Transcription ICANN Helsinki
GNSO Meeting Board
Monday, 27 June 2016
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James Bladel: Anything? There we go. Hey. Thank you. Man, this is a lot of people in a small room; thank you.

Chris Disspain has arrived. Yes. Thank you. If we could have councilors and our guests from the Board, if they could make their way to the table, if everyone else could please top up your coffee or other refreshments and make your way to your seat.

And again, if we could ensure that the table space is conserved for councilors and visitors, that would be fantastic -- thank you -- as we're slowly starting to accumulate.

I see Bruce. This is the Australian section over here, and then - Heather, you're on the wrong side. So thank you.

And then I think we had Göran in the room as well.

Woman: He's coming.

James Bladel: He's coming? Okay, great. We've got a spot for him here.

Bruce Tonkin: I think at this point, John, you're in the wrong spot. You're the odd man.

James Bladel: I'm in the wrong spot? I'm - you know what, Bruce? I'm always in the wrong spot; I made a career out of it. So, okay.

But I think - thank you everyone. I know it's a very - it's kind of a small room and kind of a big group, so if we can - there you are -- the man of the hour. How are you?

So we'll let everyone get seated while the staff begins the recording, and I'll wait to get the thumbs up from them. That's when we know we've begun for real.

Okay, thank you. Welcome. This is the next session of the GNSO Council. You have various members of the ICANN Board of Directors.

I think we should probably go around the table here for introductions just because I think we have enough visitors and we've had some change out here, so at least we can get the names. But if we can go through that fairly quickly, we can get to our topics.

So let's start down at this far end here. I can see someone sitting behind David but I can't see who it is. Oh, there; it's Stefania. Let's start with Stefania.

Stefania Milan: Stefania Milan; Non-Commercial Stakeholder.

David Cake: David Cake; Non-Commercial Stakeholder Group from Electronic Frontiers Australia.

Volker Greimann: Volker Greimann; Key-Systems GNSO Councilor for the Registrars.

Jennifer Gore: Jennifer Gore with Web.com; GNCO Council for the Registrars.

Jonne Soininen: Jonne Soininen; IETF Liaison unto the ICANN Board.

Chris Disspain: Chris Disspain; ICANN Board.

Avri Doria: Avri Doria; NCSG Alternate from the Council.

Marilia Maciel: Marilia Maciel; NCSG Representative to the Council.

Julf Helsingius: Julf Helsingius; NomCom Appointee to GNSO Council.

Carlos Raul Gutierrez: Carlos Gutierrez; NomCom houseless member of the Council.

Stephanie Perrin: Stephanie Perrin; NSCG Council Member.

(Hector Alicano): (Hector Alicano); ISPCP Constituency.

Tony Harris: Tony Harris; I'm ISPCP. I'm a Councilor in the GNSO Council and also a member of the Executive Committee on the ISPCP. And I'm also Registry.

Keith Drazek: Keith Drazek; Registry Stakeholder Group.

Philip Corwin: Philip Corwin; Councilor for the Business Constituency and the Commercial Stakeholder Group.

Heather Forrest: Heather Forrest; Intellectual Property Constituency and Vice-Chair of the GNSO Council on behalf of the Non-Contracted Parties House.

(Marvin Cel): Yes, (Marvin Cel); ICANN Support (unintelligible).

James Bladel: I'm James Bladel and I'm a councilor from Registrars - North America.

Steve Crocker: Steve Crocker; ICANN Board.

Bruce Tonkin: Bruce Tonkin: ICANN Board.

Donna Austin: Donna Austin for the Registry Stakeholder Group.

George Sadowsky: George Sadowsky; ICANN Board.

Rinalia Abdul Rahim: Rinalia Abdul Rahim; ICANN Board.

Lito Ibarra: Lito Ibarra; ICANN Board.

Mason Cole: Mason Cole; GNSO Liaison to the GAC.

Cherine Chalaby: Cherine Chalaby; ICANN Board.

Rubens Kuhl: Rubens Kuhl; Registry Stakeholder Group.

Greg Shatan: Greg Shatan; IPC President.

Paul McGrady: Paul McGrady; IPC GNSO Councilor.

Susan Kawaguchi: Susan Kawaguchi; Business Constituency Councilor.

Markus Kummer: Markus Kummer; ICANN Board.

Man: (Unintelligible); Board Member Elect.

Ram Mohan: Ram Mohan; SSAC Liaison to the ICANN Board.

Brian Scarpelli: Brian Scarpelli; Private Stakeholder.

James Bladel: Okay, David.

David Tait: David Tait; ICANN Staff.

James Bladel: Perfect, thank you. Thanks everyone and welcome to our Guests from the ICANN Board, and of course (unintelligible) which is also ICANN Board -- and Steve.

We had a couple of topics that we had circulated in advance for discussion, but of course -- given that this is a sort of a lighter approach to the way we've conducted meetings in the past -- we are open to new topics as well; we're not going to stand on ceremony here. We do have a couple of folks who have volunteered from the Council to raise our topics.

But first, I just wanted to open the floor to Goren or Steve -- if you had any opening remarks -- otherwise we can dive right in to the topics. It's really your discretion at this point.

Goren Marby: Steve.

Steve Crocker: Goren and I are still trying to work out our signals here.

As I - I don't know how many were around first thing this morning, but as I remarked, our posture this week -- the Board's posture -- is that we're here to be helpful. And I think we're all trying to understand how best to use the time and the new format.

Want to recognize that the man to my right -- Bruce Tonkin who is as much one of you as he is one of us -- is rotating off of the Board -- not for a few months. But it feels like it's imminent and we're already beginning to miss him.

Let me put you in the featured seat here and take control and say what kind of things we should be talking about now and anything you want to say about what kind of things we should be talking about in the future. And then you get to escape cleanly at the next meeting.

Bruce Tonkin: Well, I think, you know, fundamentally, we're here to listen than to draw the agenda of this session.

But one thing, I think, that would be helpful in terms of how we work as an organization is getting a sense of priorities and where results should be focused on because I have a sense that we're doing too much and none of them particularly well.

So I think, you know, it would be interesting to hear from the GNSO is what is your top three priorities. You know, where do you want the organization to support in your policy work? You know, that would be helpful.

