

## Transcription ICANN Buenos Aires Discussion of Motions Saturday 20 June 2015

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Man: But (Carlos)' update will be a lot more substantial. But I just wanted to make sure everybody knew that that - that it happened.

Jonathan Spencer: Okay. So to be clear, it's not (Carlos)'s update. It's going to be David Cake providing it.

Man: Okay.

Jonathan Spencer: Feel free to - if you have anything in writing, feel free to put those talking points across to David so - and David will share those then back with the Council. So that's great.

All right. We can call that session to a close and in turn - in the last half hour of the day the final session. Please let me know when we can begin the next session.

Okay. So we're good to go with the next session then, which is a discussion of the motions. To be clear, we have four motions - is it four or five - is it - I think it's five motions before the Council.

So having - it says that - there's a thing that says - I'm just rather parochial but London buses don't come along for a long time and then two or three or four or five come along at the same time. And I think that's what it's been a bit like with our motions. We've had a relatively quiet period of motions and suddenly we've got five, some or most of which are pretty substantial.

In terms of discussing these, half an hour is clearly a short time. We discussed the substance behind a few of these already during the course of the day. So I'm going to try and push us through especially the easy ones quite fast. I'd encourage you to contribute if you need to but let's just move beyond them if we don't.

So the first one is clearly the motion to extend the term of the GNSO liaison to the GAC by another year. What we did to preempt this was we applied for the funding and we (withdrawn) to the funding.

So we have the funding in place. We have an existing liaison in place. And the question really before the Council - the motion resolved to extend the term for another 6 to 12-month period.

Are there any concerns or issues relating to this motion that anyone would like to raise at this point? Okay. So seeing none at this stage. And just to remind you with respect to all of these motions, if concerns or issues come up during Constituency and Stakeholder Group Day on Tuesday, that is the purpose of the later Tuesday meeting at 6 o'clock.

It's an opportunity for Councilors and probably stakeholder group Chairs and/or people in the position of leadership in the stakeholder groups to come forward and discuss and frankly to try and negotiate and/or understand concerns or issues in and around the motions. So that's the purpose of that Tuesday session at 6 o'clock.

So please if things come up in your constituencies or stakeholder groups and, you know, clearly the whole reason we initiated that was that the Council wasn't ambushed by a sudden appearance of a change of plan during the public Council meeting on the Wednesday. So that's the purpose of the Tuesday session.

Next item is the motion to deal with the adoption of the GNSO Policy and Implementation Working Group final report and recommendations. There was some concerns and issues raised earlier. It seems to me in the discussion that concerns such as those raised by (James) were addressed. But let's hear it if anyone's got any concerns now.

And, you know, this is not your last chance. Clearly you're going to go and discuss it in the constituencies and stakeholder groups. But if you're aware of something now, let's raise it; let's hear about it. Any areas for clarification, concerns or issues?

I'm sorry. What's the - can you talk into the microphone? Let me know the concern. Anyone - so this appears to not be seconded. Is that correct? Do we not have a second for this motion at this stage?

Anyone willing to second the motion on the adoption of the GNSO Policy and Implementation Working Group final report and recommendations?  
(Stephanie), thank you very much. So Glenn, if you could note (Stephanie) has seconded the motion. Anyone would like to raise any points or comments or issues in relation to this motion? Seeing none, we'll move onto the next one then.

Motion to request a preliminary issue report on new gTLD subsequent rounds. Issues, concerns here? I mean we did - there were some points raised earlier in the discussion on this about the timing relative to other activities and so on.

So we've got a hand up. I see two people but I only see one raised. Two people raised their hand. (Brett), go ahead.

(Brett): Thanks. I just wanted to point out that we heard very loudly and clearly in Los Angeles that people wanted us to take account of the AOC process. And so we not only slowed down the pace of our work but we also made sure that the documents that we forwarded to the Council asked that the PDP if it's created take account of the AOC work.

So we want - I want to make sure that everyone knows that taking the input from the AOC is part of the mandate of what we have put forward to the Council. So that will happen.

