



Minutes BC Members Call August 29th, 2013 11 am EDT (3 pm UTC)

BC Attendees:

Elisa Cooper
Steve DelBianco
Chris Chaplow
Marilyn Cade
Sudarshan Kandi
Richard Friedman
Andy Abrams
J. Scott Evans
Caroline Greer
Mark Sloan
Bill Smith
Angie Graves

Marie Pattullo
Aparna Sridhar
Laura Covington
Sarah Deutsch
Jim Baskin
Philip Corwin
Yvette Miller
Barbara Wanner
Stephane Van Gelder
Benedetta Rossi, BC Secretariat

Apologies:

John Berard
David Fares
Ron Andruff
Sarah Deutsch
Jim Baskin

Jimson Olufuye
Gabriela Szlak
Celia Lerman
Anjali Hansen
Andrew Mack

1. Introduction

Elisa Cooper:

- Elisa reminded BC members that there is a call out for volunteers for another review team: Competition, Consumer Trust and Consumer Choice Review Team. The applications for the positions on the review team are due October 1.
- Any BC member interested in joining should let the BC list know.
- All applications should be forwarded, and will come back to the BC Excomm for endorsements and the final decision will be made with the Chair of the Review Team.
- Charter amendments: Elisa noted that despite all of the currently open policy issues, she released an updated version of the Charter for members to look at. This is a first draft for members to look



at. Elisa believes that it will take some time for the BC to review and amend and make those changes to the Charter.

- Elisa also mentioned an incident which occurred a few days before the call: a lot of companies Elisa has been speaking to have expressed strong concerns about a breach that occurred where some very large brand owners’ names were redirected to a politically-motivated website.
- Elisa encouraged all companies to implement registry locking for their core domains. So for any domain that is being used for a Website, to support email, for any critical infrastructure, Elisa highly encouraged members to implement registry locking which will make the domain virtually impervious to those kinds of attacks.
- Members are welcome to ask Elisa any further questions about this issue.

2. Policy Update and Open Comments – Steve DelBianco

Steve DelBianco:

I. EWG:

- Steve noted that on the morning of this call a round of comments were submitted by Google that focused on some changes that Marilyn Cade made to the draft. Both Andy Abrams and Marilyn Cade are on the call, so this issue should be sorted out immediately.
- Marilyn added the expression "Link to commercial service," and Steve does not support that. Steve asked Marilyn to explain this in the hope to get consensus on this call.

Marilyn Cade:

- Marilyn noted that many sites link to commercial sites. And when they do that they actually make themselves commercial in nature.
- Marilyn stated that she believes the BC should understand that non-commercial is not that clear. Many parties within the BC are actually registered in .org as their registrant space, but are clearly about commercial space.

Steve DelBianco:

- Steve asked Marilyn if she would be willing to withdraw the words, "Links to commercial site. »

Marilyn Cade:

- Marilyn answered negatively.

Steve DelBianco:

- Steve took a cue on Marilyn’s reaction since what was in the original draft was a relatively simple definition that says that they accept advertising, sell goods and services or accept donations. It's the addition of, "Link to commercial sites," that provoked a reaction from Google and some others this morning.

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Aparna Sridhar:

- Aparna highlighted a couple of issues with the commercial versus non-commercial distinction. Google agrees in principle on the distinction between commercial and non-commercial being a relevant and important one.
- However, if you play out some of the text with examples you find that the text itself sometimes leads to results that the BC might not think are desirable.
- Commercial sites: Aparna noted an example. A mom runs a blog and she reviews kids’ products, strollers. She might put a link to the site for the stroller on her blog. Does that automatically make the site a commercial site such that she would have been ineligible for privacy and proxy services? Aparna’s comment: this would be a stretch.
- A political blogger: you put in a link to some coverage on Syria in the New York Times. Does that make you a commercial site? Aparna’s comment: this would again be a stretch.
- Accepting donations: Aparna noted that accepting donations really blurs the line between commercial and non-commercial. Donations are, per se, usually used by NGOs and entities that don’t operate at a profit. They may sell things but they are typically not engaged in a profit making enterprise.
- Aparna encouraged BC members to consider something that says: the BC thinks the distinction between commercial and non-commercial is important. We think that there needs to be further conversation in the community about how we detail the nuts and bolts of that.
- Aparna recognized that not everyone may share these views, but expressed her appreciation to being able to share her views with BC members and take questions or comments.

