

Transcription ICANN Beijing Meeting

Board / GNSO joint meeting

Sunday 7 April 2013 at 13:00 local time

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Coordinator: For the transcript, this will be the GNSO board session going from 1:00 to 2:30.

Jonathan Robinson: Welcome, everyone. I'd like to welcome Steve Crocker, Fahd Batayneh and the rest of the ICANN board to our board GNSO council session. We've talked a little bit about this as a council and I've talked with Steve about trying to do things a little differently this time.

So let me just let Steve make a couple of opening remarks and then I'll come back and hopefully frame our discussion and then we can kick-off with what I hope will be a productive and relatively open-ended discussion that gives us a chance to try things a little differently than we have perhaps before.

Steve Crocker: Thank you Jonathan. It's a real pleasure to be here. As I've said in previous times, in these interactions where the board meets with the different constituencies and organizations, we've tried to evolve from a kind of pro forma process into one in which we actually have as much substantive discussion, as much direct, frank engagement as can be done in a setting like

this where a limited time and a lot of people and so nonetheless try to make it real.

And we're kind of in a continual evolution process so the good news for you is that we have rather onerous schedule and all of Tuesday I think is taken-up by these kinds of meetings for the board and you're catching us at the beginning when we're still fresh.

I don't know what it's going to be like at the end of Tuesday when we've been through some number that we can't even count so with that, you know, let me just say thank you. It's really a privilege for us to be able to spend time with you and to listen to you and it's really the listening that is most important from our point of view.

There's very little in the way of messages that we want to try to get across and it's much more in terms of trying to understand what are the main currents and main issues on your mind.

Jonathan Robinson: Thank you very much Steve and we welcome the very fresh ICANN board to our meeting and that's great so thank you again for coming and for taking the time to spend with us. I think I'm going to make a couple of opening remarks and I'm very much hoping that our council members and the board members will take-up the challenge of making this an interactive and engaged session.

I think just a couple of remarks. I mean, I've made this if I hope I'm not boring those of you who were in the GAF meeting before but, you know, this council was constituted in its current form including with myself as chair for Toronto meeting.

We've focused on a few key items and that's working as efficiently and as effectively within our existing processes as we possibly can so we've been focused on our own throughput and efficiency.

We've been focused on our own effective internal relationships and working in a collegial and constructive way and we've also been focused on thinking about how we might best engage with groups outside of our own counsel and indeed the GNSO and I think there's some early fruits without wanting to preempt or anticipate things too much.

We have had constructive meeting ahead of lunch with the GAC that was certainly had some positive indications of how we might take-up the particular challenge arising out of the ATRT which is the early engagement of the GAC in the GNSO or indeed in the policy process so we've reached out and built some bridges and we're actively seeking to forge and further develop these.

I think my personal view and I haven't fully tested this to the council but and I'm sure there'll be some more discussion on this but my personal view is when there are existing structures which we have clearly in place and it's been tremendous work for example as we just said to the GAC in our own policy development process.

For example, we might as well one of the thinking about working effectively and efficiently together is that before we say any of those structures or processes are in any way have their shortcomings which inevitably they will do but people have gone so far other times to suggest that they are, you know, seriously flawed or fundamentally flawed.

I think we owe it to ourselves to show that we can work together effectively, efficiently and in a collegiate way and I'm tremendously encouraged by what we have managed to achieve over the last short period together.

I think as far as our work with the board, one of my concerns was that we've sort of struggled to reach to find the right tone in the past and we've sort of as Steve alluded to as well, we've sort of tossed one set of ideas over another set.

And my concern is we've sort of talked past one another a little which is why I talked with Steve in the run-up to this meeting about perhaps having a slightly different style where we put items on the table and he very graciously said well, why don't you let the council lead on the topics and issues that are of concern to the council.

And so that's really the genesis of the way in which this slightly experimental way of interacting together took place so whilst we are very keen to work as collaboratively and as positively as we can, we're also collectively very keen as a counsel to in a sense reassert our position at the heart of and role as policy manager within the GNSO and perhaps we'll expand on that and talk a little bit more about that.

So really what we're proposing is an open and it's in a sense free-flowing discussion and try to focus on some of the sort of strategic themes and issues that are either on our current radar but with a full view to looking forward how we might work as effectively as possible and with the rightful recognition and place that the GNSO council deserves within the multi-stakeholder system that we all appreciate and feel so positively and strongly about.

So, you know, some of the kind of topics we want to tease-out and discuss a little bit more are and making sure that we have a common view and understanding of the counsel's role and function as a policy manager and some of the challenges we face in that role and in particular in the context of the sort of rapid implementation and the pressure to go to market if you like with the next gTLDs and some of the challenges that's posed with requirements for rapid turnaround of advice and responses.

The council and our processes are sometimes seen as or sometimes characterized perhaps as clumsy and long-winded, we actually think that they

are thorough and multi-faceted and allow for, you know, substantial and thorough input.

But we also recognized there is a need both now and in the future and we have in part although they're relatively informal mechanisms for responding and we've shown a willingness to respond rapidly and efficiently.

And somehow we've got to manage that tension between that rapid turnaround of advice yet not undermining our role which is the responsibility we are given as counselors is to not act as a legislative body but as a policy manager within this process so there's a really fine tension there that we want to tease-out and talk with you a little bit.

We have our own plans which are early in their formation but nevertheless we want to act on fast on this whole issue of policy and we've chosen to call it policy and implementation in our discussion yesterday rather than policy versus implementation.

We think that's perhaps not the right framing of the issue and it's perhaps more constructively phrased as policy and implementation so those are some of the issues that are on our and I'll post those up - well, can you see if we can put those up - on the projector so that they're there as an aid memoir rather than as an actual structure for the discussion.