I would very much like to see this motion supported unanimously. And to the extent that people have concerns about it, I would love to take the next two days to talk about it and figure out how to accommodate people.

I've known her now for almost 18 years and I - and she's not here yet but I did take a lesson that Marilyn Cade taught me to heart very early. She took me aside at one point and says, "You have the votes to get this to pass. Now you have to decide whether you want to steamroll the people who are opposing you or bring them onboard."

And she said, "It's always best to bring them onboard." And I've always tried to take that into account in the way I approach things. So I would very much like to bring people onboard even though we likely have the votes to start the PDP process and the issue report process.

I want to make this something that everyone sees their input in. We tried very hard in developing the issues to make sure that everyone was heard. And I want to make sure that people understand that their issues if they have them are embodied in the motion that we present to the Council. Thanks.

Susan Kawaguchi: Susan Kawaguchi for the record. We need to take this back - Phil and I need to take this back to the BC for further discussion. So maybe our Tuesday evening meeting we would have more information or a proposal. But at this point, you know, we're not supporting this completely but we are discussing it. But that was, you know, helpful for having the BC here together to discuss it. So hopefully Tuesday night we would have something.

Jonathan Spencer: Okay. Great. Thanks for the candor on that. I've got Heather and I'm not sure Phil - would you like to speak as well Phil Corwin? I've got Heather next and if you do, raise your hand in Adobe Connect if possible.

Philip Corwin:: I think Susan stated the BC position and we'll keep addressing it from now on till the motion is addressed on Wednesday. Thank you.

Jonathan Spencer: Okay. Thank you Phil. Heather.

Heather Forrest: Thank you (Jonathan). Heather Forrest. I don't mean for this comment to suggest one way or the other; just to say that we've listened very carefully and we appreciate the opportunity to hear the views on this particular motion and we'll simply need to discuss it on Tuesday. So we'll come back Tuesday evening from the IPC.

Jonathan Spencer: Thank you. I think that's understood then. Motion 4 is on the adoption of the GNSO Translation and Transliteration of Contact Information PDP Working Group final report make by Amr Elsadr. And we do need a second for this motion as well. So let me call for a second first of all. David Cake - Glenn, where is Glenn? Is she - oh, (Lars) you recorded that. Thank you very much.

(Volker): I would also like to second the motion.

Jonathan Spencer: All right. There's - I don't think we need to second that (unintelligible).

Man: You can second if you'd like.

Jonathan Spencer: Okay.

((Crosstalk))

Jonathan Spencer: (Lars), go ahead.

Man: If you'd like to second it, you can.

(Lars): (Lars), for the record. Just in light of the discussion earlier and the point that (Volker) brought up with response to the final report, there's likely to be a friendly amendment to clarify the clerical error of verification whereas verification is forthcoming. Thanks.

Jonathan Spencer: So actually that makes sense then that (Volker) is a second if he is the - I mean - you okay with that David? Yes. Okay. So (Volker), we'll record you as the second and there's likely to be a friendly amendment to that. Any other comments or questions on that motion? Great.

Let's move on to the final motion, which is something we haven't discussed today actually. We haven't come onto this at all. And we have a slot for half an hour to provide an update on the final report of the Cross Community Working Group on naming related functions.

So this is the motion to adopt the final proposal. Clearly this is a matter of substance to not put too fine a point on it. Any comments or questions in relation to this motion? Bearing in mind we'll have a half hour update tomorrow. (James).

James Bladel: Just that I think that we need a more thorough and comprehensive discussion of the motion and the update. And I don't think that we're really - at least I

don't feel I'm personally in a position to make any intelligent statements on that today. We'll be in a better position tomorrow.

Jonathan Spencer: Okay. I will just share with you one thing that happened in the crafting of this motion so that everyone's got this to think about. The way in which the CWG proposal is drafted is - and this was with the help of the lawyers that worked on it.

It is expressly conditioned on criteria being met by the Accountability Working Group. In other words, technically it doesn't fly without the support of that group.

