

ICANN San Francisco Meeting
Potential Council Motions
TRANSCRIPTION
Saturday 12 March 2011 at 12:00 local

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Stephane van Gelder: Okay. I've got the go ahead to restart so please take your seats once again and (David), (Jeff), don't let us you know interrupt your discussion.

We are being recorded so if you can sit down we'll start with this session and then after that we'll have a break for a working, where we'll have a working lunch sorry. Can I ask the counselors to come back to their seats please, (Zahid)? (Zahid)?

Okay. I am. Fine. So if people are back at their seats, I see a lot of empty seats. Well we'll start anyway.

And this discussion so as I was saying is a discussions on the motions that we'll look at on Wednesday. Please go to the Adobe Connect room to see the latest versions of these motions.

The idea of this session is to help us discuss, meet any potential changes that we might have to the motions and work on them now rather than coming into the open council meeting on Wednesday and not without having discussed this previously and then having to spend a lot of time during the actual meeting going over the motions, redrafting them, whatever.

So once again this is a new format I hope it will prove successful and useful to you all and to start us off I'd like to ask Adrian just to say a word because you had some comments on the list which were interesting and which set the scene for this discussion rather well.

Adrian Kinderis: Thank you Stephane. It's Adrian Kinderis here. I just wanted to talk to you first all, so hi everybody. No I think that, is Wolf here? Hey buddy.

So I think the point of this is not to necessarily tie down, though I've learned a bit from (unintelligible) comments, but is not to tie down the motions completely but to just simply open them up for discussion. And I think this will still be room for discussion after constituency day once we meet for the meeting, but I do applaud the fact that we've opened up for this point. I think there's some good discussion that needs to be had around a few of these motions, the WHOIS motion in particular, so let's get the ball rolling.

Stephane van Gelder: Great. So let's do exactly that. We have two (alternative) motions on the table and the first one was made by Tim, seconded by (Wendy) and Tim do you just want to say a few words on that one?

Tim Ruiz: Yeah I think the information that I asked for has been provided so I guess I'm not sure where we go from there so, and (unintelligible) as I said on the list I wasn't sure if the motion was necessary or not so just trying to kind of you know, cover all bases. But I think in the meantime (Liz) has responded to that and provided most of the information.

But you know I don't want to be, keep making motions and then withdrawing them because that's probably not setting a very good precedent too, but.

Stephane van Gelder: Okay. So I guess the next step is to ask you (John) to check with you if perhaps the best course of action here would be to just give us some time to look at the information that's been provided before moving ahead on your motion, or do you feel that you'd still like to move ahead at this stage?

(John): It's interesting because I don't view my motion as moving ahead as much as admitting to what we've done. I apologize in advance for using a U.S. centric metaphor but you know Congress, the council has already authorized these actions, I just want to make sure that we follow through on the authorization for them to occur.

So I didn't view this as breaking new ground but merely admitting what it is that we had already, or the council, excuse me, had already done and say let's get on with it, it doesn't dictate a specific timeframe, it doesn't dictate you know pretty much anything except for the fact that we'd like the studies that we said we want done done and we'd like the money to be made available to have them done.

I think that I maybe tipped my hand in my question earlier, I feel that if we could wrap, if we could begin, not, if we could begin to generate some statistical basis for our deliberations we might be able to get to better, faster decisions on some of these questions.

That I liked the fact that we heard from (Jeff) on one point and then from (Fred) on another that the statistical information that will result

from the implementation of the new GTLD program may in fact make some of the issues reports or PDPs we're thinking about moot.

I do believe in fact based decision making I'm merely looking at WHOIS as a persistent and thorny problem, let's get some facts on the tables, the council has said they wanted to do that, it's just put in motion or commit again to what it is we have committed to in the past.

Stephane van Gelder: Okay. Wolf.

Wolf-Ulrich Knoben: Thank you Wolf-Ulrich Knoben speaking. Just let me just welcome to the session you know, I think and really happy about it that we have this session to talk about because it helps us really in advance to clean up motions and not have formal discussions about that during our public meeting.

I have got a lot of experience with that because I was one of the initiators starting with this cutting motions at the meeting so it helps a lot.

Secondly (unintelligible) correctly (Tim's) that he is going well to refrain from his motion but now so just a question, so to my understanding it could help us as well in case the information which has been provided by (Liz) in advance is satisfying our needs, so that's what I understood if that is the case then it may be that we can refrain from that motion, that was my question, thank you.

Stephane van Gelder: Thank you. Tim you're next.

Tim Ruiz: Well I'm not going to answer that Wolf right now, but possibly, but what I wanted to respond to just the discussion that (John) started about the, his original motion. And I think there's a few problems that I see and that is that one, it addresses all of the remaining reports, and so I think that's a problem. And quite honestly I think there's some of us who are pretty well determined that we're not likely to vote in favor of the additional reports regardless, I'll put that out there.

But I think there may be others who might have questions about one or more of those possible studies, and so I think lumping them all together I think is maybe not the best way to deal with those.

And then I think too that the, that we're not talking about, you're not implying that if we, that your motion was intended to say well we'll approve these but we won't move forward and that'll be decided at a later date, because the way I look at the motion is once it's approved those will move forward on some time frame or some time scale, so there's not any, there's nobody pulling those back right?

