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COPENHAGEN – GAC Update: IGO and Red Cross Protections

Sunday, March 12, 2017 – 09:00 to 09:30 CET

ICANN58 | Copenhagen, Denmark

CHAIR SCHNEIDER: Good morning, dear colleagues. Please take your seats. We have to start.

Good morning, everybody. I hope you had a good working group session this morning.

The first item that we have on our plenary agenda this morning is the -- an update on the IGO and Red Cross protections, which is a -- which are two issues that are not new, to put it like this.

As you are probably aware, we have -- on both issues, we have some inconsistencies between the GNSO recommendations from that PDP that was done and finalized a few years back and GAC advice that relates to -- to the protection of the Red Cross and also of intergovernmental organizations.

We have a -- the board has so far not rejected or approved in the area where GAC advice in the GNSO recommendations are conflicting. The board has not taken a decision on either side. It has approved those recommendations of the GNSO that are not conflicting with GAC advice. But for the others, the board has suggested in Hyderabad that a facilitation process be started

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with the GNSO and the GAC under the leadership of a former board member, Bruce Tonkin. And we've had some phone calls and exchanges on an email list prior to this meeting. And one of the key elements, of course, is that the -- unlike the PDP at that time where everything was put together in one process, that for these discussions, for the facilitation, there is a distinction, although it may be similar or to some extent the same people, there are two separate discussions to be held, one on the protection of the Red Cross and the family of the Red Cross movement, including the national societies and so on, and the separate track is on protection of intergovernmental organization, because there's differences in legal basis and a number of other differences between these two issues.

So what we had so far here in Copenhagen is a meeting yesterday morning led and facilitated by Bruce Tonkin about the protection of the Red Cross. And we will have tonight, after our GAC meeting, we'll have a meeting with this, again facilitated by Bruce Tonkin about the intergovernmental organizations and their protection. And these are two separate tracks, as I said. And as the meeting on the IGO protection has not taken place, of course there's nothing to report on that front yet, but we can inform you about progress made in -- in the meeting yesterday -- of yesterday morning on -- on the Red Cross.

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And the meeting was fairly constructive. It was very calmly and thoughtfully led by Bruce Tonkin. We had some exchanges about the actual protection and how the Red Cross society works, and how national societies are created because there has been an addition of one national society since our first GAC advices on this issue, there were 189 at that time and now there's 190.

There are 196 countries in total that are part of the Red Cross structure, so there may be six more, but there may not be hundreds more. It was also clear that there is only one society per country, so you can't have 500 different entities in a few years' time. So it's a fairly finite list. And we are looking into the currently -- the list of currently, temporarily protected names because this is a list with -- with some variations of these national societies' names, but it's also -- it's longer than, of course, 190, but it's not an endless list either. So there are some -- some criteria on what can be on that list. And the GNSO asked a number of questions on how the protections work and how this is implemented and how these national societies use their names, and so on and so forth.

In the end, the -- there was a feeling that everybody was willing to engage in finding a solution, and there was a feeling that the GNSO would need a clear message from the board, a rationale, why, in case it would be -- it would be -- they would be asked to

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go back, re-open kind of the PDP, there would need to be some reasons, like things that had not been known or taken into account at that time, that came afterwards, like some of the GAC advice that was more precise than things that were communicated during the course of the PDP, and so on and so forth.

So we are now basically at a stage where -- where everybody agreed that we will do the process steps that are necessary to look at this issue again. And so we're waiting now for the board to communicate this to the GNSO. And if that were -- the GNSO did look at this again, then the question, of course, is how will -- will we participate in that analysis of the issues, because as -- as we try to, we try to participate and cooperate also with the hope that whatever will come out of another or of a continuation of that PDP would be acceptable and would not put the board in a position where we have -- we'll have again GAC advice conflicting with the GNSO recommendations. But of course this is not in our hands what they will -- what they will actually do, but the signals were fairly positive that everybody is willing to give this a second chance. And think this is as far as we can go as a result of the first -- of the first discussion.