One of the other things that's also come up is that it seems to be another overarching theme that's going to challenge us both in our interaction with the GAC and probably more broadly as the concept of public interest and what that means in our context so I think I will no longer hog the microphone.

I hope I've set the scene and framed some of the issues adequately here, I'd open the floor up now to counselors and board members to hear from you whether you are aware of some of these issues and how they are for the

council, whether any counselors would like to speak and perhaps either correct anything I've said or add to or reformulate the way I've positioned it.

Maybe let me do that if you'll indulge me Steve, Fahd and your board colleagues just for a moment to hear from any of the other counselors if they want to add to anything I've said before we open the discussion up more generally. Thank you.

Steve Crocker: John?

John Berard: John Berard with the business constituency. Thank you all for coming. Jonathan's phrase reasserting the council's role at the center of things prompts a thought because if that is indeed one of the things that we want to embark upon, it comes at a time when we are anticipating the GNSO review.

So over the course of the next six months we will wind-up not just analyzing what we're doing but what we should be doing when we're reporting to the review we're looking at the evaluation of our continuing purpose and the effectiveness of the council of the GNSO as an ICANN supporting organization and the council of course is a creature of the GNSO.

So one of the things that I would like to perhaps hear from the board is how do you think - what do you think - that we ought to hang on that framework as we move forward in contemplating that review?

Man: Debating what extent should say what's on my mind versus sort of hanging back and not falling into a trap. I will pass it in a minute and so actually let me thank you for the cue suggest that in a second I'll ask if any board members want to offer an opinion.

One of the most obvious things that has been in the air and, you know, is that with the expansion of the gTLD space comes the expansion of the number of players and the contracted party to house and so that just naturally puts

stress on the system and challenges whether or not the existing structure is the right thing or what.

There are other similar kinds of challenges in terms of adding constituencies on the non-contracted side of the house - the house of the non-contracted parties - and one can deal with these incrementally or one can come back and say well maybe there's an entirely different way to structure things.

I'll just say personally and not on behalf of the board that when I finally turn my attention to focus on what the structure of the GNSO is and discovered that there were four levels of structure for this operation that a supporting organization, the two houses.

Each house has two, you know, multiple stakeholder groups. Each stakeholder groups has multiple constituency and I had to refrain from using the cadence of as I was going to St. Ives, I met a man with seven wives.

Each wife had seven cats (and something) so one has to wonder if that's the right structure to engage in the set of issues and be effective at the things (we're in) so I'll just leave it there. Anybody want to chime-in here? Go ahead. Plus I think your question was directed to me and I answered.

Ray Plzak: At the last meeting in Toronto, we discussed with a number of different stakeholder groups the concept that we were moving the review structure towards.

Since that time we've continued to think our way through the evolving way of doing reviews and we've also begun to look at what is the relationship between the ATRT review and the other AOC-type reviews and the organizational reviews?

And so we're now looking also at where we can do some harmonization so that we can prevent what might be duplication. We're also looking at these processes that produce the recommendations if you will.

At some point in time those things really need to be put into the strategic planning process. You know, it's well enough to take recommendations and implement and you get them put in place but at some point in time you really got to put them into the structure and the only way to that really is in the strategic planning process so we have begun to look at all of that.

Also there is a degree of element that there's you don't want to overstress the organization under review by having them to be continually being looked at so we're also looking at how we can minimize the impact of that to occur and so we're also looking at perhaps shaping some of this to look more like a process or a control audit in which case the staff would be more involved with it.

So if you were to look at what we were describing in Toronto as the micro phase or pronged approach of the review process and the fact that all those things carried the objective criteria that could be easily answered and most of it could be answered by examination of records and reports that do exist, that would be more of the staff interfacing just providing the records and reports and looking at things that happened.

And so you wouldn't necessarily see a large number of interviews and so forth associated with that. You more or likely would see interviews occurring for example in the ATRT when they look at the objective echo (that need) which talks about the policy processes.

And I suspect that they'll probably spend more time on it this time than they did last time because they did all those other things last time and so we have to look at how we can put those things together.

So consequently from the standpoint of the review itself, the organizational review of the GNSO probably will not commence until sometime in the 3rd Quarter of this year and I've already had some conversations with the chair of the ATRT as far as how we can do some amalgamation, make sure that we don't cross lines and that we don't overly tax the organization so does that help?

Man: Yes, thank you (Chris). I just one very brief comment and I just wanted to welcome what (Ray) said about recognizing the potential impact of the review on productivity and I'm tremendously concerned about our productivity and effectiveness and the role we play and so that needs to be delicately balanced with the need for reviews.

And the other brief comment is that I think it's very easy to make review synonymous with restructure and whilst one may follow the other, it shouldn't be assumed that they follow each other and so those are my two very brief comments. Thanks (Chris) for indulging me.

Steve Crocker: Could I basically respond back to you real quickly, carrying on that discussion about what you just mentioned with restructuring. Actually that should more so come out of the strategic planning process than it should come out of the result of the review.

It could be some recommendations from a review or process control audit which would indicate that a modification of restructuring should occur. However, it's once you get into the strategic (vetting) process where you rethink about that and that's where you start looking at your strengths, your weaknesses, you know, and your challenges and opportunities.

And so that is probably where we really reside and so I would not necessarily - less something, let's put it this way - it's absolutely so grossly wrong that you wouldn't be surprised if somebody says this has to change.

I wouldn't necessarily see a strong recommendation coming out of any review that says that this has to go away but you may see as a result of looking at these things a comment or recommendation that says that you may want to look at though using a slightly different layer, you may want to organize slightly differently to do that so from a restructuring challenge, I don't think that you'd ever see something that says do away with it.

