

Transcription ICANN Beijing Meeting

Discussion of Motions Meeting

Saturday 6 April 2013 at 13:30 local time

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Wolf Ulrich-Knoben: Five minutes to the hour now one minute to the beginning. The next session please take your seats.

Counselors approach your seats please. We would like to continue.

And please if you would like to continue to talk please leave the room. It's easier for you to handle and for us as well. Thank you.

Last call for attendance please. Please take your seat.

We are going to start the next session. And I would like to ask the operator whether recording is prepared.

Coordinator: Yes sir the recordings are currently going.

Wolf Ulrich-Knoben: Thank you very much. Please take your seats.

As you know (Jonathan) together with Thomas shall be away for some more minutes having a chat with Heather about the IGO issue. And so the two vice chairs have the opportunity to chair these meetings.

And I am going - am happy to hand over to Mason please.

Mason Cole: Thank you very much Wolf. Again if counselors will approach the table and take your seats we'll begin.

So we're in the portion of our agenda now where we're going to discuss motions that will be - could be put before the council for a vote later this week. We have two -- one from Maria Farrell, another from Wendy Seltzer.

Maria's not able to be here at the meeting. I understand she's online.

But in her place David Cake has offered to give an update to the council on the motivation behind the motion. So David if we could turn it over to you for that please go ahead.

David Cake: Primarily this motion is about the - this is the motion about the trademark plus 50 primarily recommendation in the trademark clearing house. We feel (unintelligible) NCSG we feel pretty strongly about the policy of the comment of this motion - of this issue.

We feel that it's not particularly good policy. But that really isn't the primary purpose of this motion.

The real issue is that we were not given a chance to properly discuss why we think it's bad policy because there was no policy process in which to - no proper policy process in which to do that. It was thrown out with a brief public comment.

Everyone as far as I can tell -- the council is on record as saying we believe that this issue is a matter of policy and thus should be discussed in a policy process by the council. ALAC agrees that it's policy.

As far as I'm aware everyone agrees that this is a significant policy question. The ICANN discussion paper of response issue said that it was policy, agreed that the GNSO council acknowledged that it was policy and then went straight ahead and unilaterally declared that it had made a policy decision without there being any policy process.

We think that the council should - if it believes in a growing policy role and its own role as the primary policy - as the place for GTLV policy development to take place absolutely has to stand up for its role and say this is a policy decision. The council shouldn't make policy.

It's the community. It should not just be thrown out into a very small group, put through staff process and decided.

There isn't even a justification provided for why ICANN made the decision on something that it determined was policy and thus should be a multi stakeholder bottom up policy process. I - and I - no justification is provided and so we can't even argue against it.

So I think - certainly I understand some people have issues with the way in which we characterize the process and the policy. And we're certainly willing to talk about that.

But that is the fundamental point. Everyone agrees it's policy.

Why wasn't the GNSO part of that policy development process?

Mason Cole: All right. I'll start with you John.

Before we do that David I wonder if you might elaborate for the benefit of the council on what the desired outcome is for the motion. Is it the intention to put something back before the council in terms of developing policy for a board recommendation?

Or, you know, what specifically would you like to...

David Cake: That's a good question. And I don't actually know what exact policy outcome Maria intended from her motion.

Certainly I think I would like to see that decision reconsidered and essentially sent back to GNSO to develop - to have some form of policy process.

Mason Cole: Okay thank you. John?

John Berard: John Berard with business constituency. So there should be a friendly amendment then to clarify the action.

All right, so right now just to reconsider. And you want us to not just reconsider but you want it sent back to the GNSO council, yes?

Wendy Seltzer: Thanks. I believe the final paragraph of the motion does request that the board reconsider. It specifically asks that the extension to 90 days, an inclusion of 50 additional terms not be implemented until these proposals have been approved by a majority of the GNSO council.

John Berard: Okay. All right. Thank you very much.

Not everyone agrees. So there's a fallacy in your opening statement that everybody agreed which is, you know, I guess we could review the tape to determine who didn't.

But I'm fairly certain that the business constituency and the IPC felt that these were matters of implementation and not policy which were certainly within the purview of the staff and board to implement. Neither were they proposals that came out of the blue of the Western sky.

They had been on the table. And in the ether with regard to the possibility.

And not all of the recommendations that those who thought were implementation were in fact implemented. So there was some discretion I think applied by the board in picking and choosing those things that they did decide to implement.

If this motion comes to the floor in the public meeting then I would vote against it for those reasons.

David Cake: Thank you John. Evan?

Evan Leibovitch: Thanks. First off I want to concur with what Wendy said definitely the ALAC point of view has been that the plus 50 especially is something that should not have been done this way. I guess my question here to the council is has been any discussion with policy staff?