(John): Right. Move forward on some time frame but the motion does not specifically say what the time frame is so we'd be dependent upon the input from everyone who'd be involved. I don't want to say it's got to be done by Christmas. My view is that data can be very helpful in making the decisions. Actually data can be very helpful in letting you know you don't need to make a decision, which is something that we ought to consider more often.

Tim Ruiz: Yeah and I think, I guess you know just for the merits of the studies myself, and we've (unintelligible) stuff a lot of times and that some are new they may not have heard some of these arguments, but when

you're going back to day one when WHOIS in fact day one of ICANN practically, WHOIS has been an issue and it's been very difficult to ever come to any consensus on some of those issues.

And I don't think that the data isn't known, I would be highly surprised that any of these studies are going to reveal anything we don't already know. And that's what's really kind of troubling about spending hundreds of thousands of dollars to answer questions that we already know the answers to.

And I think at least one of those studies is going to be very difficult to do even those who responded to the RFP, in fact nobody responded to the RFP, we should really question that and we haven't really discussed it at all as a council.

And a lot of times we get these final reports and we spend very little time actually discussing the content of the reports and trying to have, you know, some sort of discussion about whether it's all the recommendations going forward it's like a week later we have a motion on the table you know eight days, exactly eight days, boom, there's the motion that's on the table that says well we're going to approve this report.

And I don't think we are doing our job as managers of the policy process by not spending sufficient time, at least you know, making sure that we've discussed the report as a group, and that we don't miss the opportunity to deliberate and I think that's what's missing from all of this right now.

We get final reports, we have motions, we move forward.

Stephane van Gelder: Yeah. Thanks Tim. Do you want to come back on this?

Man: I wanted to say I don't want this to be a colloquy so (please) others.

Stephane van Gelder: Okay. Well maybe I can just step in and put my registrar hat on for a second, I don't do that often but I fully agree all the points that (Tim's) just made and I do have a worry about the expense and what the use of all that money is going to be down the line, you know, it is a habit of ours to really push to start things and then just let them go.

And if I put my chair hat back on now one of the things that we've been looking at, as you know, is trying to push those pending projects that the council has initiated and then just left for months or years back up to the top, towards the top of the pile so that we look at them again and understand what's going on there and remember that this is work we asked for.

So I think there's a danger that we may find ourselves in the same situation here and that's why I think it was useful to ask for the information that Tim asked for and perhaps try and take just a minute to digest it before we move ahead.

But I also want to say that those, I suggested on the list because we were all traveling and everything I'm not sure that people have had time to even notice or respond to it, but we would, the way we would deal with these two motions is that we would vote on (Tim's) motion first and only vote on yours if (Tim's) did not carry. So I just wanted to make sure that you all had a chance to either understand that or provide feedback if there is agreement.

(John): Yeah I'm okay with that. You know I didn't object to it when you recommended it because it is all part and parcel of my hope that we can begin to build our decisions on the basis of statistical analysis some real insight.

And just as a point of information you guys have been at this, and I use guys in both the male and female definition, you guys have been at this specifically longer than I have, if in fact Tim as you say, the answers to these questions already exist. You know show them to me, let's put those on the table.

Maybe we don't have to do the research that the council has said that it wanted to do, but I wouldn't want to, I wouldn't want to continue on a subjective approach to decision-making, I'd like to see a little bit more fact based decision making.

Stephane van Gelder: Thanks (John). I mean this is just extremely useful and exactly the kind of discussion I was hoping we'd have. I've got (Jeff) next then (Zahid) then (Christina). So (Jeff).

(Jeff): Yes. So this has been a very active discussion on the registry list and certainly will be discussed more at this meeting, I think you know it's our sense that more discussion needs to happen and you know wouldn't be surprised if the registries on, when this is voted on would ask for to be tabled to our meeting, to have more discussion on it.

More specifically there's been some pretty good discussion that we'll tend to list after we finalize it but you know there are certain studies

that seem to, as Tim said, you kind of already know the outcome of what it's going to be.

You know for example this is to be number three on WHOIS privacy and proxy abuse, you know it's aimed at looking at, you know are there bad actors and I think the answer is probably. So what. So what do we do about it?

As opposed to you know there's kind of a you know, the comment I have is what's, what's missing is there's no way to ascertain what percent of proxy private domain name registrations are not engaged in bad acts. So that's study three.

Study two there seems to be a presumption from what we've read that it's based on the assumption that commercial domain name registrants, or anyone that's not an individual is not entitled to privacy and that's just not necessarily true, so that's you know registries have kind of see that little bias in study two.

Unfortunately we thought study four, which is the relay and reveal would've been the most helpful one and the one that a lot of people from community-wide, registrars, registries and others all work hard to kind of get a good formation of that study but unfortunately that's the one that nobody responded to the RFP so the registries are a little disappointed by that because we thought the most helpful data could've come from that study.

So just the bottom line is you know there are things, this is an active discussion in the registry with and if we do come out with a conclusion that we ask for it to be tabled it's not in any way, any kind of statement

that we don't think it's important or that we don't think it should be addressed it's just we need some more time to kind of maybe help focus this study.

Stephane van Gelder: Thanks very much. Wolf.