Chris Disspain: No problem at all. Sort of halfway between (Ray)'s helicopter of the process and Steve's specific thing about, you know, a topic for review, I'm speaking to somebody who's been on the other end of the reviews, the chair of the CCMSO, I just think it's really important to remember that you do have a quite substantial say in the terms of reference.

And it's important that you get clear what it is that you think you might want to take out of the court for the review and negotiate that so just to give you specifically with the CCMSO review, we were very clear that money was not to be a part of this review.

We did not want the review to look at CCT, all the contributions to ICANN and the review did not look at that and so I would encourage you to think about making very clear statements about what you want in the review and anything that you specifically want out and why that should be out.

Steve Crocker: (Chris), thank you very much. I too had the experience when I was chair of SSAC of being on the other side of the review process and I think your advice is spot-on. My recollection is that it was the GNSO that was the first that was started in the series once upon a time and dragged-on for a very, very long time partly because of the learning curve of doing it of being the first.

When I was chair of SSAC I watched this process and SSAC was in the middle of the pack and I said to myself, we're going to try to engage and help drive this process and try to make it as smooth and as effective as possible and as efficient as possible.

And I think we were actually first over the line of all of the reviews even though we started in the middle of the pack so I think it's very, very possible and I would strongly encourage very much along the lines that (Chris) said to proactively get in there and use it as if it's your choice of being reviewed in the way that you would choose to structure it and try to use it as a positive process rather than just simply a burden to be borne.

Jonathan Robinson: Thank you Steve and thanks for that. I've got a couple of people who have started to come into queue. I suspect (Ray) you're coming back on this direct topic. I've then got Yoav and (Bruce).

Man: To the matter which (Chris) raised, that's exactly what we were doing in Toronto. We were raising that and we also at the time we were encouraging people to participate in the development of the criteria and we will continue to do that so that in the end, it really goes back to the point it's that A, you should know what's going to be looked at and B, you should have a say in what it is.

And actually it's very constructive to do that because you may be able to suggest better ways of looking at it so edits embedded in this process right now.

Jonathan Robinson: Thank you. Yoav?

Yoav Keren: Yes, thank you. Yoav Keren with the consulate for the registrars. I want to go back to the opening statement of Jonathan, you know, just talk about the issues that we currently see as problematic.

I think we've been seeing the few cases recently that the council in general the counselors or some stakeholder groups feel that processes were done in a way that circumvented the GNSO council and the GNSO in general.

First of all, we want to make sure that the board is aware of this view of us that these things I think we've tried previously to stretch that out. If you (wouldn't) that you will be aware of that, that we feel that things are sometimes done not in the proper process.

Saying that, we can - I personally - can understand that the reason for these cases, where it came from, the fact that in a vibrant business environment sometimes you have to react, you know, in quicker ways.

And it's clear it has been seen by many people in this community that the PDP is a long process and you cannot wait for things to happen but what happened when, you know, you don't get the views of all the stakeholder groups in different cases, then problems may occur in later (scenes).

I'll just give a small example but probably talk more specific about it later in our session with Fahd and we've been talking about it over an hour yesterday. An example like ID and variance that we're not considered in the implementation of the PMCH.

This is a real problem and if input was provided at the right time previous implementation, that might have been resolved. It still can be resolved on time. I'm not saying it's not and this is just a small example.

And it's important for me as a member of this community that if we are going to go through a review or restructure or something out of, you know, type that we will at the end find the way that processes in the GNSO can be faster so stakeholder groups or constituencies' views on different issues can be provided faster and so we won't see these circumvents happening again.

I think there are ways to resolve this, practical ways to resolve this and make sure that we have the possibility to provide input quickly, not always to have a very long PDP process and if we go that way this review or restructure, I think we will all feel that we get better results. Thank you.

Jonathan Robinson: Thanks Yoav. I have Zahid next and then I've got Jeff.

Zahid Jamil: Thank you. I just wanted to say it's a very good point about the ID and variance...

Jonathan Robinson: Sorry Zahid, I've skipped over (Bruce) and I apologize, I'm sorry.

Zahid Jamil: Oh, that's all right.

Jonathan Robinson: I apologize.

Bruce Tonkin: Just a couple of things. One thing with the history is one of the things the GNSO council do in that very first review is that do the self-review and I thought that was probably the better piece of work compared to the external review (from (Bruce) and Martesmal team).

And that's self-review probably focused a bit more on, you know, improving working group operations and structures and things and it wasn't a restructure to put your, mine, (don't know) if that's really added much value so just to encourage him to think about that.

Do your own self-review because often when you're doing reviews and employees or any group actually, you ask them to reflect themselves first and then give an external review to have a look at that so that one opinion's worth looking at.

Go and have a look at the original review, see if you still agree with it that was done by the GNSO so the other thing is picking-up on the earlier comment you were making Jonathan is you and I think others have made is they'd like to get the GNSO back into the center so to speak of the policy process and I think what you're seeing happening is a reaction to the past performance of some particular policy processes. (I'll use his) as a classic.

And there's a lack of trust and so people feel that if you put it in the GNSO, two things may happen. One, it may take a long time but even worse it might get nowhere and that concept of the style mate that it's getting nowhere is one of the biggest risks that why I think we want to initiate the GNSO process and it's one of the things you might look at self-reviews.

What do you do when things start to get stuck because the history of the GNSO and, you know, its chair at the time but there were individuals in this community that left the community. They were so badly burned - you know, Ross Rader for example - some have come back. Jordyn Buchanan's come back after a few years wearing a different hat.

But people put a huge amount of work into some of these policy processes and when they got stuck in no outcome, they had just had enough so we burnt the volunteers so that's the other thing to consider that, you know, volunteers put a huge amount of time.

