so what I'd like to throw out there is just a suggestion that maybe we could try experimenting with some new ideas to complement the existing dotted lines. Because, otherwise, we would just continue to talk about the value, the merit of getting GAC advice earlier on in the process. But I think we need to actually explore and experiment with

some practical steps that we could take to try different methods than we currently have available. Because the current tools I think are -- everybody's well meaning. But, if you can't make it work, then the recommendation -- we can't sort of live up to the spirit and the intent of the recommendation.

So I wanted to suggest that perhaps we try to find a -- some solutions that we can experiment with. It, obviously, involves sort of consultations with the SOs themselves because it would be good to get their feedback. And I'm just mindful that at one point, if you recall -- I know nobody likes to read old reports. But the joint working group report, the group that precedes this group, we actually did spend some time in there, very good text that explains why, for example, continuing with GAC liaisons to SOs and ACs is not considered by the GAC or by the GAC/board working group to be a solution. And, at the time, you recall we had a recommendation that considered, you know, asking the SOs and ACs to provide reverse liaisons. We also explored whether ICANN staff, a diverse array of staff could play a more fundamental role as an information conduit to help inform the different parties of where an issue might be at a given moment in time and then to perhaps -- I don't know whether staff would be able to do this, but it would permit the board to perhaps say at a moment in time, pause. Let's reflect before you get too far, before things get voted on, for example. And let's make sure we, the board, have a sense of confidence that all of the views of the ICANN being a true multistakeholder organization, the GAC is a part of the larger multistakeholder organization, even though it may not be a member of an SO. So I think there are things that we might want to explore and then agree to experiment with to see if we can tighten up

those dotted lines and maybe start to make them a little more firm short of amending the bylaws, which, of course, is always an option. But that's a larger undertaking than this group might want to agree to at the moment. Thank you.

BILL GRAHAM:

Thank you, U.S.

As I was reading the staff briefing paper on this, which -- the policy staff briefing paper on this with GAC and PDP processes, which I found very useful, the fact that the board is responsible to notify the GAC chair of any SO or AC activity that impinges on public policy or affects public policy really stands out as being an area where we could probably find mechanisms involving some monitoring and early notice and, as you say, recommendations to ensure that GAC advice is sought and considered at an appropriate early time in the process.

So I think, yes, I would appreciate any suggestions you or others have about how that might be made to work going forward.

MANAL ISMAIL:

So we have Australia next.

AUSTRALIA:

Thank you. And thanks to Bill for that point. I think the U.S. comment and your comment really sort of highlight one of the key aspects of this recommendation 12, which is how the GAC finds out about these things early in the process and can then respond. So it will be very useful to continue the discussions on that aspect as well.

And thanks also to Suzanne for the imagery of the dotted lines joining up the processes, which I think Chris eloquently described as the fudge.

So I quite like the idea of experimenting here. So -- one example that came to my mind, which was an engagement between the GAC and the ccNSO which resulted in what were termed for a period "interim principles" where it was seen that it was useful to have a GAC input early into a policy process but not necessarily something as binding as GAC advice. While the policy process was still being developed, issues were still being brought to the table, things were still being discussed and so on. And GAC advice, again with an imagery, is like a little block of concrete that the water may have to flow around somehow. But at the same time it's very useful to have GAC input. So the wording, I don't know, may not be particularly useful. But it was interim principles. The GAC has got principles on various things. We came up with interim ones. Not like a comment from an individual GAC member to a working group. Not something said off the cuff. It's GAC input. So that maybe something useful, as this conversation goes on, to look at that particular approach or model where there's something in between the views of a couple GAC members and something said into the microphone and advice, which can usefully inform these processes.

MANAL ISMAIL: Thank you. Chris, please.

CHRIS DISSPAIN: Thank you. Thanks, Peter. I agree. I -- but I want to just strike one note of caution, which is that I don't think -- we need to be a little bit careful

coming up with rules you're trying to apply across the GNSO and the ccNSO, because they're fundamentally different.

The ccNSO, because we're all effectively in the same boat, will strive to find almost any way of not having a policy development process. Whereas, the GNSO, because they're all in different boats, actually want the policy development process because it's the one thing they rely on to make sure that each bit of them has their say. And even then they're not necessarily very happy with it. So I think we just need to be a little - - yes, if we're going to experiment, I think Suzanne specifically said both. And I think -- but I think they need to be different experiments, because they're a different -- different set of criteria that operate to make them workable.

MANAL ISMAIL:

Thank you, Chris. Yeah. Definitely it doesn't have to be the same solution for all communications with all SOs and ACs.

Ray, please.

RAY PLZAK:

Thank you. First of all, let me say that I wholeheartedly endorse what the U.S. has said, despite the fact that I'm American.