I'll stop here and I'll let others who were part of that meeting complement or be more precise, if you wish.

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Yes, U.K.

UNITED KINGDOM:

Yes, thank you. Thank you, Thomas. And good morning, everybody.

I think it was, indeed, a very productive exchange facilitated by the board and moderated very effectively by Bruce Tonkin.

I think the one sort of additional point I would make to your comprehensive account was that the proposal made by the PDP that the society names, the national society names should be treated as trademarks and the processes for rights protection established -- already established by ICANN, that these are not appropriate, I think that was acknowledged in the discussion, which is a very useful step. And, yeah, let's look forward to a further reaction from the GNSO after they've duly had their consultations.

But that was the -- a key thing for me, was the sense that the legal basis on which the GAC advice had been grounded was -- was acknowledged in the discussions.

Thank you.

CHAIR SCHNEIDER:

Thank you, Mark.

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Stephane from the Red Cross, please.

IRC-RC:

Yes. Good morning. Thank you very much, Thomas. Stephane Hankins, ICRC International Committee of the Red Cross for the record.

A few words from our side to express again our appreciation to the GAC for its continued commitment on this issue. It remains, I think, a very important question, and of course a question that also raises some important issues, not the least the place and recognition of the global public interest inherent in public international law within ICANN's decisions and processes.

I think, indeed, the working session which took place yesterday was, from our perspective also, was, indeed, successful. And again, thank you to the GAC but also to -- to the staff of ICANN for -- for making this successful.

I think in terms of conclusion -- conclusions of this discussion, certainly I think the important point is really that the -- the board, I understand, is now committed to reformulate a clear request to the GNSO explicating, indeed, the list of Red Cross and Red Crescent identifiers to be protected, clarifying that this list is finite, that there are no other legitimate users that could -- that would be -- which names would be put forward. And then

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of course explicating also the strong legal grounds under public international law and, in particular, the 1949 Geneva Conventions and their additional protocols.

I think there's one additional point which Thomas has -- has referred to, which is important, is that I think between the different stakeholders that took the floor, I think it was -- it was highlighted that, indeed, a reservation of the exact strings would not of itself completely fulfill the requirement for the protections of these names under public international law and that, indeed, there was a need to have, in fact, both, both the permanent reservation and then also consideration for these reservations under -- under ICANN's rights protection mechanisms so as to allow an immediate reaction, for example, to avoid or to prevent a fraudulent use of the Red Cross/Red Crescent names in the event of a humanitarian crisis.

So again, many thanks to Thomas and to the GAC for their continued support. And certainly I think it's important that the GAC remain mobilized, including in the request to make these protections permanent, including in the context of preparations for the next round.

Thank you very much.

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CHAIR SCHNEIDER: Thank you, Stephane.

I see Switzerland.

SWITZERLAND: Thank you, Chair and good morning. I have a little to add to what you yourself explained, Mark added, and Stephane also added.

I think it was important that in the discussion, the underlying public-policy interest served by the reservation of those names was clearly understood and underlined as different tool to protect such names, vis-a-vis the protection mechanisms based on trademark law, which are not really the right tool to handle the protection of the names of the national societies.

And, on the other side -- and a little bit in line with what Stephane just said, I think it's important that we keep engaged in the PDP, if it is finally started, as it seemed yesterday that it would be and that we actively participate in the discussions of this PDP in order to make sure that outcomes really fit with what we seemingly agreed yesterday. Thank you.

CHAIR SCHNEIDER: Thank you.

Iran.



