
HYDERABAD – Joint Meeting: ICANN Board and GNSO
Monday, November 07, 2016 – 12:30 to 13:30 IST
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JAMES BLADEL: Okay. Let's get started. Hopefully we have all of the members of the council and the board have had a chance to fix a plate. And to our colleagues from the ICANN board, welcome, and thank you for joining us for this joint meeting. Shall we start off with some introductions? Of course, I don't know how much of this has changed since the last time between our two groups, but if we go around the table, maybe we can just do a refresh. Can we start down here?

AKINORI MAEMURA: Akinori Maemura. I am the incoming board member. Thank you.

LITO IBARRA: Lito Ibarra, ICANN board.

KAVEH RANJBAR: Kaveh Ranjbar, incoming liaison from RSSAC to the board.

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- MASON COLE: Mason Cole, GNSO liaison to the GAC.
- DARCY SOUTHWELL: Darcy Southwell, GNSO councillor for the registrar stakeholder group.
- PHILIP CORWIN: Philip Corwin, councillor for the business constituency.
- SUSAN KAWAGUCHI: Susan Kawaguchi, B.C.
- MICHELE NEYLON: Michele Neylon, registrar stakeholder group councillor.
- MARKUS KUMMER: Markus Kummer, ICANN board.
- PAUL McGRADY: Paul McGrady, GNSO councillor for the IPC.
- ASHA HEMRAJANI: Asha Hemrajani, ICANN board.

HEATHER FORREST: Heather Forrest, vice chair of the council for the non-contracted parties house.

JAMES BLADEL: Hi. James Bladel, chair of the GNSO Council.

STEVE CROCKER: Steve Crocker, ICANN board.

BRUCE TONKIN: And now from the Australian part of the table, Bruce Tonkin, ICANN board.

DONNA AUSTIN: Donna Austin, vice chair of the council.

DAVID OLIVE: David Olive, ICANN organization.

LOUSEWIES VAN DER LAAN: Lousewies Van der Laan, ICANN board.

RON da SILVA: Ron da Silva, ICANN board.

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- ED MORRIS: Ed Morris, GNSO council, NCSG.
- SUZANNE WOOLF: Suzanne Woolf, outgoing liaison from RSAC to the ICANN board.
- BECKY BURR: Becky Burr, incoming contracted party house board.
- MATTHEW SHEARS: Matthew Shears, NCSG.
- KEITH DRAZEK: Keith Drazek, Registry Stakeholder Group, GNSO Councillor.
- SARAH CLAYTON: Sarah Clayton, NCSG.
- DAVID CAKE: David Cake, NCSG councillor.
- MAARTIN BOTTERMAN: Maartin Botterman, incoming board.
- MIKE SILBER: Mike Silber, part of the future.

CARLOS GUTIERREZ: Carlos Gutierrez, outgoing council making room for Erika Mann. Very honored.

STEFANIA MILAN: Stefania Milan, councillor for the non-commercial stakeholder group.

STEPHANIE PERRIN: And Stephanie Perrin, councillor for the non-commercial stakeholder group.

CHERINE CHALABY: Cherine Chalaby, ICANN board.

GEORGE SADOWSKY: George Sadowsky, ICANN board.

KUO-WEI WU: Kuo Wu, ICANN board for one more day.

RUBENS KUHL: Rubens Kuhl, registries stakeholder group.

JAMES BLADEL: All right, thank you. And again, welcome, to our board colleagues. I think we have an agenda, and in preparation for this discussion you had sent us two questions. So if you don't mind we'll probably start with those two items, Steve, and dive in there, and we can keep this relatively informal as we go through some of our questions here.

So this is the first one that was submitted to us by the board. We had the question of what do we the board and ICANN the organization need to do to make the transition effective.