But, speaking from my personal experience in the regional registry system and noting the different ways that the regional registries have had governments involved in our policy processes, the kinds of mechanisms that are being discussed here with regard to the GNSO and

ccNSO have been in operation and working very well inside the regional registries for many years.

And I personally have heard members from the RCMP and from the FBI and from the U.S. Department of Justice and Homeland Security and numerous other government-type organizations who have gotten up and have provided the education and the awareness into the policy process, which is what's really needed at the lowest level to craft meaningful policy that does work into the public interest.

And so I am perfectly willing to work in this area and to go forward and see where we can find what amounts to informal mechanisms that can work and that do not become cumbersome and will allow the process to move forward more smoothly. Thank you.

MANAL ISMAIL:

Thank you, Ray.

So do we have any more comments or reactions? So we're ahead of our agenda. So Pakistan, please.

PAKISTAN:

ICANN policy development process has important natural processes. So input of multistakeholder including government word of the countries is a necessity. Because we all know it is the government of any country who deals with the local issues including the domain names. So -- and other related matters. It is suggested that -- and it is only the GAC who has representation from government of the worldwide countries. But

the suggestion that GAC input may be considered in the ICANN policy development process including GNSO and ccNSO. Thank you.

MANAL ISMAIL: Thank you, Pakistan.

We have European Commission next.

EUROPEAN COMMISSION: Thank you, Madam Chair. First of all, I just wanted to thank everybody who gave a presentation and overall comments. I listened very carefully. This has been very -- very illuminating contribution to an issue that I don't -- has always been quite -- I'm not sure is the right word, but I'm not a native English speaker so you will excuse me. We always wanted to be diplomatic to understand to what extent we as public authority can and should intervene into the policy development processes of other organizations.

We will continue to be engaged because we think this is very important. And certainly within the European Commission we find our co-regulation mechanism. We have found that for many years to be very useful. And we're interested to see how we can and should be useful here.

But, in light of the forthcoming reflection we will have just two points of reflection on what is certainly two important points for the commission.

The first is an understanding. And I'm saying this without implying any criticism to the current processes or to any organization that participates in current processes.

There is a reason that government and other authorities take a bit of time and have processes that outside are cumbersome and perhaps too bureaucratic. And that is because we need to ensure accountability. And that means that processes need to be traced. It must be clear who has taken a particular decision on what legal basis. Because 10 years from now -- and it happens -- 10 years from now we may find ourselves even in front of a court of justice to defend a particular position that we have taken and why we have taken it. And that takes a bit of time.

And, secondly, that whatever setup we may find for the GAC or individual GAC members to participate in the discussion, it has to be absolutely clear to all participants that any input the commission may give -- and I imagine other GAC members as well -- is without prejudice to any formal position that the commission may take in the future.

So we need to be very clear because, quite frankly, we have been beaten by this in the past. The fact that we express an opinion or we give a suggestion or we simply tell people, "Well, have you thought about this or have you considered consulting this," this is without prejudice to the formal position that the Commission or, I believe, other GAC members, but I can't speak for other GAC members, will take.

If we are clear on at least these two basic points, then I am confident we can progress with the discussions on how to engage with each other. But we have really to be clear on these two basic points, certainly from our perspective.

MANAL ISMAIL:

Thank you, EU Commission. Australia.

AUSTRALIA:

Thank you. And thank you to the European Commission for that comment because it's very helpful for what I was thinking to try to say in terms of I was very interested that we leave this session, which I think is a very important discussion, with some idea of some next steps or where we're going with it after this meeting.

So the one thing that I was going to suggest is that we consider exactly what is the shape of the space that we can -- we're working within here. And I think the European Commission has usefully pointed to some principles which may underpin the GAC's experiments or the options that are open, however we want to look at that.

So regardless of what approaches we look at for the dotted lines, we consider it's sufficient that the GAC has time to fully consider its positions and that they may not be final positions and so on.

So I wonder if, as a next step, we can look at things which we all agree are important considerations in looking at the options, and then potentially we can start to look at, then, some of the options, noting again that they need to be nuanced between the different SOs and appropriate to each.

BILL GRAHAM:

Thank you, Australia. And I think that leads very productively into the concluding portion of this item, which is to talk about the next steps.

There's been some discussion on the list over the last few weeks of how to move forward on this item. And I think the -- my conclusion from reviewing those discussions is that it would be valuable to have a

discussion ongoing on the list with about -- first off, to propose some possibilities for consideration and then to discuss those.

There has been a suggestion that a working party be formed, and I get a sense that that's not -- for the very reasons that the U.K. expressed in the last section of the agenda, that's not really workable in the GAC context because, of course, each government represents its own view. And so representative -- the notion of a representative participation can be problematic.

