

## **Transcription ICANN Durban Meeting**

### **GNSO / Board Meeting**

**Sunday 14 July 2013 at 13:00 local time**

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Thomas: Are we ready to start the recording?

Great. We're good to go. Thanks. Welcome to this next session in our GNSO weekend sessions. This is a meeting we obviously look very much forward to and judging by the attendance in the room so do many of you.

It's an opportunity for the council to interact directly with the board and so welcome on behalf of the council and the GNSO as a whole, to our board friends and colleagues.

Steve, I don't know if you'd like to say anything before we kick off and then we can start with the proceedings.

Steve Crocker: I'll keep it brief, so we use the time for something in discussion. But it's a pleasure to be here on behalf of not only myself, but you know, my colleagues on the board.

(Yona's) walking in. Thomas and I expect Fadi will be not far behind - oh he's already here. Thank you. Sorry.

So let's do it.

Thomas: Lars, if we could have the agenda slide up please.

So you have very - board colleagues have very graciously allowed us again as you did in Beijing too somewhat drive and shape the agenda in some discussion with you. What I was hoping to do and what we have discussed doing was just to give you a very brief introduction and an update from the council.

I think it's important that we set the scene for you as to what we've been doing lately and where we've been going. And then we're going to move into the more substantive discussion which has three key areas we're going to cover.

So in terms of an update from you I thought it was useful to reflect back a little bit to the last few months; perhaps as far back as the Toronto meeting where we had a meeting - we had at the time no meeting with the GAC; we had a series of comments floating around in both public and private about concerns over the functionality or disfunctionality of the GNSO Council, the GNSO as a whole, the PDP process. There was quite a lot of noise in and around those issues which personally gave me, and I know colleagues on the council then within the GNSO as a whole, some concerns.

So we were also cognizant at the time and it was Fadi's introduction to a new season at ICANN and we're very keen to buy into that and see if we couldn't emulate that in some ways, that spirit if you like within the GNSO and the council as a whole. So we picked up on some key focal points to work with; the internal workings of the council it's no secret that it's hard work within the council. The council is diverse, multi-faceted, multi-stakeholder if you like represented by many different groups and constituencies that have to come together and direct and manage policy.

And that's no mean feat to try to deal with. So we were concerned about the internal workings of the council. So of our critical, external working relationships with you guys on the board, with the GAC , the ccNSO and others in the community and indeed our workload management which had been an issue as well.

I think we've addressed all of those and made good progress in all of those areas. I'm pleased to say we are meeting with you, although we haven't not met with you in the past. But we're meeting with you in I think a productive tone. We're meeting with the GAC immediately after this in fact and have engaged well with the Board-GAC -- I hate this one -- Board-GAC, BGRI Working Group; let me just say that.

And really the objective is to have an output of an effective and respected council within the GNSO itself and within the broader community. But not - that's not the end game; the end game really is one of continuous iterative and ongoing improvement.

So I think we need to make you aware that that's on our agenda regardless of whether there's a GNSO review, regardless of what the ATRC is doing, we ourselves within the council of the GNSO are fully cognizant of the need to have an ongoing, continuous improvement process if it lies on, you know, collaboration, consensus and output wherever possible and doesn't focus on process for its own sake whilst we recognize that our processes are fundamental to the way in which we work.

So I think that really covers it. I should give you a couple of details; I gave you details of about the fact that we are engaged with key working relationships which have taken on some basic management initiatives like attractive tracking of the actions and recognition of the need for continuous review. We're initiating a couple of really interesting areas. We picked up on the cross-community working groups and picking up on that with the ccNSO and hope to take that a little further.

There's obviously the Policy Implementation Working Group which is has its charter up for a motion in this week's council meeting. And I mean there are no doubt that there are some ongoing challenges. We need to continue to be and in fact be seen to be effective and productive. We recognize that. And we have been banging on your door and will continue to bang on if you like about common agreed and proper understanding of the multi-stakeholder model and the recognition of our and all of our laws within that.

And then we have a challenge of ensuring ongoing debts of participation within the work that we do within the working groups, on the council and making sure we're active and refreshed and that coincides with some work and we've got to make sure it dovetails properly with what's going on.

So that's really my introductory remarks. I just want to make a brief set of scene setting to let you know that this sort of approach and the style with which we're working. Onto our three substantive points then really; the discussion issues - areas we wanted to cover with you were well one of these items that picked up a lot of comments, criticism, attract interest is the PDP process.

And we wanted to present to you a few facts and points for discussion and then to go on to talk about a couple of other points which is, you know, the proposed change to the bylaws which is a motion on our agenda and the issues really underlying that as opposed to specifically the motion. And then time permitting some more discussion on areas where we might have concerns about how effectively the multi-stakeholder model is or isn't working for all of us.

So in terms of the validity and value of criticism of the PDP, I suppose there's one opening remark that I've been reminded of a couple of times. The PDP isn't the only process available to the GNSO for this development of policy. It is a critical mechanism; it is a mechanism that results in binding policy on the

contracted parties who are assigned up to that, but it's not the only way in which we work.

And indeed, I think the Policy Implementation Working Group may well help with how we detail some of the other methods we work. If you'll indulge me and I'm keen to stop talking, but I would like to take you through a couple of slides that we've got on the PDP and some of the - that addresses this concept of whether or not it is or isn't working. And I will try and take you through that relatively fast. We'll make the material available to you.

I have to acknowledge Marika from ICANN policy staff, substantial effort in this preparation. But I would very much like to take you through it.

So Lars, if we could flip through the slides starting with the first one.

So there's this perception that PDP process is broken, doesn't work and we want to tackle that head on. So let's have a look.

So it seemed to be slow because it takes two to three years potentially to complete the whole process promissory note to board vote. I mean there are segments within that, that clearly take much shorter, but that is a typical lifecycle. However it's not necessarily fair to compare it to normal commercial processes or other product or other cycles although they may indeed be as long in some instances.

But really to compare to perhaps some comparable processes like what goes on in the ITF or ccNSO. And I think one theme that comes out is recognizing that multi-stakeholder is a process or a recipe that gets prepared with not necessarily speedily, except it takes time. We have to bear with that at times.