Has anyone here had a discussion to actually ask how or why this was done the way it was done?

Mason Cole: That's a good question actually. I was going to bring that up with David and his group whether or not that discussion had been sought out.

Perhaps Fahd could enlighten us a bit more tomorrow. But since Marika and her colleagues are here, Marika would you take a shot at that?

Marika Konings: Yeah this is Marika. And that's actually a question that should be directed to policy staff as we're not involved in implementation of the trademark clearinghouse.

But I would suggest that you direct it to Fahd or people involved in that discussion. Because we didn't have any involvement in that.

Mason Cole: Okay. According to (unintelligible) that Dave was here this morning but isn't here now. Okay.

I have Milton in the queue.

Milton Mueller: Yeah my - even though the trademark plus 50 and the time extensions are a substantive matter of great concern to us I really think it would be a mistake for the debate to get stuck on that. I think the fundamental point we're making is one about whether the GNSO actually matters.

Are we just sitting here wasting our time? Is there a process by which we actually make policy and derive consensus?

The whole GNSO is structured in order to balance the representation of different groups such that no one group can impose its will on another without gaining some measure of support and consensus. And what we've seen in this process and I agree with Marika that this is coming from the top not from the policy staff -- is the complete circumvention of that process.

And that is indeed becoming a habit. This is not the first instance.

It's just the latest in a string of many, many such incidents. So we really think this has to be - the GNSO at the very minimum has to stand up and say this is not acceptable.

Otherwise we're wasting our time here. And everybody can just go lobby the board and the chief executive.

And if they get what they want they can say oh, we're happy. And if they don't get what they want they can say oh, darn.

But if the GNSO is going to be - there's really no point to ICANN as an institution if this whole process of (unintelligible) making policy doesn't go

through the balanced representation and some kind of consensus development among the representative groups.

Mason Cole: John?

John Berard: This is John Berard with the (GEC). I totally agree with Milton that policy should go through the GNSO council.

And I don't think that what was deployed was policy but was implementation. And so I agree with you completely -- the GNSO council is the conduit for policy.

But these were not policies.

Mason Cole: Okay. So I had Zahid in the queue but Milton would you like to address that first?

Milton Mueller: Yeah. Just a quick response was that the - Fahd himself basically was forced to admit that it was a policy decision. And the nature of trademark protection in the domain name space is pretty much a matter of policy.

And if you're granting an expanded -- vastly expanded set of rights then you are fundamentally making policy about what is protected and what rights people have in domain name space. I don't think you've got a leg to stand on when you say that this is pure implementation.

We wouldn't be upset about it if we had agreed on the policy and then we were just implementing it. Why would we be upset?

Mason Cole: Okay thank you. Before I continue the queue by the way I have Zahid, (Jeff) and Chuck.

So I just want to remind the council that tomorrow (Kristine Willett) will be here as will Fahd. So that could be an opportunity for us to get some more clarity on what was behind the decision and whether or not the motion is the right way to express displeasure or there's an alternate way or if the motion should proceed.

Just a thought for councilors. Zahid please.

Zahid Jamil: Thank you. The language used in the motion seems to be at least the way I read it a little troubling because it seems to imply that there's an overwhelming and in fact a 100% consensus support for whatever's said in that, which policy (unintelligible) John also mentioned that.

And then it sort of goes on - I mean in terms of language the expansion of rights, the protection mechanism and the UTLDs following, etcetera, etcetera. And then at the end it's basically sort of referring to the 90 days extension of the trademark claims procedure.

So I'm a little confused. How does the extension of 90 days from 60 to 90 days of the trademark claims procedure mean there's been expansion of rights protection mechanism or a new right that's been created.

Could someone explain that to me? Just on that one specific point.

Because I'm linking the first paragraph with the last paragraph and I'm having challenges.

Mason Cole: Okay thanks. We may want to take that one a bit offline while we get to the - whether or not the motion should proceed. But...

Zahid Jamil: Well in that case -- because I was hoping that there would be an exchange right now to help us. I mean there is a significant portion of people within the GNSO itself who would oppose at least the language.

Mason Cole: Right.

Zahid Jamil: And it should show a certain sense of balance in saying well there were other differing views please thanks.

Mason Cole: Okay. Let's go to Wendy for an answer to that, then (Jeff), Chuck and Wolf. Wendy?

Wendy Seltzer: So Wendy Seltzer from the noncommercial stakeholders. I think we would be happy to consider requests on the language.

It's not our intent to get into semantics debates. But I think that the - we want to emphasize truthfully that a large number of councilors and a large proportion of the stakeholder groups felt that this was a policy decision being made outside of the GNSO council and that we needed to step in firmly on the matter of the council is the place that these policy decisions should be made.

