TORONTO – Community Guidance and Advice
Monday, October 15, 2012 – 13:30 to 14:45
ICANN - Toronto, Canada

BRUCE TONKIN: We will get started. It is a few minutes past 1:30 p.m. The reason for this session is really driven by one of the recommendations from the ATRT review team which says we need to more clearly distinguish topics that are subject to the full policy development process and topics within management responsibility which are effectively code for topics where it is okay for management to produce a proposal to staff to do public comment and then for management to move forward based on that public comment.

So, the core processes that we have today that are fairly well-specified certainly for each of the organizations, whether it is the ASO or the GNSO or the ccNSO, they all have very defined process is for policy development, and everyone is clear on what those processes are. They have specified period for public comment. The names of the reports have got specified names. And so you can work out where you are in the process.

Likewise, we have pretty straightforward processes for public comment when we put out an agreement, like recently we put the dot name agreement out for comment. It was a renewal, so there is really no policy change there. Often the legal team make a few changes to the agreements as they get renewed. Those changes are just posted for public comment and are typically 30 days. Sometimes we have public

comments for a little longer. But those are all specified in our processes.

It is all predictable. You know a plan is going to go out in a particular time frame. We are going to take public comments and then eventually the board is going to vote on it. Those core processes are well-understood.

But what we've seen really in the last two or three years is a bunch of processes that occur on an ad hoc basis that daily with very substantial topics. So for rights protection for new gTLDs, there is a lot of community discussion about that topic. The board provided travel support to an expert group to produce a report. That expert group had an expectation that the board would just take that report and essentially implement it. But the board chose to seek advice on that report from the community and specifically asked the GNSO.

The GNSO formed a working group that's called the STI group, and in all of this process, no one was really clear what the time frames were, what was going to happen next. It was after the board received its expert group report that it decided to distribute that to the GNSO.

If the expert group had known that was part of the process, they may well have engaged in the GNSO slightly differently during the development of that report.

Likewise, we see similar with the big review team reports. The WHOIS review team has produced their report. Again, they have an expectation the board is going to act on it, but, again, the board went out and said we want to get direct input from each of our stakeholder

groups before making a decision. And the WHOIS review team says, well, we didn't know that you were going to do that. Maybe that would have changed how they approached it.

Applicant support, similarly we asked a group to come up with some proposals about how to do applicant support. This was a case where a joint working group was formed between the ALAC advisory committee and the GNSO. That led to uncertainty then as to who was in charge of that group, who sets the charter for that group, who ultimately approves the report and in the end, I think the report then went up two channels, one through the ALAC channel, one through the GNSO channel before it came to the board. So, again, it was very unpredictable and the process was being developed on the fly as it reached each milestone.

Another example is the board did a fairly -- I guess what I would call a scatter-gun approach and we said in our Affirmation of Commitments we have a requirement to show progress on competition and consumer trust, consumer choice. But in that Affirmation of Commitments, there was no definition of those terms, no real definition of how we're going to measure whether we've achieved those areas. So we asked for advice, but we asked each part of ICANN so that the supporting organizations and the advisory committees. The GNSO chose to form a working group. But, again, that process was really not documented and they've created that on the fly.

Really, the objective of this session and where the board's looking at this is to say we need some predictability here. As we go and ask questions of the community on particular topics, we need to be clear on

what we're expecting the community's going to use as a process to answer those questions and the community needs to know how long those process is going to take, what reports they should expect to say, what public comment options they will have during that process. So we want predictability.

Another aspect is ideally the process supports the formation of consensus across stakeholder groups. And certainly we started to see that with ALAC and GNSO and also starting to see it in some areas between the GAC and the ccNSO. So it has been sort of areas where different groups are cooperating but really as a board we can't to encourage more of that so that when the advice comes to the board, the board can see it's really advice on behalf of the whole community and it is pretty straightforward for the board to act on that advice.

The sort of questions that we had asked in our discussion paper were how should the board request advice from the community and these sort of topics, should a working group be formed, is that the right way to do it. How do you manage cross-stakeholder discussions? What happens when it seems sensible for these working groups to work across the supporting or advisory committees. What public comment processes should be used on that sort of advice?

So that's some of the questions. There is a few more questions in our paper, but these are probably the main ones. And at this point, I'll introduce our panel.

We have Ray Plzak who's from the structural improvements, a member of the ICANN board, and he also chairs the Structural Improvements

Committee, subcommittee of the board. And he has been looking at some of the mechanisms structurally that relate to this topic.

We have Chuck Gomes. Chuck was the -- has chaired the GNSO in the past and is an active member of the registry constituency at ICANN.

We have Alan Greenberg and he's actually an example of someone that has crossed the boundaries of these groups. He was a member of ALAC but actually has been participating in the GNSO Council for some time, as acted as a bridge between the work ALAC has been doing and the work the GNSO has been doing. So he is well-qualified to look at this cross-stakeholder group issue and challenges, I guess.

And, finally, we have from the ICANN staff, we have with us Bart Boswinkel -- did I get that right? Probably not pronouncing that properly.

And Bart is -- has been very active in the ccNSO community and is on the ICANN staff as a senior policy advisor, and he's familiar with how the ccNSO takes requests from the board and attempts to respond with advice. So at that point, I'll hand a few comments from the panel first and then invite comments from the audience.

So, firstly, Ray.