When this motion was first drafted - when we first started to draft this motion, which as you'll see I'm the (proposer) of the motion supported by (Thomas) and got some help from (Thomas), Chuck and Marika in drafting this motion.

Originally we had the resolution clauses that (would) somehow themselves tried to condition the motion on this report. But actually what's important to recognize is that the report itself is conditional on the accountability work.

Therefore, what this motion says in Clause 2 is the Council approval is on the understanding - rather it doesn't say the Council's approval is conditional on. It says the Council approval is on the understanding that the CWG stewardship final proposal is conditional on ICANN level accountability mechanisms being developed by CCWG accountability and so on.

So that conditionality is built into the thinking around all of this but the motion itself is not a conditional motion. We will be voting to support that proposal. But built into that proposal is conditionality. Any questions or responses to that? Heather, if you could drop your hand from the previous topic. And then (James), go ahead.

James Bladel: So thanks for pointing that out. I think that's an important - (James) speaking. And that's for pointing that out. My question is if we game this out worst case scenario and I'm glad that (Thomas) is also here - is if one of those conditions is not met, what happens? Are they - are these resolve clauses severable from the rest of each other? Or does the whole thing basically just vacated if those conditions aren't met in the CCWG accountability proposal? What happens?

Thomas Rickert: It's my understanding that the CWG would then revisit its recommendations. But...

James Bladel: Okay. Would that come with a new motion then?

Thomas Rickert: It would not - it would not proceed.

James Bladel: But would we have another opportunity to review and vote on the revised CWG proposal that took into account the changing landscape of the CCWG?

Thomas Rickert: It's my understanding that, you know, let's maybe play through the scenarios. We adopt this. This approval is unconditional but the approval is for a proposal that itself contains conditions.

Next thing that's going to happen is that the CCWG will present its proposal to the GNSO Council as a chartering organization. And we will then check whether the CCWG proposal contains everything that's in there as conditions. So we can then choose not to approve. And if the CCWG proposal is not approved by GNSO Council, it will not move forward.

But the second thing is that the CWG itself has reserved the right to revisit the proposal if their conditions aren't met. So I think two things need to happen cumulatively. The conditions need to be - need to be met. And the CCWG proposal needs to be adopted. And only then it will fly.

James Bladel: So my question is - and I'm sorry to belabor this because I think it is a bit of a procedural point giving me a headache. But if that scenario were to play out and the CWG were to go back and revise their report and their proposal, would we as a Council - as a chartering organization get another chance at that or would that just simply be go forward based on the approval that we give on Wednesday?

Jonathan Spencer: Can I suggest we deal with the easy one first?

James Bladel: Okay.

Jonathan Spencer: Just to make sure we've got the easy bit sorted out. So the easy one is the CCWG proposal does meet all of the conditions. It remains exactly as it currently is. It gets brought before the Council for approval and it is a requirement that the chartering organizations approve that in order that the NTIA then gets the package of stewardship transition and accountability that are approved by the chartering organizations.

I would expect that the Council at that stage would probably cross check with the CWG to say are you satisfied your conditions were met because we don't want to vote to - on the CCWG proposal without cross checking with you.

Now to your other question, that said - but I think - understanding that the straightforward process is a good foundation for then tackling the less straightforward issue. So I just wanted to make sure we had a common understanding of that.

Thomas respond and then Avri you might want to come in on this. You've been (waiting).

Thomas Rickert: Just a quick follow up on what I previously said. If the conditions aren't met, CWG says they will need to revisit. Then it's a different proposal. And it would

be my understanding that this needs to be brought back in front of the chartering organizations.

James Bladel: Thank you. That's exactly what I was hoping. Thank you.

Jonathan Spencer: Okay. Avri.

Avri Doria: Thank you. This is Avri speaking. That was my assumption also but I was thinking that perhaps for, you know, security sake, I mean it doesn't hurt to actually say that in a line in this motion if that makes it - if there are any changes because it is possible that it will come back after the ICG has done its melding and they say we need you to change a word here or a word there.

It could. So one could add another line that said should this proposal be changed in any way...