Now we may also differ on how significant we think the substantive change is. An extension of the time period and particularly the trademark plus 50 I think is the larger concern than the extension of 30 days.

And both of those are referred to in the specific decisions we would like to see reversed.

Mason Cole: All right Wendy thank you. Okay Peter I have you. (Jeff)?

Jeff Neuman: Yeah so just on the - just to address whether this was policy or implementation just to remind everyone we actually - we the GNSO council sent a letter to the board saying that some of this was policy. And there was a minority opinion from the IPC but everybody else agreed it was policy.

So this kind of relates to the discussion this morning. We in the GNSO said it was policy and therefore, you know, that should have been referred to us to decide what to do.

As opposed to a top down decision. But all of that said I mean I want to say I agree with Milton's point.

I just don't necessarily agree that this is the right way to go about it. I don't think a motion kind of, you know, putting egg in the face of, you know, just kind of flaunting it there is the right way.

It does relate to the discussion we had this morning about, you know, taking it at a much higher level. Instead of asking for, you know, a reconsideration it's really just a strong letter to the board and the staff saying we are the GNSO, we are responsible for policy.

You know, we've noticed some instances in the past where we think it's crossed the line and we want to reiterate that it's the GNSO that's - GNSO community that's responsible for policy affecting gTLDs. The registries are going to discuss this motion on Tuesday I guess is our stakeholders' day.

So I'm just really speaking from a personal opinion so because the registries are still obviously going back and forth on this. But like I said we can make statements in other ways than this particular motion which kind of just is so polarizing because it mentions the strawmen.

So you're automatically -- I said this this morning -- anytime you mention the strong man you're going to have the IPC it's going to oppose it because they think it's implementation, right. It should be at a much higher level.

I mean you heard John Berard say we agree with you -- if something's policy then it's the GNSO's responsibility. I think that's the point we want to get out of this.

To make - to reiterate if it's policy it should be the GNSO. But to take the strong man out of it or to take some past decisions out of it and come up with the general principle and reiterate that because otherwise it's just too polarizing and you're going to get objections based on the particular issue, the outcome that they want.

Mason Cole: All right (Jeff) thank you. Chuck?

Chuck Gomes: Thanks Mason. Chuck Gomes from VeriSign and I'm not a councilor, okay. But I want to challenge an assumption that I'm hearing almost everyone make.

And that is that the policy is the GNSO's and if it's implementation it's not the GNSO's. That's wrong.

Implementation is an act of implementing policy that was established. And someone made this point in the implementation versus policy session this morning.

That we have a responsibility in the GNSO to make sure policy is implemented in an appropriate way. And if there's any doubt it should be coming back to the council in that regard and we should - and whoever made the comment this morning and I'm sorry I don't remember who it was -- but said that we have an oversight responsibility.

And I think it's in the PDP process as well. So I think we need to get away from that.

If it's implementation, okay, forget about whether we can agree whether it's policy or implementation. Doesn't matter.

We have a responsibility in the GNSO to make sure whatever is implemented is consistent with what we recommended and if it's something new then it should still come back to the GNSO. Now with regard to the motion let me just make a suggestion.

You know, Milton you're right on on the principle. Forget the details.

I think that point needs to be made. And if it's in a motion or some other way I don't know that I care too much.

But as a separate issue you can deal with the two specific issues. But I think that that will - you need a separate motion to deal with the issue that if it's a GNSO policy or implementation issue where there's any doubt it should come back to the policy management body to get clarification.

Mason Cole: Okay Milton I have you. Thank you. Wolf?

Wolf Ulrich-Knoben: Thank you. Briefly two points. One is a more formal point with regard to that motion.

(Unintelligible) it came late after (unintelligible) this motion or what is your motion Wendy? The one of these motion came late -- maybe that one?

But in time it was the other one but...

Mason Cole: Yeah. There's a - I'm not sure it was late.

Wolf Ulrich-Knoben: Okay. Then it was the other one. Okay. Forget it.

The other point is with regard to the precision of the ISPCP. Would like to point out that we discuss it internally and we had a strong discussion within the commercial stakeholder group about these ICANN just now.

And you may know that we have diverse views on that. And that we were not happy at the ISPCP with the process that happened here.

But on the other hand regarding this motion I would like really to follow what (Jeff) was saying and was what John was outlining in his remarks on the lists to that motion. That we wouldn't like to follow such a motion which is so - set so sharply pointing to issues or to parties participating in that process that we couldn't follow that.

That's what I would like to say. Thanks.

Mason Cole: Thank you Wolf. Peter?