Lars, go to the next slide please.

Perception that we don't reach consensus; well that's not - the facts don't necessarily bear that out. Many of the recent - if not we're only aware really of one recent PDP that didn't result in consensus or the non-completion of a PDP.

Lars, if you can go on. I'm just going to take you through this rather fast; I don't want to dwell on these slide too much to get the key points across.

Because we don't necessarily allow others to participate or to provide input, but you know, they are open at every level including the opportunity for public comment forums throughout. And notices do go out to all SO's and AC's to provide input early in the process and throughout. With that said, you know, we've got direct dialogue with the GAC recognizing that that may not suit them. So there are opportunities to tweak, modify, adapt in order to accommodate variations.

We could move on.

And then we push decisions over to implementation within the PDP. Well that's certainly been an issue that we've all faced in one or another way through the new gTLD program, but that may be the exception rather than the rule in the game. So we shouldn't necessarily see that as the only way in which things work and there are opportunities to work with implementation review teams and we expect something to - some more work to come out of the Policy Implementation Working Group.

Nevertheless it's clear -- this isn't meant to sound defensive -- we fully recognize that there is room for improvement at many different levels and there are a series of bullets here; I'm not going to take all us through them now, but to highlight that these are on our agenda. We are aware of the opportunities to potentially modify the mechanics or the methods by which we work within the PDP structure.

And there are some very interesting ideas here; we may be able to add to more of them, but there's a slate that can be worked with to improve things.

There's also the opportunity for -- if we can just have the previous slide for a moment -- to recognize that there is as I said at the outset, the policy advice or guidance can be used potentially which is not generating consensus policy recommendations. And clearly one of the things that will make a difference to have the richness of participation and it's possible that we could even think about mandating that for broader participation.

Lars, if you could give me the last slide.

So our view is I think that the PDP is not broken; we have work to do. We can flex it. We have an attractive and flexible framework and there are areas we can focus on it to improve it. So I think that's it from me.

We could move onto now - Lars, if you could pull up the overall agenda and we could pick up then on that first bullet point. And I'll turn it over to fellow councilors and board members to make any remarks or open the discussion on that basis.

So I think the first topic is in and around the PDP and any thoughts or issues that that's stimulates in terms of how it does or doesn't work.

Steve Crocker: Yes also I'll order too and then invite colleagues on the board who may want to respond. First of all let me thank you very much for (unintelligible), one of the naughtier and more contentious, you know, more controversial areas.

I am very conscious that I don't have enough facts in my head to know how to carry out that conversation. It's like a lot of the very important things; we need to get rest of those facts. So I take your point that there's eight out of nine went to conclusion and thought what's my appetite to sale and what are they

and how long do they take and look for the stages or processes and an education process would be very helpful.

The other element that circles around these discussions is whether or not some parties deliberately slow things down because it's advantageous. And so whether it's gaining intense - whether the way the process is structured is appropriate for serving the multi-stakeholder community. And not opening up another set of questions. Again I won't propose to engage the debate here because I know I don't have enough facts. Let me ask anybody else on the board who wants to - Rick?

Rick: Yes thank you Steve. First of all I think that the term, the policy process is broken is probably more a reflection of it's not satisfactory, okay? And having said that I'm also curious why you didn't compare to the time it takes for policies to work through both the regional registries and when they actually have to produce one that goes to the board in the global policy process looking at those timelines.

The second thing is that my feeling is that there are some structural weaknesses in the process and the process tends to reflect the times in which it was put together and the dynamics of the time and also the politics of the time. And so I would be more than willing to sit down and work with people who talk about structures and so forth in terms of processes. I had the opportunity to work inside these processes before, so but I think - but bottom line is that when the process produces the policy, the policy's never even been very good.

It's only when for some reason or another the structure doesn't permit it to work the way it should that you get these discrepancies that leads to the conclusion that's broken because it didn't work quite the way we thought it should.

Thomas: Thanks Ray. Bruce? I would actually prefer not to respond; I don't want to get into a dialogue. It's not that - specifically I think what that was, was about scene setting. It's not exhaustive steps; it's not an exhaustive - it's not even intended as an exhaustive defense; it's setting a scene of why it may not be broken and the receptiveness to develop and change it.

Make no mistake. So I'd rather we have comments from all sorts of people from around the room would be great. So (Bruce), fire away.

Bruce Tonkin: Yes one thing I guess that's a challenge with, you know, the bottom-up prices is agility. One of the purposes of using ICANN models was partly on the basis that some other, you know, governance models had been relatively slow. And this was a fascinating industry and we need to be agile.

I think if you look at what's going on in the new gTLD program, you know, that the staff has really ramped up the pace particularly in the last 12 months and really is doing a huge workload. But it's all very resourceful. A big team of people working on it. And then some volunteers that have developed original policies and we'd like to comment or, you know, provide input on some of the limitation work that you're doing.

But the question is how agile can the community be in forming a consensus position on that? It's very for individuals to make comments and that's why the comment process is for that. But one of the things to think about is others and agile methodologies that can be used in the GNSO really sort of responding to more implementation type issues. And even when I look at your list of projects at the moment, some of them seem - PDP doesn't seem like the right tool.

There's one of your projects I think is looking at marking of names during EDRP. Is that really something that we want to use a full PDP policy process for or is there some more agile way? So just think just broadly we need to think have we been more agile in implementation of the policies, locking of

the EDRP to the implementation of the policies in EDRP. And, you know, things like trademark clearinghouse's implementation of the new gTLD policy.

But how is this group able to work, you know, in agile way that can really work with the staff and influence them?

Thomas: Yes there's no doubt that agility is a theme that's running through all of our minds in more ways than one. It's seen iterative cycle between policy and implementation; not pre-empt anything that comes out of that working group. It's the requirement (unintelligible) that, you know, there's no doubt that resonates well.

Jeff? Mike? And then Jeff, do you want to come in?