RAY PLZAK: Thanks, Bruce. Let me start by saying that the SIC has been doing some work in this area. The way we got involved in working this area is where we're taking on the issue of liaisons and how they get to the board and

whether or not there should be more liaisons or less liaisons. And we had to step back and look at the overall advisory mechanisms in ICANN.

And once you do that, you go exploring the bylaws which is always a murky adventure at best. You find advice is scattered throughout the bylaws.

And so in an attempt to organize it so that we can put an orderly process in place, we determined that the -- if you looked at it in the form of a flowchart, the first question you have to ask -- it is solely from the perspective of the board here, is the board needs advice. So what does it do?

It has two options. It can either go internally into ICANN, the ICANN community, or it can go externally. The more notable external activities have always been the hiring of consultants, the famed economic studies, those kinds of things, okay?

So the other thing you can do and the get external consultation with the panel of experts and we have done that in the past, too. The BGC does that a lot. Then there is the option that exists sort of today which is the TLG, which if you really look at it, it is an organization that doesn't exist. It has no budget. They have no meetings. In fact, the bylaws forbid them to have meetings. And they are there to provide advice to the board and one liaison is appointed to a one-year term and they rotate it amongst three organizations.

And when we started looking at how effective that organization is as a result of the organizational reviews in the first round, the conclusion of the group -- and it was the three liaisons themselves that did the

review. They determined that, hey, this organization really doesn't need to exist.

But what's really more important, though, is that ICANN probably needs to have relationships with the organization's representatives. In fact, it probably needs them.

If you go about and establish a relationship, in the course of that relationship you will decide whether or not you want to have liaisons, how much degree of reciprocity you have, and so on.

Anyway, that's the external side of the house. It's formal organization relationships. It's hiring individual consultants, forming expert panels of consultants. So then we turn to the internal side. The most familiar internal things that you have from our organizational perspective is the existence of the SSAC, the RSSAC and in a special case the GAC. You have those organizations which were organized to provide specific types of forms of advice. In a sense, they are a standing advisory committee.

Now, the board has also from time to time formed sometimes quite deliberately and effectively a working group, which that's another committee really, when you think about it, no matter what label you put on it.

Sometimes the working group kind of evolves. The JAS working group is a good example of something that really evolved throughout three or four different conversations going on and sort of meeting in one direction.

But the point is, is that there needs to be some ground rules for forming committees and so forth. And that's what we are going to be working on as far as I see in putting those things together. In the end, you will see a substantial amount of bylaws changes.

What you'll also see is the possibility held out there for the formation of other standing advisory committees. It may be that we develop a need at some point in time for some other standing advisory committee. I'm not going to say it's going to happen. But I'm saying we will set up the possibility for it to occur if it is needed.

That leaves one piece here which is why I think we're here today, and that's to discuss a consultation process. Bruce has pointed out the fact that the consultation process kind of exists. In fact, there's even rules that says how many days things get put out for comment and so forth.

And sometimes that process gets abused because the consultation is actually used as a substitute for showing consensus. And so it may be that this framework and structure we have for consultation is probably okay to a certain extent, maybe what we really need to do is spend time defining it and actually laying out some better rules as far as how things go out.

For example, instead of just throwing a document up for review and say "public comment," what goes with that is a short paper that actually asks questions that you want answered. Instead of hoping that they'll answer what you want, ask for it. That will be one example of working and making improvement, and I won't go any further than that.

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The other thing that's really sorely lacking is the ability for the community to make suggestions to the board, okay? There is no mechanism. Actually, there is a mechanism. The mechanism is, is that I'm walking down the hall or Bruce is walking down the hall and somebody like Cheryl says, "Let's have breakfast." And that never happens, does it, Cheryl? And then we have this conversation. Or we have the -- we have one of the interchange cocktail parties or something like that. That's really the only sort of suggestion program there is, or you run into somebody in an airport. So that's one thing I think that we really need to spend some effort on.

I can think from personal experience. As many of you know, I used to be the CEO of ARIN, and one of the things we did five, six, seven years ago, something like that, is actually built a suggestion program. And the suggestion program is put in place. While I was there, it was actually relatively active. And coming out of that suggestion program, of course, you're always going to get the off-the-wall things like "we need more red-colored rooms at meetings" and stuff like that. But we actually got very, very good suggestions, and some of those were actually then formed into implementation suggestions -- notion which was then put out through the consultation process to get community comment.

Some of those things actually really belong in the policy process, so they were actually passed over to the ARIN Advisory Council for policy development. And so I think what we really need is that kind of a mechanism. So from the perspective of why we're here today, I would say two things: Let's look at the consultation, the comment period, whatever you want to call it, that's in existence today. Let's take that

and let's see what we have to do to make it efficient and make it work right.

Then let's sit down and let's figure out what we can do to build a suggestion program that will actually work.

Bruce?

BRUCE TONKIN: Thank you, Ray.

Chuck?

CHUCK GOMES: Thanks, Bruce. Let me start off by saying I'm not here representing the GNSO Council or even the GNSO as a whole but rather to share some of my observations having been involved in the GNSO for -- since it started as the DNSO a long time ago.

Everybody's pretty familiar with PDPs, and we have a very defined process in the GNSO for handling input for PDPs. But as Bruce pointed out, and Ray confirmed, there's lots of other places where advice is needed and how is that handled. And certainly my opinion, we wouldn't want a PDP in every one of those.