Peter Rindforth: Peter (unintelligible) IPC. Well I don't have to play specifically what I think about implementation versus policy on this specific issue.

I just think it's - I don't really understand those that see this as a policy question. But I would like to raise the question a bit higher than going into these details.

Because obviously because of this discussion it's not clear that - it will come up future questions like this. It's obviously not clear what's implementation and what's policy.

So for future issues we need to have more clear agenda and roots on how to see questions like these and how to handle them.

Mason Cole: Okay. Thank you Peter. Just mindful of time here. We have another motion to get to.

So in the queue we now have Zahid, David, Milton and (Jeff). And maybe we have time for one more before we summarize that issue and move onto the next motion. Zahid?

Zahid Jamil: Thank you. So the challenge I face is that we won't be able to have substantive discussion on the motion and what's in there. So that - I think that's the challenge that, you know, before we sort of suggest this to the board or pass it as a motion or whatever we should have in a group that kind of discussion.

So I think we're challenged by that one. And if we don't have that then I think you're going to be challenged by the CSG groups and others to say look this is not something we support.

But there is something we can support. And I'm, you know, Chuck made this point -- we completely agree.

That if something is policy and possibly even aspects of certain aspects of implementation if we think that's relevant to the policy that GNSO's put out there why shouldn't they come back to the GNSO? So if there was a motion say for instance that focused on that aspect, not the example (unintelligible).

It focused on saying that we would like to see more of these decisions coming - or these issues coming back to the council for us to determine it. And on two points because I want to address something that Marika sort of suggested in the morning, the policy versus implementation issue.

Maybe what we could do is have a situation where if somebody - if the staff wants a clarification there's a way for them to come back to the council, that's one. Second if there's enough of people in the community who feel that something has been put out there as a proposal seems to, you know, it should have been a policy issue debated by the council then that should come back to the council.

And we as councilors shouldn't take a decision. But we should feed it back to the working group.

They're the guys that specialists who came up with the policy in the first place. And let them give the feedback.

But if that sort of stuff was addressed in a motion like this we can think about supporting it. But what we have right now it's a bit of a challenge.

Mason Cole: All right. Thank you Zahid. David?

David Cake: So I just wanted to address this question John keeps bringing up. That no the - there are some parts of the council that believe that this is implementation not policy.

For - generally I would just like to refer the comment this morning. I think the idea that declaring something implementation so - just to take it out of the council's policy remit is an unfortunate tendency that we should try to stop and to generally agree with Chuck that just because of the implementation does not mean the GNSO should have no input.

We are supposed to, you know, the implementation is not carrying out the policy. We should be able to comment on that.

But more specifically I want to just sort of ask is the intention here - is the objection here about the wording? IN which case I'd be - I'm sure we'd be happy to take, you know, replace clear determination with majority of council reminding the council that we spent several months coming up with the exact wording of a letter that clearly stated that it was the majority opinion of council.

That is, you know, unarguable. And clearly the majority opinion of council is that the - if that's a wording change that's fine.

If you are saying well actually we shouldn't - we should just let this fly by because a minority objects. If you're saying we should ignore a majority opinion because a minority objects we pretty much should give up on the council achieving anything.

Mason Cole: Milton?

Milton Mueller: Yes I'm responding to (Jeff) and to Chuck's comments which I found, you know, very reasonable and persuasive enough. But they just leave me with a feeling that I'm not sure where - what the conclusion is or where they go.

So as I understand your comments you're saying that by specifically singling out the strong man proposal we are polarizing the council. And as much as I would like to have the council unified on this question if we don't specifically ask for reconsideration of these matters we're not doing anything.

We're basically wagging our finger at the board and saying we've been bypassed again. And they're going to say yeah, you have.

And every time this happens there's always a good reason. You know, some interest group is always upset and they want something changed, they want something done outside the policy process.

So there's no, you know, teeth to this whole motion unless we specifically ask them to reconsider what they did. And unfortunately that requires us to target the strong man proposal.

I can't see how a general statement that they shouldn't do this, you know, I'm a parent. I know that you can tell a kid that they shouldn't do something that they keep on doing.

And at some point you have to take some action that says, you know, some - there's a penalty. The reconsideration is the penalty I guess.

If you can think of a better one -- if you can think of a way to make the point as strongly without specifically mentioning the strong man proposal I would vote for it. But I don't think you can.

Mason Cole: Okay. Okay so we have (Jeff), John and Zahid in the queue and we'll cut it there and summarize before we move onto the next motion. (Jeff)?

Jeff Neuman: So I guess my main question then which you sort of answered Milton which was, you know, what is your main goal of this? And it's really to penalize.

It's not really that you care that much about the reconsideration of this. Like what's the most important thing to you?

