

Transcription ICANN Buenos Aires

GNSO Meeting with the Board session Sunday 21 June 2015

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Jonathan Robinson: All right thanks everyone for your patience. We've got a very - we've got a full room and I'm sure we've got lots of people wanting to interact and discuss the topics we've got today.

So if we - can we start the recording? Good. So welcome to our ICANN board colleagues to a relatively small room it seems at least judging by the number of people in here.

It's great to see the level of attendance at these GNSO weekend sessions. As you well know all of you these are sessions convened by the council for the purposes of engaging the GNSO in the work of the council and generally dealing with matters of importance and relevance to the GNSO.

And of course it's given that the role of the GNSO in the ICANN structure and our delivery of ICANN of policy to the ICANN board it is great to be able to meet with the board.

We've got a set of questions that we worked on yesterday so I apologize for the relatively short notice that you'll have seen these on.

Just as a sort of warm up to those I've got one single slide I'm going to talk to for a moment covering recent work and just touch on a couple of key points there.

So if I could have the next slide. Is anyone driving the slides?

So clearly there's you - much of our agenda and attention span and focus has been on the stewardship transition and related accountability work.

I don't need to say that to you but you do know that the GNSO community's provided significant leadership and participation in those processes and has been a very active contributor as a chartering organization and as a supplier of resources if you like into the whole thing.

But that hasn't stopped us doing our - other people talk about a day job. I'm beginning to think that the GNSO work is my day job and the CWG work is my night job so that the day job is rather the GNSO concern is working on the policy initiatives.

And I know you've been briefed by staff. So we're not going to go through this laboriously. And there's a comprehensive and effective GNSO policy briefings PDF which you have all have available to you. And you've been briefed yesterday so we're not going to take you through in a lot of detail.

But if we could briefly look at the next slide I think these are the things you would have been - you may have seen that these essentially are from a GNSO perspective some of the key milestones which we face here in BA.

Clearly the stewardship, dealing with the stewardship final proposal and that's one of a number of motions on the table for us for the GNSO meeting council meeting on Wednesday.

We also have a comprehensive piece of work which I really want to draw your attention to because this comes out of some significant issues that arose out of the new gTLD program and all of the issues that many of us based on policy implementation, the interaction between the two, how those are sequenced are managed together.

And we have a really good piece of work that's been led by a group of four really two experienced and well-known chairs plus two vice chairs who I think to some extent have been mentored by those two.

So we've been doing some work in terms of bringing some good new people on board and which is great to see and also doing this work on policy implementation.

And in a way that kind of feeds the discussion we will have later because one of the ongoing concerns as you know has been the interrelationship between where policy is correctly undertaken and implemented in the ICANN model and how and when that the boundaries cross perhaps inappropriately in the different areas.

So that's something we want to touch on our discussion with you but I'd like you to be aware of the good work that's done on the policy implementation working group.

There's a final report on the translation and transliteration policy and the PDP that's gone on in that is a precursor to formal policy work on new gTLDs, on subsequent rounds of new gTLDs in order to - I mean typically what pre- as you know what sets the scene for a piece of policy work is the creation of an issue report.

And prior to create - to handing off to staff to create an issue report the GNSO felt that was our responsibility to do some background work and enter into some substantial discussions and identify the issues and in around what might be policy issues relating to subsequent rounds.

As you know under Item 5 the critical area for us going over the past, over the recent past and looking forward has to be to have an effective working relationship with the GAC.

Outside of the formal constructs of the ICANN model and this whole issue of which is another thing that came significantly out of the new gTLD program this whole sort of clashing between GAC advice and GNSO policy and try to find some way through and around and how we might better deal with that.

One element of that is clearly our GAC GNSO Consultation Group and the first product of that if you'll forgive me referring to a person or role as a product was the creation of their GNSO liaison to the GAC.

Mason Cole who's here with us has spent the last year working on that. But in many ways that's been a coming up to speed here. And I'm pleased to say that that's been extended for another year and so that's - that is a motion on the table to deal with that.

And then as you know there's also some work - there was a proposal to initiate a cross community working group. We've taken a small step back from that and are going to go into some intensive discussions both through the facilitated high intensity meeting on Monday but also a GNSO convened workshop session at which (Steve) and myself will both be present to start to talk in more detail.

So that any work any related work that gets done on new gTLD auction proceeds is done on the foundation of a well chewed over it and thought

through set of issues so that we don't launch straight into the chartering of a Cross Community Working Group but we've had an informed discussion to set that off.

So that's really the lay of the land from our point of view. And I thought it would be useful to do that.

Now if let me pause for a moment here because if any of these issues the back of your briefing, but I mean for example the chairs of the Policy Implementation Working Group are probably here.

I'm here, my capacity as CWC stewardship proposal chair. If there's anything that you would like to interact rather than us just throwing our next set of questions at you if there's anything you'd like to comment on or discuss in these areas feel free to do so but not compelled to do so.

Okay you're clearly not compelled to do so, wonderful. So you've obviously been well briefed and that was just a little refresher.

Let's move then on to the questions. But before doing so I - (Steve) I have a given you the opportunity to say anything so let me welcome you and I will offer you any opening remarks you would like to make.

(Steve): Thank you very much Jonathan. On behalf of the board it's a pleasure to be here. We look forward to these kinds of interactions. You've heard my speech on this many times.

In the interest of time let me just jump into a couple of things that I think are worth responding to things that you said. Backup if you were to the previous slide.

The - you made a comment of the day job and continuing on with the work in addition to the transition. This is the point that I think is very, very important and I tried to stress it as well.

Our windshields are dominated by the transition stuff. It's all over the place. It takes up almost all of our time and nonetheless we have a job to continue doing. And surprisingly after the transition we will still have a job to do.

So one of the things that as I say that's been very much on my mind and I've begun to speak about it is that in addition to the intense focus and the completion of the process which is all important we have to keep our eye on the ball of what it is we're supposed to be doing and to make sure that that gets done and to make sure that we have a kind of smooth transition after the transition that is that we don't go into postpartum blues or something and that we are able to continue.

