
ICANN74 | Policy Forum – GAC Discussion: DNS Abuse and Communiqué Drafting
Tuesday, June 14, 2022 – 16:30 to 17:30 AMS

MANAL ISMAIL, GAC CHAIR: So colleagues at the back, if you can take your seats. We are at the scheduled start time, so welcome back everyone. We will be using the coming 60 minutes to cover a few things. So first we will be receiving updates from two GAC Working Groups, and we're trying here to cover things that we intended to cover during the opening plenary but ran out of time. And then we will have a quick update on UDRP, and we will go over the Communiqué process before we start preparing for the drafting of Communiqué language. So with this, allow me to hand the floor over to Brian Beckham from WIPO, our IGO topic lead.

BRIAN BECKHAM: Thank you, Chair. Greetings colleagues, I mention in the plenary, I'm here for the world intellectual property organization, an IGO that focuses on intellectual property [indiscernible] making and protection. I'm here on behalf of a coalition of IGOs who are not able to attend the ICANN meeting in person but with whom we stay in close contact over the years.

First, I would like to thank the GAC for its long-standing support of behalf of IGOs. Some of you may recall in 2016 a letter from the

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

United Nation's secretary general calling on ICANN to provide protection for IGO identifiers in the domain name system. I mentioned I am with WIPO and here on behalf of a number of IGOs. IGOs, for those who may not recall, are organizations such as UNHCR, UNICEF, the world health organization, WIPO where I work, organizations that undertake social and humanitarian missions on behalf of member states and global constituents.

In 1999 WIPO created a process called UDRP which addressed the tension between the intersection of trademarks and domain names. Since then some 80 ccTLDs have adopted and used WIPO services to manage dispute resolution involving trailer park and - - and we heard some of those are represented here in the GAC, but the EPDP -- IGOs currently face difficulty in accessing the EPDP, and owing to the way IGO names and acronyms are covered under the Paris Convention, different from the work trademarks with covered. So a Working Group convened for just up a year I believe chaired by Chris Disspain -- because of the way they're dealt with under the Paris Convention and appeals to provide registrants with protections to be able to appeal decisions but also to respect the privileges and immunities granted to IGOs under international law, which I should recall are seen as fundamental to IGO's neutral functioning and ability to carry out their mandates.

We heard during opening plenary from a colleague who is running the dot post level domain and give you an example of how this would be dealt with at contractual level, the registrant agreement uses a provision to reflect the status of the upu as an IGO as distinct from a normal entity in terms of -- arbitration process. Happy to report that compromises were possible in the Working Group to achieve an overall positive result, and we are optimistic for a vote of approval at this ICANN meeting. There was a small delay in the process but we expect there should be a vote at this meeting, and we are optimistic that that will be supported by the GNSO Council.

We understand that there would be an opportunity for public comment following a council vote assuming a positive result before this would go before the Board, so that could be an opportunity if the GAC minded to comment on a final report before Board action, and of course we have signaled our availability to assist this at the implementation phase. So that's the report from the Working Group, curative IGO Working Group. And might have seen on the GAC list an email about the IGO list of identifiers. And there has been work going online the scenes for a process for the GAC to manage requests for updates or removals of an IGO list to be managed by the GAC, it would be used to give IGOs protection at the level of the DNS in terms of their full names in two languages of their choosing. So some work has been going

on inter-sessionally to retrace a little bit of the history on this file to ensure the document accurately reflected the state of where we are today, so work continues on that and we hope to provide possibly even over the list and update that process for maintenance by the GAC of the IGO list would be completed, so hopefully we can report positively in that respect shortly also. That's all I have in terms of an update.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Brian, for the update and for sharing the potentially good news, so happy to hear that. Any questions or comments? Yes, please, go ahead.

ARGENTINA: Thank you for your information, very useful because I would like to just recommend --

MANAL ISMAIL, GAC CHAIR: Can you please introduce yourself?