James Bladel: Thanks gentlemen. We did have a couple of topics -- at least we could call them conversation starters -- and that we could table those discussions and then see where the conversation leads.

The first one would be - our spokesperson will be Heather Forrest who is a Councilor for the IPC and also a Vice-Chair. Heather?

Heather Forrest: Thanks, James, very much; Heather Forrest. And to respond to Bruce, I don't know if this is one of our top three priorities as much as it is one of our top three bushfires at the moment that we're having to put out.

And indeed it seems that there's an impression that the GNSO or the GNSO Council needs to do something about this one, and we feel as if we're waiting for instruction from the Board. So our response to the community at this stage is we need some guidance before we can do anything.

The topic is the matter of the protection of the names and acronyms belonging to the Red Cross -- the International Red Cross. This is an issue that returned to our plate after perhaps even as much as a two-year hiatus.

At the Marrakech meeting, James and Donna and I were approached by representatives of the International Red Cross, and James and I met with those folks on the side in Marrakech. And they expressed to us some significant concerns and hopes that we would ameliorate those concerns and do so in a very rapid fashion.

And we said we weren't really in a position to do so given that we had completed a PDP - or not we, but our predecessors on the GNSO Council had completed a PDP some time ago and those recommendations were still standing. Those recommendations diverged significantly from advice received from the GAC, and that the matter really had been referred to the Board.

We sent a letter -- most recently on the 31st of May to the Board -- summarizing this situation and essentially asking for guidance as to what we should do next.

And it would be very helpful to us. It's, of course, a very substantive matter. We've taken some time as a council since Marrakech to get ourselves across the issue more fully. Many of us -- most of us I think -- were not on the Council on the time that this was first being discussed. And so we've had a fair bit of work to do ourselves to get across these issues, and we're in a better position now to talk about these things certainly than we were in Marrakech.

Given that it is such a substantive topic, we, perhaps, don't anticipate that you have all of the answers for us at this stage. But any sort of guidance as to where you are in your thinking -- and how soon we might expect some input -- would be very helpful.

Steve Crocker: Thank you. Let me ask Chris to speak to this. I have a couple thoughts of my own, but I suspect that Chris is much further on this than I am.

Chris Disspain: Thank you Steve and thank you Heather. Okay, let me see if we can sort of like level set, so they're split into two issues really.

In respect to the Red Cross, that came to us with GAC Advice saying, "This is a unique organization." I think it was combined with the Olympics at the time, but this is a unique organization and they need to be treated in a particular way.

So what we did was we agreed to reserve -- I'll use the term reserve. I know that some people say it's not reserving, but we reserved the Red Cross names. The acronyms we put into the same bucket as the IGO acronyms because we were concerned about acronyms as a principle, so I'm going to come back to those.

Subsequently, the Red Cross came back and said, "Actually, what we would like to reserve is all of the society names for the countries." So I guess it's Australian Society Red Cross or something -- whatever those names are. And I think it's that plus the acronyms which I'll treat separately but we're actually talking about.

And that, I think, has slightly dropped through the cracks; that particularly one has slightly dropped through the cracks. I don't think the Board -- to my recollection -- had much of a discussion about it.

I think from memory -- but you'd be better to guide me on this -- that the request to reserve those names is - there is GNSO policy that those names should be treated differently to that and those should get protection for 90 days like the Trademark Clearinghouse. Is that right? Okay.

And I don't - the Board has not put its mind to figuring out what to do about that, but will. So that's that piece, and apologies for that.

The second piece is the acronyms -- which goes into the IGOs as well as the Red Cross, right. And with the IGOs, their names are reserved; it's the acronyms that are temporarily reserved.

There is - you have a policy recommendation in respect to the notification piece. So I've got an IGO; I've got an acronym. I want to be notified if somebody registers that acronym. You've done some policy work on that.

The GAC Advice - well, the GAC Advice is to reserve them. We told the GAC we won't do that, but we haven't formally triggered the refusal to follow GAC Advice process; we're trying to not do that if we can avoid it.

You have understood that you might need to look at changing slightly the recommendations you've already made. If we can reach a compromise with the GAC and the IGOs as to how to deal with registration of those acronyms -- even the equivalent of the Trademark Clearinghouse -- it wouldn't actually be the Trademark Clearinghouse because they're not trademarks.

And if we can come to a sort of consensus on that with the IGOs, then we would be coming back to you formally and asking you to trigger your process that you have to reconsider a policy.

Or, if you prefer, we could reject your policy recommendation; it would be a matter for us to talk about. I understand for some of you, you might prefer us to reject it rather than ask you to use the process of reconsidering, but that's something we can talk about.

And then the next piece down -- and I'm nearly finished now -- is that there is the remedies that the IGOs want, so rapid takedown and dispute resolution.

And there is a GNSO working group -- which I think Phil Corwin is -- yes, doing that. And we are currently talking to the IGOs.

Now I would very much like to lift this out of having separate discussions and see if we can't just get everybody together and knock it out.

But bluntly, feedback from the past has been that once the IGO representatives and the GNSO representatives come together, that's not necessarily the most constructive and collegial environment in which to get these things down. And that's kind of we sort of stepped in in the first place.

We are close, I think, to having a proposal with the IGOs that it is likely to be acceptable to the GAC and to the IGOs, and then we need to come to you and see if it's acceptable to you.

Steve Crocker: Let me - thank you very much for that Chris. Let me offer up that I want to engage in a little bit of collegially with Chris that may expose a few gaps in various views about how things work -- some within the Board and some between us, and you and the GAC and others.

The Board is not the place where substantive decisions should be made about a policy. The Board is a place where we really oversee and monitor the process that's been followed, and that the results that are offered up for us to approve meet a -- and I don't want to be too specific about it -- but basically are consistent and sensible and will work.

And so, we - and this is a case and there are plenty of other cases where different parts of the community have different views about what should happen. And we get into this kind of endless cycle of we wish that everybody would get together and come up with an answer.

We get presented with what you make a decision, and I have to confess that we exasperate the situation some because we accept the language of "the

Board will make a decision." Or this gets handed up the Board or - and people talk about it in those terms.