Wolf-Ulrich Knochen: Yeah. Thank you. Just well not to repeat myself but to make very clear, so I also, I would like to base let me say our, the next steps we are doing with regards to it, to the studies on good and well funded, founded data available.

So I really support well to get available the data you are asking for Tim in your, in the motion, but I was of the opinion that you could find an easy way well to get this data because they, to my opinion they are available already and we got some from this, so again the discussion I mean is that enough what we have got so far and then to talk about the second motion or do we still need a motion or let me say or a request to staff to provide more statistical data about what you are asking for. That's my first question.

The other thing is so we are looking for to get better data and then (unintelligible) the motion from (John) as well also looking for, to make better progress when what we have already decided what we would like to do. And that's how I see the process so just not to come up with new requests with regards to WHOIS data but just continuing that discussion and continuing the, on the studies which have already decided to do so. Thank you.

Stephane van Gelder: Thanks Wolf. And (Zahid).

(Zahid): I start off with the point that this is something that several of the constituencies has been asking for for some time it's been part of debate and it was moving forward and at this stage to turn around and say well let's just drop a couple of these studies for various reasons, especially when I consider some of those generic arguments to be applied to many, in many of the studies, money and other aspects and the fact that certain data does (unintelligible).

But coming more to one of the most important points, I'm looking at the resolution draft as it is right now and I see, and I wasn't there at that time, but there's a GAAC letter on WHOIS, there's the WHOIS study drafting team that consolidated certain aspects of what GAAC had requested.

And so you know, if I understand this correctly there's a lot of stuff that the GAAC asked for that is part of these studies, if we don't move forward to what extent and what kind of message is the GNSO sending to the GAAC on that, and since I can't say I was there at that time and maybe (Liz) or somebody else can explain to us and maybe it's helpful to what extent would we be sort of, I don't want to use the word reject but ignoring some of the requests of the GAAC by not moving forward with any of these studies.

Woman: (Christina)?

(Christina): I just, I have to say that I agree with Wolf. I'm not actually clear as to from the information that (unintelligible) identified in his motion that we might not have at this point, I apologize I missed the beginning of the discussion but I'm not clear on that.

And my second point is that I actually (unintelligible) just made namely this is something that it's my understanding that the GAAC has called for repeatedly, they've been repeatedly told that GNSO was working on it and I think we just need to be prepared at a certain point to be able to say we are doing them, this is when it's going to happen, we're not doing them and here is why.

And given the tone of the discussions last week in Brussels I think we need to be prepared to have a fairly good answer for that and probably reasonably soon, certainly not this meeting but certainly by Singapore.

Woman: Thanks (Christina). (Liz) you're next.

(Liz): I just wanted to respond to a couple things that were said, I hope it's helpful. (Jeff) mentioned the abuse study, you know that it's just intended to see whether abuse of registrations occur using proxy and privacy services.

And I want to just explain that the purpose of this study is actually to compare abuse of registrations using proxy and privacy services to the user proxy and privacy services overall in order to determine whether abusive registrations are being disproportionately registered in using proxy and privacy services. So I just want to make that point that that's the specific intent of that study.

And I just also want to assure everyone, (Jeff) also made the point that the reveal, relay and reveal study got an awful lot of input from the community before the RFP was released, which was quite true. We had a whole series of conference calls with all kinds, and invited all

kinds of comment from the community on trying to get that RFP right but it's also true for the other studies too.

We really reached out and spent an awful lot of time with all of you getting the RFPs right before they were released. So I hope that that was useful, thanks. And if you have any questions about any of the other discussion, I'm also going to send the GAAC letter around that (Zahid) was referring to so that everyone has quick access to that.

Stephane van Gelder: Thanks. So Tim.

Tim Ruiz: Yeah you know as far as the motion goes again, I can't answer I mean you know, I'm a representative of a stakeholder group so you know, once you give life to something sometimes it's kind of hard to kill it again. So at any rate that's probably open for discussion but I can't respond to that right now.

I think that the GAAC advises the board; the GAAC doesn't advise the counsel. We're not really bound to respond to the GAAC as far as I'm aware of. That doesn't mean we shouldn't take the concerns the GAAC expresses seriously.

But I think as a group, as a council we should want to use our time and our resources wisely and if there was a real indication that even with the data that these studies can provide, you know that it would change any minds in regards to the policy issues that probably will come up, you know then it might be worth pursuing.

But what we're talking about doing is there's a high likelihood that we're going to spend hundreds of thousands of dollars on studies, a lot

of man hours and resources and our own time and effort just to find out that we still don't have an agreement on the issues because we all have a general idea of what the data's going to show.

We've known that all along and I don't think it's going to change any minds. And that's the biggest concern that we have is where are we spending our time on something that's going to produce some sort of you know fruitful, something productive in the end, and I guess we just don't see that happening.

What I do want to say though in regards to some of these, to one of these studies is that the reveal and relay study on the proxy services, and that is that in my opinion you can get that data by simply asking for it. And if you ask and you don't get a response from someone, and the likelihood that you're going to get any good data out of a study is probably pretty slim because a lot of cooperation's required for that study to really produce any useful data.