Another thought that relates to the six things that you have up here is that when the new gTLD program was launched, and it was launched after an enormous amount of deliberation.

I mean we passed a resolution in 2008 that was after several years of deliberation and then from 2008 until we actually launched the program was more development and so forth.

Nonetheless with all of that thought ahead of time we still didn't get to everything. We couldn't imagine all of the different permutations and combinations of interactions.

And so when I look at this list and I realize the set of topics that we're talking about and say the new gTLD program committee and in other forums they as a - and step back and take a sort of holistic view they represent the coming together of imperfectly worked out thoughts about competing things or things that look very different that now are front of us that we have to be sorted out.

So they represent a quite natural fact of life which is you can only see so far and when you get down the road a little bit then you see a little bit further.

So we're now dealing with the complexities that we we're not able to completely sort out ahead of time and life is inherently messy. There are no guaranteed answers that are perfect for all of these and so we struggle through these.

And that applies to what is the policy and what is implementation? What is the board the board role versus what is the GNSO and other SO and AC roles? What is the relationship between what that GAC thinks about and what the GNSO thinks about?

And I don't have any bias about these things. I think we all struggle to get these things in the best order that we can. And as I say there's a lot of rough edges about all of that.

I'm delighted with the work on the issues report. I think that this is the kind of spadework that is absolutely essential so that way do try to see as far forward as we can before we go on to the next step.

And then finally with respect to - well let me just say about the liaison to the GAC. There's another tradition which is our close relative siblings essentially in the IETF and all of the work that went on for years and years leading up to the current structure of ITF.

And that tradition is focused first on communication without organization. And then organization seeps in afterwards.

And in this environment I have watched there is a tendency to say well first we have to organize and decide who is in charge and what the structures is and then we'll be in communicating.

And that dichotomy is one that it has pros and cons. But just speaking my particular bias I much prefer informal communication and organization around issues after we understand what they are.

So I deeply applaud very, very pleased that we lay out the pathways, we build the pathways for informal communication as needed and then observe whatever proprieties we have to with respect to a formal order.

And then finally as you mentioned we're now focusing a lot of attention. I mean you and the GNSO Council and the community and the board actually are focusing a lot of attention on the disposition of the auction proceeds.

We had at the board level identified that this was going to be a major issue. We very carefully curtailed off the funds and said we're going to come at this slowly and carefully.

We wanted to wait until there was clarity about the rough order of magnitude so that we knew whether we were talking about a little or a medium or a huge amount of money and be able to - and people would have something to focus on and we're now at that point.

There was a side discussion about whether we were too busy doing everything else particularly with the transition and there was some difference of opinion about whether we should try to hold off even further or not. And the answer is not.

And so as Jonathan mentioned we have two sessions. The high level interest high interest session tomorrow afternoon and then on Wednesday session that Jonathan and everyone will lead off and all leading toward what I hope is a very careful deliberative and substantive, very substantive discussion.

And it will be challenging because the first thing that will happen is people will come with all sorts of different points of view.

And so getting those points of view out and visible to everybody is I think necessary before we launch forward in saying okay and therefore the decisions are going to be the following.

So that's kind of a lengthy introduction. I apologize. But there's a lot of very, very substantive things going on here and they are challenging both intellectually and they're challenging emotionally.

And I think it's helpful to have the longer term perspective in front of us so that we realize we're all in this except for Fadi who's found a way out, we're all in this for the foreseeable future here.

Jonathan Robinson: Thanks (Steve). That's more than a lengthy introduction. Those are thoughtful remarks so I appreciate it.

Let's go on to the next slide which will take a deep dive into just a couple of issues.

And what we've got here is three points that are going to each be led by a particular counselor. So under Item 1 which is the impact on - it says on the board of the new gTLD policy processes think I'm going to hand that one to you Brian so please go ahead and introduce yourself and the topic.

Brian Winterfeldt: Thank you Jonathan. My name is Brian Winterfeldt. I'm with Intellectual Property Constituency. The issue that or the question that I'm really bringing to the board is something that just doesn't come from the IPC but actually comes from the community at large.

We're hoping for a little more clarity on the board's decision-making process. Specifically our question comes from sort of the growing deference that

seems to be placed on the Government Advisory Committee on gTLD policy and implementation issues.

We specifically for an example would be the release of two letter and country territory names at the second level and new gTLDs.

We've noticed that some of the processes and solutions that are being proposed by the Government Advisory Committee are potentially really outside of the purview of what specifically the GAC is supposed to be advising on which is national laws and international treaties.

We're not sure that always these solutions are really consensus advice with like Capital A versus maybe a group of people who are pushing a specific agenda forward.

And so we're wondering how the board takes its advice from the Government Advisory Committee, how you determine whether or not it's Capital A advice and how you deal with advice that's being given to that's maybe Small A and that maybe isn't completely routed in national law or international treaties?

(Steve): We're not going to - oh, I see. We're not going to induct this but I just wanted to observe the form of your question. It could be taken as why aren't you having that discussion with the GAC and how do they respond to your question rather than trying to get us sandwiched in the middle?

But nonetheless we'll take this on a bit. I understand (Chris) is eager to jump into the...

Chris Chaplow: It's the fourth time today you said that I was eager to speak. I've got to stop bouncing up and down in my chair and...

Jonathan Robinson: I'll use another word next.

Chris Chaplow: So I'm not going to address specifically the point about the two letter things because I think there's currently discussions going on at the staff level.

But I did want to address the point about the way that the board deals with GAC advice specifically. And I think I want to start by just pushing back a little on the characterization of paying more deference.

I think if you examine the way that the GAC advice over the whole of this new gTLD process has been dealt with it would be unfair to say that we've done anything other than deal with it in the same ways we deal with everything else which is to say what we're going to do and move forward.