Is it that really that they reverse the decision of the 50 names and the 90 days? Or is it that they're penalized and should never do it again?

Because I just heard something contradictory. For me and from a TLD standpoint I'm not sure we want to see this could be used as a basis to delay the new gTLD program.

And I'm not sure we want to penalize the new TLD applicants in this way. Because if you ask them to reconsider this decision then what - if I were the IPC I'd be arguing well then you can't launch any new TLDs until the reconsideration is done and until we have a polity process on it.

So let's just be careful with what we want out of this. Excuse me, so I think a strong statement well yes as a parent as well I know the same thing that just making a statement may not.

But we've never just made that statement in a strong way to the board, to the staff, to the community. We've never done that.

We've done it in this little room. And we've done it in individual groups by sending a letter.

The GNSO council sending a letter with a strong definitive statement may be enough then a reconsideration of the strawmen which I have a feeling may lead to just additional delays in the new TLD program.

Mason Cole: John.

John Berard: John Berard with the BC. The letter that we sent was in fact David the product of a lot of input and a number of iterations.

And it said in my view four very important things. It said that we were talking about the BCIPC strawman recommendations.

That we were suggesting that the voice of the individual constituencies and stakeholder groups needed to be heard on this matter because while there was a majority of the council that felt the one way it was not unanimous. And the IPC filed a minority report.

But from the BC's perspective, my perspective the fact that it was the BC who had - the trademark clearinghouse strawman proposal had BC in its label. The initial emphasis was on the voice of the individual constituency and stakeholder groups.

And you can't argue that the majority of councilors felt as they did. I have no problem with that letter as it went out because it was quite clear that it was a - the product of a thoughtful approach by the constituencies, the stakeholder groups and the GNSO.

If this motion is offered on Wednesday as I said I'll vote against it. But certainly I'm just one vote.

And if a majority of councilors decide that this is important enough to pass then that's our work product, that's what we do. That's what we're here for is to kick stuff around, argue back and forth and try and come up with the best way forward possible.

Mason Cole: Okay. I have lots of hands waving in the room who still want to get in the queue. Kathy I'm sorry we've got to keep moving.

So Zahid and then we're going to - okay. Zahid then Kathy and that's all.

So we'll take it up on the list aft4er that. I'm sorry.

Zahid Jamil: Just to come back to David's point the issue is actually the fact that in this motion we're talking about a specific problem. And I'm not so sure wagging a finger at the board and sort of trying to penalize -- I don't know how we could even try to penalize the board in the first place.

But if that is our intention then, you know, as I said it's very difficult. And maybe this is overkill.

We've already sent a letter. A letter that was discussed, negotiated by everybody openly and as John put it lots of iterations.

We've done this already. I would see this as overkill.

And, you know, if you want to instead issue a strong statement on principle that's fine. I mean I like (Jeff)'s idea and thoughts about how that could be done.

And we would be supportive of that. And that would be just the closing point I'd like to make. Thanks.

Mason Cole: Thank you Zahid. Kathy and then that's it.

Kathy Kleinman: Hi. Kathy Kleinman, a member of the noncommercial stakeholders group.
And I was in that meeting where the trademark plus 50 was introduced.

And I want to say nobody, nobody wants policy made this way. And nobody wants implementation of our policy made this way.

You do not want a middle of the night session that went on from eight hours to ten hours to 12 hours in the middle of the night Eastern Time. When suddenly this is introduced out of the blue and pushed through.

This is not the way you want to make policy. This is not the way you want to make good implementation based on the policy.

This is not the precedent you want for the future is to have closed rooms, selected people and things introduced in the middle of the night. Draw a line, pass the motion and just say this is not the way we do things.

It's not good for the GNSO in the future. And the trademark plus 50 is an example of why - use the example as an example of why this type of policy doesn't work.

The initial policy is very clear, it was an exact match. This isn't it.

Don't let the precedent go any further. Thanks.

Mason Cole: Thank you Kathy. Just to summarize on this point here's what I believe we came away with.

And I ask the council to correct me if I have this wrong. So the motion exists as it's written.

There's been some sentiment that perhaps the wording is not exactly reflective of what it should be. The wording itself could be open to amendment perhaps the motion itself could be opened to a friendly amendment.

We have an opportunity to speak with both Kristine and Fahd tomorrow to get more visibility behind their decision. And then as (Jeff) pointed out I know that at least the registries -- and I know the registrars are going to discuss this in stakeholder group meetings on Tuesday.

And as the council's aware the chairs and the stakeholders will report the - on their proceeding for those two days before the beginning of our meeting. So that could be another opportunity for stakeholder groups to weigh in on their feelings about this motion.