So at the very least, you know, think about that. If you want to know that information from Go Daddy's privacy service that we use, domains by proxy, ask. In fact it's publicly printed in our agreement that's out there with all of the users of domains by proxy, you know, when we relay information and how, what the conditions are under which we reveal it that's out there.

So I think that at least for that one give it some thought, you know do we really need to pursue that, especially given we've got not responses on the RFP, it's going to cost \$60-80,000 to do the study to determine if the study, to determine if it's feasible. And we already, we just need the feasibility study that's got no response and now we're

going to do another study on feasibility, I get lost, \$60-80,000 on that.
Think hard.

Stephane van Gelder: Thanks Tim. I think we've got a pretty clear idea of how we can move, I know yeah, how we can move forwards on this motion during the open council meeting as there's another three motions to consider including two that will be probably that we'll need to discuss so we'll move onto the next topic after (Wendy) who wanted to, you wanted to, you're in the queue now.

(Wendy): I can wait.

Stephane van Gelder: Okay. So (Liz) can you just make some closing remarks and then we'll.

(Liz): I just wanted to say that on the reveal study that Tim is talking about I could spend a couple of minutes at any time that you all would like just talking about this (unintelligible) study and what the reason why we suggested it and in light of the fact that we didn't get any responses to the actual study, and what the pre-study is supposed to accomplish. So don't have to do it now but I'm happy to explain sort of what the thinking was behind that, thanks.

Stephane van Gelder: Thanks. So let's move on to the other motions that we have to consider. I don't think the motion to adopt the working group guidelines will generate much discussion but I may be wrong. Is there anyone that wanted, wants to discuss this? I think it's pretty straightforward but. Good.

So we have another group of motions then that we need to look at (Christina) (unintelligible) here, and so is (Mary). And those are motions to link with approving the proposed; I'm lost myself here. The yeah I know but the recommendations that's the word I was looking for on the RAA and we have two motions, one was made by (Mary) initially and then a different version of it was made by (Christina).

So perhaps I could just ask both of you first of all to discuss, explain, run us through?

(Mary): Okay I'll start and this is more by way of background for those who may not have been following all the arcane discussions we've been having. But the first motion, the one that I proposed and that (Christina) seconded pretty much takes up where we left off in Cartagena.

It's basically that part of a motion that was proposed in Cartagena that we decided not to vote on there so that's the reason it's coming back and the wording is identical to that part of the motion we didn't vote on in Cartagena.

(Christina): And my motion is actually contingent on the failure of (Mary's) motion because it, as background the work, the final report that's referenced there identified two potential prophecies for moving forward. One was Process A, which had strong support from the members of the group, and that is reflected in (Mary's) motion.

Process B was an alternative that did not have strong support, I think you probably, I don't have the report but my recollection is that it was supported by those and characterized significant opposition to Process A.

Those folks supported Process B and what I've tried to do is to add some provisions to what the original Process B was that would accommodate and address some of the concerns that non-contracted party members of the community had about the last round of RAA negotiations.

But the one thing that I was very sure to do was to not add in the requirement of observers that was in Process A. So Process B plus, as I am calling it, really seeks to keep out that requirement of observers that I know was strongly opposed by the registrar stakeholder group, but also tries to come up with a workable compromise to kind of get this moving forward.

And again, it's contingent on (Mary's) motion failing because if (Mary's) motion passes then there's no need to vote on processes.

Stephane van Gelder: Thanks. I was, I think yeah. We can agree that we have two sets of motions here that we will be treating in the same way on Wednesday and in this case we will address (Mary's) motion first and only move on to (Christina's) if (Mary's) motion does not pass. I don't know which one of you was first, (Jeff).

(Jeff): So I think we should, and I can't ask you, or I can't require you to withdraw the first motion but I can tell you that it, the, at least from a registry stakeholder group we discussed that first one at length in Cartagena or in prior, and just so it's not a surprise, and that's not a motion that the registries would be in favor of.

Actually for some of these reasons that (Christina) said, so I mean we could save ourselves some time and just have you guys have you withdraw it but we don't have to, we you know if you certainly want to move forward with it you can.

On the second one, on the as (Christina) calls it the B plus I really haven't, I know (Christina) sent the redline yesterday and I really haven't had a great chance to review that so for those of you on the council list it is a redline comparing what it is in the RAA report that's under Process B to (Christina's) motion just to compare the language, and you'll see there's a lot of additions and strike outs.

And I'll tell you right now from the preliminary discussions I've had with some registry reps, and again this is not formal because we haven't had it at our meeting, I could tell you that for us having the GNSO council determine what is and what is not and try to make sense is a huge issue, that is not something at we think is proper for the council, or even the GNSO community to determine what's inside our (unintelligible) in our contracts or not.

And that's still a basic tenet in Process B plus, and I will say that the stringent timelines that were added in Project B plus are a problem and makes certain presumptions that certain activities will occur within those timelines or else there's an assumption of bad implications if those timelines are not met making it look like the contracted parties are not cooperating. And it kind of has that tone in there.

So just from an initial read those are two big problems from our perspective just so you can talk about those within your groups and then maybe improve the motion.

Woman: You know just to be clear I know that the redline looks like there are a lot of strikeouts. A good chunk of the strikeouts are actually my efforts to try and clean up the language and have it be clearer and more precise.