Mike: Thank you. Appreciate being diverted. I think one thing that we need to recognize and it's something that I've been struggling with very much in terms of some of the critique that's been leveled by the GNSO generally against the board is that this is often an iterative process.

The GNSO comes up with the policy and it thinks it's being comprehensive and (unintelligible). Even during implementation issues which are not clearly implementation suddenly seem to be policy. And it becomes an iterative process where in the implementation of policy we then need to find out that we're dealing with policy again and not implementation and it goes backwards and forth.

The one thing that we're dealing with both is a situation where some parts of the GNSO are screaming and saying, "Implement with them policy that we gave you." And there are other parts saying, "No, no, no. We want to have everything met up." And some of them are even saying, "Before you start implementation. Everything has to be met up and in policy consideration that could possibly come up." They have to go back and be dealt with as a policy issue.

I think what we need to also recognize is there needs to be flexibility in the system, is there needs to be some degree of interim stake. And I have a believe that some interim implementation measures are going to have to be taken which will address some of these issues while the policy aspect goes back to GNSO consideration.

And I've said with my colleagues before and I'll share with you some degree high-level thoughts. In the implementation step it's got to be conservative. And when I say conservative I'm talking about conservative in the sense of conservative within the status quo, not opening what I call a Pandora's box and not making a change which cannot be reversed. Rather keeping as far as possible the status quo even on an interim basis recognizing that a 180 degree shift in direction can't be reversed if it's taken as an interim state.

But continuing on the current thought or even sometimes making the current thought (unintelligible) can be widened at a later stage with a very limited (unintelligible) to the participants who may have lost some opportunity. And there maybe be a slight opportunity cost that's been incurred, but you can reverse the decision later on.

What you want to avoid is irreversible decision-making and this is what I think those orders have been trying to do and what we're being criticized for doing because we want to trade (unintelligible) recognizing that in many cases we've got to throw these issues back to you because (unintelligible) are in a position to make final decisions.

But given the number of people who are screaming for movements to happen we are saying, "Fine. Then go ahead and open their own box. And if you don't like it, speed up your own process and give us the alternative. But for now this is the part we think." And I think it would be worthwhile writing some of this down is to say it's got to be recognized at interim. We don't think we're final. It's got to be conservative.

I'm sure there's some other aspect and I'll go back to my emails that were more lucid when I was sharing those emails with my colleagues. There are a number of principles that I think we as a board and the staff for that matter as well should be held to and say consider these for making implementation steps that may trip on policy toes ultimately.

Thomas: I've got John Berard and who else is - Bertrand and Cherie. John?

John Berard: Thank you. John Berard from the Business Constituency. So Mike, the steps that were taken when the PDP was begun on the protection of IGO names which included the notion that if the PDP were not completed by a certain time that an interim step would be deployed and then the outcome. And whatever the outcome was would be overlaid on top of that. Is that the kind of thing you're talking about?

Mike: In many cases.

John Berard: And one of the questions that came up earlier is when that - so when you are asked about - so you talk about the pressure that comes, right? So if you look at your table or organization for ICANN, all roads lead to the board. I mean whether the SO's or the AC's offer advice or policy, it ultimately winds up on your desk.

And the individual members who are unhappy with the policy or advice might seek to go to the board and say, "Hey," you know, "There was a problem with flawed thinking or bad advice and you really should be taking it another way." You think that there's a link between your willingness to do that and a belief on the part of the community that it is now a more doable thing to lobby the board.

So I think it's sort of two halves of the same grapefruit.

Thomas: Did you want to respond directly Mike?

Mike: If I could without wanting to engage too far in dialogue. And I think that's absolutely the reason why I think that should be codified both in terms of staff and board because I really don't want to be a windsock blowing each other away. The community happens to be huffing and puffing at that particular point in time.

I think we need some clear principles recognizing that sometimes interim steps need to be taken while policy is ongoing. And as long as we keep to those steps I would feel comfortable saying, "No it's interim." If you have a problem with it and the damage being caused is far out or the damage being caused is lower than the damage that would be caused if a wrong decision would be taken too quickly.

Speed up the policy process and come back. No one's been significantly harmed. The DNS isn't being put at significant risk (unintelligible). That's how I'd like to see us. I wouldn't like to see an interim decision which could then become a revised interim decision in two months and a further revised one two months later.

Thomas: Thanks Mike. It's interesting, we seem to be moving to number two. So I think we should open up that topic, but I'm conscious that we've got Bertrand, Cherie and I'm sure Jeff will want to speak to Point #2. And I've got (unintelligible) in mind as well. So I'm going to - let's hear from Bertrand, Cherie and then Jeff he may want to open up on Point 2. I'm conscious we've got your folk in the queue as well.

Bertrand?

Bertrand de la Chappelle: Thanks. I want to pick one thing in the slides that was mentioned which is the importance of the early framing of issues. This is a topic that I've iteratively tried to push. One thing that strikes me is that whenever the GNSO

creates a working group to develop the policy, the first step is to develop a charter for this working group.

I've always found that a little bit strange because the best way to address an issue is to have maybe at the next meeting when our further decision has been taken. A sort of birds of a feather type of discussion where all the different actors including participants from other SO's, AC's can come and look at that issue to prepare the drafting of the charter. Because otherwise it turns into a debate where the framing of the charter itself is the pre-framing of the discussion or substance.

It looks like a minor topic, but in terms of operational practice it saves a tremendous amount of time.

The second thing I want to say is I won't get into the debate on how to engage the GAC in particular more early in the process; it's a whole discussion in itself. But one thing is important that because it's monotone and because the multi-stakeholder process is usually longer or takes time, we need to anticipate issues more i.e. the moment something emerges on the horizon, it needs to be addressed to see whether an early exploration, an early discussion can be made so that when it has to be dealt with, work has been prepared before.

It's a warning of vigilance thing, but the final thing I'm very happy that the work we start on the policy versus Implementation Working Group as I've said to a few of you. There are two elements that I want to keep in mind. One is the notion of parallelism of (unintelligible); when something has been abducted through a certain process it's modification in a substantive manner should go through a similar process.