I don't think that - I think we have actually been stronger often with the GAC than other people have expected us to be and said no we're not doing that and here's why.

So I just wanted to get that out on the table because I think there's a tendency and it's not you. It's all of us has a tendency to have one thing happen and then conflate that into there's a big problem here because you're being too differential so I don't think that's right.

But I do except that there are issues not necessarily specifically in respect to levels although it applies to that that there are issues where international law and local law are getting maybe have a tendency to get mixed up.

And I do accept that there has been a movement towards fragmentation of the way the GAC operates.

In other words when we go to sit with the GAC for example we often we listen to questions and comments from individual GAC members. And sometimes it's not clear to us whether that's a question or a comment it's actually a GAC position or there's an individual government position.

And that's a distinction I think we need to clearly making which is that, you know, GAC advice is GAC advice but individual government views are just their own views.

But on the two letter stuff the conversations are happening and we expect more information. Thanks.

Jonathan Robinson: Thanks (Chris). Brian did you want to say anymore? Does anyone else want to come in and add to the thoughts are issues around this?

Brian Winterfeldt: (Chris) I just want to thank you for that. I think that is very helpful. And I don't think that we meant to necessarily imply that the board was being overly deferent to the GAC.

We are just watching things move forward and I think the fragmentation issue that you pointed out is exactly one of the issues that we think is something that we want to keep an eye on in making sure that when you're hearing from the GAC is it advice Capital A or is it an individual government? And so I think that's helpful to say that the board is paying attention and noting that.

Heather Forrest: Thank you Jonathan, apologies (Chris). I can't look at you and speak into the thing at the same time.

Chris Chaplow: That's okay.

Heather Forrest: Can I follow up with that? I think it would be helpful if we can identify tangible steps that we can take.

I think we can all agree that that distinction, it's important to get that distinction right between Capital A and lower case A. To say that is one thing and I think it's a good thing that we all agree on that.

But how do we go about doing it? What can we actually do to start working towards that better understanding?

Is there something tangible that we as the GNSO council can do working with the broader community, you and the board? I mean how do we do this because it's important? As you say it's something that we have to get right and the sooner we can get it right the better. Thank you.

(Steve): It's a fair question. It does not have a crisp, clean definitive, you know, do this and you will be there kind of answer.

We're in a as I indicated before we're now had a very interesting point in time I think overall in that we now have a lot of experience accumulated and we're still in a growth stage with respect to maturity and getting these more complex things settled.

So I think the answer is working the issues one at a time, getting experience in each of our organizations -- the GNSO, the board, the GAC and all the other SOs and ACs and constituencies is each one is going through what I view as kind of a maturation process built on experience of what works and what doesn't work of, you know, of getting - and getting sort of more sophisticated in our employees in our activity.

So I would say interact with the GAC on these things and keep raising these questions in a commonsense way.

Are these individual GAC members raising specific questions that are of interest to them and or are these GAC consensus kind of things? And have the GAC encourage the GAC to grapple with that and pose it is a problem that the fact that they don't have a clean answer to that poses a problem to you which it does. And there you now have a full agenda for your liaison. Yes.

Jonathan Robinson: Heather come back if you could please. I just want to make sure we catch anyone else. If you could either make sure you raise your hand or turn your cards sideways and so if anyone does want to speak we do pay you the right attention. Heather?

Heather Forrest: Thank you Jonathan. Just a quick reply Steve if I may, it would be very helpful I think to the community to the extent taking on board all of your comments in terms of what we can do as the GNSO Council working with the GAC it would be helpful if we could see an board decisions more explanation.

It is interesting to hear that this is an issue that you're grappling with. But that issue is not or the fact of that grappling is not being communicated in board decisions. And in terms of transparency and accountability in terms of your decision-making policies and I may be misinterpreting Brian's question but I think that was the heart of our question is how do you go about making your decisions?

And to the extent that you are struggling to make decisions because you're having for example a problem differentiating lower case A from upper case A advice it would be very helpful for us, the community to know that - to know what's behind your decision-making. Thank you.

(Steve): Yes. And I completely agree with you about sort of visibility into the board processes. Let me just take the opportunity to take two things about that.

When I stepped into the role of chair I had observed some things that I thought were not working best in the way the board operated. We got into late night drafting sessions and we tried to hustle things through and so forth.

And so I worked very hard to strip away from the board activity as much as possible happening in that mode and make it all as early as possible.

An unintended consequence or one that I didn't foresee is it made the - is that the outcome of that is it made the board look like it was pro forma because things were relatively well baked by the time they came to us.

The other is that in the particular case we're talking about where there - we're thrashing things out, thrashing things out in the new gTLD program committee which is necessarily closed because there conflict of interest issues that we're very careful about.

And so that it poses a challenge that I think we have not risen to properly of how do we document the essence of all of that.

And I take that as a serious kind of thing. So there's, you know, when I referred to a learning process or growth process that we're all involved in it applies equally to the board. And this is certainly an area that we want to improve on.

It's not that we are deliberately trying to be cagey about it or something. It's just a how do you build the process and so that they're very smooth and provide the information. Yes.

Jonathan Robinson: Any other comments or thoughts or questions on this? (David) go ahead.

(David): I just want to mention that one of the things - and it's in part of a response to how can we help I guess one of the initiatives that we have been discussing and that we have to do in the next month or two is that we will issue a council response to the GAC communiqué in the form of a letter to the board.

And this was from a suggestion that Bruce Tonkin made in LA I think was the origin of the suggestion.

And the idea is simply to - so that when the board had to sort of look at issues between the GAC - where the GAC and the GNSO might - their interest might

overlap you will be at least be clearer on the GNSO position and the GAC is also - well, I mean will be included in the conversation from the start.

And we don't anticipate it will be but it will be in the form of unofficial small A advice to the board about what the GNSO believes his position is which hopefully will inform and get that conversation started a little earlier. So just thought that was worth noting for the board.

