BARCELONA –Joint Meeting: GAC and GNSO
Sunday, October 21, 2018 –15:45 to 16:45 CEST
ICANN63 | Barcelona, Spain

MANAL ISMAIL, GAC CHAIR	So may I invite GNSO council to the panel. So welcome everyone to the GAC GNSO bilateral meeting. This is our regular meeting at ICANN meeting and happy to have you here. I will lead over to Ghislain de Salins as our point of contact to the GNSO but first would like to welcome Heather, Donna, Rafik, Julf, and any GNSO members in the room. So over to you, Ghislain.
GHISLAIN DE SALINS:	Thank you very much, Manal. So we have Donna, Rafik, Heather, chair, vice chairs respectively. I think of the GNSO and Julf our [indiscernible] to the GAC welcome, very glad to have you here and to discuss matters of common interest between GAC and GNSO.
	So maybe for the newcomers in GAC who don't know what GNSO is, Supporting Organization for Generic Names, so maybe this one is the most important bodies in ICANN, I can say that, after the ICANN Board, of course. But they're responsible to develop policies for the [inaudible space, so, of course, we have a lot of common interests in the point of discussion.
	So, maybe I can briefly go through their agenda today to see if we have comments on the agenda, otherwise we can just adapt it. We have

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

three main points on the agenda today. Actually, we're going to start with the last one. There's been a little change in the agenda. So we're going to start with the PDPs, which are the Policy Development Processes. And the PDP 3.0 is about incremental improvement to the PDPs to make sure that they're very inclusiv, so maybe the GNSO can talk a little bit about that and I'm sure we have some comments from the GAC side, as well.

So, the first point, then we can talk about the curative rights protections and of course access of the IGOs to the curative rights. We've already discussed this yesterday at the GAC level. And in the end, if we have some time, we're going to talk about the GDPR, WHOIS as well. So is there any comments about the agenda? I see none. So let's say it's adopted. Okay. So before we move forward with the agenda, maybe I'm going to give the opportunity to Heather, Donna, Rafik, and Julf to say a few words, of introduction, maybe.

HEATHER FORREST: Thank you, Ghislain, very much. My name is Heather Forrest. I understand that there are more than 100 new members of the GNSO -- of the GAC, excuse me, who have joined in the course of this year, a very warm welcome to those of you who are new to the ICANN environment. We're delighted to be here. This is a regular feature in an ICANN public meeting, that the GNSO comes to meet with the GAC, and please forgive me for leaning over to have a brief chat with Manal and then Julf to explain in relation to the agenda. So, we have received the letter that was recently, about an hour and forty-five

minutes ago, sent through to us in relation to the curative rights PDP, and we were concerned that, given the urgency expressed in that letter, that while we thought initially we would start with the introduction to the PDP, we did not want to insult you by starting with that item if item number 2 was the most burning thing on your mind. So hence, we made a very last-minute change to the order of the agenda. In a very quick discussion here with Manal, I do think it would be useful to start with the introduction, because that would mean the other two topics would make a bit more sense. So, I understand that you are very willing for the agenda order to be what it originally was.

With that, I'll introduce my colleagues here at the table, Donna Austin, Rafik Dammak, Julf Helsingius, Julf serves as the GNSO council liaison to the GAC and we've asked Julf to lead on the discussion of a very basic high-level introduction to what the GNSO is, what the PDP, or Policy Development Process is, and how that works. And I think that understanding will help us with the other two items.

Before I turn to Julf, I will just very briefly check with Rafik and Donna, see if there's anything you'd like to say starting out. Nothing. Excellent. Julf, over to you.

JULF HELSINGIUS: Thank you, Heather. And thank you, everybody, for allowing us to be here. Do we have the presentation I sent?

MANAL ISMAIL, GAC CHAIR: I see nodding at the back, so it's coming up.

JULF HELSINGIUS: Okay. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you.

JULF HELSINGIUS: So, while we're waiting for the presentation to start, let me start talking already so maybe the presentation itself catches up. So, yes, we are the Generic Names Supporting Organization, and we are responsible for policy development related to generic top-level domains. So, we are the guardians of the development process, that's all we do. We're not a lobbying organization for domain industry, which is something I've heard, or we don't represent any specific interests, we are here to develop policy by using the process that exists for that and we are guardians of that process. Now it would be useful to have the presentation, I can't go too far ahead.