I did add timelines in step one, the public consultation I thought was an important step so I've added that in. There is a timeline in terms of how quickly the negotiating starts, and in terms of the you know, proposed date for having a full final draft, I mean that's 18 months from now. You know so I'm not averse to considering alternative dates and deadlines but I think we do need to have dates and deadlines in this motion in my personal opinion and the opinion of the IPC.

If you know the registry stakeholder group or the registrar stakeholder group wants to propose alternative ones I'm certainly happy to consider those. I don't want to rule those out but I do think it's important that there be some timeframe in there to keep the process moving.

Stephane van Gelder: Tim.

Tim Ruiz: Yeah and I, you know I appreciate what you did on that revised stemming what you're trying to do there (Christina). And then I would like to see this become, you know, maybe some aspect of the report that the working group did. But the issue that I have is that all of this presupposes that the council should be voting on this in this way in the first place and that's the problem that I and the stakeholder, the registrar stakeholder group has with this.

To take a motion that says you know, thank the working group, the hard work that they've done and appreciate this report and make sure that the registrars and ICANN staff you know, has this report, you know I think that's as far as the council should go on this.

What we've agreed to was that we would support a working group that would put together a list of desired amendments and that they could suggest next steps, but with never any intent that we thought that the council had the authority to say here's how this negotiation has to take place and to actually direct registrars and ICANN staff this is how it's going to take place, this is the timeline you're going to stick to, etc., that's the problem.

I think that registrars we're still committed to this, we're still very serious about moving forward with it. Hopefully I'm sure ICANN staff is as well and if we can do a friendly amendment to this that says hey we accept the report, we're going to include your revised steps as a part of that, as another option, that's great.

But to imply in any way that the council has the authority to approve how this has to take place that's where I think you know I can't see the registrars coming to agreement and saying yeah, you know that you would've got on board with that.

Stephane van Gelder: Okay. Just can I get to the question that was asked by (Jeff), (Mary) about your motion and if you're willing to withdraw it or not because that might help us make some progress.

(Mary): Dramatic silence. I think the answer not surprisingly is no because just as certain members of the committee feel very strongly about the

observer issue one way there are members of the community that feel strongly the other way.

If I can expand on that a little bit further following up on (Tim's) and (Jeff's) comments, Tim I think to the extent that the process issue, what the council should be doing that feeds into the larger discussions I think we're intending to have about what exactly it is that a council should be doing.

For now the process is that when the working group completes its report it does submit it to the council for action. I think here's the question, what is the action the council should do.

So the thinking behind the motion really is that since there was a recommended process that was, that would use strong support from the group that for the council to ignore that would not be a good thing to do. I think what we're doing now discussing it is a good thing. I have no idea how we can come to any kind of resolution given the opposition but I would like to see this motion stay on the table.

Stephane van Gelder: Yes (unintelligible).

Man: And (Mary) I think that, you know I understand the concern there but I think that this was not a policy development process type of working group. We have drafting teams, we've had other situations where we have basically accepted a report and so I don't see that as being you know, something strange or unusual for the council to do.

And what I would hate to see is that we keep, we keep going round and round and revisiting this and we don't get on with the work

because we can't come to some agreement about how to end this particular working group and get this report moved forward. But I just don't see how we're going to, if we leave it as it is either version of this motion I don't see how that's going to pass.

Stephane van Gelder: Thanks. (Christina) you had some follow-ups and then I'll have Avri.

(Christina): Yeah. Just following up Tim to your previous comments. I'm certainly not wedded to this particular Process B plus in its current form. But I can tell you that from the IPCs perspective, from our perspective the last round of negotiations was a debacle.

It's not something that we want to see happen again and we really are at the point where kind of no, no from (unintelligible) stakeholder group on this issue is no longer, from our view a very productive way to go about it if you have alternatives we are absolutely interested in considering them.

And in terms of I guess kind of on another, what I'm having a hard time getting my mind around is that it was actually members of the registrar stakeholder group who participated in this working group who proposed Process B, which in terms of how the negotiations went and coming back to council having them vote on it.

I'm having a hard time kind of reconciling your position that it's not council's business with the fact that other members of your stakeholder group clearly at that time disagreed. We don't necessarily need to resolve that right now but I think it's probably some information from an

explanatory perspective that could be helpful for at least from IPC perspective for us to have.

Stephane van Gelder: Avri.

Avri Doria: Thank you. Avri Doria, NCSG. Basically I think the point that the NCSG would want to be considered is that there's, looks like a fundamental difference between the view that the NCSG is approaching and holding that when ICANN is negotiated with that that includes the community, that that includes the non-contracted party house members and that it's a process that includes those people having to vote on something at the end they very well need to be at the table.

So I think that's the reason why there's strong support in NCSG for the option, the first option.

In terms of the second option that has ended up largely a compromise motion that I think most of us in NCSG aren't totally comfortable with, it's not enough but in terms of viewing it, it needs to be viewed as a compromise between a view that sort of says when contracted parties negotiate with ICANN they only mean ICANN as staff.

Whereas from the NCSG perspective certainly when we say contracted parties negotiate with ICANN they mean the community as well as staff and that we do have a seat at the table to voice opinions and to be heard and have those opinions considered. Thank you.