If they get an outcome, they feel that that time is well spent. If they don't get an outcome, they'll either leave the volunteer part of the organization or they'll just insist that the board ignore the GNSO and come up with some other process.

Jonathan Robinson: (Bruce) if I may respond here just briefly. First of all, thank you. I mean, your wisdom and experience in this is much appreciated and so are the other board contributions that we've heard for me certainly are very encouraging about the way in which the review might take place, the outcomes.

And I think that was the tone of our council meeting just to reflect that when we discussed this. We very much - I only know the cricketing analogy - so it'll work with some of you but not all of you. We very much had a sense of wanting to get - we feel we've been on the back foot - and therefore there is an issue with we are perhaps on the defense of this.

And we very much would like to get onto the front foot, not to be aggressive which is why I use the word assertive but to reassert and productively reassert our position and our role and so there is a willingness to work efficiently and effectively and not the standard that I think it must be within we understand that the review needs to take place and that's very constructive to think of us doing elements of that ourselves and having an active part in it.

Let me go next to Zahid who's in the queue. I've got Jeff and then (Thomas) and then Milton.

Zahid Jamil: Thank you. I just wanted to say that I agree with the ID and variance issue. It has been of great concern. I know there were some board members in the room yesterday when this was being discussed and they're fairly a number of developing country concerns with regard to there being no policy with regard to ID and variance and I really appreciate the board looking into this so it's support you have on that.

On the issue of restructuring, I think I just wanted to clarify the CSC is actually not a layer. It actually three different stakeholder groups in a sense and there is this sense of bypassing the usual policy process for I expect two reason I think that's come up.

One is a feeling of disenfranchisement which basically leads to a stalemate. The voting threshold as being of such a nature through the last negotiation that some folks feel that they're not able to get that done. It's possibly the whole of the non-contracted party house that may feel that the structure is not working.

I know that definitely the commercial stakeholder group feels it is not working and so as part of a review, it would be important to see how we can improve that so that you don't feel that you're sending any requests to a stalemate

organization or sending requests to something that just take too long so the circumvention stops.

But in the current circumstance and I understand why you had to do that, I know as have as a (paucity) of time just wondering a very quick question and maybe slightly off-point, the BCNOs were really curious at the new gTLD process and I'm looking maybe at Fahd, you know, in the contention set of plurals and singulars once seen as a contention, so you have auto and autos cars and cars, (kate) and cadence but they weren't considered contentions.

This has raised some concerns. I know it's off-topic but I just want to leave that with you. Thanks.

Jonathan Robinson: Thanks, Zahid. Fahd, would you like to respond or just put that aside for the moment? Yes, I think I've got (Thomas) in the queue. I've got Jeff next and then (Thomas) and then Milton.

Jeff Neuman: Hi, Jeff Neuman. I want to try to bring us back to this, to the topic and you know, latch onto one thing that's huge. I think there is a growing feeling by the GNSO and I'm not saying, you know, I'm trying to reflect our discussion yesterday although some people seem afraid to actually say it so I'll say it that we are being circumvented, right?

They do believe that yes, there is the who-is circumstance, right, that we come to a stalemate and, you know, it's hard. Who-is is a tough issue. It's not only divided the GNSO, it's divided pretty much everybody in the ICANN community for 15 years now.

And I know because I was there in the very first ones too so I don't think who-is is a good example to ever use because that's just a polarizing one. We're going to try to work through it.

We're going to try to give it another shot but there are instances where we actually do come out with a finding, where we do come out with a policy, where we do come out with a letter saying that something is policy and then we get circumvented in that.

We get basically maybe there's a disagreement but nobody comes back to us so we send a letter on February 28th that says - and I don't want to discuss this specific example because I don't think it's productive - but the letter itself said we find X, Y and Z policy.

The council believes this is policy but then we get a decision from the board that does it anyway without ever coming back to the council, without ever coming back to us and discussing the issue with us.

And one of the things that the GNSO council discussed yesterday is that we feel like we don't have to have you agree with us all the time. That's not what we're saying but at least have some sort of consultation back with the group if you do disagree.

That we almost feel like you kind of owe that to us as a policymaking body especially in circumstances where we actually do have a finding that something - we actually do get together - and come out with something.

We think that that's probably we'd like to see that incorporated into future decisions especially when we are able to indicate our policy and as a question that I have and others have is what happens if there is advice from an outside supporting organization or advisory committee that is inconsistent with the advice that you get from the GNSO council?

Is there an obligation for the board to come back to the GNSO to discuss that issue and I ask that because there may be some advice in the future - in the very near future - that some of us may believe may be inconsistent with previous advice given by the GNSO?

((Crosstalk))

Jeff Neuman: Everyone discussed it that way. It's that people...

Jonathan Robinson: So, so, so to put it on the table so I think I just want to capture that our commitment collectively as a council is to work efficiently, effectively and collegiately (sic) but we're seeking if you like a reverse commitment or like an acknowledgement of that that we'll continue to be maintained in the process and to the extent that a decision even goes against something that we might have recommended that it comes back to us for further discussion. Steve?

Steve Crocker: Yes, thank you Jonathan and thank you very much Jeff. The first of all Jonathan I want to thank you very much for using the same words that I've been making a mantra about efficiency and effectiveness.

I truly support the emphasis that we have throughout the system for accountability and transparency but it's always occurred to me that we could be completely accountable, completely transparent and completely ineffective and though that would not be a good combination and so it actually have to make something happen.

To your point, there's a couple of things there. First of all, the syndrome that you're talking about, I don't want to just leave hanging in the air there. I don't have in my head a precise list of the events and incidents if you will that you're drawing from. This isn't the right time or place.