We had some discussion on this during -- I hesitate to call it our weekend session because it didn't fall on a weekend this time. I think it was on a Wednesday. But we did discuss this, and I -- I don't know if we have any councillors that would like to weigh in on this question. I think we had tabled some discussion relative to some potential open sessions, and I think -- I don't know mean to put her on the spot since she's not raising her hand but I think Donna as well had some ideas relative to potentially elevated discussions on particular topics between the board and the GNSO and potentially the GAC. And Donna, did you want to perhaps expand upon that?

DONNA AUSTIN: Sure, thanks, James. Donna Austin. I'm not sure whether I'm following form here. This was in response to some questions

that we were considering for the board. And it's in the context of managing the workload from a GNSO council perspective, we have four PDPs that are currently active, and we're very conscious of the fact that coming down the pipes, particularly as it relates to the new gTLD subsequent procedures PDP, there are going to be a number of very sensitive topics that are being discussed by the PDP working group but also in parallel the GAC are having some conversations. And we will -- certainly what I'm proposing is that we find a way in the schedules of the ICANN meetings to have not bilateral meetings between the council and the GAC and the board and the GAC, but we try to find a way to have trilateral discussions between the board, GAC, and GNSO, in an attempt to at least get an understanding of what the contentious items are and the different perspectives are and try to resolve some of those before we get to an end point where we have PDP recommendations that are inconsistent with GAC advice. You know, obviously we're all feeling the heat of a certain topic at the moment, so I think looking forward, one of the lessons we can potentially learn from that is to make better use of the time that we have available at these meetings. I mean, we meet three times a year. We've got the people -- people have traveled a long way to -- you know, knock out some of these problems that we have. So let's make some better use of the time and get a substantive time on the schedule to enable the GAC, the board, and the council to have some open dialogue

about issues that we know are already contentious and as we go down the path of, you know, PDP recommendations and conflicting GAC advice, let's try to head that off, to the extent that we can. So I guess that's my -- my suggestion, and it -- I think in terms of the first point here, I'm sure the board's heard throughout the week that the scheduling for this meeting wasn't perfect, certainly could be improved. And I think from a council perspective what we would like to see is we know there are a number of sessions that should be baked into the schedule and potentially, you know, not open to negotiation, so maybe a starting point is to get some common agreement on what those baked-in sessions are and then work the schedule around from that perspective. So it's a little bit long-winded, but thanks.

JAMES BLADEL:

I think Markus would like to speak?

MARKUS KUMMER:

Yes, thank you. Markus Kummer speaking, for the record. I very much like the suggestion of having tripod type meeting between the board, GAC, and GNSO Council. This is -- I think -- I would see that almost as a logical consequence of the successful IANA transition where we actually learned it works when you all sit around the same table and work together towards a solution. Working it out in a silo and then asking other people to

comment, that is asking for disaster when there are differences from the start. So let's sit together at the beginning and try to find out where the difficult points are.

JAMES BLADEL: Thank you, Markus. Any other speakers on this topic? Steve?

STEVE CROCKER: Happy to do this, and as Markus says, this is -- could well be useful. There's an asymmetry, in my mind. The board is not generally likely to come to these things with a point of view that it wants to press, so in terms of, you know, one thinks of it as negotiation or whatever, there may be substantive issues, probably would be, that the GNSO will have one point of view and GAC may have a different point of view, but the primary point of view that I would expect the board would have is how to get somewhere --

CHERINE CHALABY: Steve, we can't hear you from here.

STEVE CROCKER: I'm sorry, thank you. I was saying the GAC -- the board is unlikely to come to the table in the same fashion that the GAC and the GNSO will, and the board is not likely to have a point of view

about substance. I would be more interested in making sure that whatever does result is a quality result and that there's a process that goes forward. So I would come to -- if I were sitting in, I would come with the expectation that I would want to learn and understand what the issues are and see where the sticking points might be and find any way to facilitate it. And as I said, learn so that we're in a good position to respond when something does come to us.

JAMES BLADEL:

Mike.