Bill Smith:

- Bill supported Google’s distinction between commercial and non-commercial I think it’s appropriate. Bill noted that there is precedent in many jurisdictions for making a distinction on these things.
- What that specific distinction is making it an international scale will be extremely difficult, so Bill also agrees that the BC will need further discussion, probably beyond the BC.
- In Bill’s opinion the BC’s comments on the EWG should be more in line with the distinction between commercial and non-commercial. What that distinction is or how that distinction is actually made needs to be discussed and determined. And it may be that those distinctions are going to have to be different, in different regions of the world.

Jim Baskin:

- Jim noted that the idea of having different rules for different geographic areas is problematic to him. There have been so many instances where national laws or regional rules trumped other things and makes business difficult.

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- Jim added that people that can't do something in one geographic area just move their business to another one whether it's a registry or a registrar.
- If there are different rules for different places they just go wherever the rules suit them. And that's counterproductive.

Steve DelBianco:

- Steve noted that we were not asked by the Expert Working Group to specifically lay out the rules about who can and who cannot use privacy and proxy. We anticipate that that will end up being a vital distinction in the future of whatever happens to Whois. And we know it's really important for the new RAA because they've created an entire certification process for privacy and proxy providers.
- Steve's proposition is the following: the BC could repeat its long-held position that that distinction between commercial and non-commercial is very important with respect to the eligibility of privacy and proxy. We can suggest that certain activities are obviously commercial such as the acceptance of payments; the payment for advertising links. We could go on to discuss that it will take a broader discussion to determine how to draw that line and whether ICANN would have a single regime that would cover all national law or not. And we can discuss it but we do not have to come up with a final definitive position in this document; this is an early-stage document for the Expert Working Group. And they had not asked us to provide definitive language.

Marilyn Cade:

- Marilyn noted that if the will of the broad base of the business user community that is the Business Constituency wants to move in one direction or the other then that's where she is as well. Marilyn noted this as a call to action for understanding of any positions the BC takes.
- Marilyn's comments were an effort to narrow, not broaden, but they seem to be perceived by some parties as broadening, not narrowing. So the BC needs to figure out what ICANN can do that is achievable, affordable, measurable, accountable.
- Marilyn concluded that if the position proposed by Steve is the BC's majority position, Marilyn agrees.

ACTION ITEM: Steve DelBianco will submit another draft after this call for everyone to review, getting back to David Fares explaining to him the discomfort with unjustified prosecution. Steve will try to restrict expansion to commercial links.

Steve DelBianco:

- Steve noted that centralization providing a risk point needs to be addressed following Google's comments to his draft.

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- This is the subject of the discussion that J. Scott, Bill Smith and other BC members had about two weeks ago which stated the following: centralization should be acknowledged, while it increases standardization, and becomes a larger target for vulnerability.
- In the text submitted, the BC suggested that the SSAC would have to do an extensive assessment of the security concerns before we move to centralize.
- Steve feels as though the BC acknowledged that concern, although it wasn't fully to the extent that Bill Smith and PayPal would like.
- But the BC did suggest that it had to be studied first and it was a critical path item.

Aparna Sridhar:

- Aparna noted that Google wanted to raise it as an issue again, and instead of saying some have criticized the central ARDS model, Aparna suggested for the BC to consider that some in the BC have questioned whether the centralized ARDS model is too big and therefore vulnerable.

Steve DelBianco:

- Steve suggested adding more specific language than just a question, and literally suggest that some in the BC believe that the concerns of vulnerability may exceed the benefits of centralization, for instance.