Now, there are some advantages of PDPs because they ensure that everybody's invited. It's open to everybody. It's a mechanism to ensure that the multistakeholder model works. But it's also pretty heavy duty for every time you need advice, and I certainly recognize that. So I wouldn't advise doing a PDP every time.

So how does it happen?   Let me say, first of all -- in the working weekend sessions in the GNSO that I observed, there was a lot of good discussion on this issue.   What does the GNSO Council do when the board comes to them and asks for advice?   The GNSO Council's role really, if you read the bylaws, is to manage the policy development process, not necessarily to give advice.   And from a practical point of view, it is often very hard to get consensus in the GNSO Council on a particular issue because by design there is a lot of diversity, and that's good but it is impractical many times to get a -- maybe even a majority position from the GNSO Council.

So, one of my personal suggestions would be that unless it relates to policy development -- the management of the policy development process, it is not the best thing to ask the GNSO Council for advice.   That doesn't mean that the GNSO as a whole shouldn't be asked for advice. We have stakeholder groups.   We have constituencies and so forth, and oftentimes what the council ends up doing is deferring the request to those groups to directly submit input.   And I would suggest that that's probably a better approach in many cases unless it has to do with managing the policy development process than going straight to the council.

Now, one of the things that the GNSO worked on that's an idea that I personally believe should be pursued further -- and I think it will be in the GNSO and ccNSO and ALAC especially.   And that is the idea of a community working group.   As has already been pointed out, we really don't have good guidelines for just providing input but more specifically we don't have guidelines for community working groups.

Now, we've successfully operated some and used a lot of the principles from PDPs and so forth from both SOs and so forth. But I would strongly suggest that we pursue the idea of a community working group not just for policy issues but for advice issues and that we work together as SOs, especially the ccNSO and the GNSO, the ALAC and, of course, the other advisory committees would be welcomed there as well as well as other SOs if it's applicable to them; but that we start refining some guidelines. And that will happen sometimes with policy that goes across the groups, but it could also be applied in a simpler application with regard to advice requests.

BRUCE TONKIN: Thank you, Chuck. Alan?

ALAN GREENBERG: Thank you very much. Two phases to my answer. First of all, as Chuck was implying, one of the issues is, although we have the bylaws that talk about formal PDP processes, neither the GNSO nor the ALAC really have any definitive guidelines as to how to come to decisions. The GNSO, for instance, on occasion will simply create a drafting group or a -- invent some new term, come up with a recommendation, approve it and pass it on to the board.

At other times in parallel with this, there are people on the GNSO who will say the only way to develop policy is through a formal PDP, which is a really heavy-weight problem. So we get conflicts even within the group and sometimes within the same person as to what the vehicles

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are and perhaps we need to have some clarity on that. So that's certainly part of the problem.

I think there is a larger problem in that I believe the wrong question was asked in this paper. The question was: How should we -- "we" being individual groups or community get together and provide advice to the board. I think the real question is how should the board become better informed of the needs and beliefs of the community? And that's very different.

Right now if any of you -- presumably many of you were at Fadi's session this morning. There was an awful lot of talk about dialogue. There was an explicit part that he talked about the fact that the board is now allowed to talk to staff. The walls are down.

The only mechanism that the ACs and SOs have to talk to staff -- talk to the board with this new policy is via the staff. So we'll tell staff what we think. They will interpret it and tell the board. I don't think that's the optimal way of getting input into the board and, yet, we are still working in a mode where we are asked for advice. We're told to write a paper, toss it over a brick wall to the board. We're also told no matter how complex this issue is, keep it down to three pages or the board won't read it. Maybe that's not said officially, but it's certainly said unofficially.

And no -- typically very little feedback, no dialogue, no engagement, no discussion. And I just don't believe that the board is going to get the real input from the community by only tossing things over walls. I think the board or board committees or board subgroups are going to have to interact in a real meaningful way. And dialogue is not just listening to

someone. It is not talking at someone. It's talking with, among people. And I don't believe we're going to really address the problem until we fix the mechanism, and it can't just be tossing papers over walls. Thank you.

BRUCE TONKIN: Thanks, Alan. Bart?

BART BOSWINKEL: Yes. Just, first of all, a few comments. I think there is a bit of lack of historical knowledge in some of the more successful parts of, say, board requests and getting advice which is not a policy development process. I think one of the more successful things that ICANN has done is the launch of the IDN fast track process, for example. And that has been done explicitly outside the scope of a PDP because we couldn't do it in that time frame. And there is already a mechanism saying, which Chuck referred to, that was used in order to create that fast-track process. In fact, it was a cross-community board working group initiated by the board at the advice of the ccNSO and the GAC at the time. And so the broader community was involved at the time, so it is possible to do that and there are examples that it worked.

The second one is, for instance, the board geographic regions working group. Again, that is a board working group initiated at the request of one of the SOs. In this case, the ccNSO. So there are historical examples where you could see it worked. And, again, going back to what Alan said, that was after intense dialogue between the board and

the SOs and ACs in how to deal with it, especially the IDN fast track. And that's the nice bit of these two examples.

The second one is geographic regions working group, was at the initiative of one of the SOs, in this case the ccNSO. So there are mechanisms, and we've used them in the past to push forward stuff and recommendations to the board and adopted by the board outside the PDP. Now, that is at the initiative or at the end -- you could say at the initiative of the supporting organizations and the AC.