Can you see if it's – how long? No. Okay. It looks promising. Yes. Thank you. Right. Next slide, please. Oh, most of the slides in this presentation were actually hidden in my presentation, somehow the hiding doesn't come through. Can we just go forward until I say stop? Because I'm only going to use a few selected slides from this. Stop. Thank you.

So this shows the Council, but [inaudible] we move on immediately. So, next slide, please. Yes. This is one we can use for a while. This

ICANN 63
ANNUAL GENERAL
BARCELONA
20–26 October 2018

shows the structure of the GNSO Council and actually the whole GNSO, which shows we have these two houses inside the GNSO, the contracted party's house represent the registries and registrars, and then we have the non-contracted party's house that, again, has two parts; the commercial constituencies, which are business, intellectual properties, and internet service providers. And the non-commercial constituencies, civil society and NGOs. Thank you, next one. Stop. Yes.

And this is the famous snake or the Policy Development Process. And I'm not going to go through the whole process, as you can see there, there's a lot of steps in it, but this is a snake that you hopefully all become very familiar with, because we know it pretty much by heart by now. The important point in that snake diagram is there are multiple points where things go out for public comment, and it's public comment, period, where anyone can comment on what it's going on, both in the initial phase, when we actually put together an issue document, when we have a preliminary report and before the final result there are always a public comment period to allow everybody in the community to give input. Next, please.

Okay. We can actually skip this too. Next one, please. Okay. This one -- what we actually find is consensus policy, and that's very important because it's something that's a contractual obligation between ICANN and registrars and registries. And that's, "The power that ICANN has over them is purely a true contractual matter by defining a consensus policy that registrars and registries have to obey by." And it's very clear what those policies can relate to, what that consensus policy has to do with. Next one, please. So, this is also a term that you will

ICANN 63
ANNUAL GENERAL
BARCELONA
20–26 October 2018

probably come across a lot, the picket fence, which is really what delineates the things that ICANN can contractually impose on the registrars and registries, what kind of things ICANN has the power to set policy for. Next one, please.

So, anyone can normally participate, it varies a little bit from PDP to PDP, but normally anyone can participate in the PDP work. There are some special cases and, of course, the most famous special case is EPDP, that has very special rules, because it kind of follows completely its own rules. But with the normal PGPs, anyone can join as a member or observer and can join in the middle of the process if they want to. We did hope that they catch up on what has been going on before so we don't rehash the same new arguments again, and a lot of the work happens between the meetings. Most of the work is done by email or by teleconferences, so it's all done remotely, it's -- very little small part of the work actually happens at these meetings. Next one, please.

At this point, Heather, do you want to talk about the PDP 3?

HEATHER FORREST: Thank you, Julf. So, Heather Forrest. I'm very pleased to introduce a project that we have called PDP 3.0. The 3.0 suggests that this is effectively a third consideration by the GNSO community of the policy development process, the process is a dynamic one and an evolving one. We have a set of written rules and procedures that are internal to the GNSO, the GNSO operating procedures and part of those operating procedures is something called The Working Group Guidelines. These

documents together set out how a PDP functions, how a PDP gets commenced, the documentation it happens along the way and so on.

There were aspects within that documentation that is not entirely clear. There are aspects within that documentation that don't quite take account of the fact that the ICANN community has become larger, that participants are more numerous, that participants are more active and involved, and then there are aspects of those documents that really don't touch upon the sort of very practical things that we think we could do to improve the policy development process by making it more efficient, more effective and more transparent and accountable.

So, we started in January of this year, of 2018, a discussion internally within the GNSO Council which is the formal body that manages policy development within the GNSO, we started the discussion to say, "How could we do things better? We've heard throughout the years at ICANN meetings and away from ICANN meetings comments from within our own community and in the hallways here from other communities, well, that, you know, that's not the best, the GNSO could improve on doing this or that. Let's write all of these ideas down, what could be improved." And broadly speaking, we had five areas of work where we thought we could do something by a way of improvements. Working group dynamics, how a working group – a team works together, how it reaches consensus, how it goes about its work in a collegial and collaborative fashion.

Working group leadership, what role do PDP chairs, co-chairs, leads have in facilitating that group's work towards consensus, what challenges do leaders face in view of the fact that working groups have gotten much, much bigger. We have working groups of several hundred people now, where five, ten years ago, working groups were much smaller. So, we're seeing a huge impact of size. How do leaders manage that size?

Complexity of subject matter with the increase of participants within ICANN and simply the development of our organization over time, our policies are becoming more complex. The baseline of policy work is broader, the impact of one policy on other policies is, of course, broader and that has certain impacts on our work.

