

Extract of the discussion that followed from:

Item 3: WHOIS Access recommendation

As you recall, you will recall, we had an extensive discussion over the last weekend of -- about this motion and the rationale behind of that is an issue we have seen from former Council discussions regarding the the question of whether this item should be moved away from future Council agendas or not.

So it was on the consent agenda of the Council, but to remove that and to see it as fulfilled. And we, from our constituency, we saw a bit concern on that. So we're still not concerned that it's not fulfilled.

Also, there are a part of it in the environment of RAA and WHOIS discussed, and it is that way.

Though what we would like to see here is that this item could be taken to the agenda again of the GNSO, or, for example, when it comes to an RAA PDP and it commences and we are going to charter it that way.

So I would say -- would like to make a statement here to say I am open to restore this motion right now if we can get firm statement from -- firm statement in this regard that this item is not being put again on the consent agenda on one hand; and, on the other hand, if we can come again back with that item in this respect when the other items are dealt with; for example, in RAA PDP.

So in this respect, I would like to restore the motion.

Thank you.

>>STEPHANE VAN GELDER: Thank you very much, Wolf.

On behalf of the registrars, I can tell you that we have no issue with agreeing to not requesting for this to be put back on the consent agenda, as you have just requested.

And I will now open it up for questions or comments before going back to you, Wolf, to make sure that you are in agreement on withdrawing the motion.

Thank you.

>>JONATHAN ROBINSON: Yes, thank you, Wolf.

I actually had a question for you that I wanted to ask. But, after understanding you offered to withdraw the motion, it's probably worth raising anyway now.

The motion contains a clause about not violating freedom of expression, privacy, and related rights, which, you know, personally, I think is very sensible and it may well -- my question really relates to the fact that is it necessary to have this clause in a motion like this? And you may not be in the best position to comment. But is there

not some overarching provision we have within bylaws or somewhere else that we should trust that this kind of issue is already dealt with? I just wonder whether it's necessary to have it in this particular motion.

I think there's a second concern that's very specific to this issue. And that I think what this does is potentially implies that we're talking about the data contained within WHOIS; whereas, in fact, this is a WHOIS access motion, which is about the accessibility and availability of WHOIS. So there's a kind of secondary concern. There's a primary overarching concern and a secondary concern. I hope I've expressed that clearly enough. And, to the extent you can, it's probably worth discussing that a little now.

>>STEPHANE VAN GELDER: Thank you, Jonathan. I have Lanre next.

>>LANRE AJAYI: Thank you. The last clause on the motion that's the GNSO Council recognizes the issues of rules access in the financial issue report of the RAA. And the reserved clause is not asking the GNSO to recommend inclusion of just an aspect of the WHOIS. I want to believe that limits the scope of the RAA PDP. I believe, rather than limiting the scope to just the SLA for the web and port 43, all the general aspects of the WHOIS should be considered. In that respect, I believe -- I wonder what's the mission intends to achieve since it's better to collect -- the WHOIS access is going to collect in the RAA PDP in the first place. So I wonder if it an observation. I don't know. Thank you.

>>STEPHANE VAN GELDER: Thank you, Lanre. I have Wolf.

>>WOLF-ULRICH KNOBEN: Thank you, Stephane. Regarding Jonathan's question, this reference made to not violating freedom of expression, privacy, and related rights. So you know how it works here on council. So we brought a motion some time ago. They suspected -- and it was amended. There was a question for amendment on that. I took it as friendly in that bring it up. So that means, for me and for my environment, there's no problem with that. So, if others may have another -- not a problem but may have reasons to do so, they could explain that.

>>JONATHAN ROBINSON: Wolf, thanks. I apologize. I put you on the spot. It was something that struck me in the interim that was worth discussion. But we can -- I just want to clarify that.

>>STEPHANE VAN GELDER: Thank you. Jeff. Yeah. Thanks. I think one of the other issues that we had, just to make the point with the motion -- I'm just trying to see if it was taken -- I'm just looking at this final "resolved." Somewhere it said -- yeah, okay, in the first resolved clause, it still says the RAA policy development process when it commences. Just to point out that there is no issue report or PDP on the RAA itself. There is no PDP on the RAA. There is a PDP on elements of the RAA that are within the picket fence. And I know that that sounds a little nitpicky.

But it's very important, given the light of the negotiations going on. And it's very important for the registries, so I wanted to make that point.