But let's go document those, not from a point of argument about what happened but just so that we have a base to have that discussion and I think at least speaking for myself personally in my role as chair of the board and with a heavy responsibility for trying to manage the board process so that it is appropriate and consistent with what everybody expects the board to be doing.

I want to understand this dynamic more precisely. It could well be that corners were cut or the process was skipped. It could well be that there's differences in understanding.

Whatever it is, I will commit to you and to everybody here that I want to understand all that separate from arguing about, you know, whether that was the right answer or whether we did it right or not but I at least want to understand what the issues are on the table.

We are engaged in a remarkably parallel discussion with the GAC on almost a mirror, you know, if they give us advice, why isn't that the end of the story and when we said well, you know, there might be some practicality issues.

Well, understanding implementability. Why don't we talk to people who actually understand the subject matter? We're going to talk to the GNSO. You're going to talk to the GNSO, you know, anyway and the game is on.

So getting some coherent understanding of how to engage in these things and to do it in a way that is effective across the community and the board has no separate agenda on these things.

I can say that with strong assurance. We are not sitting there with our own sense of well, it'll cost us in our business operation or it'll protect this constituency. We want to see that the whole thing works so I do want to dig into it and if we can identify gaps in our processes either from mistakes in the past or going forward, let's go after those and get those brought to the surface.

Jonathan Robinson: Thanks, Steve. I have a queue and conscious of that. Jeff, you want to come back in that queue as well with that your, yes, just to make sure I understand your remarks Steve, when to said to get into it, I think you were

asking for us to perhaps document some examples or write to you afterwards rather than to dig into it now.

Steve Crocker: Right.

Jonathan Robinson: Yes.

Steve Crocker: Yes, yes, no, offline and let's get the history that we are going from and get us all on the same page and then glad and then very relaxed and, you know, non-confrontational, we just understand what it is that we're talking about.

Jonathan Robinson: Thank you. I'm conscious we've got (Thomas), Milton, Joy, and I think Jeff after that. Please Wendy please make yourself known if I have missed you.

Thomas Rickert: Thank you very much Jonathan. I'd like to respond to a couple of points that (Bruce) made with respect to GNSO in general and PDP work in particular and that was that there was frustration with the time that it takes and that they might potentially know where and I think that these two items need to be discussed separately.

In terms of time I guess and we've been discussing this at the council level, it has a lot to do with simple management techniques for the working group chair to be efficient and if the working group chair is efficient in moderating the work, it's not frustrating for the participant and will come to a result at an earlier pace or at an earlier stage.

So I think that's been worked on and I'm quite confident that we're making good progress there. Regarding results that might be divergent at the end of the PDP and that's something that I guess we have to accept in a world that is committed to the multi-stakeholder approach so we shouldn't take for granted or there should not be a per se expectation that a certain outcome can be predicted when it comes to PDP.

Nonetheless I think that it's worth going through the process where a PDP needs to be done. Whether a PDP needs to be done or whether the GNSO council after having consulted with the community - with the wider or with the GNSO - whether that's going to be in the framework of a PDP.

Or in another form of policy recommendation or response that is based on a very intentional decision by the council and the community so we only choose the tool of the PDP if a consensus policy might be required as an outcome.

But I think but that might be a personal perception that sometimes the board is rushing to circumventing or at least what is our perception of being circumvented to circumventing the council before you have heard what form we might take.

And I guess that adds to the frustration on our side and that adds to the frustration inside the community to commit to community work if it ultimately might be vain if you're doing your thing anyway.

Jonathan Robinson: By all means, I have a queue so I need to defer to it. (Bruce) if you can come in as a response, please do.

Bruce Tonkin : Yes, just to your comment there that in some ways you're saying that it might (finish) with the divergence of views, I think what's valuable is those divergence of views are documented and you call it a halt if you like. I think that's what's useful rather than just sort of saying oh, you know, we just going to keep on leaving and not getting anywhere.

Just a comment, I think that's actually very helpful to get a say with (unintelligible) on this and we've ended-up with these two big views or these three big views, that's useful I think.

Jonathan Robinson: Thanks (Bruce). Milton?

Milton Mueller: Yes, I would like to build on the comments that Jeff made and perhaps be a little more specific, perhaps uncomfortably specific on that sort of things but I want to emphasize the bigger picture also in the extent to which ICANN's whole reason for existence is to show that a stakeholder-led non-governmental community can actually make and implement policy.

And when that process is circumvented, when these elaborate representational structures that you've created are basically disregarded, you're really undermining the whole rationale for ICANN's existence as a policymaking entity that is an alternative to the standard intergovernmental model.

Now I look at things, you know, as a social scientist from a gain theoretic standpoint and if you tell, you know, you have very predictable interest groups represented, I mean, the interest groups represented in the GNSO typically take very predictable positions on the standard range of policy issues.

And it's always a matter of coming up with some kind of a bargain that can keep a winning coalition of them - can create a winning coalition - or which can create the least amount of unhappiness among them to get something through.

Now from a gain theoretic standpoint, if you tell all of these interest groups that the bargain you strike here might get superseded, then you've given them all a very strong incentive to not really make the bargain here so the circumventing becomes a self-fulfilling prophecy.

If you can say well I didn't get what I wanted out of the GNSO so I'm going to go to the GAC and lobby or I'm going to go to the board and lobby or I'm going to go to the staff and lobby and see if I can get it there, then it becomes this self-fulfilling prophecy in which of course the GNSO is stalemated.

Nobody expects it to come up with a solution because people think that they can do better by getting the solution somewhere else and (Bruce) I really want to mention. You mentioned the who-is.