Consensus building. In light of all these challenges that we've identified, how do we go about determining consensus in this new environment?

And finally, the role of the GNSO Council as the manager of the PDP. Article 11 of ICANN's bylaws specifically state that the GNSO Council is responsible for all policy development in relation to New gTLD, in relation to Generic Top-Level Domains. That's .com and legacy, TLDs, and that's the New TLDs, as a result of the 2012 new gTLD program. That's more than 1,000 top-level domains. And the GNSO, and GNSO Council in particular, is singularly tasked with the responsibility of developing the policy that becomes contractual obligations, as Julf has identified this notion of consensus policy. How can we adapt the

role of the Council, do we need to adapt the role of the Council to manage all of these challenges that we've identified?

So this project has been ongoing throughout the year, we were fortunate to have considerable time with the community in Puerto Rico in ICANN61, over several hours brought the community together and said, "Here is our early thinking on this, please contribute. What have we missed? What can we do better? What's on this list that shouldn't be?" Many GAC members participated in that session and we're fortunate to have that input as well as from other SO/ACs. That feedback that we received then turned into some initial recommendations that the GNSO and GNSO Council have been discussing now for several months.

We have put together a list of 17 recommendations on which 14 are broadly agreed within the GNSO community. I will be considered by the GNSO Council on Wednesday at its meeting. Now, those are really only at this point articulated in very high-level terms, principles around clarifying the role, for example of PDP leaders, and how do we explore different models for representation with the PDP and so on. We haven't made any decisions, we really simply putting down some principles to say, "Here are some things that we'd like to talk about in more detail in implementation phase."

So, on Wednesday, if we're able to agree on those high-level principles, high-level improvements, that will be the start then of a broader project to -- next step in the project to actually bring about some change, some improvement within the GNSO PDP. I think those

would be incremental changes. They won't be earth shattering at first. We will, again, take more feedback from our existing PDPs, from the EPDP, learn from what we're doing now, and see what we can do to do better. So, that's the PDP 3.0 project.

JULF HELSINGIUS: Thank you, Heather. And if I could get the next slide. And next slide. Thank you. So, what I would want to finish this with is ways of encourage engagement with other SO/ACs, so we have liaisons both from other AC sans SO into the GNSO, but also from the GNSO to other organizations. And, as an example, we have me here as liaison to the GAC. We really try to encourage input and participation into the PDP process, but especially for GAC we have early engagement process in place that includes a quick look mechanism where we can actually start -- begin with a process, we can look at what the implications are that might be of interest to the GAC.

So, I would like to finish by just pointing out that, unfortunately, for the last two days I have this old problem that I have to be in three or four places at the same time all the time and I've been unfortunately engaged in the EPDP and in the GNSO meetings. But from today on, I will be spending as much of my time in this meeting as possible, here in your room. Come and talk to me, I'm more than happy to discuss all these matters with you and I'm here to answer questions about the PDP that you might have. Thank you.

ICANN 63
ANNUAL GENERAL
BARCELONA
20–26 October 2018

GHISLAIN DE SALINS: Okay. Thank you so much, Heather and Julf, for this very informative PowerPoint and presentation, even for people that are newcomers. I want to ask if anybody in the GAC room has any questions for Heather and Julf and others about PDP 3.0. I see Iran and Switzerland asking for the floor. Please, Iran.

KAVOUSS ARASTEH: Thank you, GNSO, for coming and spending some time with us. First of all, I request that in future, distinguished chair of GAC allocate more time to the meeting with the GNSO and GAC. GNSO is the most complex structure in the ICANN. Variety of interests, two houses, commercial, non-commercial, contracted, non-contracted, and so on, so forth, and hundreds of expert, top expert, most of them are legal, supported by other people and they have sufficient time and free time to do whatever.

That is why immediately, as I mentioned this morning, after each GAC meeting they put a piece of paper, two, three, four, five pages, commenting on GAC advice, which we are not able to do that at all for any PDP, at all. We don't have that. But you have. Thank you very much. God has saved you and money also have saved you, and commercial people have saved you and the (inaudible – 19:45) has saved you.

Now, I come to the main point that I have faced since 2013. Consensus building. If there are issues relating to public policy which is exclusive authority of GAC and when they participate in the GNSO PDP preparations, with a limited time that they have, I was one of those

ICANN
ANNUAL GENERAL 63
BARCELONA
20–26 October 2018

put out.When you come to the consensus we always lose, because we are not numerous as the others. Meetings are about between 20-25 up to 50. The maximum number of the GAC participants is 3 to 5, among those 3 To 5, only two or three are speaking and the two others are silenced. So, you can imagine that we always lose, in consensus building. This is not correct. You have to modify the process of consensus building relating to the public policy issues and not count the head, and not put us in the minority, even strong minority or simple minority and so on, so forth. And be a little bit generous with us and treat us correctly.