Stephane van Gelder: Okay. So the hands are shooting up here. I have (Mason) next, then (Jeff), Tim, Adrian, (Alan). (Jeff), Tim, Adrian). (Mason) please go ahead.

(Mason): Thanks Stephane. So I want to echo one thing that Tim put into this discussion, which is the presupposition of what GNSO's role is and what authority it has over the contract.

I realize there's frustration on the part of some elements of the community that the last negotiation process was not satisfactory. Frankly that outcome doesn't necessitate a change in the rules by which the GNSO operates or by which the parties to the RAA contract behave.

So it's critical that the GNSO understands that it is not a contract administrator, nor is it an authority on interpreting the terms of the contract and I can't envision a scenario where any contracted party would allow those rules to change, it just introduces too much instability into business operations to allow that.

One other point, so I hear often, and I am sympathetic to (Christina's) point that the registrars stand in the middle of the road and just say no, no, no all the time. Let me give you an example of how that can be taken care of, and it happened just a couple of weeks ago at the Brussels meeting that we had, that the contracted parties had with law enforcement officials.

We took a list of 12 proposals that law enforcement made that they wanted to see added to the registrar accreditation agreement. We went through those one-by-one and explained to the law enforcement authorities how they could be better tailored to meet their needs.

And we made the point clearly that to use an American expression, the cart got well before the horse in that the amendments were proposed without any understanding whatsoever about their legal implications in multiple jurisdictions or how they could practically be implemented.

If there's an alternative way to deal with this my suggestion would be call up the registrars and come see us, explain what your problem is and we'll be glad to try to help you. Legislating through the RAA is just not, it's not ultimately going to be a productive way to go.

I think you actually, you'll find that you'll get registrar cooperation if you can come to us and explain the problem and we can explain back what the operational considerations are and find a good way to help you solve the problem. But we, candidly we don't get that.

Stephane van Gelder: Thanks (Mason). (Jeff).

(Jeff): So just a comment on Avri and the NCSG position. While I certainly understand why you'd want to have a say in our contracts, the reality is we signed contract for a reason of having predictability and certainty. And our contracts do allow the community to weigh in on consensus policies, they do not allow for contract negotiations.

It's a very big difference between what comes out as a policy versus specific contractual provisions and requirements. So we have to have this stability and predictability, reliability contracts mean something. This entire organization only exists because of contracts. I mean the only reason that policies are able to be implemented are because, I shouldn't say only exists because of contracts, strike that, the only way

that the system works, that registries and registrars is that because of contracts.

You know otherwise we could get into a position where the GNSO wants to renegotiate every single provision at every single meeting we're just going to be talking about new contractual provisions.

And one thing I might suggest is that the new GTLD agreements have a process for amending the new registry agreements, perhaps a way to look forward is to give that type of flexibility to the registrars and have that be the process for determining amendments to the registrar agreements in the future.

I don't know how we accomplish that but I have heard certain registries say that type of process for amending agreements may be an acceptable one, so we can think of alternative ways of doing this but certainly to say that the NCSG or non-contracted parties need to have a say in the contractual provisions is not certainly tenable by any of the contracted parties.

Stephane van Gelder: Okay. I'm glad this debate is heating up and we have nine, eight minutes left so I will ask you to start making your comments a little bit more brief. Tim please.

Tim Ruiz: Yeah I think (Jeff) said what I was going to say probably a lot better though. The only other point I want to make is that you know the RAA very clearly lays out you know that there are, that there is a consensus policy process and that there are topics or areas or issues that are subject to consensus policy. and I know we've got some debate about

you know, what exactly is policy and that kind of thing, and maybe that needs to be resolved, no doubt it does.

But the point is very clearly indicates that the whole RAA is not a policy document, that there is, these are the things that are open to consensus policy, that are dealt with at the council level, it's not the whole contract. That was the conditions under which we as a registrar signed that agreement and that it was between us and ICANN the legal entity.

And if that's going to change, you know it's going to take you know a lot bigger negotiation and discussion than what we're going to have just at the council level.

And the think the point right now is that we do we want to move forward and actually make some progress on getting some of these things that, and as we look at the, some of these issues that are down as being you know, most forward and/or high priority items on that list I think we can make some really good progress on that.

Well we can't do it until we start getting to a process where we can get it done. The reason we suggested Process B was because Process A got created and so what we were trying to do was to explain you know, that that's not going to happen. Here's the way that it can happen. That didn't get accepted so it got included as Process B but nowhere did we ever in that working group imply or indicate that we would accept whatever the council decided on that.

What we were trying to say, and said repeatedly, and I said repeatedly is that you know it can't happen the way you'd like to see it happen, but

it can move forward if we're willing to accept the way the situation is today and let's get on with it.

Stephane van Gelder: Thanks Tim. Adrian.

Adrian Kinderis: Stephane I just wanted to make a quick comment, and a lot of what (Tim's) just said. I get, the feedback I get in the community, especially with this topic, is that the registrars are out to do evil. And I just, I understand that that's not the understanding of those at this table, I hope at least.

But the point is, and Tim just made it very well, is we're out to protect our businesses. We have a set process and a set agreement that we have built businesses around.