But as Chris said, there tends to be a subset of the GAC members who are really interested in any particular issue anyway.

So what I was going to propose is that we do open a separate discussion on the list, open to anyone who wishes to participate, but to put forward some ideas and talk about those within the framework that we've discussed here today. And I think this has been a very useful discussion.

But initial, structure it around looking for suggestions or things to consider in more depth, and then to break off those discussions and go through them to try and have something to -- that will really benefit from a face-to-face discussion next time in Toronto.

Would you agree, Manal? And I think U.S. wanted to speak there as well.

MANAL ISMAIL: Yes, definitely.

U.S., go ahead.

UNITED STATES OF AMERICA: Thank you very much and I'm sorry to take the floor again.

I wanted to concur with the wrap-up comments being made by my GAC colleagues as well as thank you, Bill, for trying to summarize.

But I think one thing we wanted to make clear if not through this discussion today then to definitely clarify through a smaller work of volunteers -- and, Bill, I can assure you that the GAC quite often relies on a small group to develop ideas amongst, but the entire list is always privy to what is being proposed and then we seek guidance from colleagues so that we can share with you a coordinated view.

But I think the key point that we are trying to get across is it needs to be very, very clear that while there are -- there may be multiple opportunities for the GAC to provide what's considered, quote, "input" that is very separate and distinct from our role under the bylaws formally providing advice to the Board. And sometimes we are not entirely sure that the rest of the community fully appreciates that.

So we need to build more bridges, perhaps, and get a better understanding. I think our goal, if I may speak for our colleagues around the table, is to arrive at a shared understanding of how the processes work and what tweaks need to be made, what additional complementary steps need to be taken, need to be. This isn't an option, actually, at a certain point. If we are to really implement these recommendations, then certain things have to actually change.

So I think coming up with some concrete proposals through a working group is probably the best way for us to then have concrete ideas to consider in Toronto.

So thank you for that, and I'm happy to volunteer.

MANAL ISMAIL: So, perfect. And I really believe that the early engagement of the GAC would not pressure the GAC in any way. In fact, it will allow more time for the GAC to provide input rather than squeezing the GAC at the very later stage. So, in fact, it allows more time. And, on the other hand, it eliminates any surprises for the SOs and ACs, again, at a later stage. So it's, hopefully, a win-win situation.

Argentina.

ARGENTINA: Thank you, Chair. Please, I would like to volunteer for this working group as well.

MANAL ISMAIL: Okay.

U.K.

UNITED KINGDOM: Thanks. I'm really supportive of trying to achieve concrete results here because this is being driven by an ATRT recommendation, and we need to provide a kind of sign-off for that, if you like, hopefully in Toronto.

So the -- Those colleagues here who want to engage on this, I think they sudden be mindful of that. You know, we should try to aim for something concrete for Toronto, and we need to engage the SOs in that

process, too. They need to be involved in this working out of a formula, if you like, considering options and so on as we have been discussing.

So what I'm saying is I think we need to have a clearly defined track and up to Toronto, and then hopefully this particular recommendation 12 with then be effectively signed off.

Is that too ambitious a target, I wonder, but these are important recommendations, and we have to deliver on them.

Thank you.

MANAL ISMAIL:

Thank you, U.K. And I think, yeah, we should have Toronto as our milestone for this recommendation. I believe we can continue the discussion online, and volunteers would definitely help outreaching to other SOs and ACs and bringing back ideas on the full list so that everyone is engaged in the discussion.

So this sounds sensible, and if we have no more comments, maybe we can conclude on time.

BILL GRAHAM:

Good. Well, thank you, Manal. Thank you, U.K. for pushing us. I think that's always useful. And I think with an understanding of the importance of this as one of the key ATRT recommendations, we should really try to have something for Toronto, to the extent possible.

It's -- I absolutely agree with you that this isn't something that the working group or even just the Board and the GAC can do in isolation. So we will have to find a mechanism for involving the SOs and ACs.

Once we have come up with some initial discussion points to take to them, I think it will be fun to invite them to have inputs to this process rather than going the other way all the time.

So thank you all for your contributions both on the list and here today. I really appreciate it and look forward to working with you between now and the Toronto meeting.

Thank you.

CHAIR DRYDEN:

Thank you to both of you and everyone present, and I am really pleased about the progress on the GAC register of advice. This is really key to tracking and ensuring that our work is followed up on and ensuring good communications between the GAC and the Board.

So just a quick announcement for GAC members. Please return to this room at 2:00. We have a meeting with the security, stability, and resiliency review team, and we have quite a tight schedule this afternoon so we indeed to start at 2:00.

Have a good lunch everyone.

Thank you.