I can give you one example of unequal access. You have the EPDP. Six of the nine is from GNSO, 29 members. So, the overwhelming majority of the GNSO. Although the EPDP is under the management of the GNSO, but the EPDP relating to the general data protection regulation is not only GNSO. Government is highly involved, although some people do not agree with that. But what you did, you've given six seats to non-commercial and three seats with GAC. Why? What is the difficulty? Why we should be treated as such? I'm not talking of others, I'm talking of GAC. Why they have six? And among those six, even with the three that we have, sometimes if you take a point, some of you are coming, "No, no, no, no. You don't have the right to do anymore." And always we are overridden by the comments of the people having more seats.

In the EPDP, consistently, four members of the non-commercial stakeholders -- they speak. And one or two from GAC. So we are in minority, even in the distribution of seats. I raise this point with our

ICANN 63
ANNUAL GENERAL
BARCELONA
20–26 October 2018

distinguished chair and our distinguished chair said that she has made her best effort but it was not agreed by the GNSO. In the ICG we had equal status, five from GAC and five from others, we have 30. But here we don't have that, unfortunately. So this is not correct.

And now coming to the consensus, please do not count heads, count the subject, the substance, we are not entering in an issue which is not public policy. Do whatever you want. But whenever we become public policy, we don't agree, you count the heads. And that is always, counting the heads and saying, "Sorry, you are in minority, give your minority a statement." That doesn't solve any problem. Either you listen to us or you don't listen. If you don't listen, that's another issue, but if you want, we did our best.

Please kindly, seriously reconsider, at the level of the Council of the GNSO, saying that, "With respect to issues with relations with the public policy, the consensus building arrangements or criteria need to be modified in order to allow the government, according to the bylaw they have, a strict and they have exclusive authority on the public policy, have sufficient voice but not be always dominated by having -- being a minority." This is one important issue. And the other issue is that you are too fas,t and you are too numerous, and you have too many meetings, just we cannot cope with that. Thank you.

GHISLAIN DE SALINS: Thank you very much, Iran, for this intervention. Before we let Manal and Heather respond, maybe I will give the floor to Jorge and then we can have a group answer. Jorge, please.

SWITZERLAND: Thank you. Thank you so muc, Ghislain. Welcome, good afternoon. Thank you for coming to this traditional meeting between the GAC and the GNSO Council. On the issue of the PDP 3.0, I just wanted to share with you the feeling that at least when I saw the 17 recommendations I thought they went into the right direction. I would be curious to know which are the three recommendations which are not broadly supported within the GNSO, and I hope that it's not one of the following ones which I think are very useful, and this is mostly a recommendation too which regards how the PDP Working Groups should be composed, and I think that that recommendation would encourage improved accountability, efficiency and transparency, and also a genuine community-wide perspective within the PDPs and also a better and more informed GAC engagement with PDPs.

With the reading I made of that recommendation to follow more CCWG accountability style, composition without prejudice that apart from members there could be participants as we did in the CCWG accountability. And in fact, I think that this recommendation is really a precondition for many of the other challenges that have been noted by yourself to be addressed, the quality of discussion, the consensus building, because this really allows the working group chairs to see, to evaluate what is really the level of support for particular positions in the wider community, a bit in line with what Kavouss was saying, a more qualitative approach also instead of accounting hats approach that might expressly or implicitly be used sometimes.

So just to return to the question, I hope this is not one of the problematic ones and which are the not so supported ones. Thank you so much.

GHISLAIN DE SALINS: Thank you so much, Jorge. Heather, Manal, do you want to say something?

MANAL ISMAIL, GAC CHAIR: Actually, I think the questions are more directed to the GNSO, so I yield to Heather.

HEATHER FORREST: Thank you very much. So if I may take the questions out of order -- and Jorge, thank you very much for your comments. You will be delighted to hear that the recommendation that you have identified is not on the list of lacking in principal support. And I would say that I ought to be careful in specifying what I mean by in principal support. What I mean is that the comments that were received from the various stakeholder groups and constituencies simply show that there was more work to be done to refine the language in a particular recommendation, that there wasn't quite agreement as to how something was expressed, that perhaps a basic concept was understood but how it would serve the PDP was not, so I would not like to create the impression that something having or not having in principal support has more meaning than it does.