And it really is not what anybody should want that the Board is sitting as a kind of court of determination of the substance of matters. We have plenty of expertise; we could do that. Sometimes in the past, I think we've fallen into that. But that's not the role that the Board should have; that's not the role that you want the Board to have.

So the maximum that I would say that the Board is going to get involved in is on the order of the kinds of things that Chris talked about where we will try to facilitate bringing the parties together as opposed to stepping in and saying, "Well, we've listened to both sides and we've decided that it's like this or it's like that." Because if we fall into that mode, then the question is how do you appeal, where is the escalation if you don't like the decisions we've made because we're just -- at best -- no better than everybody else at making these decisions.

We might be pretty good, but we're not perfect. And that's not the mechanism that you want for the Board. So that's - I said it collegially and I haven't taken a breath yet.

Do you want to respond to that Chris?

Chris Disspain: James, is that okay?

James Bladel: Yes.

Chris Disspain: Steve, I agree with everything you said. The only recall, if you will, is that in this case, we actually have - it is our decision -- in innocence. We have GAC Advice that says to do one thing; we have GNSO Advice that says - recommendation that says to do another.

So in parts of it, we are actually at that stage where we could -- if we chose to -- say, "Thank you very much, thank you very much. Bang, this is what we're doing." We have not done that. We've said, "Let's see if we can bring the parties together."

But ultimately, if there isn't an agreement, we will have to make a decision because it's mandated in the bylaws, right, that we have to do that.

So that's the only thing I would add to you. As a general principle, I agree 100%.

Steve Crocker: I would - just before. Yes, and in the event that that happens, we need to have a very clear documentation that you guys made us that -- that we were forced into it -- so that there's no complaint afterwards about us taking control of it or being preempting the process.

James Bladel: Thanks. Okay, I have a queue forming now. Heather, Donna and Phil. So Heather, you're up.

Heather Forrest: Thanks. Thanks very much James; Heather Forrest. I thank you, Steve, for your intervention then and Chris as well.

I was a bit disappointed to hear what you said that the feedback that you had received was that the working relationship between IGOs and the GNSO wasn't all that positive.

I think one of the things maybe that could help that situation -- I'll say -- we've had the impression in being approached by the folks involved in this issue that maybe there's a misconception as to what we're able to do; we as GNSO leadership and what we as this Council can do. This Council being not the council that decided on this issue some time ago.

And it would be very helpful if the Board could help us to communicate that while the GNSO understands that this issue is within the GNSO's remit -- given its inherent relationship to generic top-level name policy -- under the bylaws, there are processes that we have to follow, and those processes have been followed in this instance.

The Board has intervened -- as you've said. But the specifics in terms of what the council -- this council -- needs to do following that intervention are not really clear. And some clarity would help us very much.

So on the first point being help us communicate that we're not being difficult, we're not being obstructionists, and help us to understand what it is that we need to do. Thank you.

James Bladel: Thanks Heather; excellent points. Donna, you're up next.

Donna Austin: Thanks James; Donna Austin. Fully agree with Heather. We had a little bit of a discussion, you know, prep discussion before the Board comes in here.

And I think one of the observations from my perspective is we don't necessarily - one of the frustrations with this if we're to use down the road, we don't have a resolution. The Red Cross has come to us, and to some extent tried to lobby us to get some action; we couldn't do that.

We know that the GAC is also frustrated that this hasn't kind of moved on because the Red Cross is coming in to lobby them as well.

So I think sometimes we get hamstrung because of the processes that we have, and we try to find a workaround that will give us a result. But that workaround at the moment isn't happening.

Now we understand that, Chris, you've had discussions with the IGOs, but we haven't had any visibility into that, so that's part of our frustration as well.

So maybe if we can find a way - let's not talk about the substance, but let's understand what the process is for us to get to an end result and that might clear some of the way forward. Thanks.

James Bladel: So we'll go Phil and then Chris. Phil?

Phil Corwin: Thank you; Phil Corwin. And I just wanted to since Chris mentioned me.

In the working group, I co-Chair along with Petter Rindforth -- former councilor from the IPC. I just wanted to get a bit into that and to relationship to what the Board is considering.

Our working group is the working group on curative rights processes for IGOs. We have two basic questions before us -- to make it simple. One is do IGOs -- even if they have not trademarked their names or acronyms -- have standing to bring either UDRP or URS action?

And while we haven't made our final recommendations, we've pretty much resolved that issue that in almost every conceivable case they would have standing.

The other issue is whether under the accepted views of the scope of sovereign immunity of IGOs, whether the mutual jurisdiction clause in the UDRP and URS would offend that. And that would occur only in the very rare instance that an IGO brought an action under either the UDRP or URS won the action, and the registrant of the domain having lost - exercised their right to bring an appeal in a court -- a mutual jurisdiction -- which of course the court is in a nation determined by the UDRP rules -- and whether that would offend.

And we've approached this with the view that -- being very careful -- with the view that ICANN must recognize and be respectful of existing legal rights but have no remit to create rights that don't exist.

And our working group made very rapid progress through June of last year up to the Buenos Aires meeting last year, and then kind of hit a stop because none of the members of the working group had any expertise in this very esoteric area of sovereign immunity and the subset of sovereign immunity -- not for nation states but for international and inter-governmental organizations.

And we sought ICANN's modest financial assistance to hire a recognized legal expert, and late last year found one -- Professor Edward Swaine at the George Washington University Law School.

And we've just received a final - about a 30 page legal memo from him on this issue, and we'll be discussing that at our working group meeting tomorrow -- which is one thirty to three.

And if you'll read the legal memo, you'll find -- not surprisingly -- that the question of what is the scope of IGO immunity, that the answer is it depends. And there's multiple different ways that different national courts would analyze this, and some might find sovereign immunity to this while others would not, and it's complicated is the answer.

But at least we have a very solid legal opinion which is not, you know, people can look at it and disagree.

The other thing I wanted to say is throughout the existence of our working group, we have proactively reached out to both the GAC and the IGO small group and urged them to participate in our group because we wanted their input. And I have to say, quite frankly, we've been greatly disappointed in that regard.

We did have a meeting with the Chair and co-Chair of the GAC; that we being Petter and I had a meeting with them in Buenos Aires last June -- an early morning meeting -- which I remember quite well because there was no coffee in the room which made the meeting a challenge at 8:00am.