Male: Just to say that my quick reaction is this is fantastic. I really hope you help us with that. This will be very, very helpful.

Jonathan Robinson: Let's hope that the GAC thinks so too because we're going to discuss. And we have discussed it with the - informally with the GAC leadership that we're going to have it on the agenda with the GAC this afternoon. So that's the plan.

Any other comments or questions?

Just for the sake of good order I should clarify there's a sort of at least with the shorthand that the topics are on this slide actually the topic we've been discussing both are sort of gTLD policy and interrelationship with the board. So we've actually been discussing Item 2.

And I apologize. I left straight on to Item 2 because I was just reading shorthand off the slides. (Sheri)?

(Sheri): I mean still on Item 2 is just to reassure you that for example at the new gTLD committee one thing we don't want to do is create policy. One thing we don't want to do is create law. We are not capable of doing that right? I mean we're not qualified to do that.

And frankly you have no idea how much we debate and discuss GAC advice to the point that, you know, we're never going to win because the GAC is sometimes unhappy with us, you are sometimes unhappy with us.

So we're squeezed in the middle here. But we have to balance a few things. And by a very large majority we don't get into creating policy at all. We don't want to do that.

At the same time we need to get the program going and create some stability and not do any changes to the Applicant Guidebook.

When you've got a big A which is a consensus under the bylaws you are sort of obliged to address it. And there is a strong presumption also that we're going to accept the GAC advice.

But other than that in general I, you know, presided over more than 70 new gTLD - I don't think we have come up with some - with policies as numerous as one might think.

And I, you know, so that's all I want to say trust that we are not in that business. Thank you.

But anything that can help us to also not fall into that gap between two things we will be - we will work on that very much. Thank you.

Jonathan Robinson: So it seems we've done well in doing in accidentally mixing the order up of these because these one or two items are in so many ways connected.

And in helping you to not fall into that gap here the work of the Policy Implementation Working Group is critical in how we, you know, at bringing at some new tools, mechanisms and processes.

And one of the things we're aware of is that there's a perspective, the plan is to implement the final or do - vote on and support the final report from that working group.

And if those are, indeed if we do support that final report on Wednesday it's something where we would like the board to pick up on this in very short order and consider implementing the outcomes of that themselves.

So I think Chuck are you willing to talk to us a little bit? Chuck has been one of the co-chairs. And Chuck it would be good to call out that who are the chairs and make a couple of remarks on that so over to you.

Chuck Gomes: Sure thanks Jonathan and thanks to all of you here. J. Scott Evans was co-chair with me on the Policy and Implementation Working Group.

And let me say that group is not a PDP working group okay just to clarify. But we made some very specific recommendations in that group.

Now in addition to the two co-chairs we had two vice chairs, Michael Graham who's not able to be with us at this meeting but (Olivi Kawami).

And I don't know if (Olivi) is here or not from Africa was another co-chair. And this happens to be his first meeting in person. So it was good he could join us as we hopefully wrap up our work.

I'll be very brief. You will be able to see the recommendations. But one of the recommendations that we make is that they GNSO Council and the board approve the recommendations or in particular approve the principles and requirements that we recommend.

In a minute I'll just mention elements of three of those to give you an idea. But we think those are the foundation of dealing with the issues that we've handled in the past especially with the new gTLD program and what's policy

and what's implementation and so forth. And I'll let you judge that on your own.

But we also recommended three new processes for the - to service tools different from the tools we have right now in the GNSO.

One of them is a GNSO input process. It's a very informal process that would define procedures for how to just give input for example like the public comment period if the GNSO wanted to respond to something.

It doesn't have any binding effect on any parties but it's a specific process instead of using an ad hoc process like the GNSOs had to do many times in the past.

A second process is the GNSO guidance process. And this one when you look at the details actually talks about a process that isn't binding on contracted parties like a PDP but is binding on for board consideration. And let me clarify that.

We're not saying we can't tell you what to do. We're not trying to do that. But it would require board consideration.

And if the board doesn't accept - if they would need a 2/3 majority to not accept the guidance that's given not policy okay -- very important distinction.

The third process, something we've all talked about for years is an expedited PDP process. Now that's not just to get PDP's done quickly. In fact that wouldn't even be allowed.

But it's in cases where you already have well-defined issues, fairly narrow scope and you don't need an issues report, it's already been defined. You don't need a comment period on the issues report.

But it would be somewhat faster than a full PDP. All of us know we've had situations for needs of those and so that's in there as well.

Let me just give you three - two elements of the principles because I think these are important because we've all had the debate what's policy, what's implementation, who's responsible for what?

Here's a part of one principle. Implementation should be regarded as an integral and continuing part of the process rather than an administrative follow-up. Nothing revolutionary but we think that's fundamental to policy and implementation.

And an element of a second one is this. Policy and implementation are not two separate phases entirely but require continuous dialogue and communication between those that develop the policy and those that are charged with operationalizing and implementing it.

Those I think sum up the genesis of principles that are in there. And there are a lot more principles and requirements that are recommended.

Like Jonathan said certainly the Policy and Implementation Working Group would not only appreciate quick council action on this but quick board action on this because we think it really it has advantages including the new processes to a lot of the things that we're doing right now.

And my last comment is this. It was a great working group to co-chair and super staff support. So it was just a complete team effort that was a joy to help lead. And I complement all of those that contributed.

Jonathan Robinson: Yes so thanks Chuck. That's very, very helpful. And so (Sheri) in terms of your rock and a hard place as you described earlier I hope you'll see that this is clearly - and you'll recognize many of those issues that we had to try and deal with through the implementation of the new gTLD program.

And this is a constructive and thorough effort to attempt to remedy some of those past issues which is why we are so keen for the GNSO council to give the consideration it deserves and thereafter the board. (Ray)?

(Ray): Thank you Jonathan. Chuck if you could.