Aparna Sridhar, Bill Smith, J. Scott Evans:

- Support Steve's proposed language.

Marilyn Cade:

- Marilyn noted that she would like to see the proposed language before agreeing to it, but that it is moving into a moderate direction that she could support.

ACTION ITEM: Steve DelBianco will submit a draft language to the BC list in the next day or two.

II. Postponement of GNSO Review

Steve DelBianco:

- ICANN has solicited public comments on whether to postpone the GNSO review.
- Reply comments close on September the 6th.
- Steve asked if the BC has a position about deferring GNSO review or would the BC like to draft a position?

Marilyn Cade:

- Marilyn noted that the BC did submit a comment a couple years ago stating that it was premature to advance major changes.

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- Marilyn proposes for the BC to go back and look at why the BC said that and assess what has changed since then to guide future statements.

Aparna Sridhar:

- Aparna notified BC members that Google filed a comment in this proceeding encouraging that the GNSO review not be postponed.
- Aparna volunteered to share this comment with the BC, since she believes the BC members would share an interest in expediting the review.
- Aparna noted that the last review started in 2006 and implementation was not substantially complete until 2012. This is therefore a long process, and Aparna underlined that a lot has changed since 2006.

Marilyn Cade:

- Marilyn noted that the GNSO Council did a self-review which was published and called for a number of changes. That was a very helpful process. Changes were implemented and made certain improvements in the GNSO policy council work.
- A GNSO review is a GNSO review which reviews all of the constituencies, their roles, their functions, and the house alignment. That's not just the policy council.

Steve DelBianco:

- Steve ruled that the BC does not have strong feelings about deferring the review or doing it now and that the BC will not file a comment independently on this.
- The BC encourages members to file independent comments if they have them.

Bill Smith:

- Bill noted that PayPal supports moving forward on this review and thinks the BC should submit a comment.
- The last review occurred in 2006 and PayPal believes that ICANN needs to look at itself to determine how to become more effective.

Steve DelBianco:

- Steve noted that there are two members on the call who support this review, Google and PayPal, and that therefore there isn't a full quorum.

Steve DelBianco:

- Given that full plate of items that are currently top priorities for the BC, Steve noted that the Postponement of the GNSO Review falls much lower on the priority list that Steve feels inclined to leave it alone, due to lack of support.



Marilyn Cade:

- Marilyn noted that members who are interested in pushing for the review to take place can submit comments individually.

Steve DelBianco:

- Steve supported Marilyn’s comment and encouraged Bill Smith to follow Aparna Sridhar’s lead and to submit on behalf of PayPal, a worldwide brand, his comments before September the 6th.

Bill Smith:

- Bill noted that PayPal might do so, but for the record Bill expressed his disappointment regarding the fact the BC won’t take a position on this since PayPal sees this as an extremely important issue for ICANN.

ACTION ITEM: The BC will not submit a comment regarding the Postponement of the GNSO Review.

III. Locking of Domain Name Subject to UDRP Proceeding (PDP)

Steve DelBianco:

- Steve notes that this is a very brief comment where the BC endorses for the Board to please accept the recommendation on the locking of a domain name that is subject to a UDRP or a Uniform Dispute Resolution Process.
- This was a PDP that the BC participated in and had a lot of leadership in the drafting of it.
- So the BC is going to submit a comment that says that the BC urges the Board to accept the recommendations. As stated in the final report, the BC thinks the proposed recommendations will have a positive impact and agrees that clarification and standardization of the procedures is necessary and beneficial.

IV. Proposal to mitigate bale collision risks from new gTLD delegations

Steve DelBianco:

- The name collisions issue has become really interesting because ICANN staff took the Interisle report that was discussed in Durban and has moved in a very aggressive direction by suggesting that they have a mitigation plan.
- The mitigation plan suggested by staff has some interesting recommendations: they will defer completely DotCorp and DotHome for some 20% of names for which they cannot calculate risk they're going to defer the signing of contracts. But all other contracts would be able to proceed.
- Elisa Cooper volunteered to draft the first draft of BC comments.
- Other volunteers included J. Scott, Marilyn Cade and Steve DelBianco.