>>STEPHANE VAN GELDER: Thanks, Jeff. Mason.

>>MASON COLE: I just wanted to echo what Jeff just mentioned because the -- excuse me. Let me just get a little closer. The issue of the picket fence, as it relates to policy development, is important to the registrars in that -- thank you -- in that it allows registrars and contracted parties predictability for operations of their companies and for the experience for end users. So the idea that a policy development at the GNSO level involves operational elements for registrars needs to take into account the picket fence. So I just want to echo that, as Jeff just did.

>>STEPHANE VAN GELDER: Thomas.

>>THOMAS RICKERT: Thanks, Stephane. A couple points I wanted to make have been covered.

But, getting back to the amendment respecting freedom of expression and privacy laws, just in general terms, a word of caution. I think that each and every resolution that the GNSO Council or the ICANN board makes should respect those core values. And, by putting it in here explicitly, that could imply that we don't respect those values when making other decisions. So it might make a precedent for us to ensure that we include this phrase in all future resolutions that we make. And, therefore, I think it might not be appropriate to include it here but just take it for granted that all decisions are made in this spirit.

>>STEPHANE VAN GELDER: Thank you. Can I ask everyone to speak very close to the mic, please. Because some people are a bit far away and difficult to understand. Any further comments? Joy?

>>JOY LIDDICOAT: Thanks, Stephane. Just a couple of comments and a question in response to a point that's been raised by Jeff and Mason. Is someone else's microphone on? No? Okay.

Firstly, just in relation to the question that's been raised around freedom of expression references. Councillors will recall that this is a specific response to the particular background documents and the issues that were raised in them rather than a generic call.

And, certainly, Jonathan, I'm not aware of any particular overarching document that references those three. But, in any event, I think the point was to focus on those, in particular. And, in addition, just to respond to Thomas's comment, I don't think there can be the suggestion that the GNSO Council, by specifically referring to these three in relation to this particular issue, in not doing so generically in relation to others would be sending an inappropriate signal. Of course, it would be open to GNSO Council at any time to issue some more general statement, if it chose to.

So I -- I think concerns about that, although rightly raised, can be allayed.

My question in relation to the points raised by Jeff and Mason and, properly so, in relation to the picket fence issues is are they seeking a particular amendment to the resolution that might be seen as friendly? Or are they wanting their concern about that simply noted for the record?

>>STEPHANE VAN GELDER: Thanks, Joy. Mason?

>>MASON COLE: Thanks for the question, Joy. With regard to the motion, first of all, in substance of the motion, the registrars are seeking to not be obligated to -- for Port 43 for WHOIS because the registry is already provided and it can be flowed through to whoever is looking it up. So we've been instructed by our stakeholder group to oppose this motion on the grounds of its content.

In terms of the process or the motion, I'm not sure what amendment would help it. I've talked this over with some other councillors. And, with all due respect to Wolf, I agree with his intention. WHOIS should be open and available and accurate, of course.

But making a motion to -- that refers to a motion that's going to be made later so that that motion can be included in the second motion, I'm not sure process-wise that's the best way to go about it. I'm certainly not opposed to addressing WHOIS. But I think the council should do it in the most efficient way.

>>STEPHANE VAN GELDER: Thanks, Mason. I have Jeff next.

>>JEFF NEUMAN: Yeah, I think the registries discussed this in our meeting and came to the same conclusions as Mason and the registrars. In addition, we thought that the work seemed very duplicative of what was going on in a number of different areas, whether they were the negotiations themselves or whether they were the WHOIS surveys and the WHOIS studies and a whole host of the thick WHOIS PDP, which is likely to come back now because of the com agreement being done. So that we just thought it was extremely duplicative.

And the other thing that we kind of looked at was you're talking about making sure that port 43 is reliable. It's already required to be reliable in the agreement. So a resolution requiring something that's already required in the agreement doesn't seem like something that council should be necessarily doing.

>>STEPHANE VAN GELDER: Thanks, Jeff.

I have Wolf and Mason.

>>WOLF-ULRICH KNOBEN: Thank you. We're still in this phase where I could accept what you're saying and withdraw from the motion. I would like not to get into the whole discussion again of what is already put down and what is open. So we have this still concern that this is not really covered. And so, since we have this

concern that is raised, that's very simple. Might be coming up to that. So we're trying to bring it in. So, if we can find a way, it is not -- the issue is not well to bring it in right now. That's not the issue. It is to bring it in in a way that we can participate in. And that may be the end of this year or whenever those parts or those elements are going to be started and covered by a PDP.