If something has been validated by the GNSO, a modification of substance needs to be done through the same process. So at least with the same level of recognition and recent reconsideration case to prove the point. The second

element which is almost as important is that whenever there is a discrepancy in the analysis between the GNSO Council and the staff on whether something is policy or implementation, it cannot be one of the parties -- in that case the staff -- or the GNSO to decide on its own that he is right or not.

If there is a discrepancy between the two it has to be reiterated to the board or to a mutual agreement, but it cannot be one of the parties that decides where the line is.

Thomas: Thanks Bertrand. We've got Cherie next followed by Volker and Jeff.

Cherie Stubbs: You stole my thunder because I was going to say in the last two or three years I've been on the board I've rarely seen a PDP. And most of the issues have been around the second point on your agenda. So it will have been very helpful to see that proposed changes to the bylaws and issue (unintelligible) and get into that because that's a very - that's the heart of the subject in my mind.

Thomas: Thanks Cherie and let's get on with it. And let's talk about that; that'd be great. Volker, would you like to say something?

Volker Greimann: Yes I'm trying to lead over into that so that Jeff can take over for this. We're given with the multi-stakeholder model here that that's the basis of ICANN and basic content of that is that you have a lot of different views come together forming a consensus.

This can take a lot of time. Sometimes it's quicker. I relish those moments. And I agree that sometimes interims can be necessary, however I think that a dangerous path that needs to very well considered because taking interim steps that pre-conceive part of the possible results undermine the ability or the willingness of whatever stakeholder group has an interest and whatever change there is to come to a consensus if that step has already been made.

So any interim steps that are taken and decisions that I've taken without consulting the stakeholder groups should be very well-considered and should be very considered. To that effect it would be very helpful to have a feedback group to have something of more communication between the different parties of ICANN when such a step is taken and before that step is taken at least a consultation has taken place.

And I think with that I can lead over to Jeff.

Jeff Neumann: Thanks. This has been a great discussion and actually it perfectly leads into the second point. And I would start out with this point that there's been a lot of focus of whether some of these policies versus implementation. And I want to point out in this next part of the discussion; to me or to us it really doesn't matter. We're a multi-stakeholder organization.

Whether something is policy or implementation it should be multi-stakeholder, period. And I think we all described that. With that in mind, with the talk, with being agile and having other mechanisms and with a feedback. I want to get into this next part of the discussion which is that if - there are two - well actually I don't know if we can post those proposed changes up there so that people can actually read them? That would be actually beneficial.

There are two proposed changes that are now in front of the council to the bylaws. The first change is formally adding a sentence to the bylaws that talked about other ways that the GNSO can act other than through a formal PDP because right now if you read the bylaws and if you take the view that was recently taken in that reconsideration request that we're referring to, it basically says that the GNSO really can only act through a PDP.

And if it doesn't act through a PDP we really don't have to listen to that which actually contradicts the first sentence of the bylaws which says that the GNSO is the responsible party for developing and recommending policies

related to generic domains. So the first change that we're asking for is really - and the wording at this point we're not trying to word things.

Thomas: I'm not asking Jeff.

Man: You're being - you're getting the cart in front of the horse here.

Man: All right, but let's take a step back. That's a fair point. So what we're discussing at this point at this meeting is really kind of a drilling down on the feedback was what Volker was talking about. And really when the motion that's in front of the council at this meeting.

The discussion is that when the GNSO acts whether it acts in a formal PDP or whether it acts in some other way or some other mechanism that it has to act. And again, I just also want to emphasize we're not talking about the GNSO Council; we're talking about the GNSO community. And the community acts in a way. What we're asking for is almost kind of a common courtesy.

If the board would like to take an action that is inconsistent with what the GNSO has come out with, either as formal PDP or otherwise, that there should be some mechanism for the board to come back to the GNSO community, explain its rationale and then provide an opportunity for the group that Bertrand said - for the groups to come together and see if there could be some sort of mutually acceptable solution to that.

If not, then the board's free to act as it's free to act now. But basically what this current proposal is, is that to memorialize the concept of a feedback loop as a common courtesy to come back to the GNSO when it would like to take an action that's inconsistent with what the GNSO has come out with.

I guess that's basically kind of the summary of what's being asked for. This is still a debate within the GNSO how we go about doing that. So I'll let other

councilors come in and speak, but it's really that kind of common courtesy that we're asking to be memorialized; the feedback loop in light of Bertrand's comments as well.

Thomas: Yes he needs to comment. I just want to make sure we are clear this is a motion before the council. We have had the opportunity to discuss it over the weekend session. I detect there is certainly some - you know, there's a fundamental principle here which seems to attract a lot of interest and contention and it's a motion that we will certainly discuss further and potentially vote on at our meeting on Wednesday.

So just to John's point, you know, we haven't - it's work in progress as far as the council is concerned.

Yes and then hand over to Zahid.

Jonathan Robinson: Yes the other thing I do want to mention is this really isn't anything that's new. We did discuss this with the board in the Beijing meeting, so this is not - it's really more a continuation of the discussion that we had in bringing the GNSO into that feedback loop.

Man: Thank you Jonathan. A couple of points, a good friend of mine Jeff, but two clarifications; policy implementation, the division between that and that everything should come back. The GNSO is not something that is across the board -- pardon the pun -- something that everybody in the GNSO necessarily subscribes to.

There are certain constituencies at least who believe that there is a stark distinction in what its implementation is which the GNSO has nothing to do with or the council has nothing to do with and then policy which the council has to do with. So there are differing views number one. I just wanted to clarify that.

Many thought that this was helpful to put this on the agenda to see what the board's reaction would be to something like this. And as John pointed out there's not yet a clear understanding by everybody that they definitely want to support his. There are many people who might reconsider, but the - what I heard from Mike's and Jeff's discussion earlier was that, you know, Jeff basically suggesting that it would make sense to have some sort of an involvement in the implementation process for the GNSO.

So if there's some implementation going on you need feedback. Or maybe the GNSO feels that this is something that they've worked on and that implementation is going into that space. They should have the ability to come back to the board and say, "Listen, we have something we have to say about this."