First of all I would - my experience has been that any working group that you're on is a great working group and anyone that you're may be a chair or co-chair of is going to be an outstanding one. So thank you there.

The three processes you described I fully support them. I think that they're long overdue. The one that is most overdue is the expeditious process because there has - that has to exist.

There has to be some mechanism by which the board and the GNSO can deal with rapidly changing environments or technologies or whatever the circumstance may be.

And so I look forward to looking at the details of that process.

I fully support every single one of them as you described them. Of course maybe there may be a little bit of the devil in the details but maybe we could talk about that.

I am curious though when you started out you said it's three different processes. So are these processes in addition to something or are they throwing out other processes and actually putting some new order in place.

Chuck Gomes: Thanks (Ray). We're not replacing anything, any processes. Essentially the one process that we have for policy development is the PDP okay. So these three are in addition to that.

The input process and the guidance process are not policy development processes. They don't result in policies that would be required for registries and registrars to implement.

The expedited PDP is a somewhat abbreviated version of the PDP. But PDP procedures still come into play. It eliminates some of the steps at the beginning because a lot of the parameters are already defined.

(Ray): Thanks Chuck yes I fully appreciate that in terms of, you know, going back to my years of experience there. And we instituted that very early on like about the year 2000. And so very familiar with how effective that can be when it has to be used.

And so with two other processes though I guess or implementation or related to Step 10 of the PDP, is that correct?

Chuck Gomes: I'm sorry ask that again please. I didn't catch...

(Ray): Step 10 of the PDP talks about implementation.

Chuck Gomes: They don't necessarily have to relate to implementation. For example if we wanted if the GNSO wanted to make, submit a comment on the budget or a comment on a strategic plan they could use an input process for an example to develop...

(Ray): Okay I see where you're going there. So why don't we carry on this conversation...

Chuck Gomes: Be happy too.

(Ray): ...maybe perhaps in our joint office.

Chuck Gomes: Okay thanks.

Jonathan Robinson: But by all means do continue that outside. But it's clear that for example we were asked during the course of the execution of the new gTLD program to provide guidance at times. And we didn't have a mechanism in place.

So we fumbled and we did our - made best efforts but this speaks to address that issue plus the input plus the expedited PDP. Any other questions, comments, issues arising? Any thoughts?

Male: (Unintelligible).

Jonathan Robinson: Okay thank you. Let's move on to the third point then which is something again connected with how and whether policy related matters are implemented at a staff or board level.

And I think Philip Corwin is going to introduce this topic. So over to you Phil.

Philip Corwin: Thank you very much Jonathan. Philip Corwin on the council representing the Business Constituency.

The issue I'm going to bring up is a critical important issue. It's much bigger than the issue it's being focused on.

Because we're going through this transition the whole point of the transition and everything that's led up to it is to preserve the multi-stakeholder model.

At the heart of the multi-stakeholder model is that policy is reached by the stakeholder that comes from the bottom up. It's created by the stakeholders. And then when they reach consensus policy then it becomes enforceable against all the contracted parties. That is the heart of the model.

And the heart or the role of the council is to initiate policy change and new policies where all the stakeholders come together with their different

perspectives and different interests and work out consensus and that becomes a consensus policy if they can reach consensus.

This is a major issue, much bigger than the particular incident that's bring it up.

By way of very brief background on this this relates to incorporation of a new TLD RPM, Rights Protection Mechanism and a legacy, several legacy TLDs by new proposed renewal contracts.

We had a lively discussion with the GDD staff this morning. This is an issue on which there's strong concern among several constituencies and stakeholder groups within the council, not unanimous.

But when the rights protection mechanisms for the new TLDs were created they were created as implementation details for a general intellectual property protection policy.

And during their creation many of us have similar recollections we came in. Some were members of the teams we created and some were interacting.

But the question was raised by adopting these for new TLDs are they going to automatically be applicable to the legacy TLDs? And the answer that many of us thought we got at the time from the members of those teams that created them and from the staff presiding over the creation of the applicant guidebook was no that would take a PDP to become consensus policy.

The other key piece here is that I think it was back around in 2011 there was some discussion within the community whether there should be a PDP to review the UDRP which is the only consensus policy that's never gone through any review since its creation back in 1998.

And there was a decision by this council saying no, before we consider UDRP reform we should consider the performance of the new RPMs at the new TLDs and then factor that into any UDRP form.

So this council passed I believe it was a December 2011 a resolution asking staff to bear an issues report on the performance of the RPMs 18 months after the first introduction of the first new TLD.

That staff report was firstly delivered in March. And staff early this year asked for a six month extension because they had other - they didn't have enough data they felt. There were other analyses going on.

And they asked for a six month extension which is council granted in January I believe. And that issues report on the performance of the new RPMs will be delivered in September.

So I hope that background wasn't too lengthy. By that it's important to understand the context for all this.

In May the proposed renewal agreement for.travel was issued. And I just want to quote one line from that in the request for public comment which is quote, with a view to increase the consistency of registry agreements across all gTLDs ICANN has proposed that the renewal agreement be based on the approved new gTLD registry agreement as updated on the 9th of January 2014.

So those words ICANN has proposed. We know the board had - as far as we know the board had no discussion on that.

We know that there was no consultation by the GDD with the community about whether proposing that as a starting point for contract renewal negotiations was a sound idea.

It was decided within the GDD and there is concern within the business constituency, other parts of the council that this creation of what looks like de facto consensus policy by individual contract agreement is not consistent with the policy development process laid out in the bylaws.

I want to make clear on behalf of the BC and the BC just filed a letter which went live about 30 minutes ago with the comment form.

This is not about whether Uniform Rapid Suspension. There were two of the RPMs were adopted, the post-delegation dispute resolution procedure and Uniform Rapid Suspension. The URS has gotten lots of attention.

The BC letter makes clear that after receipt of the staff issues report later this year if there is a PDP on whether the URS should be adopted at legacy TLDs the BC would probably say yes.