So I understand that this is a, and this is more a comment for the record I guess, I understand that registrars are not about trying to protect our ability to do evil or that we are advocating wrongdoings with respect to what some do, what we are trying to do is protect our businesses and we are more than happy to talk about the issues that are at hand but in the appropriate forum and format. Thank you.

Stephane van Gelder: Thanks Adrian. (Alan). And I, sorry, just to remind people that the queue as I now have it is (Alan), (Mary), Avri, (Christina) and (Jamie), I'll probably stop at (Jamie) and once again please be very brief. (Alan).

(Alan): Two points. I don't think anyone is debating that this is a negotiation between ICANN and contracted parties. That's a legal issue. From my perspective who ICANN chooses to include in its negotiating team is

up to ICANN and if it chooses to include Avri for instance, that's allowed. I don't think ICANN (unintelligible).

Man: But the point is (Alan) it won't come to the table then, that's the problem. That's what you have to think about. We can't, we're not going to come to the table when there's parties outside of ICANN involved in it, ICANN the legal entity. I mean that's the whole issue, because we can't openly discuss the issues that we have or the things that we may need to discuss in order to come to some agreement on these amendments.

(Alan): Okay. I find that rather interesting that you're controlling who the other party says can be (unintelligible).

Man: (Unintelligible) or Avri is there (unintelligible).

(Alan): Okay.

Man: (Unintelligible) whatever then she can be there.

(Alan): All right. The second point is when the last revised RAA was brought to the GNSO effectively for its rubber stamp with the super majority, which it didn't get the first couple of times, it's unfortunate that that amendment to the RAA did not include a change to the amendment process, which it could have and life would've been a lot easier, but we're stuck again with the GNSO having to do, have a super majority approval for that RAA to get cleared.

And as other people have said, we have to come up with a process where the GNSO can do that because the majority of the GNSO, the

super majority is not going to approve it as a pure rubber stamp (unintelligible).

Man: Just to be clear on that (Alan) is that registrars never agreed that it was appropriate for the council, as it did last time, to go ahead and vote on that, we accepted the situation because it was a way to move forward but we've never accepted with staff, in fact we've continued to question with staff whether that was an actual amendment process defined in our agreement.

In fact I think most of our position is there is no amendment process defining our agreement process. All it really addresses is amending our agreement when, to include consensus policy as it's created over time. Otherwise there is no amendment process in that agreement. That's been our position, I don't want to get into a debate over that. I just want to explain that we've never, we never have come and said yeah, that the way to amend it is a two-thirds vote of the council.

(Alan): It's not the clearest written contract in the world, I think we are all agreed on that. We have to figure out a way to go forward.

Stephane van Gelder: Avri, (Mary), sorry.

(Mary): Thanks. So first just some quick points in response, and maybe for clarification. I think first of all the concerns about the council deciding what's consensus policy and so forth I think are ill founded, maybe it's not in the best way in the report but that's kind of how I read step one of Process A, that there is some kind of discussion as to what is and what is not consensus policy and maybe that will be a heated debate at that point as well.

Secondly that I wanted to emphasize that the word right here observers, so that even when the community is saying to the registrars that we want to see it at the table, it's very different from saying that we're active participants.

So the nature of observant is just a requirement for two things, one some sort of transparency and secondly, the opportunity to provide timely input in the negotiation process because the hope at the end of this and the title of this document was Improvements to the RAA, that that input comes in throughout that process from people who do have a stake in the outcome. So that's the second point, and I think the final point is that everybody wants to move forward.

And going back to what (Christina) was saying about the refusal to say no, I think maybe this is misplaced but those of us in the community have not really heard anything helpful back. It's either a threatened no, but we want to move forward, we can only move forward if you guys aren't in the room, and the other reasons are things like having you in the room will delay the process and will not allow us to protect our business.

I don't think any of us find that particularly helpful or convincing. So if the registrars, if we're wanting to move forward are able to propose a method or some kind of approach that determines exactly what the role of the observers are that addresses our concerns over timeliness, transparency and input, maybe you can process A minus and then that might be something we could consider.

Man: I think we did and you've yet to respond, and that was my question because you said you'd accept currently amendments, and I said (unintelligible) I intend to do. But before I went through all the trouble of writing it you know, I felt the likelihood of you accepting that was pretty slim right, that's our compromise.

If we're stalemated and we can't move forward then let's just drop this and get on with something else.

Stephane van Gelder: Yeah (Jeff).

(Jeff): I just have a real quick clarification, I think the reason is not that we don't want observers in the room, it's not because we're thinking a delay but any negotiation involve the exchange of confidential information, any negotiation for contracts, and that is a big concern for a number of contracted parties to not have observed this, so just put that on the table, it's not that we think it's going to delay but that's the reason.

(Mary): Quick response, I heard (unintelligible) not from you (Jeff) but from somebody else, and secondly again as part of Process A I think there is a mechanism in there that allows for some kind of closed door negotiations for certain things provided there's a reporting back to the group. And again if that needs to be refined perhaps but there is that possibility built into Process A.

Stephane van Gelder: Thanks so I have now in the queue Avri, (Christina), (Jamie) and Adrian. I will close this off with Adrian. Thank you. Avri.

Avri Doria: Thank you. First of all in terms of the confidentiality issue, we've already had examples of groups where working groups where people signed NDA about the information that was going on inside the group, so I don't think that that is necessarily a relevant issue.