So the echo I have got from all these sessions here with regards to RAA and WHOIS over the last days was there are controversial issues and they're not solved.

So -- and this is -- that is the major reason why I would like to get a chance not to come back with that issue. It must not be through that motion. Must be firm statement from this audience or from the community which is concerned about that that we will have a chance to come back with that. That's it. Thank you.

>>STEPHANE VAN GELDER: Thank you, Wolf. I have Mason next.

>>MASON COLE: Thank you, Stephane. Just a brief clarification. When I made reference to the registrars and port 43 WHOIS, I was referring only to thick WHOIS. I wanted to be sure that was clear.

>>STEPHANE VAN GELDER: Thanks, Jonathan.

>>JONATHAN ROBINSON: So, Wolf, it's Jonathan. I really appreciate the approach you've taken. And I think what I would suggest as a way forward is that we accept your gracious offer to withdraw, if I understand it properly, and that we continue to discuss this offline on the understanding that this may well come back to the council should it not be adequately resolved by other processes. And so really appreciate that. And I think that's what I would suggest, Stephane, that we do now.

>>STEPHANE VAN GELDER: Thank you, Jonathan. Yoav.

>>YOAV KEREN: Jonathan said almost exactly what I want to say. I think it would be redundant to do this now in the relevant PDP. You can raise these issues again and cover it.

>>STEPHANE VAN GELDER: Thank you, Yoav. Zahid.

>>ZAHID JAMIL: I was just saying that this is -- you know, we've seen various issues that can, basically, probably because of working group having provided us, you know, recommendations. And the RAP WG has been the victim of certain things getting dropped by the side. I know this is not necessarily the most important issue. I don't necessarily want to take it out of -- and -- you know, sort of beat it to death.

But this whole resolution was just a place holder saying that in September 2012 this is going to be looked at again. So I agree with at least the compromise position that, yes, let's take it offline but let's bring it back and not forget about it. Otherwise, the recommendations of the RAP WG will drop off the wagon. And I don't want to see that work go to waste. Thank you. That's all I wanted to say.

>>STEPHANE VAN GELDER: Thank you very much. Perhaps I can bring this discussion to a close now and open it up for open microphone, comments, or questions, if there are any. Just waiting for one individual to make it to the mic. And don't forgot to say who you are, Mikey.

>>MIKEY O'CONNOR: My name is Mikey O'Connor. I was a member of the RAP working group. And I just want to clarify that the working group really had a very technical point to make that there is an SLA on WHOIS for port 43 for thick registries. But for registrars serving up WHOIS in the thin TLDs, there isn't. And our recommendation was let's just bring those to parity or figure out some mechanism to get the service level up to snuff. And that was really it. It was a very narrow, very focused, very technical almost housekeeping thing.

And so I think that this is exactly the right way to go and, you know, let -- let the events that have happened since we wrote that report two years ago play out a bit and then see where you are. So I just wanted to support where we're headed.

>>STEPHANE VAN GELDER: Thank you very much, Mikey. That's very helpful. Any further comments? Okay.

Can I turn back to Wolf and John Berard as seconder of the motion and ask them if they are willing to withdraw the motion as was suggested by them earlier on?

>>WOLF-ULRICH KNOBEN: Yes, I'm willing. And I'm waiting for the minutes.

>>JOHN BERARD: Sorry, I can't do that. I'm okay with that plan. I do want to just make the point that the hard work that the working group did, Mikey in particular, who at that point was pillar of the business constituency, makes it important that we not let that effort go undiscussed. And so the fact that we're just slipping it off the agenda now but it is set for reemergence at an appropriate time is fine with me.

>>STEPHANE VAN GELDER: Thank you very much to you both. We will withdraw the motion and not forget about it, obviously. Jeff, you have a final comment. And then I'd like to move on.

>>JEFF NEUMAN: Yeah. I want to thank Mikey as well. I also want to just remind the council and everyone that this was one of many, many recommendations, most of which we acted on in one way or another. We've started a number of PDPs based on the work, I think it was back in 2009 it may have completed. So just for everyone up here and down there, we did take a lot of the report. This is the last remaining item that hadn't been acted on in one way or another. So thanks.