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- Steve circulated Elisa’s draft to the BC list enabling members to comment.

Marilyn Cade:

- Marilyn noted that she had volunteered to co-draft, but was not included as a co-drafter. In the future it is important to understand that when members volunteer to be co-drafters, they need to be treated as co-drafters.
- Marilyn also noted that any volunteers are volunteering as members, not as officers or in any other position so just to make that clear. Marilyn volunteered as an individual member to co-draft.
- Marilyn will submit her comments to the team that volunteered to be on this
- She also noted that the BC comments, as initially drafted, are not strong enough or clear enough that collisions are significant problems for those who run recursive servers. This is far beyond the list of those who are being contracted parties or applicants to be contracted parties. But collisions present a huge problem to the rest of users.
- As business users, the BC needs to encourage ICANN to be more accountable for unintended consequences of the decisions they're taking.

Steve DelBianco:

- The initial comment period closed to two days ago for the name collision debate, and there are quite a few comments filed.
- It's really drawn down to two sides so those who want everything to continue quickly or disregarding the process and disregarding the recommendation of any delay even for the 20%.
- There's not even a general acceptance that Corp and Home ought to be indefinitely deferred. So the new gTLD applicant group, the Registry constituency group are strongly in favor of continuing and not wanting to even park the 20% uncalculated risks.
- Steve noted that this is becoming a very controversial issue; one in which there are now challenges to ICANN for doing what they call a staff-driven process that didn't necessarily follow the recommendations of the report and that may have violated the Applicant Guidebook.
- Steve noted this to indicate that the BC ought to get its comment in as soon as possible can and be as specific as possible on the impact on business users and business registrants.
- Steve’s opinion is that the BC should focus on how it is unjustified to shift risks and to create economic risks, for the Business Constituency community when there is significant documentation by the SSAC and by Interisle that genuine risks are included.
- The BC needs to comment on the fact that when the collisions occur and systems fail it is BC members who have to spend the money to remedy those situations.
- This will often involve BC customers, business partners and employees. And in the case of those who run a recursive name server a whole another class could be impacted.

ACTION ITEM: Marilyn Cade will submit her comments on name collisions to the list in the next day. Members should comment asap in order to submit a comment quickly.



Jim Baskin:

- Jim stated that Verizon submitted comments or some proposed new wording for Elisa's draft. These comments came from Sarah Deutsch.
- Verizon is taking a very careful look at what the issues are and one of Verizon's concerns is that there has been some misinterpretation of the Interisle results. They did not state that approximately 80% of the names that were being proposed are not potentially problematic and that 20% are unadvocated level of risk.
- They indicated that they observed higher volumes of queries for some of the proposed domains and lower for others and they tracked them all.
- But they were very clear to say that the frequency of appearance of those domain names, those proposed domains in current queries, is not a proxy for the severity of the risk. And in fact the 20% is not a safe way to segregate the risk. The other 80% could contain many high risk strings.

V. Rights Protection Mechanism (RPM) Requirement

Steve DelBianco:

- Initial comments were due by the 27th of August but reply comments are due the 18th of September.
- Elisa Cooper drafted the reply comments.
- Steve noted that these comments are more substantive and that Elisa drafted them with the BC perspective in mind but she is also working at a registrar that has specific knowledge of how to run the RPM requirements. And that means that Elisa's initial draft is highly specific. It deserves the attention of everyone on this call.
- Steve noted that J. Scott Evans, Marilyn Cade and Steve volunteered to review Elisa's draft. Steve noted that they will review her draft and provide comments to the BC list.

VI. Charter Amendment Process for GNSO Structures

Steve DelBianco:

- Due to lack of time, Steve decided to skip this topic.