Another issue -- and this is now I put on my CC hat a little bit, or ccNSO hat, is where the board asks requests from the community in this case of, say, the ccNSO. The ccNSO has a couple of procedures in place -- (no audio.)

-- interpreted and it is very unclear at the time, especially for an SO that is not directly involved in, say, the new gTLD process. What it is supposed to do. Which question it needs to answer. So a direct link between the Board after a resolution and an SO and AC would probably be very -- would improve the situation dramatically. Because then you have a way back as well to advise the Board. You create a loop where -- which you can use.

Another thing, and that is probably a bit outside of the scope of this discussion, but it is very relevant, again, in providing advice and/or recommendations to the Board and to other SOs and ACs, is if you look at these processes the ccNSO is using, say one concern is initiation. The second one is the duration of some of these consultation processes across just the ccTLD community. They take six to seven weeks, at the minimum. So if you -- if the Board needs advice or whatsoever within

that time frame, it is off the radar. It's impossible to do. And that's a logistical issue.   And the second, which is a far more concerning logistical issue, I would say, is in order to get these processes going, you need volunteers. And what you see, the more requests are coming out, we've done some -- they are very, very rough analysis on the number of requests coming out, so not just from the Board but from other SOs and ACs is the volunteer capacity is caving in. It's not there anymore. So that was just my comments.

BRUCE TONKIN: Thank you, Bart. Well, to summarize what we've heard then, so Ray has talked through the process of identifying how the Board gets advice and can use consultants, panels of experts, technical liaison group, can go to an ICANN Advisory Committee, it could form a new Advisory Committee.   And so we need different mechanisms, and we need to sort of understand some guidelines as to which mechanisms we use when.   He also said in the other direction it's not clear how people provide us advice. That's if you like unsolicited. And that mechanism required to do that.

Chuck talked about the difference between the GNSO council's role which is managing a policy process and the GNSO itself which comprises constituencies and stakeholder groups. And, you know, one way is to ask those stakeholder groups and constituencies directly, which incidentally we used to do. If we go back, you know, more than five years ago, that was pretty regular. We actually had reports from each of the stakeholder groups.

The other thing is that Chuck talked about having some guidelines for how you develop and use community working groups because again, each working group more or less had to create its own guidelines and a lot of time's wasted on process rather than content.

Alan mentioned that the frustration from his perspective, and I've seen this a few times, is we're not -- when a body, doesn't matter which body it is, provides a report, it doesn't really get a chance to have a dialogue with the Board on that report. Maybe some months later they get an answer, which again is in the form of a Board resolution but there hasn't been a dialogue. And you know, a few groups that have presented reports have expressed that frustration. And I think Bart, from the other angle, is saying when the Board gives a request, often the request is drafted, you know, by a Board person at 2:00 a.m. in the morning or something in past practices is a succinct statement and then everyone in the community then tries to interpret what do they really mean by that. But hasn't actually been a conversation between the community and the Board on the interpretation of that. People just start creating their own interpretations. And I've seen that on a few cases as well, where a word that was written in about five seconds actually has, you know, ten hours of work trying to decipher it by the recipient of that particular sentence.

So I think that's -- that's things we need to work on, which is the clarity of the request but also having the dialogue between the groups.

I think the other thing Bart's pointing is this partly comes into the timeline of certainty. In the past the Board sometimes is asked to have something back within 30 days. Clearly that's unworkable for the GAC.

Tends to work on a timeline between its public meetings, so that can be between three and six months. Bart has mentioned the cc, any requests probably take six to seven weeks. That's probably pretty similar I think, Chuck, for the GNSO is that most of the bigger constituencies would take that long to really form a view because they've got to consult widely amongst their members so you may set the appropriate timelines. And this partly lines up why the Board has often used external consultants on other things, because of the speed issue. But at the same time, we're not really leveraging the knowledge in the community. So it's trying to work out when is it appropriate to take a bit longer and get, you know, a very broad piece of advice from experts spread in the community versus I need something in a few days' time. I'll go and get an external firm to do the work.

So those are some of the comments and ideas so far. And at this point we're ready to just open it up for the room if anybody has any comments or questions.

MARIKA KONINGS: Hello. So this is Marika Konings asking -- making a comment on behalf of Mary Wong in her capacity as a participant in some of the working groups that Chuck was referring to and her experience while on the council and not made on behalf of the NCSG. So her comment is plus one to Chuck's suggestion. The problem that arose in some of the recent cross community working groups were over rules and process, especially those for different SO -- especially where those for different SOs/ACs differ. Another was uncertainty over whether working group members could speak for their respective ACs/SOs. Where the group

worked well, one big factor was a direct dialogue between the working group and interested Board members which meant that issues could be thrashed out directly with Board representatives. Should we move forward with these groups, however, a mechanism needs to be agreed on to solve the problem of GAC involvement and appropriate case since no GAC member can participate on behalf of the GAC.

BRUCE TONKIN: Okay. So the focus of that question, I think Marika is saying, how do you solve the problem of GAC involvement because typically that works through -- there's a communique and that's essentially the GAC position. Yeah. Go ahead.