ARGENTINA: [indiscernible] Argentina. I would like to highlight that we would like to introduce new names to the list, and I would like to know the way and procedure to do that and maybe the kind of protection that it would mean. Thank you very much. Sorry, I

would like to maybe in the coming days or weeks to have the mechanism also to introduce if there will be any changes in the [indiscernible] protection. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Gabriela, and apologies for not recognizing you with the mask from a distance. So I think the question is regarding how to add to the IGO reserve list and what are the benefits of being on the list.

BRIAN BECKHAM: Thank you. In terms of the process, I'm thinking out loud, while the process for management of the list itself isn't finalized, it represents work undertaken over the years and it's a pretty settled document in terms of finalizing that process for the GAC. Really it was just, as I said earlier, reiterating a little bit of the history so that the document itself accurately reflected the state of things. So in other words, nothing substantively has changed from the draft we have currently and nothing will to the final draft, it's just crossing a few T's, dotting a few i's, referencing it was reflected accurately in the Communiqué, in a footnote for example.

In terms of protection, what that provides, currently you may recall there is a moratorium on registration and new top level

domains of IGO and acronyms. The expectation is when the curative Working Group is concluded, hopefully at this meeting at least in terms at which council vote, that moratorium would be lifted, so we would be left at the level of this document with the ability of an IGO to designate its full name in up to two languages for protection which would mean that a third party would not be able to register that in a new top level domain. And I apologize, I didn't quite catch the last question part of your intervention.

ARGENTINA: It was just the date and also the protection if we have this name, and you just mentioned it, thank you very much.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Argentina. So next I would like to hand the floor to Suada, and we will be hearing a report from the GAC Human Rights and International Law Working Group which is co-chaired by Suada, a GAC representative of Bosnia and Herzegovina, and Lina from Lithuania, a GAC representative of Lithuania. So over to you, Suada, please.

SUADA HADZOVIC: Thank you, Manal. So good morning, good afternoon, and good evening to all. My name is Suada Hadzovic, I am a GAC representative from Bosnia and Herzegovina, and I am co-chair of

the GAC Working Group on Human Rights and International Law, and also I am the GAC representative in workstream 2 community coordination group.

First, I would like to thank Julia Charvolen from the ICANN support staff and to Giacomo [indiscernible] world broadcasting union, who is also a member of this Human Rights International Law Working Group and also a GAC observer in community coordination group, for their help preparing this update.

Let me start with a brief introduction of Workstream 2 because of the new GAC colleagues. As you can see, in November 2019 ICANN Board approved the recommendations outlined in the Workstream 2 final report. The ICANN organization and individual community groups have an obligation to undertake the implementation of all these recommendations. And at ICANN69 meeting which was held October 2020, the Human Rights and International Law Working Group agreed on recommendation 1, [indiscernible] this final report had 160 recommendations on various aspects and these are divided in the eight issues, and you can find all the information about GAC involvement in this process on our web page which is updated.

So the focus of our work currently is on recommendation 1, defining diversity. So at the last ICANN meeting, ICANN73, our

Working Group, Human Rights International Law, reviewed the GAC perspective proposal document on Workstream 2 recommendation 1.1. It's about definition of diversity and each of the seven elements identified in the report, and also we have two new proposals, it's about diversity of resources for meaningful participation and diversity in attendance.

So our plan was to share this document with the newly formed community coordination group for community-wide discussion. So this community coordination group was formed to serve as a forum for coordinating, prioritizing updating and reporting on each individual group's implementation progress including exchanging best practices and its focus is on recommendations 1, 2, and 3. So we had two meetings until now. The first was on the 5th of April, and we agreed with the proposal to start discussion on recommendation 1.1 on 20 April GAC representative and observer kick starting the community discussion on recommendation 1.1 on mailing list and on [indiscernible] we had a second meeting and took tenets through the GAC approach through diversity. And after GAC input, the Workstream 2 community coordination group decided they would go back to their members with recommendations on 1.1 -- I am not seeking GAC input today, as the GAC proposal document is still being discussed within the community group.