The BC also made clear in its comment letter on the new RPMs that it might well support some alteration so the URS and some of the other RPMs in the wake of the experience.

So it's not about whether they should be adopted. This is about what is the proper process for adopting it.

And since the .travel renewal agreement was put out for comment there were two other agreements point out two weeks later, .pro and .cat.

And all of them have exactly the same things. They've all adopted exactly the same RPMs.

But the record is clear that in this statement ICANN proposed that inclusion of those RPMs should be the starting point for contract renewal negotiations.

And yet we heard from GDD staff this morning that all three of these registries have voluntarily adopted this. But there is a question would that voluntary adoption have occurred but for staff proposing it as starting point?

So that is the heart of it. Again it's not about the substance of whether these RPMs should be applicable to legacy top level domains. It's about whether the manner in which they're being put into legacy TLD renewal contracts is consistent with both the letter and the spirit of the bylaws and of the policy development process prescribed by the bylaws.

So I'll stop there and I hope that set up the discussion well.

Jonathan Robinson: Thanks Philip. That's pretty clear. I've got a hand up but I think it would be great to hear from any board colleagues first.

Volker I know your hand is up as well. Just okay make one additional point and then if the board colleagues could either - could make yourself known so we'll come around to you and have a discussion on this. Thank you.

Volker Greimann: Indeed this is Volker Greimann speaking for the record, sorry. And this is not a matter of substance. This is a matter of procedure where it is perceived that ICANN staff is taking issues in its own hands where no community mandate exists.

There have been numerous examples over the past years for registrars. The first and foremost have been the introduction of the 2013 RAA into the registry agreements as a requirement to get accredited where there was no community mandate for such a requirement.

There have been various examples in the past. So this is just the most recent example where staff has without a mandate pushed for certain issues that would otherwise be policy issues to be introduced into new TLDs, legacy

TLDs or other matters. So that's just a little point I wanted to make on top of that.

Jonathan Robinson: Thanks Volker. (Mike)?

(Mike): Thanks Jonathan. I accept the majority of the comments raised. But I do have an issue going back unfortunately direct the beginning of Phillip's dissertation with a question in terms of consensus policy because that's GNSO consensus policy, not multi-stakeholder consensus policy.

And I think that's one of the things that we currently (start off). And it goes back to the discussion about giving the GAC too much preeminence or not.

And that is that GNSO policy does have impact beyond just contracted parties. And banging the contracted parties drum is entirely valid and it's certainly something that we need to recognize.

But we also do have an obligation to consider other people in this multi-stakeholder environment. And we can't just say this silo has existed. There's a consensus in that silo and we have then an obligation to ignore everything outside of that silo.

And I think you need to recognize that we're walking a difficult tightrope around that. And it would be really useful and I'm really encouraged by the number of Cross Community Working Groups, I'm really encouraged by the discussion about the GAC liaison about foster and more direct engagement with other groupings so it doesn't turn to the board as an arbiter because really we're very poor arbiter between different views and different opinions and different requirements.

So the ideal situation is one where that mediation is done internally and the board is not thrown a allegedly consensus policy with clamoring happening from all sorts of groups outside of the people who've reached consensus.

Male: I'd just like very briefly to respond just to say that while your point is taken (Mike) it was not restricted - the concerns were not restricted to contracted parties and GNSO and non-contracted parties anyway obviously.

Philip Corwin: Might I respond briefly as well? I certainly didn't mean to imply that the GNSO represents the full breath of all the stakeholders with ICANN.

The GNSO though does have the responsibility to create consensus policies for generic top level domains. And that's what we're talking about. And there's been no input from any other part of ICANN on this staff decision.

And when there is a PDP everyone gets to participating comment on that, not just GNSO members.

And finally this council has taken very affirmative steps including the appointment of a liaison to the GAC who's sitting next to me to get the GAC more involved in GNSO policy decisions.

So we're by no means saying that we ignore the rest of the stakeholders but that there's been no participation by any stakeholders in the decision we're discussing.

Jonathan Robinson: And I guess just let's make one remark which I hope will be a clarifying remark.

I mean the very concept of consensus policy is by definition something that can only originate within the GNSO and in so being be binding on the contracted parties.

So we shouldn't apply that term in this context although in broadly generic words consensus policy had a very specific meaning as many of you will know and recognize.

Any other comments or questions or points? Heather?

Heather Forrest: Thank you Jonathan, Heather Forrest. Just for the avoidance of doubt for board members and those who perhaps haven't seen the comment I posted in the chat this is a matter on which we had quite lively debate this morning within the GNSO council.

And it is certainly not the case that the views that have been expressed are uniformly held within the GNSO council. This is not a council view.

This is a matter that I think we'll end up discussing at length further. The IPC has filed comment specifically on the .travel issue and they don't conform to much of what's been said here this morning just so that's quite clear. Thank you.

Jonathan Robinson: Thanks Heather. Any other comments or questions in relation to this? Any other thoughts, input, Cyrus?

Cyrus Namazi: Thank you. I'm Cyrus Namazi with ICANN staff. Indeed as Mr. Corwin mentioned we had a healthy exchange on this topic when the staff visited the council this morning. And I thought we actually resolve it to mutual satisfaction.

So the background of it is that we've had I believe four TLDs that are not considered new gTLDs contracts coming up for renewal. And the staff has suggested as a starting point for the contract negotiation the adoption of the new gTLD registry agreement.

And the reasons for that are that we believe that the new form actually provides better safeguards for registrants. I mean that's the whole reason that we renegotiated it to begin with.

Operationally the consistency of the agreement that makes it easier for us to operate it and monitor it.

And I think lastly but not last but not least the fact that the registrants actually have a more consistent set of TLDs to deal with more consistent set of RPM related issues is also an added benefit.

I think the disconnect here between some of the council members -- as Heather mentioned this was not a unanimous opinion from the council -- was the fact that I believe there was a perception that the staff imposed this requirement on the negotiations which is not true.