I was on the council as you know when you were chair and I seem to recall - you can correct me if I'm wrong - that we came up with a remarkable 2/3 majority - GNSO council consensus decision - on the definition of the purpose of who-is and what happened?

That decision was blocked by GAC members and you sort of went along with that is my recollection and you sort of said well let's start over again. That's the problem. Either you're making the authoritative decision here and everybody has to bargain and realize that that's the decision or if you throw it up after that, what's your incentive to come to an agreement?

What's your incentive to make a concession here to come to a compromise? How do you do that if you know that the other players in the game are not really showing you their hand and they're not really showing you their hand and they're really going to go do something else and strike some other bargains elsewhere.

So the, you know, and referring again specifically to the who-is issue, after it went out of the GNSO we didn't resolve it either, right? It's not like getting them out of our hands suddenly made it all easier, right?

So I just want to stress the seriousness of the issue because as somebody who takes ICANN seriously and tries to defend the model in the global arena, I find myself constantly undermined and my credibility easily attacked by these kinds of circumventions of procedure.

Jonathan Robinson: Okay, thanks for expressing that thoroughly and eloquently. I'll put you in the queue (Brian). (Bruce), since Milton specifically mentioned work you'd

done together, is there any way - I don't want to put you on the spot - but if you want to come back and respond, otherwise we'll progress with the queue. Right, Joy, I've got you next and (Brian), I've got you coming up.

Joy Liddicoat: Thanks Jonathan. Joy Liddicoat, non-conventional stakeholder group. Just wanting to echo and pick-up some of the points around the table and I'm finding this a refreshingly frank conversation between the council and the board so I thank you for that.

The focus I think it's important to emphasize although we've talked a lot about the stalemate and (unintelligible) that there is very firm and I think unanimous view of the council that our policy development processes are not broken and function for the most part to produce high-quality community-endorsed policy that works.

And that we mustn't let the concerns about stalemate on issues which are deeply felt and they really are strongly-held views in the community skew our feeling about the overall effectiveness and robustness of the policy development process so it's at this point and it's come very strongly in our view at the council meeting today.

Secondly in terms of I think it's strange that we've sort of we slide from a discussion about the need for consensus policymaking and define stalemate as somehow a sort of pejorative positive.

That simply means there's a lack of consensus and I think we must be careful to emphasize that not making a decision is sometimes making a decision. It's the community saying that they're not ready for policymaking on this point.

And I think our concern and the emerging trend we're seeing across a number of areas lately is that rather than stalemate reflecting a true lack of consensus, it's reflecting as Milton has said the fact that parting constituency groups know that they can re-litigate either outcomes that were agreed or that

they had no incentive for consensus because they know that they can pursue lack of decision-making (up there).

So I think that we're wondering as a council how to support the board and (teeing) that those requests for intervention back to us more effectively perhaps even passing those concerns back to us directly to respond to rather than feeling that somehow the board must justify council's position that the council has followed due process, then the board saying that.

And I think also, you know, I in other forums as my other non-conventional stakeholder group colleagues do support and defend the ICANN model and we want to see a successful multi-stakeholder model that makes public policy, not private policy.

And so we have had concerns for example about negotiating with the RAA and concerns about the board's, you know, the proposal for the board to have unilateral powers there not that this is an issue on what the GNSO council has direct responsibility but in a wider landscape concerned about public policy implications of such a power. Thank you.

Jonathan Robinson: Thank you Joy. I'm going to keep things moving by I've got in the line Jeff, Wendy, Wolfgang, (Ray), Steve and (Brian) so and Volker and (Dave). Jeff, please.

Jeff Neuman: Yes, one of the other items that I neglected to mention the last time was a topic we discussed yesterday and it seems like now there's things that are trying to get moved along quickly.

There have been a number of times where in the past six months or so we've gotten the letter from the GNSO saying hey, you know, we recognize you're responsible for policy so in the next 30 days, give us your thoughts on it.

And, you know, while we certainly appreciate in those instances coming to us for our advice, things are very complicated. It's very difficult for us within 30 days to actually get to you a council view or even a GNSO communitywide view to what you get in that circumstance is only at best one constituency feels this or one stakeholder group feels that.

And so people wanted this brought up that we appreciate the fact that you have come to us but you need to let us go through our processes and procedures and like (Thomas) said it's not always - we don't always - have to go through a PDP.

There are other mechanisms but just a recognition that we do have to - the council is not a legislative body - so we have to go through our groups and through our stakeholder groups and constituencies to get to you the response that we need to get you.

Jonathan Robinson: Thanks, Jeff. Wendy?

Wendy Seltzer: Thanks. Much of what I was thinking has already been said so I won't repeat what Joy and Jeff and others have said but to echo some of this, I think I'm hearing a lot around the table there are tensions between speed and deliberation or concerns about stalemate.

And I think we wanted to reemphasize among counselors the council's role in policy development, the council's role in reaching consensus in the multi-stakeholder model and sometimes that is a slow process and sometimes we need to reach out to our stakeholders.

We don't need quite so many levels of indirection in getting there I think but we need to hear from the bottom from the edges and bring that together and when we don't get there in 30 days, that doesn't mean we're never going to be able to reach consensus but it does mean we need the time in the process to get there.

Now that may not feel like sort of rapid-fire management that gets everything building on the timeline that everyone might like but we need to be able to do that and where there's a tension between getting something done quickly and getting something done by consensus, I think we would all say we want to vet the issues through the consensus process.

Jonathan Robinson: Thanks, Wendy. Wolfgang?

Wolfgang Kleinwachter: Thanks, Wolfgang Kleinwachter from the non-conventional stakeholder group. Something has been already said so I can be very brief. Point Number 1 is an I want to echo what some people have said here, in our view there is no policy versus implementation.