And Mike's point I think I heard this was interesting for us I think, but there needs to be flexibility. There needs to be something the board should be able to in the interim measure put in place which basically allows us not to go in a sort of a continuous loop back further than the GNSO and the board. And I think that was important and I think that was something we would in the GNSO explore. That was great feedback.

So the purpose of basically asking this question is to see what you think about this and one of the things it's proposing, not only the leads of what has been proposed in the motion is that you would have to number one, and I think that's appropriate, give us a reason if there was a rejection. And two there's sort of a process similar to the GAC that's been proposed that basically you would have to sit down and consult with us.

And the third which has been proposed is well, you know, even if it's something that's sort of links up to a policy thing or issue related to the GNSO, you can go outside it and do something without talking to us first. Those are the three elements for the last point. Maybe I wasn't clear; I'm sorry.

Jeff Neumann: Yes let's not talk about the (unintelligible) because I specifically did not (unintelligible).

Man: Right. I'm sorry.

Jeff Neumann: Don't characterize it.

Man: Sorry. Thank you for clarifying that Jeff. Thank you. But what many of us are interested in is getting the board's reaction to such a bylaw and would it be helpful and what would your policy be. Thank you.

Thomas: Thanks Jeff. Mike in the queue and based on Zahid's comments Ray and Joy. Sorry Joy, have I overlooked you at some point?

Okay. So we've got Mike, Ray, Joy.

Mike: A couple of things; firstly, I really think we're being unfair suggesting that there hasn't been a feedback loop. I think that we're being unfair and staff suggesting that we haven't been taking cognizance or putting things to comments and multiple comment periods in some circumstances.

And I'm really sorry that there's some people including some in this room who would've got a comment process not as having taken place if they don't get their way coming out of the comment process. Be that it as it may can it be improved? Yes absolutely. Is a feedback loop which is better or more than simply the rationale that we put in our resolutions at the moment useful? Yes I agree with you completely. I think that was a very useful comment.

I think that's something that we can take on board, but ultimately please be aware that we've got staff who are being (unintelligible) at one side by people saying, "Go, go. Go implement." And on the other hand by people saying, "No, no you can't implement because there's a policy issue over there." And

that often times they walk a tight rope between the two while the people debates the number of angels on the (unintelligible) or staff trying to actually walk the tightrope of getting things delivered.

So I think we should not be unfair on them and suggest that they're running some hidden agenda there. We can see the people with the whips chasing after them. There's nothing hidden. Their agenda is actually delivering and performing and I think to suggest otherwise is a mistake.

Thomas: Okay.

Mike: Last comment I would make though is I also think that we must work out what's the best way of interacting with this community? You're talking about the GNSO community as a whole rather than the council. We spend a lot of Tuesday with disparate groups, but it sometimes needs a siloed approach.

We tend to take on a more issue-driven approach when we meet with the council. But then we get groups coming to us on a Tuesday and complaining and giving us a message different to what we heard is more or less consensus view in the council. And I think that we, both sides, we've been looking into the best way for us to engage with the GNSO community. Is it in your silos? Is it in issues? Is it on topics? Is it a combination?

But I think that it's something that you need to give us some feedback on as well is how do we best interact because what we can't do is on Tuesday listen to the different parts of the GNSO giving us conflicting messages and feedback on the same issues. And then trying to decide how to resolve this when this community hasn't resolved it itself.

Thomas: Mike, I think Jeff wants to respond. I've got a queue and I would just like to say that the tone of this is not intended as criticism; this is a forward-looking constructive view about how we might better engage with you, with the board in the future. I would say one other brief response on my part and that is

unfortunately to some extent the very nature of the GNSO is you will get diverse messages.

So, you know, it's hard to apologize suggesting that we can do away with that completely. Jeff, you wanted to respond and then I'm going to come back to the queue which is Ray.

Jeff Neumann: Thanks Mike. And I fully appreciate that in what you said, but the way I started out my discussion is when the GNSO actually acts. So when the GNSO actually comes together which is so rare, right? I mean it's too rare, but when we actually do come together and when we actually do act, that's the premise of it.

So when we do act as a community because we are the bottom-up process, right? We are the embodiment of the bottom-up process. There's probably no other organization within ICANN that is more diverse than we are.

So when we actually get our ducks in a row and we actually do act what we're asking for or what this proposal is asking for is that if the board is contemplating an action that will be inconsistent with that, regardless of why, right, and regardless of whether there's other people whispering in your ears or whatever; what we're asking for is on this go forward basis is that the board come back and say that it will act, give a rationale and give a chance for the GNSO community that did act to find a mutually acceptable solution.

And then the board can do whatever it wants anyway, but to just kind of memorialize that feedback loop and just asking for the courtesy that when it does act that we can engage in that dialogue.

Jonathan Robinson: Okay Jeff, I've got Ray next. And then I've got Joy and Steve in the queue as well. And Cherie.

Ray?

Ray Plzak: Thank you Jonathan. I'm - yes I'm trying to pull this thing over here. I want to say three very broad statements and I don't expect to illicit any feedback or conversation here; I want to put them out here for food for thought.

The first one has to do with policy and statements being made well if the board is going to depart from GNSO policy. Well first of all it's an ICANN policy; it's not a GNSO policy. If it's going through that process and the board's approved it, it's an ICANN policy. The board does not have license to depart from that policy. Now certainly the board as a fiduciary and liability responsibility that it must discharge through something that policy that actually inadvertently is causing or can cause injury or so forth that it must take emergency action.

But it also is incumbent upon the board at that time to refer this matter back to the body that produced that policy, whether it's the GNSO, the ASO or the ccNSO. So number one, the board just can't decide that it doesn't want to do anything about policy because it's already been approved. Number two, with regards to implementation, implementation is the prerogative of the executive; it is not the prerogative of the board.

When the board finishes with the policy and says, "This is the policy," and because we are satisfied it went through the bottom-up process and everything else, it's handed to the executive for implementation. If there is a dispute about a manner in which it's being implemented, that's a matter to be taken up in my opinion with the executive and not with the board. However if in a matter that dispute it becomes evident that the policy is not clear and that there's a difference of interpretation, then it's incumbent upon the policy process to take it back and fix it.