However, in my position as primary representative from the GAC to the community coordination group, I believe that I need to keep my GAC colleagues informed that discussions are continuing and we will make sure to notify you of any changes that merit attention, and just want to know the enhanced communications regarding the status of Workstream 2 implementation, the ICANN org has created a central Workstream 2 implementation page that has links to ICANN org implementation, community implementation and also to community coordination group activities and exchanges with the Workstream 2 implementation team. And this new page features charts and tables to better visualize the implementation progress. Thank you very much.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Suada, for all your efforts co-chairing the Human Rights Working Group and also attending and updating the GAC on activities of the community coordination group. Any questions? Okay. If not, then allow me now to hand over the floor again to Brian on a quick update regarding an emerging issue related to the UDRP.

BRIAN BECKHAM: This follows an email on the GAC list of the 16th of May, for reference. I mentioned earlier that in 1999 WIPO at the request of

their member states created the UDRP, and since that time we have mingled almost 60,000 cases covering over 100,000 domain names, and in recent years we have had record filings and we think this is largely attributable to people working from home, going to school from home, so that will unfortunately has created a stronger need for this enforcement tool in the DNS. We are glad we can provide that tool but it has been used at record pace in recent years.

Right before the launch of the new gTLD round which was already some while ago now, there was some discussion around an effort to review the UDRP. At the time it was felt with new gTLD coming there were too many moving pieces, so it was advised not to undertake the UDRP review at that time. More recently there has been what is called a policy status update undertaken by ICANN staff which sort of looked back at the UDRP and key metrics in terms of cases filed to look at whether it has been effectively used and meeting its intended purpose. So that was put out for public comment. WIPO and a number of community stakeholders submitted comments, a number of GAC colleagues submitted comments on specific issues they felt were worth raising with respect to the UDRP.

And so the exact next steps in terms of a formal ICANN process to review the UDRP are unclear, and I would like to recall

Communiqué language from Abu Dhabi in November 2017 where the Communiqué reflected that the GAC received a comprehensive briefing on the [reading] members noted the public policy implications of this work and the value of engaging with relative experts, notably WIPO and government agencies at the national level. So I mentioned there was a project status report undertaken by ICANN and I mentioned the GAC advice from Abu Dhabi, mentioned the review of all rights protection mechanisms. Some of you may recall over the course of four or five years, there was work undertaken to look at rights protection mechanisms created for new gTLDs that work excluded the UDRP that was meant to be undertaken in a Phase 2, where we are at today.

And what I would like to mention in particular, and this was mentioned in comments from the business constituency in its comments on the project status report by ICANN staff. In that section 13.1 of the ICANN bylaws titled external expert advice, the purpose is to allow the policy development process within ICANN to take advantage of existing expertise that resides in the public or private sector but outside of ICANN. In those cases where there are relevant public bodies with expertise or where access to private expertise could be helpful, the Board and constituent bodies should be encouraged to seek advice from such expert bodies or individuals.

And I would also note that in a letter to ICANN -- sorry, I don't have the exact year, I think it was a couple of years ago -- the European association of trademark owners which goes by MARQUES, wrote a letter to ICANN listing this, the idea of an expert led process. So the question is whether this would be a moment to invoke that section of the bylaws, to call on WIPO who created the UDRP and has been managing it ever since, to produce -- and here is where the bylaws aren't exactly clear how this could feed in the ICANN policy development process but to produce some sort of an expert report or white paper that would inform the policy process at ICANN.

The actual charter for the Phase 2 of the rights protection review hasn't been completed yet, so it could be that this expert led process could feed into the charter and complement the PDP process. So again, the exact process for actually deploying this is unclear, but this is something that we feel would strongly merit the GAC and the community's consideration in terms of maintaining the efficacy of the UDRP going forward.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Brian, for this timely update. Any questions or comments? Okay, thanks again, Brian, Suada -- sorry, US please.