Policy and implementation are two sides of one process and we should not make them as take the disconnect policy development from implementation and I think all sides are responsible both for policy development and implementation. You could say awkward at in their respective roles so there are different roles for doing the things.

But we should not make the mistake to disconnect policy development from implementation and the second point it should be also clear I think what Milt and Wendy have said just Joy that when we're discussing here these issues, we are discussing let's say the very core of the problem, the multi-stakeholder model and I think this is really what makes ICANN different.

What's the difference to other bodies in the global Internet governance ecosystem which is also, you know, the big privilege of ICANN and (so that they care). We are the front-runner. We are discovering and exploring new territory in cyberspace so we are the pioneers here doing that.

And one thing should be full clear that the multi-stakeholder process is much more complicated as a one stakeholder process. If you have just one stakeholder, you can act much more faster and quicker.

So some people have said okay, multi-stakeholder is faster than the government. No, I think if it goes really to the realities, then the multi-stakeholder process is much more complicated than to reach agreement among the government because this is just one stakeholder group.

I think if you go back to the history in the industrial revolution, from King's perspective discussion in the Parliament, there was a complex and a waste of time but certainly a decision by a Parliament, they're much more sustainable than a decision by the Palace.

So and I think we are now in this transition period where we have to accept that the multi-stakeholder process is a very complicated process but the outcome is a higher-quality and is more sustainable and this is what's counting and then so far all parties have to be aware about it and should have more patience in this process. Thank you.

Jonathan Robinson: Thanks, Wolfgang. I've got (Ray), Steve, (Brian), Volker and David so (Ray), please.

Ray Plzak: Thank you Jonathan. One fundamental thing that's been said time and time again here is that bottom-up consensus policy takes time and it is absolutely totally unrealistic to ever, ever put a suspense date on when a policy is supposed to be delivered. It won't happen and so giving a policy in 30 days is not the right thing to say.

Speaking from my experience working inside the regional registry system, there's been times when a stake in like two years to develop a policy because of the inability to reach consensus on a particular piece of that and so yes, it

took two years but in the end you had something that was very effective and it was the higher quality that you just mentioned Wolfgang.

So and in this case what we're not talking about also is the consequence of allowing time to pass and it's not a matter of implementation. It's just not policy versus programs and so there has to be a willingness to accept the fact that we may have to halt a program. You may have to delay a program until you can get the correct policy to fix whatever it is that needs to be fixed in order for the program to proceed.

If you don't have the willingness to stop or halt or some other modify a program until you get that, then you're always going to be under the gun if you somehow or other rapidly produce a policy to fix a problem so that has to be all-encompassing community acknowledgement and agreement of that.

And so in the end if the whole community doesn't agree and acknowledge that that has to occur, you will always be in this conundrum of trying to push something through faster than it should take to do it.

Jonathan Robinson: Thanks, (Ray). Steve?

Steve Crocker: Well, I think we'll go next to (Brian).

Brian Winterfeldt: (Braymer) in commercial property constituency. I just wanted to say I feel like we're I'm listening to my fellow counselors very closely. I know now that we have total unanimity on everything that everyone is saying and expressing and so I wanted to flesh that out a little bit more.

I think that the policy and implementation or versus implementation issue is really important. If we designate something policy at the council and the board sees otherwise and considers (something) implementation and moves forward with something, I know it's been stated here that we feel like we owe or deserve to have sort of dialogue or explanation.

You know, the letter that was sent for example that Jeff referenced was not a unanimous, you know, council letter. It was a majority point of view and so I now we're having a discussion later this week and a panel about policy versus implementation and how that's going to characterize.

But I think, you know, it's important for us as the council that we do have an important role setting policy but that there are other parts of the community that have input so for example if the advisory committee put something forward to the board, you know, what is that role?

I think you mentioned that Steve brought that up earlier because you were having that same discussion with the government advisory committee about feeling maybe some of the same frustrations that the council sometimes feels where we think if we feel something is policy, then that has to be (unintelligible) by the board.

If it conflicts with something from an advisory committee, how is that handled and so I think this is complicated and I think we're all working together hopefully to find a better path forward.

Jonathan Robinson: Thanks, (Brian). (Chris), I'll add you to the - did you want to response directly - to that?

Chris Disspain: Yes. Just really quickly, it occurs to me that it might be worthwhile thinking about and making a distinction in these conversations for the future between policy and public policy.

There is a very specific role that the GAC in respect to public policy as opposed to policy so I think it just worth sticking that in the notes as a thing to remember to talk about because they do have a different view about public policy.

Jonathan Robinson: And indeed, I mean, I think we had as I mentioned and many of you are aware we had our own interaction with the GAC this morning and of course the issue for the GAC is how to be involved with GNSO policy and other policy at an earlier stage.

But really my understanding is to the extent that it has public policy implications and so it's quite important to recognize that and so I'd echo what (Chris) is saying. That's the crux of that particular issue. Volker, you've been patient so let me come to you.

Volker Greimann: Thank you Jonathan. Volker Greimann, I'm on the (Vegas class) stakeholder group. I wanted to pick-up on a few comments made by Milton, Wolfgang, Joy and Wendy which I fully support.

Gain theory plays into this, the policymaking process in a way. We are indeed breaking new ground and that means whenever new ground is broken that the way that is taken is less than the ideal way but while they're breaking new grounds and seeing the processes that we operate under, we should aim to revise those processes, not circumvent them.

We should look at the processes regularly and look how we can improve these processes, not how can we use the processes to get a better result but not circumvent the processes to get the result that we want because once we circumvent the process, we break it.

If we break the process, then suddenly the game breaks apart. In the original way that GNSO operates, you can get a stalemate but a stalemate is not necessarily a bad thing. A stalemate may be just an expression of the view of the council of the GNSO that the status quo is preferable to any of the other alternatives on the table.