And so getting back and forth on this discussion using the board, everybody else to decide policy versus implementation is really a losing proposition. And I think it's also incumbent upon the executive that when he receives a policy

that they publish clear operational procedures; procedures that are clear and that are followed and are not diverted from.

Now it's also incumbent upon him that he must somewhere other consult with the effected parties to make sure that the procedures are understandable and are workable. And if they're not they'll be worked out in that circle. And so that's number two with implementation.

The third thing has to do with the presence of the prosecution if you will or the bylaws if you will of the GNSO existing in the ICANN bylaws. I think that is totally wrong. The bylaws of ICANN should not contain the bylaws of the GNSO. In other words the way the GNSO - the GNSO should not say we want to change the way we act; the only way we can do that is change the ICANN bylaws. The GNSO should have a way to change the way it acts on its own accord.

And that and the matter which the GNSO interacts with the board is a different document if you will or a different statement. And so I advocate strongly that everything, that whole piece of the bylaws that tells - that talks about the GNSO and everything else be removed from the ICANN bylaws and appropriate references be made in the ICANN bylaws to the GNSO. And if you want an example of that, look at the ASO.

It's two paragraphs. One is they do the job and two it says it's going to be done in a manner in which the MOU says. Simple. And the changes that they made the way the ASO does its work is the business of the ASO. And I don't see why the GNSO can't do the same thing.

Man: Just to carry on that last point, it's not just GNSO; it'll be all the SO's and all the AC.

Ray Plzak: Well yes. We're talking about the GNSO. Yes I would pull a whole mess about the ccNSO's as well. You know, you're not the lone ranger.

Man: All right, thank you Ray. Let's go to Joy and then Steve and Cherie.

Joy Liddicoat: Thanks. Joy Liddicoat from the Non-Commercial Stakeholder Group. And to keep on Ray's last point, no certainly not a lone ranger and very much the Non-Commercial Stakeholder Groups really support this discussion and welcome this discussion about policy and implementation.

And I think the tenure of this conversation with the board is quite a different tenure than (unintelligible). So I think that's constructive and useful. In terms of the discussion to implement the plan, I also don't want to go into the weeds of the current environment for reasons why this is to be talked about by our constituency group. But just to say that I think I really want to echo the point that we made earlier about mutualizing (unintelligible) from the impact of being lobbied around decisions.

I think very often the Non-Commercial Constituency Group, stakeholders work very hard and working groups and policy development processes. You know, in good faith coming to decisions and, you know, driving to respect the decisions that we make about policy. Extremely undermining when others (unintelligible) when we finally get to the point for resolution.

(Unintelligible). I mean one of the constituency groups has done that at some point. So I think (unintelligible) and I would also then encourage board members to (unintelligible). And so that we can help feed each other and remind ourselves stick to the agreement that we came to.

In terms of the actual motion that we're debating I think one of the legal reasons why we thought this was useful for the board as a decision-maker is that transparency about decision-making and rationality of decision-making (unintelligible). And it's not intended to be a burden or in any way put shackles on board, but rather to (unintelligible) talking to the community about its decision.

You know, whether we ultimately end up with the motion or the best way I mean that's going to be community discussion, but very much want to reiterate that we support and we look forward to seeing the outcome and its constructive data and the policy implementation discussion.

Man: Thanks Joy. Steve, you wanted to say something?

Steve Crocker: Yes thank you. This is an important discussion. I think there are a couple of different things that are intertwined here. One of the things and it's come up frankly in discussion with ALAC as well is how do we -- speaking of ALAC and I think here speaking of GNSO -- provide advice to the board and how do we get taken seriously? And how do we know what's going to be taken seriously? And how do we follow the process and so forth?

And in the setting here that question is get a little bit burdened with we have a policy development process. And if that's all we have, then we can't do anything else. From where I'm sitting to put it in first person singular, but you know, the board we think advice from any of the supporting organizations or advisory committees is important and needs to be dealt with respectfully and fully, irrespective of almost what the - how finally the words are crafted in the bylaws.

The whole purpose of existence of the GNSO and the other bodies is to think hard about these topics and it's just sort of come up in common sense that the board has to be attentive to that. We are a little underpowered at the moment in terms of just our manpower and processing stuff. We're a little burdened; we're in the process of fixing that and that's something that's been going on behind the scenes that is not yet fully in place, but it's been very high on my list and very important.

And let me just say another word or two about that; I've been sitting in the chair position for now two years and so I'm quite conscious that in saying,

you know, this is very important, that the natural response is, "And so in two years you haven't been able to fix this?" And this is sort of the dialogue I've had with myself and it's been aggravating a bit. But the context is that the first year was completely consumed with the search process and transition to bringing Fadi on board.

And then there was a whirlwind of activity as he came on board; a lot of structural changes and so forth. And I quite deliberately held back from saying, "Well the set of problems that we have in our little patch on the board is the most important thing. I'm going to go push for all of that." A couple of months ago I said and I didn't make a big deal about this, but I went through a state change in my mind; I said, "It's time enough for this. We've gone through the transitions. We've got the major pieces in place and then now it's time for me to start pushing on this." And so I have been.

So as I said just, you know, the best way to judge will be from watching the actions, not necessarily from what I'm saying. But I can tell you that this weighs very heavily on my mind. We have the basic process in place of paying attention to things that are not necessarily resolutions. They come from board member's interests or from other things. We have not had quite the energy to track and process these things as fast as I would like. And that will change.

The second thing is that, you know, ultimately what can the board do with anything? We in terms of actions we feed things back out to the staff or to supporting organizations or to advisory committee or to the community in general. But we're not an operating arm. You know, we're not a department in that sense. So there's very little that we can do directly.

And although we have quite a bit of expertise, a huge amount of expertise actually on the board and subject matter; it's actually we know as full well as anybody that it's not appropriate for us to be acting as subject matter experts and making decisions that we think will be this way, therefore do that. That

our fundamental role is to oversee the process, to facilitate and enable the community in all the various ways that we've structured things to get things done.