IRAN:

Thank you. Good morning. Apart from the compliment that was made to colleagues, since it was mentioned that we participate in the PDP, what PDP do we participate? Because the two vice chairs of the GNSO clearly mentioned that a PDP has been approved by the Board in a recommendation. In order to review that, there is a need to prove that that PDP has deficiencies. Who is going to take that action? Board would not ask GNSO to review that unless and until there are proved that there are some deficiencies and mistakes, which may be. But who is going to take that action? Would it be in the GAC advice to the Board that, after several rounds of discussions, we found that this PDP has deficiencies, difficulties, shortcomings, and need to be reviewed? And then, based on that, if the Board considered the GAC advice valid, consistent with the bylaw, with rationale, and so on and so forth, the Board then asked the GNSO to review that. And it is up to GNSO to see whether those arguments are valid and then start the PDP review. On that aspect, on that moment, yes, we could participate. But, currently, we are far from that. Because GNSO retains its position that our PDP is correct. So we have to prove that and we have to mention that, who is going to take that and how the process is going to be done. Thank you.

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CHAIR SCHNEIDER:

Thank you, Iran. Well, actually, maybe I wasn't clear enough in what I said before. Actually, there was a discussion and the GNSO signaled that it would be willing to look into this again given that some of the more detailed information was available to them only after the PDP concluded for the GAC advice. And the Board will look into this and will come up with a rationale asking the GNSO to look at this again.

So we don't -- there's nothing that we have to do. For the time being, the ball is with the Board. They will look into this and will communicate to the GNSO what they expect them to do. So I hope that that makes the situation clear. We'll see what exactly will be the wording. But I think that's not so fundamental. The good thing is that there's a willingness to look into this again. And then we will be part of this looking into. I hope that clarifies.

Looking at the time, we have to move on. I just want to spend two minutes on IGO protection.

As I said, there's nothing yet to report on the facilitation discussion. Unfortunately, this is taking place tonight after this session. Initially, we had the understanding that both things would be discussed yesterday morning. But we will find a moment later in our schedule to report about what will have happened tonight on the IGO discussion.

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Just one information. As you have seen, we have received and sent out to you a draft reply for a GAC position to be sent into the public comment period on the first report draft report on IGO curative rights from that PDP. We've asked for an extension of the deadline, because their initial deadline had been the 1st of March. And the deadline for comment in the GAC has been the 1st of March.

And we have received a number of supportive opinions also that we should actually send this before the Copenhagen meeting. We have not received any suggestions or requests for discussion of this issue.

So what we are going to do right now after this session is we'll send that position as a GAC input to the curative rights protection mechanism. OECD?

OECD:

Thank you, Thomas. I just have a quick housekeeping point. You've spoken a lot about the areas in which the GNSO recommendations and GAC advice are in conflict. But there is, of course, the other piece of GAC advice and GNSO recommendations that do align. And that is on protection of IGO full names.

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I understand that for many IGOs like the OECD, these protections are ultimately not that helpful because most of us are known primarily by our acronyms. However, it is moving forward with implementation. The GDD is taking that, on and I'm helping them with that.

So ICANN staff provided me with a list of email addresses of GAC observers who are IGOs. I received and I requested those individuals to confirm with me the exact full names of their organizations in up to two languages.

So, if you receive that email from me and haven't responded, please do so as soon as you can. If you haven't received the email, please let me know. I'm right over here. So please get in touch with me so that I can have your exact full name and hand it over to the GDD. Thank you.

CHAIR SCHNEIDER:

Thank you for this information. But emails -- it's always helpful - - because I have a little time management problem with the emails I receive and the things I'm supposed to do in parallel. So it's always good to put somebody in copy, in particular the secretariat and ICANN support staff. You may also send it to the leadership address, because then the whole team gets it and then it doesn't get lost. Because I have, basically, no chance to secure that I see every email.

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So in case I have not replied so that, please apologize. But it may well be that I have received it but just not seen it or have not been able to answer. So don't hesitate to send it again. Thank you very much.

OECD: No worries. You did reply. And Olof and Julia sent me the list of IGOs. So now I'm just waiting for the individual IGOs to confirm with me their names. So thank you.

CHAIR SCHNEIDER: Okay. Thank you. Any questions, comments on Red Cross and IGO protections? If that's not the case, then I think we have to move on to our next agenda item which is something very interesting.

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