But we've really - I don't want to say that the IGOs have boycotted our meeting, but they've been conspicuous in their absence raising some concerns that they thought they could achieve something with the Board that - I don't want to mention names but I've been told to my face that they thought we were prejudiced against their position where, in fact, we've tried to be completely objective and very careful about how we've proceeded.

But there's still time for both the GAC and the IGO to engage to comment on this legal memo and to participate in the final stage of our working group. We'll be making the final decisions on our findings and our recommendations.

But we do expect to bring this working group to a close before the end of 2016 now that we have the legal opinion. And so we're in the latter stages now. And we have been, you know, we've been aware of the Board activities, but we're hoping for more definite information on where they stood.

So I hope that - I'd be happy to answer any questions, but I just wanted to bring people up to speed to understand exactly what our working group is doing which there's some overlap of what the Board is considering; they're related. But they're also quite different.

And I'd be happy to answer any questions, and we have our 90-minute session tomorrow -- which if you're interested in this issue we hope you'll attend and participate. Thank you.

James Bladel: Thanks. So what time is that session tomorrow?

Phil Corwin: It's 1:30 to 3:00 pm.

James Bladel: Okay, Chris and then Bruce. Chris?

Chris Disspain: Thanks James. Phil, just to acknowledge what you said, yes; you have in fact been extremely willing to step forward and ask for, you know, input. So I completely acknowledge that.

                 May I suggest that what might be a good idea is if whoever the right person is -- whether it's you or someone -- actually writes to the Chair of the GAC enclosing the legal advice letter, and requesting the GAC to look at it and consider it. You might not want to do that but it's just a thought.

Phil Corwin: I'll defer to Mary Wong, but I believe we've already conveyed that letter to the GAC and the IGO -- a small group -- and asked for their input. And we sent them the preliminary draft, and of course now we have the final draft received about a week ago.

Chris Disspain: Thanks. And I just wanted to respond to Donna on two things.

                 One, Donna, yes; visibility. There has been some visibility. We did have a couple of meetings where members of the GNSO and the IGOs were together with me and Jaime, Heather and a few others and a couple of Board members, and the Chair of the GAC. So there have been a couple of those. But I think we should, you know, it's time to bring everybody around to the table.

                 And the second thing I wanted to say is really just by the way of an apology, I think we really do need to peel off the Red Cross country names and just get that off of the table. It's nothing to do with - it's not the same argument as the acronym is, so I think we just need to get that out as quickly as we can.

So let's agree that the Board will do that and deal with that, and that will then mean that we're only dealing with the acronyms and that's a discreet piece that we can deal with separately.

James Bladel: Thanks Chris. So Bruce and then Donna.

Bruce Tonkin: Yes, thanks James. I think it's asking the question, you know, what can the GNSO do?

One of the things I think is really helpful perhaps is to -- maybe in a really simple diagram on one page -- explain the processes that have been developed around trademarks as a starting point.

And the processes that are being developed there is that there is trademark law. We've come up with a lightweight dispute mechanism -- which is the UDRP which is experts in that area of trademark law; make a decision between two parties.

Then there's a very defined appeal process where if either of the parties disagrees with that decision, then they can then take it to a court of law. That has been a system that's been in place for many years and has been quite effective.

In recent years, we've made an enhancement to that which is the Trademark Clearinghouse. And principally, what that does is it's giving notice to the trademark holder. So now we have notice to the trademark holder, we have a dispute process that they can use, and now we have an additional dispute process -- which is the Rapid Suspension Process but there's three dispute processes available -- and then there's a court of law behind it. So it's a very clear, simple framework actually.

And then the question is if we start looking at some of these new things is to follow exactly the same path. So the first path is what's the law that defines

the matter, and I think in Red Cross there is quite well defined laws available so you can start with that point.

But then the question is, is there some sort of dispute process that could be put in place to deal with the dispute where that law impacts the particular registration? And then the appeal process should be pretty well defined as well -- which presumably it could then go to a court of law if either party is unhappy with that dispute process.

I think we should try and map both cases out in exactly the same way, so that's at least an education piece that's clear and it's a very clear framework that can apply to any use of law at ICANN because really, we don't make laws. We basically abide by the national laws that exist.

And then secondly, I think the frustration I'm hearing is it sounds like that some of the parties that want protection aren't actually engaging with the policy body that makes that decision. And, you know, I guess to the extent that we can perhaps encourage -- either through the GAC chair or, you know, in any meetings that we have with the IGOs -- to encourage and to actually engage in your policy development process.

So I don't think it's the Board's role to come up with a policy solution. What we can do is (unintelligible) frame the discussion. I'm sure we would be happy to - if people were worried that they may be treated unfairly or in a biased way, then, you know, we're more than happy to help appoint a neutral facilitator to the extent that it's necessary.

But the key thing is the effected parties need to talk to the groups that are trying to come up with a solution.

James Bladel: Thanks Bruce. And we're going to go to Donna for the last word on this.

But before we move to Donna, just want to note that although it's not exactly what you're looking for, we've been also attempting to produce some materials that put all of these issues into a one page. And what you see in the - I think this is actually a two-page document although I don't see Mary. I think it's a two-page document.

But what you see in the Adobe Room is a side-by-side comparison of the different - where we landed between GAC Advice, the GNSO recommendations, the temporary protections and then the permanent protections that are being sought -- or the delta.

So we can certainly share this with you if you feel that that would be a helpful resource. It's not exactly what you were asking for, but I think it is a handy reference guide.

So we'll go with Donna and then Cherine, and then we'll move on because we have one more topic we want to cover.

Donna Austin: Thanks James; Donna Austin. Just to respond to something that Chris suggested that we should couple the Red Cross from the rest of this issue.

So we had some discussion around this one when we were doing the drafting of the letter. And we do recognize that the Red Cross is a different situation, but we are concerned that if we couple the IGO acronyms for this as well, then we'll just have longer delays in resolving the IGO acronym issue.

And I just want to explain that some of the challenge that registry operators currently have with the temporary reservations of IGOs is that there's no mechanism to release them.