UNITED STATES: Just a question for clarity, Brian. You had mentioned that the email went out to the GAC list on May 16th. Was that the full GAC list or was that a subgroup?

BRIAN BECKHAM: Thank you, that was to the full GAC list.

UNITED STATES: Okay. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, US. And I have to say that also we have received a related email from our colleagues from Italy. They are attending from remote regarding the same topic on UDRP and whether it is possible to extend the UDRP to include geographic indications. This was not sent to the whole GAC yet, it was just probing whether this is something that can materialize during this meeting. It was agreed that it is a bit of short notice and this will need more discussion. So maybe between now and ICANN 75 and we can take it from there.

So just bringing this to the kind attention of all GAC colleagues, and of course we will be continuing the discussion over email during the inter-sessional period. So again, to colleagues who

were part of the discussion, any additions or any... I see none. So I think we're done with the reporting GAC, and I think we're good to start -- I see Italy please, go ahead.

ITALY:

Domenico Alfieri. Thank you for the floor. First, I want to thank you for our input consideration. Our proposal can be to of course a start of the discussion with all GAC members, that is the reason why we even share our full input to all GAC members because first of all, it's important for us to discuss all together maybe with -- of course with some meeting before ICANN 75. I don't know if it's possible now to introduce something maybe in the GAC advice where we plan some meeting, whether -- GAC may take consideration to schedule meetings with to investigate whether it's possible to define maybe a relationship with the [indiscernible] protection and eventually to the extent [indiscernible] to the protection of the [indiscernible] thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Domenico. I'm afraid not everything you said was clearly heard but what exactly are you suggesting that we put in the Communiqué?

ITALY: I suggest, if it's possible of course, to put in the Communiqué the intention of GAC to discuss maybe to organize some meeting to investigate this possibility, the possibility to extend the new UDRP with the [indiscernible]

MANAL ISMAIL, GAC CHAIR: Thank you, Domenico. I think we can reflect the factual discussion that happened here, so we can say this was brought up and we intend to continue the discussion, if this is what you meant. And I see hands up from European Commission.

EUROPEAN COMMISSION: Yes, thank you Chair, I am just intervening because I was part of the Small Group which discussed this and first [indiscernible] of course other colleagues were there, feel free to intervene. It was my impression that indeed there was a kind of let's say global understanding that we would think of putting some Communiqué text under the issues of importance, thinking, as you have mentioned Chair, that there will be further discussed. I think in response to Domenico who did what we could possibly mention is the intention to discuss precisely the point of possible extension of the UDRP -- some of the GAC members and therefore the GAC, we will reflect and discuss on this, and this I think was also the second part of your suggestion, Manal, if I understood correctly.

MANAL ISMAIL, GAC CHAIR: Thank you Velimira. US please, go ahead. And sorry, Nigel, I overlooked your hand. Very sorry. Nigel, please go ahead.

NIGEL HICKSON: Thank you very much, and no problem at all, I would have been happy for Susan to have gone first, no issue. Nigel Hickson, UK. I mean there is very interesting sort of intervention from our European Commission friends and we very much welcome a discussion on this at some point, but clearly we would have to reflect on it and discuss with our government colleagues back in London; this is something that we didn't know was going to be discussed. We're not of course opposed to discussing but it has to be done in an appropriate way, as you always facilitate, Manal, thank you very much.

MANAL ISMAIL, GAC CHAIR: Indeed, thank you, Nigel, and it came in very last minute. US please.

UNITED STATES: Just to add to the discussion here, there are varied perspectives on the issue of geographical indications and the UDRP. I think the US would support more of a reflection of the facts on this issue.

And I will stop there as to the Communiqué text proposed. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you US, noted. Any other requests for the floor? If not, then allow me to thank again our colleagues here, Suada and Brian, and also colleagues who contributed. I know Giacomo is online and Lina is somewhere here as well, so thank you for your efforts.

[END OF TRANSCRIPTION]