Anything else on this before we move to the second motion? Okay. Thank you very much.

Wendy may I turn the floor over to you for an introduction on your motion please?

Wendy Seltzer: Thanks (Jonathan). Wendy Seltzer from the noncommercial stakeholders group.

Very brief motion in we've had lots of discussion in council about the problems with the negotiation of the registrar accreditation agreement. And when the most recent updates were made we heard some pressure coming in that everyone was being urged to negotiate quickly so that the signing of a registrar accreditation agreement wouldn't hold up the new gTLD program.

Or wouldn't hold up the ability of registrars to offer registration in new gTLDs. And so the intent of this motion is to decouple those issues, the timing of the

signing of - negotiation and signing of a new registrar accreditation agreement.

And the new gTLD program by saying that the current registrar accreditation agreement should be extended to new registries and new gTLDs until such time as the GNSO adopts the consensus supporting policy changes and any proposed new RAA. That's bringing back the council's - or asserting the council's role in approving any policy changes made in a registrar accreditation agreement.

And explicitly putting that step into the process giving everyone some breathing space to consider the policy changes that are being proposed in these draft policy changes that we think have serious implications for privacy, for security of domain name registration and that we believe merit further discussion among the community.

Mason Cole: Okay. Thank you Wendy. All right we'll start with Thomas.

Thomas Rickert: Thanks Mason. I have seconded this motion.

And I would just like to add to what Wendy said that I think it's - the link of - to the RAA 2013 and the registry accreditation agreement suggests to the outside world that all players that are not signatories to the RAA 2013 are bad actors. And I think that doesn't match Fadi's intentions to raise the profile of the DNS industry to be quite honest.

I think that it's a very bad precedent to make every registrar look evil. You know, certainly there are some things in the RAA for 2013 that want to bring bad players to reason.

But the vast majority of players is actually running a good business and therefore in addition to what Wendy said I think that this needs to be

decoupled. And also in practical terms we know that bringing new gTLDs to the possibility of launch is a very tight and challenging exercise.

And we shouldn't put the burden on the registers because ultimately we might have the first registries that have signed that want to launch and no registrar available to sell the domain names and offer them to the general public which is waiting for the names to be available. And I think the pressure shouldn't go on the registrars.

Mason Cole: Thomas thank you. (Jeff)?

Jeff Neuman: So I think and the registrars can jump in from some latest conversations and the new draft of the registry agreement if you look at the comments that were filed and summary of changes I believe that ICANN is aware of the issue that there may be no - there may not be a 2013 agreement. And they've talked about ways in which they are working on transition language already in there.

Again this is one of those where I find myself supporting some of the sentiment but not the words of the resolution. That I think that again this is something that the registries will discuss.

But this almost makes it sounds like -- and maybe I'll ask the intention of the last - actually before I make any assumptions can you just explain Wendy the last part where it says until such time as the GNSO adopts a consensus supporting the policy changes in any proposed new RAA? So can you just go over what some of those might be and how we would go about doing that?

And are you saying that some of those things like a registrant's rights and responsibilities needs a PDP? Or can you just go into the background?

I won't make any assumptions.

Mason Cole: Wendy?

Wendy Seltzer: Thanks. So the assumption all along has been that a new registrar accreditation agreement needs to come back to GNSO council for approval of the policy changes. And this is complete making sure that the existing agreements are extended in time to permit that to happen at the pace that it needs to happen.

Not suggesting that we should slow things down but - so I think there's always been a place for us to consider the policy in a registrar accreditation agreement. And this is making sure there's continuity while we do that.

Mason Cole: Okay thank you Wendy. Did you have a follow-up?

Jeff Neuman: And maybe it's for - I don't see ICANN staff here or the people that - at least the ICANN legal here. But maybe I - is that the understanding of does a new RAA need to be approved by the council before it can be signed by the registrars?

Wendy Seltzer: I'm not sure of the answer to that question but I can find out for you and get the answer for you.

Jeff Neuman: The registrars do you have a view on that?

Mason Cole: Yes we do. I think we've been very clear all - I'm sorry, Mason Cole. I think we've been very clear all along that the GNSO council is a policymaking body and not a contract manager.

Jeff Neuman: Okay. Yeah so on that Wendy that's why I think some of us have some consternation on the last part of it. So while I think we sort of - I think we agree with the sentiment that the new gTLD program shouldn't be halted because the agreement's not done.

And while we agree that there needs to be some transition period in there to make sure that we're not stopping the new TLD program I'm not sure there's agreement with the groups here as to what needs to happen when a new RAA is actually completed by the registrars and ICANN.

Zahid Jamil: Thank you. Zahid here. The - a couple of problems. We - coming out of Toronto I think much of the BC, the IPC and large part of the CSG actually took a view about the registrar accreditation agreement.