So with, you know, in the Registry agreement, they are reserved. You cannot, you know, if you - there is actually a situation where the International Olympic Committee wanted to use IOC in a number of top-level domains.

An RSEP was submitted to ICANN to see if that could be done and it - it's just kind of in a holding pattern because nobody knows what to do with it. So would - there actually isn't a mechanism at the moment available for Registry operators even if they have agreement of the IGO in question to actually release that and have the - have it available for their use.

So that's - some of the concern from a Registry operator perspective is that if we decouple we are concerned that that delays it even further. And also we're, you know, we had that added problem that we don't have a mechanism to release the IGO acronyms at the moment. Thanks.

James Bladel: Thanks Donna. Cherine has the last word.

Cherine Chalaby: Just an observation from the discussion is that I'm not clear how the gap between the GAC advice and the GNSO policy because there are inconsistency there.

I'm not clear on the actual step of actually either reconciling those or not and what is the timeframe for that, because this has been going on for such a long time and it can go on for another long time.

So it's not clear to me how this reconciliation is going to happen or not at all, and face the fact that it's not going to happen and then we'll have - someone has to arbitrate in the middle of that.

So I'm not leaving this meeting with a clear direction frankly on exactly the time scales of when we're going to do this and how - what is the process with a bigger chance of success?

James Bladel: Thanks Cherine. I think that's something we're struggling with as well. I think right now what the Council is saying -- and I'm just going to try and

paraphrase this -- that we're not clear and we're looking for guidance from the Board on whether or not we should pursue efforts to close that gap.

But I think that where we are for some of us is that we'd like to see some formal indication from the Board that that gap exists. And I think some of, you know, I think just speaking personally I think a formal rejection of the recommendations that don't meet the GAC advice is probably going to go a long way to upholding the integrity of the PDP process.

I'm more concerned that if we take some sort of an informal approach where we start amending the PDP based on, you know, a request or lobbying efforts or whatever you want to call it that I think that that's probably the road we don't want to go down.

We want to see something that actually follows the script as it's outlined in the bylaws.

Bruce Tonkin: Just to be clear…

James Bladel: Yes.

Chris Disspain: …there is - so a couple of things. So yes fine, we could do one of several things. We could reject the GAC advice. We could reject your thing. The - your - there are two points.

First of all your current recommendations that we could formally reject only go to a part of the problem, right, so that's not the whole problem. And secondly, there is actually - it's not the - sorry, the process to ask you to look at your policy is a formal process.

They're both formal processes; at least my understanding is they're both formal processes. They both exist so we could reject or we can trigger or ask you - trigger the process of asking you to reconsider.

Either of those things are available and I'm happy to do whichever one you prefer but if we - but all - what we would - if you want to bring this to a head the quickest way of bringing it to a head is for the Board to take an action which - whatever that action may be.

What we have - up until now we've been trying to, you know, bring the parties together.

James Bladel: Chris are you asking us what we want?

Chris Disspain: Well I'm not. I'm suggesting you - I will think about that. I don't - I think that part of the issue with this is incredibly complicated because we've got several different pieces.

So if we take the Red Cross out for a second and just talk about the IGOs, we have a GAC advice on the table that says, "Reserve them." That's the advice. We have not formally rejected that yet.

We told them we won't accept it but we have not formally rejected it. We've got your policy that says, "Put them in the thing for 90 days and then that's it."

And then we've got the ongoing policymaking on the curative rights, so those are three things going on right now.

James Bladel: Yes and I think that the - if we can possibly take the curative rights thing and set that aside because it's not - it's peripheral but it's not on the collision course with the other two points.

I think what we're saying is we are open to pursuing those other processes and initiating them. We don't want that to become the default response to these questions.

However we also don't want to pursue that blindly. I think we need some guidance from the Board on which direction, you know, where they fall short versus GAC advice.

((Crosstalk))

James Bladel: Are there elements of GAC advice that you think are more important than others? What's the priority? I mean, otherwise you're just telling us, you know, "Make your recommendations look like this." I guess we're not clear where…

Chris Disspain: Completely agree. So is this - are we - is it okay to carry this on? I mean, it's up to you guys. I'm happy to do it.

James Bladel: Yes I think we've got a couple more minutes.

Chris Disspain: Okay.

James Bladel: But we do need to…

Chris Disspain: So…

James Bladel: I know a lot of people are jumping to get in the queue now so…

((Crosstalk))

Chris Disspain: Two things arise. So first of all you could carve off the curative rights aspects of this. The challenge there is that it's the coming to an agreement on the curative rights that gets them to step away from the, "We need reservation."

So the starting point is we want these reserved. We've said not formally but effectively no. They then said, "What?" We said basically, "What's your fear?"

And their fear is that if somebody registers them they have no way of dealing with it. Now whether you think they're right or not doesn't much matter. That's what they think.

So the first question is they want to be notified that they've - someone's registered the acronym. Then the second piece they want is that they want the Registrant to get a notification.

We're pushing back on that and saying, "That's not appropriate." And then the next thing they want is they want a rapid takedown of some description, and then they want a DRP of some description.

It's the curative rights - the - they're saying to them, "We'll find a way of giving you the curative rights." That gets them to step away from the demand that the names - that the acronyms are reserved.

That's - so it - so they are connected in the sense of trying to bring this to a head. The only formal thing we can do is either reject their advice in which case we then go into a - what effectively is a six month formal process - we think normally about six months of rejecting the advice, which is effectively going to mean acting in good faith and carry on negotiating, right. Or we can formally - I guess it's reject your policy recommendation.

Bruce Tonkin: But essentially Chris it's not an or, it's an and/or.

Chris Disspain: Sorry. And we could reject both.

Bruce Tonkin: That's an and/or.

Chris Disspain: We could reject both.

Bruce Tonkin: You can reject both but let's take it offline because I think we - what will come back to you I guess is a bit of a decision tree so you actually understand what the decision options are.

But yes in simple terms we have two groups at ICANN that have a conflicting position. The Board's option is to accept neither of them/accept one of them.

It doesn't look like we can accept both of them because they conflict. But in either case I think what we're then trying to do is to say if we reject either one of the positions is then saying, "What's the next step?"