James Bladel: So I kicked over this rock. I will be happy to craft a friendly trap door just to catch this if necessary.

Jonathan Spencer: Okay. I would just caution probably thinking about my role in the CWG that we should have an issue there of materiality or something like that. I think we should have a consideration that, you know, tweak to the proposal, you know, that doesn't materially alter the outcome or different to material changes to the proposal.

James Bladel: Sorry. I was just going to put a trap into Item 2 here that if those conditions are not met...

Jonathan Spencer: Yes. Okay.

James Bladel: ...just...

Jonathan Spencer: All right. Let's hear from - Thomas, let's hear from some others.

Thomas Rickert: Just before we lost this moment, I think we don't need to add any language. If we see that the conditions aren't met, we wouldn't approve. And our approval is a requirement for the CWG proposal to become valid. So I think it's inherent in here.

James Bladel: But those would be in a different motion on a different report. It's the linkage that I'm afraid we might lose. I don't want to beat this up. But it does seem like if we're - we would be measuring a future report with its future motion against the language that we would have already approved past tense...

((Crosstalk))

Thomas Rickert: If the conditions...

Jonathan Spencer: There's others waiting to speak. So let's consider taking this offline. Let's see whether others help resolve it and bring it back in a moment anyway. So I've got - Avri's out. So I've got Phil, Greg and Kristina. So Kristina, you're apparently at the microphone first or before Greg at least. So let's go Philip, Kristina, Greg.

Woman: Go ahead.

Philip Corwin: Thank you. I'm consulting with my colleagues here from the BC. Of course this will be coming up Wednesday. We want to - we understand there's some further tweaks on the CWG proposal and we haven't really evaluated them yet.

I do want to note for the record that we did file a comment letter when it was put out for comment -- the CWG transition proposal -- expressing concern about the very short comment period, about the incomplete nature of the proposal and the fact that we didn't know what the accountability measures were.

So we may be okay with this but I just want to as a place marker note that we're still developing our position. And certainly by the time we discuss this within our Constituency Day we'll have a firm position for Wednesday.

((Crosstalk))

Philip Corwin: ...but I want to make sure that people know that we're still analyzing.

Jonathan Spencer: Yes. And just to help there, in my capacity as a CWG Chair, there was - this is - just to be clear. This is the final proposal from the group. This final proposal is more complete than the one that went out for public comment and substantial gaps were filled in; for example, about the structure of the PTI and the PTI Board.

And I won't comment on the shortness of the public comment period. That was a decision taken in order to expedite the processing of the whole point. But there was a thorough piece of work done on processing the public comments and absorbing those and those were all reflected in the public comment tool.

So just to make clear that that's - and not to preempt any discussions that are going to take place in the BC. Kristina, go ahead.

Kristina Rosette: Kristina Rosette speaking personally. And I apologize if my question is about to open a whole other can of worms. But given that the conditionality of the final proposal on the CCWG accountability seems to be giving everyone heartburn or at least that's what I'm picking up on, I guess what I'm having trouble understanding is why vote on this now.

Why not wait until CCWG accountability is ready? And if there is some concern that there needs to be GNSO action on the final proposal, then put together -- although I guess it - you have a problem with the ten day rule -- a

very simple motion that says the GNSO Council has received the report.  
Because of the conditionality we're going to vote on them simultaneously.

Jonathan Spencer: That's a really good question. And it's a key question in all of this. And what's required here is that this - it depends on your view of the overarching timetable. But it is - this has been - as you know, this names proposal is significantly delayed relative to the other proposals from the other two communities. So there's an element of that - of pressure in that direction.

The ICG needs to have the three proposals in order to try and bring them together to form a coherent proposal. What this does by presenting and voting and completing this part of the work is it enables us to transmit that onto the ICG for them to do their work whilst the Workstream 1 is further developed by the CCWG.

And then they come together again for a second - the two need to be locked together. They have to be - the one doesn't fly without the other. So we have the - they're sort of two pieces of the puzzle. So we - what we do by this mechanism is we allow the ICG to do its work in addition to not closing off without seeing that the accountability work is satisfactorily complete.