At least as call it earlier as that, even before that we've had positions on RAAs. And so we would be sort of - because of the sort of umbrella approach taken in the motion we'd have to sort of oversee both the motion.

But beyond that also on some of the language here the second paragraph where the second line, ICANN negotiations are held out as a blocker to the implementation to the gTLD program. I think, you know, we don't want to get into what's happening in the room in a motion necessarily.

And the last part says that, you know, and for a different reason but agreeing with what (Jeff) and I think you just mentioned in fact was that to what extent should the GNSO have any kind of input into the RAA itself completely. Now of course we're a consensus policy building body.

That's fine. But as far as the rest of the RAA agreement is concerned that's not our purview.

That is for registrars to get into a room and discuss and negotiate that out with ICANN. We otherwise I think are overreaching and saying well the whole registrar accreditation agreement needs to fall, you know, go through the policy process within the GNSO.

So those are our hesitations. Thanks.

Mason Cole: Thank you Zahid. I have Wolf, Brian, Volker. Wolf?

Wolf Ulrich-Knoben: Thank you. Wolf Ulrich-Knoben speaking.

I will come back to that formal point first in which I was of the opinion it was returning to the last motion. This motion came in lately and also I think (Jonathan) you were on the list asking nobody was objecting to that.

It may happen - I would not exclude that that somebody raises his hands on Wednesday and saying okay, it came late. And then there is a process problem maybe.

That's one point. The other point is with regards to that motion.

We discussed it with the general constituency, the RSP constituency and I was very happy to hear or clear - to hear clear words that the things we are not partners of the negotiation team. This is a - this may be, let me say, an item which is outside or inside the picket fence, you know, what is not the obligation of the council to give is it or to decide upon any registrar agreement because we are not partners of this negotiation team which okay, was to discuss diversity in the past I'm saying.

So having that said we as ISP we have a general problem with that motion. And since it to our understanding, it would mean if the council comes with these recommendations with regard to something which he, the councilor is not - or has no, let me say no - is not dealing with it in detail so it might be that the councilor takes some responsibility to what is recommended here in that.

So the question is for me how that could happen since the councilor is not a partner or - here of his negotiation team at all. So in this sense, in this respect we have a problem with that motion in general. Thank you.

Mason Cole: Okay I'm going to let (Jonathan) jump the queue here before we continue.

Jonathan Robinson: I just want to jump in on this issue of the lateness of the motion. So I'm not commenting on the substance of the motion which is where the discussion's been.

It's just that Wolf brought up this subject of whether or not this motion was made in time. But really there's a couple of points I'd make too.

One is I'm - first is I'm not 100% certain of what the deadline is. My understanding was at the time I wrote that comment was that it was midnight UTC on the requisite number of days before the motion was due to be submitted.

I have to say I'm not 100% clear that it is that. So if this becomes a material issue we'll need to seek clarification.

I think one of two points might come out of that. We'll either establish that that's been some form of precedent or not.

So we need to deal with that. However beyond that personally I would think it would be a shame and not in the spirit of the way in which we should work if we allowed ourselves to focus on that what I would call non substantive issue.

I realize the process is critical for how we work. But the essence of whether this is - whether this motion was submitted an hour or two beyond some normal deadline that I may or may not be correct about I would really caution us in terms of our, you know, the respect with which the council's held in a broad sense whether we focus in on that small point.

So that's my personal view on it as well as my understanding of where we're at at the moment.

Mason Cole: Thank you (Jonathan). Brian?

Brian Winterfeldt: Brian Winterfeldt IPC. I agree with you (Jonathan) about the process point.

I did object to the motion as being late on the list. But also the IPC has substantive concerns about the motion as well.

We share some of the same concerns that (Jeff) and Zahid have already stated. So I won't necessarily restate them.

And we're in the process of putting together a more formal feedback. I think, you know, frankly having people submit motions more timely would be helpful anyway just to give people time to review and go over them.

So I just wanted to make sure that I had that statement on the record.

Mason Cole: Thank you Brian. Volker?

Volker Greimann: When I first read the motion I was very sympathetic to it because it has a lot of elements to it that I really appreciate and like. From my comments that I've made regarding the public interest statement, the specifications that they added to the new registry agreement.

I made it very clear that I hold not as a good idea to require registrars to sign up to a new agreement as a prerequisite -- to be able to solve the new gTLDs. I don't think that's the right way to go and that's the right stick or carrot to use for ICANN to use.

I share some of the concerns that were made by Zahid, by (Jeff), by Mason. But I don't think the motion itself is not salvageable in a way.