And as Chris says, you know, for example if we accepted your middle Column 2 here which is the notice piece that doesn't necessarily solve the problem if there's no process for what happens after you get that notice.

You know, so I found out about it but now I don't know what to do. So that to me would seem that there's a missing piece but let's map out the decision tree for you and we'll come back.

But I do agree that what I'm hearing is you want the Board to make some decisions one way or another so that you've got clarity. But I think the direction that Chris is heading - ultimately what we're trying to find is a consensus position that meets the requirements of the law in this topic area between the two areas/two groups if you like.

James Bladel: Okay thank you Bruce. Thank you Chris. Thank you Cherine and Donna and Heather and everyone who weighed in on that and Phil as well. I think we're going to pivot to our next topic.

That was the easy one by the way just so you're properly prepared. Oh our next topic - and I'll turn it over to Susan Kawaguchi who's volunteered to take the lead on this.

But we want to tee up a discussion regarding our recommendations of Privacy/Proxy Accreditation Services. Susan?

Susan Kawaguchi: So thank you for that discussion. I actually found that very enlightening and fascinating and have lots more questions but offline. All right. So as you all know we - there was a PDP for the Privacy/Proxy issues and the working group did a great job in my opinion.

I happened to be on it but there was a lot of people that spent a lot of time developing positions and recommendations, and we provided the final report to the community and to the Board with those recommendations.

The GAC did not find these recommendations acceptable, so what we're asking of the Board is what's your viewpoint on this and how do we move forward?

James Bladel: Do we have any takers from the Board? Anyone wish to speak to this? Everyone went shy all of a sudden.

Chris Disspain: Don't look at me. I can say some…

James Bladel: Chris we would never…

Chris Disspain: Oh no, no. Of course…

((Crosstalk))

James Bladel: …get in the way between you and the microphone.

Chris Disspain: Thank you James.

James Bladel: Yes.

Chris Disspain: Thank you so much. My own level of self-awareness has now been enhanced by your feedback. Thank you. My personal view -- this is my personal view -- is that the GAC were involved as they should be in your policy development process.

That's pursuant to the bylaws. I understand that there were representatives for want of a better way of putting it who were supposed to be there. I think they - I suspect that they weren't there anything like as much as they should've been or could've been, and that once again we find ourselves in a situation where - after the event of reaching a recommendation and all of the effort that's gone into something that I know is contentious within the GNSO because of the contention between the Contracted Party side and Intellectual Property side, we find ourselves now once again having what is in effect law enforcement I suspect wandering into the room and saying, "This is not enough."

And I think my - again my personal view is that that's - we should really say no to that. It's enough. That said maybe the answer is to - my understanding is that if we maintain the status quo then that's even worse for them in the sense that the steps are being taken that they would consider to make things better.

So therefore it seems to me that one way of thinking about it is to say, "Let's just do what we recommended and work on the rest of it another time or later or tomorrow or whatever." But that's just my personal view.

James Bladel: Any other thoughts from the table, Council, Board? I think there's some commonality between this topic and the one we just discussed, which is that, you know, there's gaps or daylight or deltas between recommendations coming out.

I don't think we've - we have formal GAC advice on this or are necessarily expecting it, but I think it is one possible avenue that's been hinted at coming out of Marrakech.

And I think that, you know, from our perspective the GNSO - we've, you know, as you mentioned we've - we worked for a number of years. We had a number of very spirited debates.

We've reached a number of let's say very constructive but perhaps tenuous compromises, so to reopen those issues after the fact I think starts to call into question the integrity of our processes that we use to develop processes, and to make decisions as a GNSO community and then to ratify those decisions at the Council.

So it's, you know, it's something where we - we're not trying to put you in a difficult position but we also want to find a clearer path forward for these things.

And I think that, you know, we have a number of processes in place to try to encourage earlier and more substantive coordination and participation by the GAC and by individual GAC members or the GAC as an organization and to try to get - to head these things off earlier on in the process.

And that's always been the goal but I think that, you know, it - look if we're being candid and this is the policy forum and it's time to put the cards on the table I just - I don't think we can point to any huge success in that area yet.

We're trying but I, you know, I don't think that we could - we have anything to hang our hats on there. I don't know. Heather.

Steve Crocker: You're touching on a general problem of the pace and rhythm and processes of the GNSO on the one hand and the GAC on the other hand, and they're

almost as if they're not only two different organisms but from two different planets.

And there is a slight piece of good news - I think not going to satisfy anybody at the moment. But I think that in general there's been movement in the direction of being more responsive and getting engaged at an earlier time.

But that still leaves us with problems like the ones we're discussing here of - as queued up from all that. So I don't have any magic bullets here to offer except empathy that it's not okay for these kinds of problems to fester and fester and fester, and that is something that does concern us.

I want to make a comment that I hope is not going to be misconstrued. The - this syndrome has been of concern for a period of time and should have gotten more vigorous attention than it has, so in that sense a slight apology.

However I'll observe and this observation is really one of - a collegial one of all of us that the past two years have been extraordinarily expensive in terms of the amount of attention to the transition process, accountability process and so forth all - which is fine.

But as a consequence a number of things that we would have pushed harder on have not - have been starved for attention and as I said that's not a negative comment.

It's just an observation about where we are. So just speaking for myself my hope is that we come out of this transition process and we're not going to come out of it like a thunderclap.

There's a lot of implementation. There's a lot of things to be sorted out so even assuming the transition goes through smoothly there's still going to be a long tail on it.

But nonetheless I hope that we're able as a community as well as the Staff and the Board to start to turn our attention back to some of these issues that have persisted over a period of time and we start to bring the processes together.

So I'm sorry for that speech but that's the kind of thing that - and feel has been a source of frustration over a period of time. You want to…?

James Bladel: Well I have Heather and then Bruce…

Bruce Tonkin: Okay.

James Bladel: …join us. And Heather go ahead.

Heather Forrest: Thanks James. Heather Forrest. In the spirit of frankness and James has been frank and Steve has just been frank, I'm not convinced that this is an - only an issue of pace.

I'm not convinced that early intervention is the silver bullet. I really think that getting involved earlier might just mean we reach deadlock earlier. We're all affected by PDP recommendations and the decisions of Council on those recommendations and the decisions of the Board on those recommendations.