RAY PLZAK: One of the other things I do, I'm a member of the Board GAC recommendations improvements, or whatever the acronym means, but anyway, that's a topic question. In fact, it was discussed yesterday in a meeting of the working group. And it's something that I think that the working group and -- is going to come to grips with in the near -- very near future. There was some concrete proposals put on the table yesterday. Staff presented a way of getting some additional information at an early time in to the Board -- excuse me, in to the GAC and there's more discussion involved from the GAC, and as far as getting it in in the early stages of a policy process coming from the GAC it cannot be advice, but there has to be a way of getting what amounts to the GAC insight, GAC observations, whatever term you want to use that's not advice into the policy processes at an earlier time. And then you have the opposite problem of how you get the information back out

of the policy process so the GAC understands whether or not they've been heard and if there's -- and then at some point in time you've got to get the Board involved in this if there's going to be an issue later on. So those are the things that that working group is working on, and I think we made some good progress yesterday. So this is one of those times when I would say you can almost say stay tuned because I think you'll see some real concrete proposals that will show up by the time we meet again in Beijing.

ALAN GREENBERG: Thank you. You know, Mary's question was relatively wide because it included people speaking on behalf of the ACs and SOs, interactions with Board members and GAC members, and people speaking on behalf of the ACs or SOs are essentially an internal question that they have to address, either they decide they are speaking or they aren't speaking through whatever mechanism they have. The Board and the GAC is more challenging, certainly under the current modes of operation. On the other hand, I've sat through a number of groups over the last couple of years with Board and GAC members sitting in, not quite participating but perhaps asking leading questions, perhaps taking something which the working group had discarded as that would never fly and say well, maybe it would fly and pulling things out of the fire -- out of the fire that have already been semi-burnt. So there are all sorts of mechanisms, even if we can't get into a real dialogue, which I believe we truly need, we need to get away from where we are right now. The consumer choice issue is an interesting one, and I'll focus on it for a moment because it came from Bruce. The GNSO did nothing with it until after the deadline that Bruce had -- that the Board had set for an answer, and

finally when there was a discussion between -- a very informal discussion where the GNSO had an opportunity to ask Bruce, what did you mean by the question. And once that was clarified, a way was found forward -- to go forward and do something about it. But we hadn't had that opportunity before. We -- you know, we just have to fix these impasses that we have or we're not going to make progress.

BRUCE TONKIN: Ray just wanted to respond.

RAY PLZAK: Yeah. The concerns you're raising is exactly what was discussed yesterday.

BRUCE TONKIN: Where?

RAY PLZAK: In that Board GAC working group. So the problem is well internalized, I think, and is getting very, very socialized and so, I mean, what you just said, those words were said yesterday.

ALAN GREENBERG: I'll add in our prep meeting for this meeting yesterday everyone who was there, everyone on the panel had a different understanding of what the questions the Board was asking meant. So be it.

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BRUCE TONKIN: The dialogue.

BART BOSWINKEL: Just in response to Mary's question, and again, the experience from the ccNSO again in working with the GAC is probably again a bit different than somewhere else. And I think the major break-through came, especially again in the fast-track process. What was done at the time, before the recommendations were sent to the Board, it was explicitly in the mandate of all that working group that both the GAC and the ccNSO had to endorse or support the recommendations. This was recorded in the communique and only then, only then the Board was informed of, say, the methodology. And currently we -- the -- there is another working group, say with participation, not just from the GAC, and I agree, it's a bit fuzzy how they participate, but at the end, again, the Board will only receive some of the recommendations of this working group only after both the ccNSO and the GAC have endorsed the recommendations. So at that stage the Board is ensured that everything is between the cc and the GAC community, feel comfortable with the set of recommendations and these recommendations, and that's an important point as well, these recommendations are not sent directly from the working group to the Board. It has to be done through either the council or the chair of the GAC.

BRUCE TONKIN: Thank you. I'd also just add a comment on Mary's statement about working with a subset of Board members and it's always -- the Board

tends to operate in committees because we are a large Board and part of that is a committee can actually socialize and work on a concept before it brings it in front of the whole Board. So using subgroups of people is useful.

I think the other thing we want to be weary of, though, is turning the Board itself into a policy committee, and one of the things that perhaps as we're thinking about from a staff perspective is that there are a set of staff that are actually specifically policy support staff. So their role is if you like supporting the writing up of the policy and the documenting of the discussions underway. But often there are other staff in ICANN that have to implement particular decisions of the Board or the community and finding ways to engage with that staff group early in the process I think is important, as well. Particularly that they might say well, that's a nice idea but it's almost impossible to implement and getting that feedback as early as possible, whether it's from the legal team of ICANN or the new gTLD technical management building team. So it's not just the Board that needs to be engaged. It's also the staff. And we'd like to see a bit more of that happening as well, I think. Chuck.

CHUCK GOMES: Thanks, Bruce. I want to respond to something that Bart said, that the advice from a group that's not part of one of the SOs needs to go back through the SO. And I think that's absolutely true, if it's related to policy. But I raise the question, I'm not saying it's -- you know, what the answer is, but are there cases maybe where it's really not a policy issue so much as it is just collecting community feedback in an organized

manner that might not have to go through the SO, assuming, of course, that they're not trying to represent the SO's position in that regard.