That is an important outcome that can be the outcome of the policymaking process if we prefer what we have over what is offered with me and I would

like everyone to bear that in mind because in the end, we are not separate entities. We are one. We are ICANN.

We are different organs of the same body. We have different functions and each and every organ of our body serves to function as best as it can but the heart should never start to try to breathe.

The brain should never start to grasp things and that is something that we should look at if we should amend the roles that we have, that is something we should look at but we should not circumvent organs that we have if we think beat the wrong pace or have the wrong rhythm.

Jonathan Robinson: Thank you Volker. I'm going to go to David now and I'm going to put myself in the queue, John.

David Cake: Yes, to a large extent I'd want to agree with what my client's AFG - David Cake from the non-conventional stakeholders group - to a large extent want to both agree with both my non-conventional stakeholders group colleagues and what Volker said which is that I think (Bruce) is very right that stalemate and, you know, not coming up with a policy outcome is the same as being something that happens within the GNSO council.

And I think it is something that we sometimes find quite frustrating within the GNSO council that things can stall quite easily in its processes and I do think that is something we need to look at within the review and so on.

But also want to say that sometimes as John has said, if you're a consensus-making policy body and you discover that consensus does not exist, then we should not push on a get a resolution if we aren't very clear.

We should we definitely need to work out as an entire organization how best to deal with those situations and all agree on what the - how to deal with it - when there clearly is not a consensus.

It seems to be and I must say the GNSO we're not terribly happy when that's been the sort of fault of board be it that we're not really - that we don't really understand - what the process is but I also want to say that is not that we should not see that that is a failure. It's also not too that is a lack of progress.

Sometimes when the GNSO arrives at the point in the process where we go stalemate, we understand that consensus does not exist. We have arrived at that point by working groups putting into view, (if we) can looking at, you know, legal research, looking at the situations as they exist for stakeholders.

Sometimes we end-up with quite a much deeper understanding of why consensus doesn't exist and I think that is sometimes actually quite a valuable process and I think we are seeing that with some of the higher profile processes that are going on at the moment.

We may not have a consensus falling-out but we are certainly coming to a much bigger understanding of the issue and that's one of the things the GNSO does. We tend to be thorough.

We tend to not skip over the details and there is something I would like to be appreciated in the process. Now it's been slow but sometimes slow because we are thorough and there's something to be said for that.

Jonathan Robinson: Thanks David. I think we need to start to wrap things up now. I mean, it's been absolutely great to hear from such a diversity of the council and for all the talk of the council being diverse and at least at times fractured, I think that what's interesting is that there is some quite strong and coherent views about some of the things we've heard about. John, did you want to wrap something up or do you think we can...

John Berard: John Berard, business constituency. I don't know wrap so it up as much as suggest that Volker's comments have brought me directly back to where I

started which is that if there are in the context of a GNSO review if as we as a council see the need for some changes that the parallel paths I think can help each of us can help us meet the requirements of both and ultimately lead to a stronger policymaking body.

The notion of consensus is a good one. I would suggest that if you're not familiar with the voting thresholds at the council you take a look at those because consensus is not majority - consensus is not unanimity, excuse me - and I think that's a key point that sometimes gets lost in the debate so that's really all I'd have to say Jonathan. Thank you.

Jonathan Robinson: All right. I'm going to try and wrap things up before handing over to Steve and, I mean, I think there's a few things. One, we've approached this in a new way and in particular I'm conscious that council members have talked and talked quite substantially and we've heard from a number of different counselors.

I want to thank the board for listening actually and listening carefully and intently. I'd like to thank council members for stepping-up to the plate and expressing their opinions and showing that in fact we do feel quite strongly about if not very strongly about some of these issues.

We have a coherence about us but I think in many ways what I'd like to end on is recognizing that we are forward-looking. We'll embrace a review. We recognize the need to do some things faster but we've also emphasized the value in doing things thoroughly.

And so I hope that we have not come across in a way that suggests that we are confrontational or accusatory but rather the start of us being reasserting ourselves as I said being on the front foot in trying to establish or reestablish our position which we collectively believe to be a very valuable and fundamental organ in Volker's body or at least the general body that is our multi-stakeholder versus. Thank you Steve, over to you.

Steve Crocker: Thank you Jonathan and thank you everyone. This has been a stimulating interaction which is exactly one of the requirements that we try to satisfy. Speaking personally, there's a couple of very key action items starting with going back and looking a bit at the history to make sure that we are taking about the same set of things and understanding what they are and some other thoughts that stimulate for me.

The board has made a practice in the last few iterations of using these sessions not only as I described but also to record what we think we heard and then echoing it back as part of the feedback to you and to the community in general.

So at the public forum as part of that session, we will be echoing back what we heard this week plus what we did about we heard the previous time and then that will setup for the future as well so (Ray) has been taking notes on behalf of the board. Is somebody else? (Bruce), so that process has also been operating in the background here.

And I commend to you that ask you to pay attention to what we said and hold us accountable if we didn't echo back the things that you were trying to tell us because we want that loop to have fidelity to be a fair representation of what you were trying to say and it's an honest attempt on our part so catch us if we miss something.

Catch us if it comes back in a way that isn't what you were trying to say. I can tell you for sure that we're not trying to spin it and we're not trying to put any torque on it. We're trying to get it right so with that, again thank you. It's met our needs and our expectations speaking on behalf of the board in wanting to actually engage and dive into some key things and we've done that.

Jonathan Robinson: Great, well thank you Steve, thank you all of you and we look forward to seeing you through the course of the meeting and at some social and other professional functions. Thank you again for spending the time with us.

END