And when one of us is affected in a way - let's say affected by Council's decision in relation to PDP recommendations - when one of us is affected in a way that personally or in terms of our organization isn't an outcome that we desired or hoped for and then we go to another SO or AC and say, "This is not the outcome that we desired. Can you help us get the outcome that we desire?" that's a broken process.

That's a systemic organizational broken process. It's going to one part who says no and the other part who says yes or hoping, you know, lobbying the other part to say yes and that bothers me.

This is not - we have two issues on the agenda that as James just said are really two peas in a pod, and I think this is an opportunity to try and nip this in the bud rather than let it continue. Thank you.

James Bladel: Thanks Heather. Bruce and then Stephanie and then, you know, we want to give first crack to Board members but the floor is - well Jonathan.

Bruce Tonkin: Yes. I think the goal of our organization is to create policies that have consensus support within the community and the GAC is definitely part of that community.

I think one of the challenges that I'm noticing actually is really a problem of resource limitations and different priorities and I think that's what's affecting - and there's a lot of light coming sort of responses.

So one is if you look at the GAC you might look at it at face value and say, "You know, it's got over 100 members." So obviously they've got lots of people to get stuff done.

If you actually look at that and say, "Well who's actually doing the work - the hard work of, you know, directly participating in a working group or a policy?" it's probably five of those - five people - well five equivalent people that are available from that particular organization.

Then if you look at the GNSO I can see this room. There's, you know, probably 100 people in this room. I bet there's 20 of people in this room that really do the heavy lifting.

And what you get there is that you then - you might look at the GAC side and not have their - for their five people that really do the heavy lifting probably all five of those have been on the - one of the CCWGs would be my guess.

And therefore - but they're - maybe they've got one person that's available to look at NGOs because that's something that's important to their constituents.

On this side you might say, "Okay you've got - obviously you put a lot of this - and into privacy and proxy because that's something that's of interest to this particular community."

And so your - of your 20 people you probably had 15 on the CCWG and maybe you've got one or two heavy lifters on privacy/proxy. The GAC's got no heavy lifter on privacy/proxy so they kind of go, "I'm just going to wait until I get to the end result.

I haven't got time to participate. I'll wait till you've done all the hard yards and you've worked and you spent a year working on it and now I finally got the document.

Well I've got time to read the document now that's it in final form and hey I don't like it and now I'll put my advice in." So I think it's - that's actually aligning the fact that you need to identify early who are the stakeholders and you've got to try and find a way for them to be - to agree to the priorities because otherwise I think you'll always end up with this problem, because I think it's not bad faith.

I think it's just to - each group is trying to use their resources and prioritize those for what they think are the important topics.

James Bladel: Thanks Bruce. Next up I have Stephanie, Jonathan, Greg and if anyone else wants to get in the queue that'll probably take us right up into the end of this session.

So we'll just go David last and then we'll close off with those and Susan. Okay so David and Susan and then that's it so if we could ask folks to keep

your interventions succinct that'd be great. Thanks. We'll get everyone in that way.

Stephanie Perrin: Thanks. Stephanie Perrin for the record and I totally agree with what Heather said. I think that the deadlock will move forward. That might be useful and it might not.

I totally understand that Bruce gets it. There is some frustration here but there is basically - it's first among equal so there's a trump card being played.

And the point I wanted to raise - and I'm painfully aware - painfully, painfully aware that there are people around the table who would cheer resoundingly if I said, "Okay I'm quitting."

But I - this impacts the multi-stakeholder model rather profoundly because we're not that stupid. If we're going to work for five years on something bringing missing expertise - at least I think I bring missing expertise and representing civil society, and then it's to no good anyway because none of our arguments will ever be heard.

And the careful calibration that takes place during a PDP where there's give and take - there's genuine give and take and then that gets trumped. Well eventually you're going to leave and that eventually could be quite precipitous if this happens in a number of PDP areas.

And that impacts whether ICANN has any credibility and then this gets us back into the Workstream 2 discussions about accountability so I think it's a very important topic.

I'm glad that Steve said what he did because it's time we address this for good or ill. Thanks.

James Bladel: Yes Stephanie thanks and it's a good point. And I'd also throw onto the pile that the next time we put out a call for volunteers to PDPs and folks see what happened to their work the last time around, the enthusiasm let's say is…

Greg Shatan: Yes.

James Bladel: …tempered quite a bit. So Jonathan.

Jonathan Robinson: Thanks James. My - good discussion. I mean, I really appreciated hearing it and, you know, Bruce's point about resource, Steve about distraction, Heather about, you know, whether or not the problem is so sort of structural or systemic that bringing it forward wouldn't help.

But what no one's mentioned is of course that these two examples that we've discussed do predate the work of the GNSO-GAC consultation group, which has done some very good work in the background during the course of all of this - distractions that Steve talked about, all of the other overarching issues that we've got involved in.

And quietly in the background there has been some very good progress. I'm not saying it is a silver bullet to quote Heather on this point but it's - there has been some very good work about early involvement of the GAC in the PDP process, some mechanisms put in place to achieve that and of course that is on the back of the ATRT recommendations to do so.

And Mason's worked in his capacity as the first GNSO liaison to the GAC very specifically in that direction, an opportunity to engage and provide that kind of input to the GAC early on.

So I'm not saying we would've found these really intractable or challenging problems any more easy to resolve, but we have made some steps in the right direction to dealing with this kind of thing earlier in the process and making sure we are better equipped to do it.

So let's keep it up but let's not forget that some work has been done and it's rather supported that kind of initiative, and feels to me like that was a long way forward from if I roll back to the Toronto meeting say in 2012 where the GNSO didn't even meet with the GAC.

So, you know, we may well have some structural and other challenging issues but we have made some progress as well. Thanks.

James Bladel: Thanks Jonathan. And just for clarity, because if I need to apologize to you or to Mason if it felt like I was throwing your efforts under the bus, it is possible that we're not just seeing the fruits of those efforts yet and that we are kind of chasing a trailing indicator from the - that work and I understand that.

I wasn't - certainly wasn't trying to call you out for those efforts. I think they are good efforts/good programs. They just haven't…

Jonathan Robinson: Thanks James and I wasn't taking it as that but I think…

James Bladel: Okay.