I know there's a couple of other people that want to respond specifically to this question. It guess it's Thomas. Keith, I don't know if you came to respond specifically to that question. So let's hear from Thomas and Keith in response to that and then see where we go from there.

Thomas Rickert: Yes. Just to respond to Kristina's point. I guess what would be important for the CCWG is actually to have certainty that there were no further changes to the CWG proposal. And if we approve this, then we're sort of locked in the status of that proposal. So we can't afford to have this as a moving target. I guess that's...

Jonathan Spencer: Thanks Thomas. Keith.

Keith Drasek: Thank you (Jonathan). Thank you (Jonathan) and Kristina for the question. So I - so for the transcript Keith Drasek, Chair of the Registry Stakeholder Group and one of the GNSO or the gTLD registries representative on the ICG along with John Nevett.

I think the question and (Jonathan) referenced this about timing is really a critical one. I think as most of you know, the protocol parameters and the numbering communities delivered their proposals to the ICG back in January. So we're significantly behind them. Understandably so. It's a much more complex process that we've had to deal with than the naming community.

But the ICG is not just responsible for collating or bringing together the three operational community proposals. It actually has to conduct a public comment period of its own and establish the public record of public comment and feedback and input once the three proposals are pulled together.

So there are months and months of work ahead for the ICG and to the community in order to be able to deliver an approved and consolidated proposal to NTIA.

So I think that I totally understand where Kristina is coming from in terms of process and order. But I think the conditionality that's been set out in this recommendation does in fact allow, assuming it's approved conditional on the results of the CCWG accountability work. It allows the ICG to get to work, to consolidate and to compare, to put out for public comment with a goal of having all of this come together in and around Dublin in October.

So I would encourage to the extent possible with my ICG hat on to move this forward keeping the conditionality. Thomas referenced, you know, the mechanisms that the CCWG accountability will take or the steps that we will take in the CCWG accountability to ensure that the dependencies are met. And I think that's an appropriate pass forward.

Now taking off my ICG hat and putting on my - I'll put on my personal hat right now. I think it's - I think there's actually certain leverage that we will have to secure meaningful accountability through the CCWG accountability because of the conditionality that's hanging out there.

So I actually think there's a benefit to the conditionality. So those are my remarks. Happy to take any questions or comments. I understand the - this is an unusual step or procedural step for the GNSO Council. But I think in this case it's warranted.

Jonathan Spencer: Thanks Keith. That's helpful additional information and point. Philip Corwin, your hand is up. Okay. I've got Steve, Avri...

Man: What about Greg.

Jonathan Spencer: I think Greg - I think Greg's been there for a while. So sorry, let's bring Greg in.

Greg Shatan: Thanks. Greg Shatan. Actually a comment on Resolution Paragraph Number 8, which goes (Jonathan) to your point about materiality in terms of the linkage between CWG and CCWG.

As drafted, I'm of the view and I've discussed this with some other people. But that perhaps there's too little wiggle room in the way this is drafted for insubstantial changes.

So for instance where it says if implemented as envisaged, first it's not clear who's envisioning what we're taking about. But right now the CCWG proposal is still somewhat in flux.

So I would suggest the two places has implemented putting the word substantially after them. So if in - and that's in the second to last sentence -

second to last line and the (fifth) to last line. That perhaps, you know, helps to open up things a little bit while clearly still leaving room for any material change to bring us back.

Lastly, I'm not sure what the as described below refers to at the end of the first sentence. But that's - I'll leave that to any future amendments.

Jonathan Spencer: Greg, can you assist us by putting those proposals on the list so we've got them in writing just...

Greg Shatan: Yes.

Jonathan Spencer: ...as friendly amendments.

((Crosstalk))

Jonathan Spencer: Great. And then that can be responded to. So who have I got next? I've got Steve DelBianco. Steve, go ahead.