BART BOSWINKEL: Yes. But then it needs to be very clear this is the limited group. Again, a very good example from the cc community is, we've got what is called the strategic and operational planning working group. It is in a mandate, after building up trust with the community, that it can submit on its own and respond on its own, which it has done in the past and submit comments. And it's always very clearly stated, it's only the opinion of this working group. It doesn't represent either the council or the membership. So yes, I fully agree that should be possible. But then again, I think that's important to say is, in that sense life is a little bit easier in the ccNSO than probably in the GNSO to do this.

BRUCE TONKIN: Okay. Any questions or comments from the audience. Yeah, Alan.

ALAN GREENBERG: Related to what was just said, there's an immense amount of fear in our community that if someone says something, no matter how many disclaimers they put about who they're speaking on behalf, someone is going to misunderstand it and therefore they better not say anything. Board members can't speak as individuals because someone is going to perceive it as a Board view. GAC members can't speak because someone will perceive it as a GAC view. A working committee can't speak because someone will perceive it as the ratified project -- product

of the AC or SO. And we've got to get past that. Otherwise we add months and months of time to everything. If a work group comes up with a recommendation, it will likely take the GNSO two months to ratify it, typically. Maybe longer, maybe shorter. A little bit shorter for the AC -- the ALAC but not that much shorter. And we have to stop hoarding the information. We need disclaimers at times, but we -- we need to make sure that people aren't crippled by the fear that -- that they're going to be misrepresented and no matter how much you say, the people reading it aren't really going to read the words or understand it.

BRUCE TONKIN: Thank you, Alan. Any other questions or comments on the process of getting advice. Let's look at the questions we had here and see if there's anything else.

So maybe some feedback from panelists is when do you think a topic should go to one of these advice processes versus something that should genuinely be a Policy Development Process? Do people have a view on how do you distinguish between those two scenarios? Go for it, Ray.

RAY PLZAK: Well, the simple answer is, is that whenever you're trying to do something that is going to require a choice, then that involves the formulation of criteria. You know, as soon as you get involved in the formulation of criteria, then that really becomes a public process and it becomes a policy process because everyone has to agree upon a criteria

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because when they are trying to apply or get or whatever thing you are trying to do here is that they know they're going to be measured against criteria to see whether or not they qualify, then they are the ones that need to have the input into what that criteria should be. So from that perspective, then that really becomes a policy. The criteria itself is -- the policy is that we are going to hand out A to people that meet this criteria, okay? So the policy really is, I'm going to hand out A. Everybody wants A. But the thing is that how do I qualify for it? And so it's that criteria that actually becomes the policy piece of that. And so that would be how you would -- one way you could look at the formation of policy.

Now, opposed to that is that -- is that we now have the policy that we are going to hand out A, and we're going to do it according to the criteria that was developed in the -- in the policy, in the policy form, but now we have got a proposed method of doing so. Now, there may have been more than one choice of methods and so that point in time is when you're going out and seeking this consultation or this advice. Because everybody agrees we're going to hand out A and everybody agrees that we're going to do it against this criteria, but now it's the how we're going to do it. So we're going into the how we're going to do it type of thing, that's when we're going to formulate a process or a procedure and then that's where we need consultation and advice. So we get to a -- a process, a procedure that's understood by everyone and that people have had a hand in developing. So that's how I would -- that's how I generally differentiate between policy and consultation advice.

CHUCK GOMES: Thanks. Let me use a real recent illustration because the Board came to the GNSO and also to the various GNSO constituencies and stakeholder groups and asked for advice, feedback on the recommendations by the WHOIS review team in particular and which of these recommendations would require a PDP. So let me first share the way the registry stakeholder group responded to that and we responded individually and then since then the council has been considering it, in fact may even be sending something from the council today. We looked at it based on our contracts in terms -- because in our registry agreements there's a lengthy clause on Policy Development. And there's something that is often referred to as the picket fence and it gives criteria for what can be considered for Consensus Policies in this case. And so those criteria obviously provide guidelines in terms of what can be included. Now they're not all-inclusive. But the bylaws do say in our -- that it should involve substantial Policy Development. One of the issues, and this came -- and I shared this over the weekend in the GNSO session, for example, there's 16 recommendations from the WHOIS review team. There are those that think that a Policy Development Process should be initiated in all 16. There's another group that pretty much thought that no Policy Development Process was needed on any of them. Well, that of course would be much faster.

[Laughter]

So I can empathize with maybe why they thought that way. But I think there's problems with both extremes. In the one case, if you require a Policy Development Process for every issue, we're paralyzed. We can't get anything done. On the other hand, if you don't have some cases where you have a very defined process, I think you invalidate the multi-

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stared model and the bottom-up process. So we have to find a common -- a middle ground there. And I think we do that, in some cases naturally. It may have been in our little planning session last night that this came up, I don't even remember because I've been in so many meetings the last three days, but, you know, I mean, we handle budget information for ICANN and the strategic plan and so forth without going to PDPs and so forth. So we're already making some judgments as to when substantial policy work applies and so forth. But we definitely have to, I think, avoid the extremes and come up with some -- some ways to get input. And we're going to have to make some judgment. Is it really substantial policy? If it's not, and of course the -- in the case of the GNSO, the GNSO can't handle all that it has on its plate right now anyway so if you throw more PDPs at them it's going to be worse. So again, I go back, there are some guidelines in registry agreements and registrar agreements that are helpful. They're not going to answer all the questions. Certainly when those guidelines apply, it's a pretty easy answer. When they don't, we're going to have to make some judgments. But let's make sure it's substantial and that there are resources needed if a Policy Development Process is needed.