And Jorge, you are familiar with the document I believe and for others, I would like to follow up in writing if I may so there's more specifics, but I believe it's recommendations 7, 8, and 10 that will simply be parked for now to return to at a later time. As to the specifics of those recommendations, I would like to come back to you on that, but I can say that the recommendation that Jorge has identified, you identified recommendation two, I believe, was not part of that group.

To the comment, again, perhaps this is good news with a twist, the comment made by Iran. In fact, the process for determining consensus is not something that is proposed to be changed in a PDP 3.0 effort, and the reason for this is this: The GNSO Council operating procedures through the working group guidelines explicitly state that consensus is not a numerical exercise, it is not the intention of the GNSO to change that in any way. The effort is around consensus building and we have rules for how consensus is reached, taking account of factors other than numbers.

The chair or leader of a particular group has very detailed instructions as to how to go about finding the sense of a group and make sure that views are captured, and this is admittedly something that's becoming increasingly difficult with PDP numbers increasing in size. How everyone has an opportunity to have a voice has become challenging and that in part explains the different model of the EPDP. We very happily take on board the feedback that we've received here, particularly in relation to the EPDP, can discuss that with the EPDP leadership team and the facilitator working with that group and we'll

GHISLAIN DE SALINS: Thank you, Heather. is there any more requests for the floor regarding the PDP 3.0? The gentleman over there? Michele, please.

MICHELE NEYLON: Thanks, Ghislain. Michele for the record. Just on a couple of points there. As Heather was trying to explain, the general views were collected from members of the GNSO Council and the wider community about how to improve the PDP process, and it's just really a case of us trying to refine the language in those recommendations before we actually vote on them to go to implementation. The ideas that we supported making some changes, it was just a matter of thrashing out the language in such a way that we got to what we were looking for as opposed to something we weren't looking for.

But in terms of some of the comments from Iran, the idea of winning consensus to me seems a little bit strange, that's not really how a consensus is done; it's not a winner takes all type scenario. The idea behind the multistakeholder model is that we all suffer equally, that we end up making compromises, that where we end up might work in some shape or form even though it might be painful at times, but it's not a case of winning. And if you are approaching it in terms of we won, you lost, then I'm not sure you are really playing the same game as everybody else. Thank you.

GHISLAIN DE SALINS: Thank you, Michele, for this. I think what's really important on the GAC side is to make sure that the PDPs and the GNMSO processes are as inclusive as possible and that the voices of stakeholders are heard, including governments if possible on an equal footing so to speak, which is a bit what we have as a CCWG for instance, so I guess we're also moving in that direction. Are there any more requests for the floor on the issue of PDP? I see Iran wants to respond. Please, Iran.

KAVOUS ARASTEH: Thank you. I have a specific question relating to the EPDP. First one is there is a charter. I have read that several times. I question that although the PDP is under the exclusive authority and management of GNSO but since the situation relating to the GDPR is not only GNSO but others including GAC with respect to the enforcement of the law and many other things, and we have been explicitly or implicitly counted as a chartering organization, why have we not been consulted with respect to the charter? Point number one.

Point two, in the charter it is mentioned that the team is expected to modify, which in the English language means change, add, and delete. But now EPDP rewriting, rewriting the temporary specifications. The temporary specifications were prepared by ICANN based on the GDPR, and you correctly mean GNSO, not yourself, said had that amend, modify, change, and delete. But not rewriting. We are rewriting everything from zero.

We start at, okay, let's take it away, talk about purpose. What is the ICANN's purpose, what is the registrar's purpose, what is the registry's purpose, what is the third party purpose? And having and going and preparing and mapping, all the underwriting directions? Do we have time to finish everything before the end of the period that we have to have something replacing the temporary specifications such as definitive or we may at the end not have time to finish and then what the French says [Person speaking in French] quickly done, badly done and bring something, and then in the GAC we have difficulty. Are there any suggestions to make that we're not expected to rewrite everything from zero, paraphrase everything and go through anything.

Distinguished Chair of the GNSO, yesterday we spent four and a half hours to draft three lines, four hours and a half; one of the purposes of ICANN, and there was one of the participating constituencies or stakeholder pushing for something that in order to have access, ICANN needs to develop the policy, and finally it was rejected by everybody, but they came in and came in many times but why it is this? There is no instruction?