Steve DelBianco: Thank you. Steve DelBianco, Business Constituency. A little over a month ago two hearings in Washington, D.C. in U.S. Congress on this whole topic of transition. And we were asked - Phil Corwin and I were witnesses and I was in both hearings and I was asked what can Congress do to help.

Well, you get a door like that, you take it. And we said that Congress should require that the bylaws changes requested by the CWG and CCWG be implemented prior to this transition. Sometimes you get what you ask for. Congress gave us that.

It passed the House Judiciary Committee - sorry, House Commerce Committee on Wednesday and it'll be on the floor next Tuesdays. It's bipartisan support. And there's a version in the Senate as well. There may be a few tweaks here and there.

But the core sentence says that the required changes to ICANN bylaws contained in the final report of ICANN CCWG and the changes required by the IANA Stewardship Transition Coordination Group have been adopted. So that language will likely be there holding NTIA's feet to the fire.

So my point is on 2C, not on the whereas but if you don't mind going to the result clauses of 2C. If I can get you to scroll.

Jonathan Spencer: (Lars), are you on the slide there?

Steve DelBianco: To the resolve Clause 2C. Thank you very much. So the opportunity here (Jonathan) would be to be stronger and simpler in 2C. Two C could say not just implemented but bylaws changes necessary for the transition will have been adopted beforehand. Bylaws changes necessary for the transition would be adopted beforehand.

So that would be simpler and not creating the wiggle room that certain things could happen later. Now having said that, some of the CWG and ICG implementation is more than just bylaws changes. Somebody's got to stoke a pen and create a corporation, do some filing and those aren't entirely bylaws changes.

So if you believe that those implementation steps outside of bylaw adoption are at risk as well, you're well advised to stick with your current language. However, if you think the key is simple adoption of bylaws changes, we could make 2C simpler.

Jonathan Spencer: Can we - I think that needs some further thought and - but that's helpful and quality input. Thanks Steve. I'm mindful that we're at the top of the hour. Let me just check what are the - who else is in the queue. I've got I think Avri and (James). So let's call it a day after Avri and (James).

Avri Doria: I basically took myself out of the queue but if there's any crafting of friendly amendments to do, I'm willing to play.

Jonathan Spencer: Thanks Avri. (James).

((Crosstalk))

Jonathan Spencer: We're all set then. What I think I heard from Steve is either a rephrasing - a potential rephrasing of C or if not, potentially an additional sub clause, which deals with the adoption of the bylaws. Let's think about that and see whether there's a change there.

And if anyone would like to make such suggestions on list, that's - Steve, (unintelligible) sort of Councilor but by all means make those suggestions especially - because I'm just not fresh enough to think whether how much need. That's a pretty robust Claus C. And I take the point that it's - yes, that it may be unnecessarily complex.

Steve DelBianco: It leaves the out that they don't really have to be done before the transition if you can get a promise that it will. The simplicity I was advocating is there's no out. Everything has to be - all the bylaws changes have to be adopted before the transition period.

Jonathan Spencer: That is true. Although as it happens there's another force requiring that anyway or likely requiring it, so. But point taken if we want to lock that down.

All right. Is there - so I think that was actually a very useful and very tightly managed discussion. So thank you very much for the cooperative and effective way in which we dealt with those motions in the time allotted.

I'm going to call the meeting to a close at this point. You're all very clear that we've got opportunity to discuss these motions further and it feels like we'll need that time. We've got the informal dinner this evening for which you need

to be in the lobby between 8:00 and 8:15; 8:15 is your final time to be there.  
Otherwise you may be left behind.

Are there any other housekeeping issues Glenn? The informal meeting on  
Tuesday to discuss the motions should it be necessary we'll be in this  
room between 6:00 and 7:00 on Tuesday.

Thanks everyone. That's a very, very - and there'll be some lubricants and  
(max) to keep you going. So thanks. Very productive day. (Brett).

(Brett): Sorry. When and where do we meet for dinner tonight?

((Crosstalk))

Jonathan Spencer: In the lobby of the Sheridan Hotel between 8:00 and 8:15 pm.

((Crosstalk))

END