BRUCE TONKIN: Alan.

ALAN GREENBERG: Just something Chuck said triggered a recollection. The question on the review WHOIS team that was asked of all the stakeholder groups and constituencies was not is Policy Development needed. It was, is a PDP needed. And as Chuck points out, for things that perhaps are not

substantial or do not affect Consensus Policy, there are other mechanisms within the GNSO for making a recommendation which are not a formal PDP. But because the question was asked that way, the answers might be slightly different. Yeah. And just -- I don't think Chuck and I disagree but there are other people who feel that policy development, lower case, and PDP are synonymous. And not everyone does.

BART BOSWINKEL: Yeah, as most of you know, say Policy with a capital P, to quote you, for the cc community is very, very limited and described in, say, the bylaws. As a result, and to be active, the ccNSO had to develop some other procedures and processes, and I've touched upon some of them. And I think if you -- if you really look at some of the underlying more successful ones is, first of all, say the topic itself must lend itself for, say, a broader consultation, otherwise it's -- but one of the critical elements in, say, for instance the fast-track process in the other ones is that up front you define a process that everybody agrees to. And if you do it that way, and it's acceptable to the community, only then you can run, say, the substantive topic through that process in order to get resolved. And I think that that's -- and that is, say we've learned that over the years within the ccNSO and the ccTLD community is the first step is not to say diving directly into the substance of the issue but get buy-in on the process itself. Also from other SOs and ACs and I think that's one of the reasons why the fast-track was so successful, because that was pre-defined and everybody was clear what the outcome was and how that process should be run without going through a formal PDP.

BRUCE TONKIN: Thanks, Bart. Yeah, I guess one of my thresholds is the degree to which it's impacting the party. So I think, you know, if I look at negotiations between, say, the registrar community and ICANN with respect to the registrar agreement, negotiating a term like, you know, how many weeks they have to pay an invoice or, you know, how they provide contact details between each other, to me that's perfectly appropriate for negotiation between the parties.

But where you're imposing conditions on registrants, you know, to me, you know, the registrants should be part of that discussion, and I think in a lot of our policy processes, we perhaps have gone too far the other way and tried to do everything fast, but often, you know, the fast track is -- becomes sort of a standard terminology, "Let's go the fast track, because the actual policy process is too slow," but often it ends up taking about the same amount of time. Because when you're dealing with a difficult issue that impacts lots of parties, they're going to, you know, want to communicate. You end up going through lots of iterations and perhaps you would have been better using the policy development process in the first place.

CHUCK GOMES: Let me share a couple real-live examples in that case.

With regard to your last point, Bruce, if we look at the IOC/Red Cross issue, a step was taken by the board to make a decision and -- and bypass the policy development process, and I fully appreciate why that was done. I'm not here to debate that.

But I was just thinking recently, if we'd have started a PDP then, we could have been done.

[Laughter]

So your point is well taken.

I'm going to put my VeriSign hat on right now. Both ICANN and VeriSign have been criticized quite a lot because in our negotiation of the renewal of the dot com agreement, thick WHOIS was not required. And our reason, VeriSign's reason -- I won't speak for ICANN. VeriSign's reason for doing that was exactly what you just said: we saw the impact on a variety of third parties and we didn't think that we should unilaterally or bilaterally, if we want to include ICANN in the argument, make that decision without giving those third parties adequate input, and that's why we favored the PDP approach.

So another illustration. We certainly applied that criteria, because a lot of third parties would be impacted by that.

BRUCE TONKIN: Okay. Any other questions or comments? Yes, please.

MURRAY McKERCHER: Yes. I'm a newcomer to ICANN, but I have some experience in the past from something called the WAP Forum on mobile technologies, and I'm not sure if there's anyone –

BRUCE TONKIN: If I could ask you -- just because we transcribe, can you just state your name as well.

MURRAY McKERCHER: Oh, I'm sorry. My name is Murray McKercher from Canada and I'm looking to the discussion and I thought Alan had a good point about individuals being fearful to make statements in the process representing their own opinions, and I just wondered if Alan could bring a little bit more about that out.

I sense that ICANN is a little bit of United Nations and a little bit of IOC, the International Olympic Committee. It's a very interesting organization comprised of both governmental organizations and private industry. It has to be very difficult -- I don't belittle the process here -- as to how to manage that, and I was just interested more from Alan's perspective on whether we're asking the right question.

ALAN GREENBERG: I'm not sure what you mean by "whether we're asking the right question."

I can elaborate a little bit more on the substantive issue.

I sit on the GNSO Council as a liaison from ALAC. I am obliged to pass on ALAC positions, should they exist and be known to me, and I'm obliged to try to get those positions if I know about the question ahead of time.

That being said, most of the things that come up, I can either be silent on -- and in which case, if I'm only passing on official authorized

positions, I could be an e-mail program and don't need to be a warm body in the room -- or I can make an informed guess as to what the ALAC might do, or I can give my personal opinion which may or may not coincide with what the ALAC ultimately will decide, should they make a decision on something.

And because of the plethora of issues, they're not going to make decisions on everything.

So I think most people within the GNSO now understand that when I say, "This is an ALAC position," it is an ALAC position, and barring that, I try to make it clear what my positions are.