In addition to that, I understood that the team is now working on some sort of mediations. This is something new in ICANN. Why do we need mediators, why do we need brokers? And a mediator says that, "Yes, we come here to help you negotiate." Are we disabled to negotiate with each other? Why do we need these external mediators? At the beginning the mediators say that they have little knowledge about this process and at the end becomes the manager of everything and so on and so forth. So I don't understand, so I request kindly to

look at the process and see whether there is a need to have additional advice to the team in order how to proceed.

And lastly, they have meetings every week two times, every time two hours. We're told many times that two hours is boring. The last 30 minutes is really inefficient. Everyone's tired, so we told them to told reduce the time but no one listened.

And lastly it is not subject to yourself, distinguished Chair of the GNSO, it is to ICANN, related to the Boar. There was a meeting in a country that put a general ban on participants of some other countries. There should be no other meeting of the EPDP in any country which has a general ban on the visa entry of any other countries. Meetings should be open to every participants, we are not intervening into the visa process, but whatever there is a general ban, we totally disagree with that. A meeting shouldn't be in that country, and there was a meeting and I was deprived to participate. And when I participated remotely, one of the people sitting on the podium said that, "Mr. Arasteh, you cannot speak because you spoke this morning, it is not the time to speak again." Why? I was deprived to participate physically, but I was not allowed to talk. What does this mean? So please kindly be a little bit more friendly with us. Thank you.

GHISLAIN DE SALINS: Thank you, Iran. We only have 15 minutes left to go through the rest of the agenda. So I will ask if the GNSO Council wants to maybe give a short answer or wrap up about the PDP 3.0 and then we'll go through the other points of the agenda.

HEATHER FORREST: Thank you, Ghislain.   So there were a number of points that were raised there and I believe if we return to our agenda, we're really now talking about in the last intervention about the GDPR and EPDP more than we are talking about PDP 3.0.   I think we have segwayed very effectively into that agenda item.   And there are a number of questions that were asked.   One question that was asked is in relation to the EPDP charter and why was the GAC not consulted in relation to the EPDP charter?

ICANN's bylaws have specific provisions in them in relation to an expedited policy development process.   They sit in ANEX A1 of ICANN's bylaws, GNSO expedited policy development process, and what it very specifically says there, and bear in mind please, this is the first time ever that the GNSO has commenced an expedited PDP.   We were very very mindful of being observant of the process that we have to follow and did not want to deviate from our stated requirements.

It says in section 3 of that article of the bylaws, the Council, meaning the GNSO Council, may only initiate the EPDP by a vote of the Council, meaning the GNSO Council, and it goes on to describe the formal requirements for the GNSO Council to initiate a PDP and EPDP, including the formation of the charter.   We followed the bylaws to the letter, we followed the requirements that we were given, so any comments or concerns around how the bylaws are written let's say can be taken up but it's the case that we were very conscious of

observing those requirements and making sure that they were followed.

In terms of the EPDP, again, I think these are comments that we can take back to the EPDP leadership team. And in fact, Rafik is a member of the EPDP leadership team in relation to visa issues and scheduling; that's certainly something that we can work on.

In terms of it's taken four hours to write two lines, I would remind the group, and I do this with a certain degree of hesitation because we don't often like to link the two efforts together, but the EPDP actually has a predecessor within the GNSO, which is the Registry Directory Services PDP, which is also an effort we're about to terminate on Wednesday, or consider the termination of. And the registry directory services PDP went on for several years and really only managed to get through a very small chunk of its work, and all of those questions that were actually dealt with went to purpose.

So these discussions around purpose have been happening in the GNSO under a formal charter for some years and they're just taking a different flavor and context. And I would say to the extent -- and forgive me, but that RDS PDP worked for years on questions of purpose. If we achieved agreement in four hours, I would say we've done significantly better than we have done in the past, we've made a pretty big improvement.

The reality is, these are very contentious issues and the variety of interests that are represented in those discussions is reflected in the difficulty in the dialogue, and is reflected in the difficulty and time it

takes to bring very disparate positions together, so I would suggest that none of us in the GNSO had an expectation that those discussions would be always smooth, or quick, or efficient

It is the case that when dealing with such broad ranging views, we simply have to devote time to find consensus, and again, that's what the GNSO operating procedures require us to do in determining consensus. It's not just a simple majority rules formulation, it requires pretty significant discussion. So again, we'll take back the specific comments on the EPDP to the leadership team. Thank you.