And that every once in a while we take note that something may be stuck or broken or - and need to speak to that. But mainly we're concerned with process, with quality and it's not that we don't have any values; we definitely have values. But the principle value, the primary value is to make sure that we have the involvement from the various parties. So that's kind of a long-winded answer with respect to the proposed changes in the bylaws here.

I'm very empathetic, but I think - and I actually don't have any strong feelings one way or another with respect to whether you do or don't put it in the bylaws. In the most positive way I want to say I don't think it will make any difference; that is yes something's broken. It needs to be fixed. Yes we will fix it and when we fix that it will not matter whether or not you've done this or not because we will wait to advice.

I don't know how, you know, that helps you or makes you feel better about all this, but at least from where I'm sitting the condition that I would take.

Man: Thank you very much Steve; that's helpful to hear. I know Cherie has been very patient. I know you want to respond Jeff. I think we should give Cherie an opportunity; he's been patiently holding off there.

I'm also conscious that there's one other bullet point in this and I think we should open that up as well potentially after we've heard from Cherie and Jeff.

Cherie Stubbs: Okay I'm going to be quick. Personally I'm sympathetic and I hear your concern, but I'm sympathetic to this change to bylaws because I don't think it helps you. And I'll tell you why.

The board doesn't make policy; the board only adopts policy that is recommended afterward. And once it adopts it doesn't - and for the sentence if the board is not consistent with GNSO advice, once we've adopted the policy we don't have a right to deviate from that policy. And what happens after that, we are not at least we past the implementation of that to the executive as Ray said very earlier on.

So the issue for you is later on in the execution and implementation of whether staff had implemented - in its implementation has deviated more or less. And this is open for interpretation. So you need to re-examine what it is you want to achieve because the way it's written here as Steve said it's not going to matter at all because we're not going to deviate from the policy that we have adopted. So we're not going to be inconsistent with you.

The issue is later on. And we have to find a way if that's what you want to do that doesn't tie the hand of our CEO and his staff when they're under pressure to deliver. And at the same time give you some "safeguards" that if you see a real deviation from policy, then there has to be some consultation there. But I don't think that the way this is written serves that purpose at the moment because there is a big distinction in my mind between the role of the board and the role of the executives.

Thank you.

Man: You've mentioned a lot about the executive. I know Fadi wants to speak. Jeff, you were in the queue and you may want to respond briefly and then we should give Fadi an opportunity to comment.

Jeff Neumann: I guess my brief response is complete agreement with I guess Steve and with Cherie. I don't think - you're right; it absolutely shouldn't be - we shouldn't need a bylaw to actually say what should be the obvious, right?

Unfortunately this all came about because of a board governance decision, a rationale that was put in there which actually puts in writing something it probably should have never put in writing which was the notion of if something does not go through a PDP there is no obligation for the board to go back to the GNSO. Period. And that's what it says.

Had it never said that, none of this probably would have ever come up. And again, it's really I want to come back to the whole notion because we get caught up in policy versus implementation as a working group. And I think in the end and in my personal opinion there's never going to be a line that we'll ever find between policy and implementation. One party is always going to call it policy; one party is going to call it implementation. And basically it's whichever party wants to call it whatever it wants to call. Whatever is in their best interest they will call it.

In the end we are a multi-stakeholder organization and we need to act like a multi-stakeholder organization whether it's policy, whether it's implementation. And I heard the point about implementation is for the executive, but in the end the executive should be coming through the multi-stakeholder model when it proposed this.

And there's a lot of stuff and hopefully once this new gTLD stuff is - we're way passed it, but there's a lot of stuff now, whether it comes from the GAC to the board or elsewhere to the board that many of us if we actually took and sit down for a while we'd say, "You know what; this is really policy and really secret to the GNSO." But you're right; you have the pressure Mike of having to act.

Man: Jeff and then Fadi.

Man: Yes and I'll sum it up again. No I won't set it up; I'll go to Fadi. Thank you.

Fadi Chehade: First of all, I do not think the PDP process is broken; I think it actually works marvelously. I just think we're not saying this enough. I think we have communication framework issue.

We have a remarkable process at work; the world could kill for a process like that. And the stakeholders that come together and make policy across nations, across institutions, across interests. Frankly we should be very proud of it and stop being defensive. It works and the GNSO works, okay? Let's change the frame of that discussion and I know that's what you're trying to do. We should help you do that.

We should - and I hope (Sally's) hearing me somewhere, we should work with the GNSO to actually communicate that and be proud of how this process works. It's not perfect, but when people say it doesn't work what the hell are we comparing it to? A body that meets every 15 years to discuss something? It works; this is a process that works and we should be very adamant about that in our communications. And we should help them.

Second thing I want to say is that looking at this resolution, frankly I must say I have no issue with the second one; if it's needed we can put it. I have an issue with the first one, but the second one is fine. I mean you all make advice, I just still don't know what is a GNSO advice. I think this should be defined. And once this is defined, clearly if you give advice, whatever that is to be defined, and the board rejects it, I think you deserve some mechanism of knowing what.

I'm okay with that. I think this is very reasonable and it's not my decision. My chairman is here and the board is here; you can decide. But Fadi is saying I think this is more than reasonable. However on the implementation side it gets tricky; it gets very tricky. And I'm an implementer; I'm not a lawyer. I've implemented systems. It gets very complicated to implement processes and policies when you have a mechanism where a lot of people have to give opinion all the time.

I mean Rome fell because that was what the senate was doing in the 4th, 5th Century. So what we have to be very careful if we're going to make decisions how to not impede these decisions. So I'm going to make a practical proposal until your working group figures out how to do this and I'll support that and I'll make sure all other constituencies make it part of the working group. So it's not just the GNSO. I would support that.

But in the meantime I'm proposing you create what I'm going to call a hotline on policy versus implementation, okay? You know have a new division at ICANN called the Generic Domains Division. It's an implementation division run by an implementation team. They don't make policy; you make policy. So the GNSO and the GDD should have a policy versus implementation hotline. Today if there's a problem with the root server, in under 60 seconds all the root operators are on the phone dealing with it.