Geographic Indicator Debate

Steve DelBianco:

- Steve noted that J. Scott Evans began the discussion on this topic and it was discussed extensively on the BC call which took place on August the 8th.
- J. Scott Evans, Stéphane Van Gelder and Sarah Deutsch are looking to circulate a letter due to their concerns about the geographic names consideration, in particular relating to the Amazon/Patagonia issue.



ACTION ITEM: J. Scott Evans confirmed his interest in pursuing this and will circulate a draft letter to the BC list.

Standardized Contract for URS Providers

Phil Corwin:

- Phil noted that the draft letter on this issue circulated last night.
- This is an issue Phil raised in July, and Steve suggested for Phil to prepare a draft for the BC.
- The BC has been on record for three years in favor of a standard mechanism for establishing uniform rules and procedures and flexible means of delineating and enforcing arbitration, provide a responsibility for the UDRP.
- The BC reiterated that position this spring when they took a position in favor of the accreditation of the Arab Center for Dispute Resolution as a UDRP provider.
- On July 19, which was the day after the Durban meeting ended, when participants were traveling back from the meeting, ICANN put out a status report on uniformity process for the UDRP in which it took a very strong position that it opposed contracts of any kind of UDRP providers. The reason behind this position is that it would make it more cumbersome to discipline them and make sure they're implementing UDRP in a uniform way.
- Phil noted that there was no indication and advance from ICANN that a statement like this was being prepared; there was no Board review, nor a request for public comment.
- Phil noted that ICANN's only enforcement powers are their contract. Certainly the trend with both registries and registrars has been to add more complex contracts with more flexible means of enforcement.
- We saw in 2007 that just having termination as an option for registrars was not good, that they needed intermediate steps when a registrar was misbehaving.
- The letter Phil drafted asks a series of questions asking for clarification of positions taken by ICANN in the report.

Steve DelBianco:

- Steve noted that he reviewed Phil's letter again to see that it was consistent with previous BC positions. He also asked Phil that you run it by other BC members that are active as UDRP and URS providers.
- Steve is satisfied that Phil did both of those things, so as policy coordinator he is prepared to recommend that our Chair send this letter to Fadi and to Crocker because the letter seeks clarification.
- Steve will circulate that recommendation via email to the full BC to see whether there are any further edits before the letter even goes in. J. Scott Evans: Steve, I'm back. This is J. Scott.



ICANN’s New Policy Tools

Chris Chaplow:

- Chris noted that on behalf of the BC he explored the new tools available on the ICANN website, including ICANN labs, ICANN round table, ICANN passports.
- Chris noted that it is a staff initiative driven by Fadi, managed by Chris Gift with the help of a consulting company called Neo. It is an experimental platform.
- The key to see whether these tools work would be to find out from new members, since long term ICANN participants know where to get information about ICANN.
- Chris, Marilyn Cade and Angie Graves joined the Advisory Group for a Digital Engagement Project. The first call was held the day before this call and 27 members joined. Chris hopes this group will be diverse and will be able to find out exactly what is going on regarding the digital engagement project and bring it back to BC members.
- Chris noted that these tools could be more useful to people who are furthest from the community, including new BC members, and he encourages for any new member to be pointed in that direction.

Singulars vs. Plurals

Steve DelBianco:

- Steve noted that he is trying to address the singulars vs. plurals issue, and he needs to understand whether the BC is interested in pursuing this issue. There is no official way for the BC to participate other than to generate a letter where the BC would suggest that there needs to be further public comment on the singular plural decisions and the conflicting decisions that are coming back from the arbitrators.
- Steve will submit this to the BC list, and encouraged members to reply to all since he is anxious to try to find a way for the BC to make a difference on what many BC members feel is a fundamental flaw in the way that ICANN's rolling out new gTLDs.

3. GNSO Council Update

Steve DelBianco:

- Steve noted that neither of the BC Councilors are on the call.
- The Council agenda was posted, and Steve will ask the BC councilors to email the BC list before the September 5 meeting on items of particular interest to the BC, especially voting the motions on September the 5th.

Steve adjourned the call.