Jonathan Robinson: …you're - that's a very elegant expression - trailing indicator. I mean, to some extent these predate that work so - and again on the flipside I don't think we've got it all resolved but we have made some progress.

So I wouldn't like us to think that we just simply ignored the structural issues. We did some good work on that and are doing some good work and…

James Bladel: Thank you. Greg?

Greg Shatan: Thanks. Greg Shatan for the record. I'll point out that I was a member of the IGO-INGO PDP that was the subject of the first topic under discussion. And I think that what I see is the two topics that were discussed today with the

Board are really the same topic just with slightly different facts - specific facts so it's really the same story.

And that, you know, we've come to a certain set of policy recommendations using our process and then it all got gummed up. So if that's the process that's, you know, that's in our bylaws that's a problem.

Clearly there needs to be a way out of this dead end - this policy collision. And I remember noting that we were heading into a policy collision when we were issuing our policy recommendation from the IGO-INGO Working Group - not the current one but the prior one.

So this is the, you know, the world's slowest train wreck and now we have two train wrecks that are essentially, you know, mimicking each other. Maybe like Jonathan says we have a way out or it's not a silver bullet.

I don't know but just to point out that we've really just had the same conversation twice, which means that there is a systemic problem.

James Bladel: Yes thanks. What did he - what's the saying? Once is an anomaly, twice is a coincidence and what, three times is a pattern or something. It's - I think if you start to feel like you're going down the same tracks and every time you go down the tracks you end up with the same result. Yes absolutely.

Okay we've got David and then Susan and then I think we'll saw it off and that'll probably take us to the top of the hour. David?

David Tait: Well yes Jonathan said I think a lot of the things that I was going to say. The GNSO-GAC consultation group which - was essentially I think partly formed in response to some of these problems.

We - the - obviously the Red Cross issue has been dragging on for a very long time, showed a lot of how bad this sort of can be when the GAC and GNSO come into collision.

We've tried very hard to get early input. The only thing in which I'd - and, you know, I think a lot has been achieved and a lot of good work on both sides by everyone involved in that group and especially by Mason who's done, you know, done a great deal of good work in that role.

But I think one way I'm going to differ is that - and in the PPSAI largely does not predate that work. That's work that happened post - mostly post all those processes coming in and it really showed that, you know, we're still not there, that the work we've done there and trying to get GAC early engagement has still not been fully taken up and is still causing us some problems.

So maybe this is just a, you know, a call to arms to get back into work at that and see what we can do in terms of dealing with the, I mean, those issues that Bruce talked about the way the GAC works and does not have the, you know, use - has different sets of resources to the GNSO and different processes are very true but we've - well, you know, they remain problems.

We still need to work on them and even just getting that same level of, "Oh I better read - I've got time to read one thing and respond," you know, if that - and if that was the initial issues report as well, you know, we could get that on the initial issues report as well as the end or something.

You know, even that sort of modest level of early input would hopefully make a real difference and let's keep working at it.

James Bladel: Thanks David. Last word goes to Susan.

Susan Kawaguchi: Okay. Thank you. So this has been really interesting and some of this may be my lack of understanding on how the thing - this would work with the Board in general.

But I guess my, you know, and being a member of the many working groups over the years I've always thought, "Okay we've finalized this. We give recommendations to the Board. The Board takes action."

But I'm disturbed with the Red Cross IGO acronyms, all of that, that now the Board is coming back and saying, "What do you want to do GNSO Council?" There - some of that's fine because I think working together and compromise and discussing things are good but we still need the Board to take an action.

The Board has its own processes to follow. GNSO and especially in the PPSAI Working Group followed those processes to a tee. Now we're looking for your advice and input and maybe it's - maybe we haven't seen GAC advice yet on the PPSI - AI.

Maybe we're, you know, jumping the gun here but I really would urge the Board to think about this and sort of weigh the community and the multi-stakeholder aspects of our community, and the fact that we followed the process and now we need to move forward in one way or the other.

James Bladel: Thank you Susan and thanks to all who contributed to that conversation. And I think your last point is probably a good as place as any to land on this topic is that we don't have any GAC advice on this yet.

It's a potential but this is just a - an acknowledgement that that could be one of the potential outcomes of the Helsinki meeting. And we want to essentially get your thoughts on the Board as to, you know, where you see this going.

Steve Crocker: Yes. Let me - it wouldn't be appropriate for us to say we hereby make a decision or we're going to make a promise to the GAC. But I can say not only

on my own behalf but on behalf of the entire Board we have - definitely have heard you and we agree with you that this is not a satisfactory process.

Stephanie suggested that -- what I said before or what someone said -- will only have the effect of speeding up the train wrecks. I'm not sure that that's a terrible thing.

It's - if we're going to have train wrecks let's get them done and then we can deal with them faster. But I think that we not only have to deal with these specific issues and agreed and we have to deal with the systemic process.

And as I said earlier my fervent hope is that we can - all of us, not just the Board but the whole community can start to turn our attention to getting that kind of work done as opposed to the overlay of how we're fixing up our accountability process.

And not that that's unimportant but there's a limited bandwidth that we all have, and I would like to see going forward that a year or two years from now we're not still dealing with those issues but we are dealing with the kind of issues that we're talking about here.

James Bladel: Thanks Steve and thanks to our visitors from the Board. We can leave this session a couple of minutes early. I think we're breaking for lunch now. Is that correct?

So let's - thanks again to everyone who contributed on those two topics. I know they're challenging and we'll give you at least 48 hours to solve them.

((Crosstalk))

James Bladel: If we can stop the recording I think we're going to break for lunch. We'll reconvene - so I'm checking the schedule here. I believe we reconvene at 1:30 and there's going to be a little bit of a shift around the topics.

We're going to move the GNSO review first. Where's Marika? Am I saying this wrong? The GNSO review first. Just to accommodate some of the guests that are going to come in and some of the subject matter experts that are going to visit with us for those topics, we're going to shift some things around and I'm looking at you Rinalia.

And then we'll also have a discussion that involves the Co-Chairs of the Accountability and (Davey) will be coming a little bit later so enjoy your lunch. We'll see you at 1:30. Thank you.

((Crosstalk))

END