We should have something that shouldn't be 60 seconds, but how about 24 hours? If your community feels that our implementation team is going across the line and is making policy, I'm prepared to set up an interim hotline. You take two, three, four people on your side. I'll come in that team there. We get on the phone and we discuss it. If we can't agree, if you say no it's policy and you say no it's implementation, we take it up to the board.

Let's do something practical; let's not become like Rome. We need to solve these problems and show our agility. Agility is central to our trans-national model. If we do not focus on that and we become mired like OGSR, we look like all of them. So and by the way this is just a personal comment to Jeff; when you say the GNSO is truly the only multi-stakeholder kind of body in this, frankly the board is more multi-stakeholder than the GNSO. And we should not forget that; the board is the community. The board is not some bunch of people who - they are more multi-stakeholder than even the GNSO.

They include every stakeholder group and they all try to do their best. So I want to defend them for a moment here. They are a body that I'm also proud to be part of. So but that doesn't take away anything from the GNSO.

Man: That's okay Fadi; we didn't feel attacked.

Man: Thank you Fadi. Thank you for your constructive input and to everyone else's. We're coming into the last five minutes of this discussion when we have to wrap up and I'm sure you've got other scheduled meetings. I know Bertrand would like to say something briefly.

I'm just conscious that there was another bullet point. It's been a theme; a thematic bullet point. So the others are more practical, but I'm just - I'm not going to throw this one open now, but there's been this theme of the multi-stakeholder model being used and being out there as something which has been critical to the defense of ICANN in its current framework. And I think a lot of the thinking that has gone on and that we've been dealing with is trying to shore up and recognize our part in that multi-stakeholder model.

So I just highlight that that bullet point exists there as a thematic one that captures many of the items. And frankly we've had a very good discussion that's covered many elements of it.

Bertrand? I'll hold the microphone.

Bertrand de la Chappelle: Thank you. We would have the opportunity to discuss the whole debate about implementation policy. I saw a reluctance particularly when Fadi was looking at the formulation that the GNSO might be advised to the implementation. Just at this point I want to highlight that we shouldn't mix two things under the term implementation.

One thing is execution and here there should be no meddling at all. Implementation's slightly different and everybody that participated in the

developer and the applicant guidebook knows that the development of the applicant guidebook has been the multi-stakeholder process. I mean Jeff is perfectly right to say when the policy framework is being set by the GNSO. The implementation framework is also developed in a multi-stakeholder process through the consultations.

The operational execution is a completely different matter and there's no implement of the GNSO in the management of the applications and so on. That's my contribution at that stage and I stand to be corrected if not.

Fadi Chehade: No but frankly I want to answer this because this is very important. I think a lot of the issues we're having today in implementing the gTLD program is because the book went too far in implementation. And a lot of things implementation in that book are not implemented. Therefore the lesson should be that there should not be a focus on implementation in policy; there should be focus on a policy and a set of requirements. And let the implementers do their work.

Now if as they're implementing you as a body who made the policy believe that they crossed the line, we need to create a mechanism for somebody to say, "Oh." And now frankly you don't have that hold, so you end up feeling like, "Oh they're rushing away with something and that's our work." So I'm proposing let's create a little emergency break in the training where we get together and we say, "Look, we actually disagree. We're going into policy matters" and we discuss it.

And if you convince us and we convince you, we move on. If not, we take it to the next level. But this way we keep moving.

Man: Thanks Fadi. I hope you don't get everyone hanging on the emergency break.

Olga?

Olga Madruga-Forti: Thanks. This is a really good opportunity to informally shall we say talk to you about the resolution that you have put on the screen and that you are considering. So thank you for the opportunity.

And let's talk a little bit more about agility. Agility of the organization which actually in the overall context of organizations like ourselves and how they operate around the world, time frame of anywhere between two to three years for a major decision is indeed agile. So I fully agree with all of those that made that kind of comment.

But take a look at the words of the resolution that you're considering and you are considering the addition of a consultation process without more. That in and of itself is creating a lot of implementation issues and can have a significant impact on agility. So capitalize on experience that the organization already has in the context of these consultations with some of the other parts of the community. And consider framing that more concretely; what kind of consultation, how long can it be expected to go on, what is the maximum amount of impact that we're willing to undertake to impact agility.

So this is very constructive to have this kind of back and forth before you passed a resolution like that can be very useful, but really what could be the impact. Let's define that more.

Man: Thanks Olga; that's very constructive input. Jeff, we're already tied for time. I mean we have to wrap up now. You're looking - very brief response then please because we really do need to pull things together.

Jeff Neumann: Olga, I completely agree with you and we'll look at those words by consultation what I and we discussed as a group is really a conference call.

Man: All right, let me hand the last word over to our chairman Steve and then we really will close things up.

Steve Crocker: So as usual these discussions get right into matters and sort of have a sort of frank, vigorous discussion. It's quite clear that a particular event where the rationale in that resolution grabs attention. It's causing me to think that maybe we ought to look at that in a slightly different way.

We did get it fixed and so in some ways we could argue that process - you know, (unintelligible) was made and the process was fixed. And so this question is does the mechanism we need to prevent that from happening (unintelligible) or do we have the mechanisms in place? Can we use them and the lessons we've taken and so forth? I hope it's the latter frankly.

But in any case we are clearly going through a rather interesting period with the whole gTLD program and multiple changes underway including the creation of new gTLD division that Fadi's talked about. And as we get new TLD adding to the root and we get new entrants into this organization, all of the talk that we've had in the past about transformation's going to take place. And so over the next year, two years it's going to be a pretty interesting period in which the future is going to look not quite like the past and maybe not at all like the past.

So I don't think this will be the only challenge in front of us; I think we'll have a lot of challenges.

Man: Thank you Steve . Thank you Fadi. Thank you board, colleagues, councilors and members in the room. It's been a very interesting and interactive discussion. Very much appreciate your time.

We have to call it to a halt now, but thanks again. Thanks Fadi.

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