We just offered it as a starting point. And I believe these four gTLDs stepped up to the plate to adopt it which I think should be commended. And I think that's where the disconnect comes from.

I'm not aware of any consensus policy that actually keeps a TLD from adopting a higher level of RPMs for their contracts. Thank you.

Jonathan Robinson: Thanks Cyrus. Any other comments or input or questions? Volker?

Volker Greimann: Yes just to respond to Cyrus's comment. I think staff would be better advised to take a more neutral role instead of taking a position that it would be in anybody's best interest to have certain implemented to provide a starting point to nudge contracted parties into accepting a certain position.

It would be more beneficial to wait for the community to come up with a decision that is actually something that the community wants.

Staff should implement, not make policy. That's at least my position. It's not maybe the position of the entire council as Heather always pointed out but this is my position.

Jonathan Robinson: Thanks Volker. (Ray)?

(Ray): I wholeheartedly agree with that. It's my position as well. Staff should be neutral and impartial and objective in all their dealings with the various supporting organizations and the advisory councils. And to do anything else puts staff in jeopardy of becoming part of the argument.

(Steve): At the risk of roiling some waters here the contract between ICANN as a legal entity and the contracted parties puts ICANN in a somewhat competitive position as opposed to a neutral position in that the issues that are in the contract on the one side represent interests of the contracted parties and on the other side represent interest of my goodness who?

Does it represent the interest of the corporation per se? Does it represent the interests of other stakeholders who are not contracted parties to the contract directly?

Does it represent general public interest? So it's a somewhat ambiguous situation. And the staff, this is now me speaking not as a coordinated position but having observed this for a long time.

In the case of the contracts with the contracted parties the staff is acting mostly as a proxy for the real other parties on the other side of this.

And there's a small amount or a specific amount in which the interests of the corporation per se how much money are you going to give us? That's a very important thing from a revenue collection point of view and a few other details.

But the other aspects are in effect acting in lieu of or on behalf of the other parties who are not in the room but who are legitimate parties to this contract which is the contract with the community about how the registries and registrars are going to operate.

I think that there is some legitimate questions about what the processes are that bring all of those forces together. To speak quite frankly the 2013 RAA reflects a very long history, years of pressure from law enforcement among others for improvements in the quality of Whois information. And trying to find the right way to bring those forces together remained a very, very difficult challenge.

There was a memorable eruption in a meeting between the board and the GAC in the Dakar in 2011 I think. It happened to be the first meeting in which I was chair of the board although I've been on the board for a long time.

And the GAC took us to task very vigorously, quite vocally that we had been ineffective in pursuing or unsupportive of the pressure that law enforcement had been pursuing for several years.

I was keenly aware of the law enforcement interests and somewhat felt somewhat chagrined that I had been chair for several months by the time, four or five months and had not turned my attention to it.

Of course it was also the time in which previous CEO had announced that he was leaving and we were in full gear focus on that. But nonetheless in keeping with trying to stay focused on the ongoing business as well as whatever the immediate issues are I thought that was very important.

And the 2013 RAA in some sense is a very late response to what had been going on for a long period of time.

Now the underlying process question is so where should those forces be brought together and brokered? And we don't have a perfect solution for that.

In that room with that GAC taking on the board the whole law enforcement contingent was sitting there. And the GAC was speaking on their behalf.

And one of the questions that we had pursued prior to that is whether there should be a law enforcement constituency perhaps within the GNSO?

The GAC was very unhappy about that idea and said no they are part of government. We speak for governments. We don't want any part of government to be having a separate constituency. We need them to be focused through us at a position.

So these things have more complexity than simply in my view whether the board, whether the staff is acting solely and only as a neutral party.

There is another element which is inextricably and inescapably marbled in there until we have some other way if ever of dealing with all of that.

So that's a somewhat contrary view. And I debated it for a minute or two as to whether to bring that up. But I think these forums are best if we can actually get at the underlying substance and dig into them rather than just at the level of the forum.

Jonathan Robinson: Thanks (Steve). I know (Chris) wanted to speak next.

Chris Chaplow: Thanks Jonathan. So I started I put my flag up originally to disagree with Steve in an effort to prove to you all that we don't always agree with each other all the time. But then it ended up kind of agreeing to some extent.

But I wanted to come back to the point because I want to take this away and actually not specific as such but the bigger points I want to make sure that I understand that I'm clear.

What I think I'm hearing is one part of the, so it's not about how good the contract is or how bad the contract is at this stage but I'm going to come back to that in a second.

One part of the community is saying or the GNSO is saying that use of that contract is policy and so therefore the staff shouldn't be doing that.

And I suspect that's being said because you don't - because there may be an issue with the contract.

Another part of the community is saying we actually don't feel the same way. And that may be because they actually like the contract.

And if the positions were reversed we've probably end up with in exactly the same position but with you talking exact opposites.

And I want to use that simply as an illustration of just how difficult this is. I get the fact that staff shouldn't be doing policy. I understand that.

But the reality is that oftentimes the feedback that we get is not built around the process. And I acknowledge Phil that you were very clear that you were talking about the process so respect for that.

But oftentimes the conflicting feedback that we get is actually not about that. But in fact it's sort of I like the contract so I'm fine with what you did, I don't like the contract so I'm not fine with what you did.

So there are two problems that we need to be solving here. One is the process problem which you've raised which is what should happen in those circumstances.

And the second one is in the same way that we've have been asked about how we look at GAC advice and how we treat GAC advice and what's the difference between capital A GAC advice and advice that we receive from individual GAC members exactly the same thing applies here in the sense of

we hear all the time that the community feels X when it's actually quite rare for the community to agree on what X is.

So I know I've gone slightly off point and I did want to acknowledge what you said and say it's important that we have a process. I get that.

But I think the exchange we just had is indicative of some of the challenges that we all have in trying to operate this multi-stakeholder model. Thanks.