GHISLAIN DE SALINS: Thank you very much, Heather. Next item on our agenda is curative right protections. PDP with of course from the GAC specific case of the IGOs access to curative rights. Manal, GAC chair, sent a letter this morning to the GNSO Council about possible conflicts between standing GAC advice on the protection of IGOs on the DNS, including access to curative rights and the possible results from the Council's examination of the issue. So maybe you want to say a few words and then I can open the floor to GAC members to chime in about that.

HEATHER FORREST: Thank you, Ghislain. And in fact I would like to invite just the opportunity to open the floor. Unfortunately, the timing was such that we only received your letter about an hour and 45 minutes ago. We were in the middle of a Council discussion on a different item, we didn't have an opportunity but 15 minutes before walking in the room

here to discuss your letter. We have read it we are aware of it, we take it very seriously.

Before turning the floor open, I will say that we have not made any decisions in relation to the matter that we are now discussing, and in fact, we had a very robust discussion this morning within the GNSO Council on options available to us to the extent that we had concerns with certain recommendations in that PDP final report, and we are in fact discussing what options we have and what we might do.

Concerns have been raised, we will follow up with those in further discussions amongst the Council Tuesday evening, and there is still really nothing decided. So we'd like to use this as an opportunity to hear your concerns so that they might feed into our discussions that we're having this week. Thank you.

GHISLAIN DE SALINS: Thank you very much, Heather. I see Manal. Please.

MANAL ISMAIL, GAC CHAIR: Yes. Just ver quickly to apologize for the late sending. It was an outcome of the discussions yesterday, so it was a last-minute decision, so I do apologize for the last minute letter. Over to you again, Ghislain.

GHISLAIN DE SALINS: Thank you, Manal. I have WIPO on my list. Do you want to take the floor?

BRIAN BECKHAM: Thank you, Ghislain. Brian Becham from the World Intellectual Properly Organization. I wanted to ask the Council's view on something. So in the GAC's Abu Dhabi communiqué, the GAC mentioned that, "Recall the values of openness, transparency and inclusion, and representativeness and process integrity that are enshrined in ICANN's bylaws and the GNSO operating procedures."

And the GAC went on to advise the Board to review closely the decisions on this issue, being the IGO curative working group in order to ensure that they're compatible with these values and reflect the full factual record. And of course, IGO's have provided letters to this working group and those are in our view an important part of the factual record which have been left out in the recommendations.

So the GNSO's reaction to the Abu Dhabi communique was that, "The referenced working group has held itself open to receive all viewpoints relevant to its efforts, has operated in a transparent and fully inclusive manner, enjoys representation from a broad spectrum of the ICANN community, and has engaged in a work process displaying high integrity and rigorous policy analysis."

In the final report from that working group, which I understand the Council is meeting to decide how to react, the now resigned co-chair from that working group stated in a minority statement that, "After four years of effort, this working group has utterly failed to provide a policy recommendation that reasonably resolve the central challenge it confronted. Of the 11 working group members who supported the

recommendation, a majority, seven, were either domain investors or attorneys representing domain investors, called domainers, indicating that the working group's consensus call process had been captured by a narrow segment of the ICANN community with a significant commercial interest in the outcome. I In addition, three of those seven members participated in an individual capacity and are unaffiliated with any ICANN stakeholder group or constituency." So my question is, how do we reconcile the GNSO Council's assessment of the working group with this statement of its now resigned co-chair? Thank you.

GHISLAIN DE SALINS: Thank you, Brian. There's a link actually with a previous item about the PDP 3.0, how do we ensure that there is equal and fair treatment of all stakeholders in the GNSO process? But I will let Heather maybe react on that. Thank you.

HEATHER FORREST: And I will encourage my colleagues, Donna and Rafik, to please not let me monopolize the opportunity to speak. I'm happy to respond to that in a variety of ways. Number one, it is the case the by-product of the consensus building process is often the case that full consensus is not possible to be achieved. A minority statement in a PDP is not unheard of, it's not an unusual situation, so it's certainly not the case that we draw conclusions from the fact that there is a minority statement. That is a first point to make.

The second point to make is, it's very difficult for us as the GNSO Council, as the managers of the PDP, to do any more than we might say beg or implore other parts of the community and as broad as interest as possible to participate in a PDP effort. We cannot force interests, interest groups, stakeholders to participate, and in this instance, we have on record that the co-chairs were engaging in attempts throughout the life of this PDP to encourage broader participation. And this is a perennial challenge for us, how do we ensure that representation within a PDP.