I think we can on - based on this model make a motion that is effective that would - everyone's concern. So which - we would have to work on the second whereas.

I would suggest striking that if it has a friendly amendment and the second half of the resource section would also have to be changed substantively by removing the GNSO consensus from this - from the equation by changing it to the completion of the RAA in a way. I think that way we could make this motion workable, still express the same intent that it had.

And give a strong message to GNSO that we are not in favor of this carrot or stick that ICANN is pushing forward with regard to the new gTLDs or the new RAA.

Mason Cole: Okay thank you Volker. Wendy and then Marika. Wendy?

Wendy Seltzer: Thank you Mason. So thank you Volker and (Jeff) and Mason for raising more clearly the concerns that you have. And I would be open to discussion of amendments to the motion perhaps instead of GNSO consensus, GNSO comments.

Because while it's clear from past process that there are some pieces of the RAA on which the GNSO would have a review and potential comment and approval function there are other pieces for which we don't want to be contract managers. We shouldn't be contract managers.

And I wouldn't want to imply that we need to reach consensus over all of that. So I am happy to reword those and have conversations with you offline about specific wording that would be more appropriate.

I think - I appreciate the support for the general sentiments.

Mason Cole: Thank you Wendy. I'm just going to before we turn it over to Marika put myself in the queue as a registrar representative and agree that believe me registrars did not react in a happy way about the way that this was sort of thrown on the table at the last minute.

And it was sort of an implication that if registrars didn't go along with that part of the negotiation then they would be responsible for delay of the TLD program. So I appreciate the sentiment behind this.

But thank you for being open with working on this amendment. I don't see anybody else in the queue to Marika to you.

Marika Konings: This is Marika. Just to the procedural question I just looked at the GNSO operating procedures and it actually said that reports and motion should be presented to the GNSO council inclusion in the agenda as soon as possible but no later than eight business days before the GNSO council meeting.

I think we've actually interpret that as being eight calendar days. I don't think we've actually implemented the business days aspect of it.

But it doesn't specify a specific UTC time. So I think the midnight you mentioned is actually not here.

I haven't even looked at some of the matters (unintelligible) eight days and not a specific time by which it needs to be submitted. Anyway just as a practical point, you know, even if someone would object to the motion being made after the deadline, you know, another way is just asking for a deferral that would give you more time to consider it.

So I think it would have the same matter of fact of looking at it whether it was on time or whether people need more time as a result of the deferral.

Jonathan Robinson: Yeah thanks Marika. So I would again strongly suggest we don't focus in on - I mean I think it shows that we can tidy up a little bit on a, how we operate because it sounds like we might be operating slightly outside of the way the procedures are written through some accident of history.

And second that we've tightened our power. We were generally maybe in terms of a timeline.

But neither of those I personally would strongly encourage us not to let that be the substantive issue in and around this motion. It sounds like there are plenty of other things to talk about other than whether or not it nominally made the deadline.

I don't know - I'd like to see if anyone else has any comments on that.

Mason Cole: Anyone else from the queue? Osvaldo?

Osvaldo Novoa: Thank you. Osvaldo Novoa, yes CPC. I am - I just wanted to ratify what Wolf said.

Our constituency considered that this discussion is outside the scope of the GNSO. RAA is all the bilateral agreements within the contracted parts on ICANN are outside the GNSO.

We are only on the general policies. So this would - we would consider this outside.

Anyway we strongly support the bottom up process for policymaking. We think that it must be respect4ed at all times.

And by the way also if the proposed - we also support that the new RAA is applied to all the new gTLDs even though it may mean a delay in the

introduction. We think that any way if a new RAA is approved it should be applied to all the new gTLDs. Thank you.

Mason Cole: Okay thank you Osvaldo. All right.

Unless there's anyone else for the queue we can summarize on this too. All right so it sounds like where we left off on this was Wendy is open and available to discussion or the motion probably especially with the registrars.

But anyone else on the council. We can then come to a conclusion here on the list or in conversations here about what to do with the motion going forward.

We also I'll remind the council again that we have an opportunity to speak with Fadi and others about the impetus for their decision to make the new RAA a condition of new gTLDs going forward. And by the time we arrive at our meeting Wednesday hopefully we'll have a clear path forward.

All right. With that thank you all very much. And I'll now turn the chair back over to (Jonathan).

Jonathan Robinson: Thank you very much Mason. You've ended up chairing that in a more timely fashion than I might have given my morning's performance.

But so we are nicely on time. And I think we'll call this session to a close then and take the - well we'll give 60 seconds or so, take a minute or so to simply do the changeover to let Mikey come up to get ready for his presentation for the audio to be prepared for the next one.

So let's close this session now. Thanks very much.

END