Jonathan Robinson: (Chris) I would just make one remark and that is getting above this, level above this I think there is my sense -- and I'm sure I'll be corrected if my sense is not accurate -- but is that over some sustained period of time within the GNSO and the way that threads through all of these topics there is a strong push for this respect for and recognition of due process.

And I think we've all got to get behind that and be disciplined about recognizing when that doesn't happen because and that's kind of Phil's overarching point to some extent as well the model the post-transition environment it's about the integrity of the model and our collective mutual confidence in that.

So I'm stepping away from this particular issue but there is an overarching point that I think we are probably including those that might have issues in this particular example and who might have even wanted this to be used as an example of such a point but generally and so that's the kind of stake in the sand that we're going to be going by.

Chris Chaplow: Yes. And if I wasn't clear I completely agree with that 100%. You're absolutely right and that's why I said I wanted to take it away because I think we need to try and work out how to make that happen.

Jonathan Robinson: Good, thank you. Any other comments or points in and around this topic? So Stephanie go ahead.

Stephanie Perrin: Thank you very much, Stephanie Perrin for the record. Just that very simple point that if we explicitly recognize that a contract is a policy instrument and that the policy should reflect the multi-stakeholder community and that we want to avoid the position where staff are in a push me pull you kind of situation with various stakeholders being happy one time and not happy the other as (Chris) has described then we need probably more work -- and I hope it doesn't involve more work landing on GNSO -- on how to make sure that the policy instrument, there's a straight line between the policy development process and that nothing gets sort of added in or pushed in to an ICANN contract at the end.

What the parties do is really their own business. What ICANN puts in a contract is everybody's business. Thank you.

Jonathan Robinson: Okay so there's a follow-up hand from Avri.

Avri Doria: Thank you, Avri Doria speaking. I think the issue comes down to very often the interpretation of policy becomes policymaking.

And so very often we find ourselves where staff is saying but it's just implementation when what they're doing is interpreting the policy and they've got a difference even among themselves or any time they see that difference they need to come back but that they can't make a policy determination.

And I think that that's the point that and it's one that has been repeated over the years. And I feel like I and others are constantly certain repeating this thing is you cannot interpret policy without actually making policy.

And that bit of awareness and that sensitivity to come back and check is this an issue and how do we deal with it is the piece that's essentially missing.
Thanks.

Jonathan Robinson: (Ray)?

(Ray): Avri I agree with you 100%. But it also puts the onus on the people that are putting together policy language to make sure that the language is so clear and complete that it can only have one possible interpretation. Because when it doesn't have that one interpretation the situation you're describing will occur.

So in negotiations between the various members of the policy forum they have to make sure that in the end the language that is agreed to is commonly understood.

And so and I also agree that if the staff does not necessarily understand or has trouble in terms of really trying to perceive what was intended -- and that's really what the perception comes from is what's intended -- that there does need to be a dialogue that has to exist so as you can get to the common understanding.

Avri Doria: If I may. Yes I agree with you. And it is something that we have learned from the years when, you know, the original new gTLD policy came out when there was more of a - there was a dialogue and was a feeling that there was understanding but a much looser to the realization we have now that no, you know, every T needs to be dotted every I needs to be crossed before things are passed.

But still there'll will never be a perfect bit of writing that can't be interpreted in a way that was not imagined, was not fathomed at the time of the writing so there needs to be a coming back no matter how much.

But you're right. Now of course that'll mean for longer policy processes while we are doing the dotting and the crossing to make sure any analysis and such.

But you're absolutely right that at this point the policies have to be several layers deep to make sure that those implementation details that are policy reliant are indeed covered.

Jonathan Robinson: Okay thank you very much. So (Ray)?

(Ray): Yes real quick. That's where this expeditious process becomes more important. Because if you get a policy that gets mired in discussion and something has to be done it's better to have an expeditious process to do that than to let somebody like the board say well we've got to do something. What are we going to do? We need to pick something.

Male: Yes.

Jonathan Robinson: Thank you. I think we dealt with these topics well. We've got through them. It's been reasonably interactive and thorough discussions so thank you very much.

We - I think that the ARB we're not going to touch. And I think they're relatively clear in writing and especially in the way they were sent to you in full form that this isn't the full form and just some thoughts to think about.

One question we had for Fadi and you may want to respond to this in our remaining five minutes -- any of you feel free to do so -- was how could we be more effective in our interaction with the CEO and/or the board?

And if you - I mean, you know, this is what we've done. We've told you - we've done a whole lot of work to try and do our existing policy work, to try and improve the way in which we work and to engage you on areas of concern.

Is there anything else that any of you think we could or should be doing differently or you would like to see otherwise from your policymaking body? (Steve)?

(Steve): So this is a somewhat small but very specific thing that comes out of our recent interactions related to the auction proceeds.

We have a really excellent kind of newly exercised process of cross constituency working groups. And I think that's an excellent piece of machinery because it goes to the heart of an issue and cuts across a lot of activities.

The natural process for starting all of this up is to reach out to the other SOs and ACs.

I'm sure it's completely unintended but the board actually would like to be included in this because not that we want to control it but we have a role to play, often just a supporting role to facilitate or to anticipate or to provide the inputs to the process.

So the mechanical form of your question and, you know, the interpretation of your question what can you do that would be more helpful is in kind of a - and I don't want to make - I don't want to trivialize this or make it sound silly but treat the board as a peer and include rather than as something to be held outside and that we're in some degree of tension.

And that will just facilitate communication. It's not a - it doesn't change the formal aspects. It doesn't shift any power or anything but it will I think avoid some confusion and speed things up over a period of time.

Jonathan Robinson: Thanks (Steve). That's a good suggestion and we'll take it on board.

Any other comments or questions in and around from the board perspective
how and whether the GNSO can do anything different?

All right let's call it a wrap at that stage unless anyone has got a last point
they'd like to make? Great. Thank you very much from the...

END