I think in almost the same intensity that the registrars say no we do not accept that the process whereby the council approves the change in RAA is legitimate. I think equally we don't think there is a legitimate change to the RAA without the council's approval. So yes we do have a fundamental difference.

As for the stalemate, I think that's what the vote is meant to show. Basically continue discussing it until you get there and then raise your hand and basically if there are two positions from then you go on to figuring out what's next, but I really do believe the two sides are fundamentally opposed and that needs to be expressed.

Stephane van Gelder: Thanks Avri. (Christina).

(Christina): Just a couple points, and I don't know if people are misunderstanding, you know my motion is not at all intended to prescribe to the registrar stakeholder group what topics will be the subject of negotiation, what specific topic will be the subject of negotiation, for all we know we can do this analysis and it turns out that everything that's high and medium priority is a function of consensus policy and then you're done, I mean the rest of the motion becomes moot.

And if there needs to be an amendment to that motion to say that that would satisfy you all I'm happy to consider anything that you present.

And second, you know my motion is really about building in timeliness and transparency, that's all I'm asking. I'm not saying that there has to be an adoption of public comment on a particular issue, it's just if you reject the proposed amendment tell us why and let's make sure that the explanation is one that both staff and the registrar stakeholder group agree on.

I mean that's really what I'm trying to get at is to have transparency and timeliness to the community. And I'm happy to take other questions off line about this, I'm happy to consider potential amendment that I feel will kind of further this compromise, you know I understand we're out of time but I really, really don't want us to get up there on Wednesday and have what is clearly going to be a no vote on (Mary's) motion and I presume that mine will get a request for deferral, and then have the next vote be no and we haven't really advanced the situation at all.

Stephane van Gelder: (Jamie).

(Jamie): I would like to know what, I'm a little bit confused here because I understand registrars say that they are open to amendments that result from consensus policies that (unintelligible) this is the kind of amendment that would be accepted.

Man: We're required to do that, so if...

(Jamie): Yes.

Man: ...a consensus policy, something that's subject to consensus policy ends up with a policy then we have to, we have to (unintelligible).

(Jamie): But if registrars are part of this consensus and they keep saying no to each and every attempt to reach consensus when it comes to amending RAA then there is no amendment possible, not even there is no consensus possible.

I would, my this is the introduction to say what kind of, would be acceptable to registrars, what kind of not interference, I understand that, a third party should not interfere in a contract between two party, but what kind of possible not participation but as (Mary) put observations would be accepted?

Man: Well that's the whole discussion (Jamie) is that we would not accept observers in the negotiations. We have agreed, and we're discussing this in the working group, we proposed B, it wasn't called B then it was just this is what we propose and that is that you know, as negotiations take place we report back periodically so the community gets the chance to see what's going on and make a comment on that and we'll consider that and this process will just keep moving forward.

But we've said that, that's what we've already said we would do. I don't see that changing. What this is about, and we've there has been consensus policy, we haven't blocked every consensus policy, there's a consensus policy that wouldn't be out there if I had my way, but you know I don't have my way in every situation, and so they're out there and there's some coming down the pike.

But we're saying is that with all the, everything that's been said is that if it's not, the council does not have the authority to decide how this process will proceed, so it doesn't matter, you know how the

discussion about what we would accept or we won't accept. What we're saying is all the council should really do is say thanks for the report now get on with it and that's what we intend to do.

But as long as we keep debating this over and over and over again and we keep going around in circles and we keep voting down motions we're not getting anywhere, and at some point then this is what, it's going to fall by the wayside, we're not going to move ahead with this at all, it just seems like such a waste, you know. But I think...

Stephane van Gelder: Can I, sorry, can I shut this off. We're way over time, Adrian was last on the list and I'd like to move on if possible. Sorry. At some point you have to close the discussion off, I mean we're ten minutes late already.

(Jamie): Well I would just say that what we are trying to do is to move to consensus, that's all.

Stephane van Gelder: Thank you. Adrian.

Adrian Kinderis: I'm not sure how to bring this to a head. We stated pretty clearly our position now. We want to work towards getting something done within, but you have to do it within the realm of what we, what you guys have to work with what (unintelligible). And I'm sorry but that's the way it is. You're not going to get observers, that's not going to happen because we're going to block it every time.

So if that's the case so that's the reality, we need to start dealing with reality to move forward, so we're happy for you guys to, once you understand that parameter please give us something else and we'll talk about it.

But that's you know I guess I want to finish Stephane is just please take our points as the set parameters with which we are working in, that is the lay of the land. If you can come back with something that works within that by all means do so, but otherwise we're just going to be at loggerheads for the entire time, and as Tim said, we're not going to make any progress whatsoever. Thank you.

Stephane van Gelder: Thank you Adrian. I realize there's a lot of discussion that we could still have on this, I'm sorry to have to cut this short but we do have a schedule that we will try to keep to.

Now I have a working lunch to discuss our forthcoming joint meetings with the CCNSO and the GAAC, the lunch is served in that side room there. I would ask you all to give priority to GNSO counselors, counselors please go and help yourself to lunch.

Now let's have a five or ten minute recess and then come back to, sorry, and then come back to discuss the points that we are scheduled to discuss. Thank you very much.

END