There used to be a bylaw-mandated GAC liaison to the GNSO who has not occupied that seat for a long time because, no matter what the GAC liaison said, it was perceived as being a GAC view.

We certainly have had board members being reluctant to talk in a public forum for the same reason, and, you know, I can understand. We have chairs of various ACs and SOs who don't want to speak because it would be perceived as being a decision of the GNSO or the ALAC or the whatever, no matter what disclaimers they put.

At least that's the perception that it will be perceived that way. I don't think we've tested the water a lot recently, but people are cautious.

RAY PLZAK: I don't think the paralysis is as deep as you think it is, Alan, because I know that for a fact the liaisons to the board speak their own mind, and when the ALAC had representation on the board in the form of a liaison,

that liaison -- and I've seen several of them -- we knew when an ALAC position was being stated and we also knew when that person was speaking their mind.

Same thing is true of the GAC liaisons that we've had.

The problem you have with GAC members and so forth is that there is a sensitivity to that. You know, and actually even there's a much deeper sensitivity, which is not speaking on behalf of their own government. And so that is a sensitivity that they have that they could actually lose their job over. So -- and that's something that we have to respect.

Now, I will say this: That in the Regional Internet Registries, there are government people that attend those meetings and who do speak, and it's very clear -- a clear understanding that they're not speaking on behalf of their government. You know, it's clear that they are speaking with knowledge of their government and government processes, and it's clear that when they say, "This won't work," that if you ask them why it won't work, they will tell you. Or if it will work or this is a good idea, they'll tell you.

So I don't think the paralysis is near as deep as you --

It does exist. I know that. And so there has to be an education on the part of the speakers how they couch things, you know.

You know, in fact, you will hear board members -- Steve does it all the time in GAC meetings and everyplace else -- he says, "This is not a board position," you know, and everybody understands that.

The thing is that I generally have found that the people that don't understand that, they've got some agenda item of their own, and so they're going to purposely misunderstand that.

So while it does exist and the -- it's a matter of level of comfort of talking in an environment.

Like, for example, I'm a board member but you'll hear me speak my mind, you know. It's not a board position, but it's me.

But the thing is that I think there's a degree of comfort that the speaker himself has to have, and you obviously have developed that and you've put the rapport on the table with the council so that there's the understanding. And the person that comes after you will have to probably go through the same thing. But that's an individual thing.

But you are right, there is that -- there is that notion, and that has existed inside, for example, the IETF, where you have all these other companies there and so forth.

I mean, I wasn't thinking of Chuck speaking for VeriSign until he said, "I put on my VeriSign hat," you know.

So you're right, it does exist, but I don't think it's as deep and pervasive as I'm understanding you to say it.

ALAN GREENBERG: Well, for clarity, I wasn't saying it was a characteristic of the human race. I was saying in certain venues in our environment, it is very characteristic. I am not surprised to hear that in the board, it is not a

general problem. On the other hand, sitting on the ALAC executive, we have had issues where we were asked, after the fact, was this person speaking on behalf of the board or individually, because it wasn't clear.

So even in that venue, there can be confusion. And yes, it's very much a personal issue of whether you feel comfortable, but nevertheless, as impacting our ability to create consensus and create usable policy, it has been a problem.

RAY PLZAK: In the case you just described, if the person is listening, is not sure, they should ask. I mean, I've been in situations before where I've been asked, "Is that a board position?"

So it's also incumbent upon the other -- the other party to say the same thing, whether it's a large group or just a small group or one-on-one.

So -- but there's a responsibility in the communication on both sides of this, to make sure there's clarity of what's going on.

BRUCE TONKIN: Does that answer your question?

MURRAY McKERCHER: Yes, thank you.

BRUCE TONKIN: I don't think it's clear-cut. A lot of it is cultural and it depends on -- you know, partly it's the trust of the group appointing someone to a committee versus someone that, if you like, is self-appointing. So sometimes you just say, "We want volunteers for a committee and we want somebody that comes from this perspective." That's a little bit different from a group like the registrars electing somebody to a role. Say, when the registrars elect somebody to the GNSO Council, for example, they're actually trusting that person and give them a degree of latitude that, you know, they're looking after their interests.

So I think, you know, there are different situations there.

Likewise, if you -- you know, board members wear different hats at different times, so if you're asking a board member -- for example, if you had a question about what we were doing with respect to bylaws reviews, you know, Ray is actually appointed by the board chair of that committee, and certainly if Ray is saying something with respect to what the committee is doing in that area, that would be very different to me saying that, because I would just be a board member and I would just say, "Oh, that's my personal view." So it's really understanding in what mode the person is talking at the time, and as Ray says, ask the question if you're not clear. And certainly I think I, as a board member, try and make clear if I am speaking on behalf of the board. Usually when I'm wearing the hat of a chair of a committee or something. But other than that, I'm just speaking as an individual.

Steve Crocker really is the only person authorized to speak on behalf of the board, in general terms.

MARIKA KONINGS: This is Marika. Just as we're getting towards the end of the session, if we can maybe just remind everyone here that we actually have a paper on this topic that is out for public comment and the public comment forum is open until the 25th of October and then followed by a reply period. So if you have any further views on this, please feel encouraged to submit those in the public comment forum.

BRUCE TONKIN: Thank you, Marika.

Well, at that point, I think we'll close. It's 2:42, and that gives us three minutes early. Thank you.

>> END OF SESSION