These two things have unquestionably impacted upon the final report. You may not be aware, we have had a comprehensive discussion on what to do in view of the minority statements and the final report in this situation in the form of a webinar that took place several weeks ago of the GNSO Councilors, and we asked questions that went to process, if you like, based on what we understand our role, the GNSO Council's role to be in evaluating a final report; by what mechanisms do we question what has happened in that report.

And we've had some very comprehensive discussions around that focusing on such questions as: was the group able to and did it actually answer the questions that it was chartered to answer? Did it live up to its obligation under the operating procedures to consult with other groups? And I note that we had a public comment period that solicited a number of comments in relation to this PDP. We have engaged in questions, critical questions, around the procedural validity of this final report, and I would again say that those discussions are ongoing and will continue throughout this week.

Brian, your questions are noted and they will be included in our discussions this week.

GHISLAIN DE SALINS: Thank you, Heather. I have Jorge from Switzerland on my list. Please, Jorge, the floor is yours.

SWITZERLAND: Thank you so much. And Jorge Cancio for the record, sorry for taking the floor again. Just wanted to state that we support the points made by WIPO which reflect a long-standing position of the so-called coalition of IGOs, and also previous GAC advice. I think that this PDP has had many different procedural issues, at least seen from the exterior, with the co-chairs, there was even a special procedure of a conflict which I think that Heather had to run through. So it's really a special case and for whatever reasons, a basic part of the community affected by this PDP did not participate directly within the PDP working group although there has been input coming from the GAC and the IGO's coming to that PDP.

But as I think I recall, if I recall it correctly, even in one summery I've seen there was probably not enough receptiveness from the side of the working group members to these legitimate concerns and interests from IGO's and also from the GAC. So I think that beyond looking at the formalities of the procedure, whether the consultations were done, whether the inputs were taken into account from a formal point of view, I think we have to look into the substance and avoid in

any case any clash of trains and that's also why in the letter that has been sent to you, this reference is made to recommendation five of our joint consultation group. So I hope that we can avoid going that long way and then back again and try to facilitate things from now on to the future and avoid a conflict in this regard. Thank you.

GHISLAIN DE SALINS: Thank you so much, Jorge. Are there any more requests for the floor? Unfortunately, we're already out of time. If you want to take the floor, please be very brief, below 30 seconds. Iran, please.

KAVOUS ARASTEH: Yes, I don't know whether 20 seconds or 10 seconds, I can do that. I'm disappointed with the radical and inflexible answer given to my comments. Although bylaw is not a convention nor a constitution not ratified by any government, it's something that we might have some moral responsibility to agree with that. But even in the constitution convention there are two elements, letters and the spirit. The distinguished chair of GNSO just read the letters, but we should read inside in line with the letters and the spirit of that. Nothing prevents to have a degree of flexibility in order to satisfy the members. Point one.

Point two, consensus building, something which has been forgotten in the GNSO is we had an ICG for the transition of the stewardship of the IANA function and we had also consensus building. In that consensus building it said that before asking the minority to provide views, it is

the duty of the chair to get into serious discussions with the proponent of the minority in order to satisfy them to join the consensus. This does not exist in your charter. The people shouldn't be said, "Okay, you are in minority, go ahead with your minority statement."

Chairs should take every possible effort to engage in discussions with the proponent or supporter or the people that are minority to try to see what they want, what is the situation to understand and try to satisfy to the extent possible, and as a last resort, go to the minority statement, but not immediately at the meeting, "Sorry, you are a minority." This doesn't work. Thank you.

GHISLAIN DE SALINS: Thank you, Iran, for those two points. We are out of time already. I will let Heather maybe have the last word, and thanks again for coming. It's always a pleasure to see the GNSO in the GAC room. Thank you.

HEATHER FORREST: Thank you very much, Ghislain, Manal, colleagues, for having us here today. May I make a request please in relation to your comments on the curative rights protection PDP. So the comments that we've heard here today are in fact very specific, and where the letter is general, refers to concerns. It would be helpful to have some articulation of those specific concerns that we might consider those in the course of the week today, because again, it's not too late, we have not decided anything, we're in the process of discussing, and to the extent there

are the two that were raised here today and more specific concerns that can be communicated to us, that would do a great deal of good in informing our discussions. So the more information we have, the better. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Heather, for your consideration. We will do this and get back to you. And thank you, Ghislain, and thank you, everyone. This concludes our session with the GNSO. There is a transition break I think right now, and please be back in the room at the hour. Thank you.

[END OF TRANSCRIPTION]