MIKE SILBER:

Thanks, James. Donna, I think it's an excellent suggestion. I think Steve highlighted a critical issue and that is, I think as long as the expectation is clear that the role of the board is to observe or to audit what's going on, I think that's very valuable. Just given some of the pressures on time, it may not be the entire board. It may be a subset to have board, but yes, absolutely, for us to engage in those discussions early so we can understand where it's happening and not wait for choke points. But up until now there's been a temptation almost to toss the ball to the GNSO and the GAC and say you guys have an issue with each other, go and sort it out. And I'm not saying we should behave any differently from that, but rather we need to be just watching

what's happening in the interaction to make sure that the game's not being played to a stalemate while we're not looking at what's going on. So I think a valid point. I'm going to suggest that we raise that with staff as well as with the GAC secretariat in terms of trying to find a slot within the meeting schedule for -- or maybe we just go to your existing bilateral meeting. I don't know if you're thinking of a separate meeting or if we can gate crash your existing bilaterals.

JAMES BLADEL: So I have Cherine and then Donna. Unless Donna, did you want to respond to --

(Off microphone).

JAMES BLADEL: Yeah, do you mind, Cherine? Donna and then Cherine.

DONNA AUSTIN: Thanks, James. Donna Austin. Obviously the idea is something that we need to flesh out a little bit. But I think from my perspective understanding that the board isn't there as a decision-maker but I think it's an education opportunity. So to -- rather than the board being hit with something they're not familiar with when it gets to that choke point. So I think it's an

opportunity for education. And I think the other thing from -- certainly from my perspective is that, you know, often there's some pressure on staff to provide the board with information about how they perceive an issue, but I think if the board can hear directly what the interactions are between potentially the council and the GAC, that might actually, you know, help with some of that filtering that the staff have to do. So I think there's some benefits in terms of education. Thanks.

Just in relation to whether we tag this onto bilateral meetings, I'm not sure that's the -- that's the best option. I would like to see dedicated sessions on the schedule that are trilateral discussions. Thanks.

JAMES BLADEL: Thanks, Donna. Cherine, Bruce, David.

CHERINE CHALABY: So I agree with the suggestion. I think it's a very good one. Especially if it takes place earlier on, before a PDP is formed and approved so that we talk earlier on about this topic. But as everyone said, I would not expect the board to come in with a board position. Individual board members will be there to listen, understand. And they may express their point of views, but it would be probably individual points of views at that stage.

I just want to manage that expectation ahead of time. Thank you.

JAMES BLADEL: Bruce.

BRUCE TONKIN: Just a comment on Donna's suggestion, which I support. I think I made the same suggestion two years ago when we received the policy on the IGA names and then we received the GAC advice. Because I think it is important that we get the groups that have a difference of opinion together. And I do agree that it needs to be a dedicated session.

I think what's particularly important is making sure that people have got the right briefing materials before they attend those sessions. So using the IETF, for example. The general principle is if you haven't read the draft, you shouldn't get up to the mic and say stuff. And that principle we could use here more, I think. But the briefing materials have to be accessible. Because quite often I see these sort of discussion I think with the -- might have been the registries/registrars meeting in the board the other day and one of the members was diving into great detail about RDAP and most of the board doesn't know what that is. So having a conversation at that level isn't useful in a broader context for the

rest of the board. And likewise, if you -- I can imagine that there's some people in the GNSO and some people in the GAC that know the IGO issue back to front, but you probably have got 200 people in the room from either side that don't know what you're talking about. So I think before you set up those sessions you've got to be really clear, here's the briefing document that's accessible. It's a few pages long that sets out the two positions, and then when you come into the room you're prepared understanding what the issues are. Because it's not just enough to schedule the session. You've got to make sure that people are properly briefed when they come in.

JAMES BLADEL: Thanks, Bruce. David.

DAVID CAKE: And I think it's -- I mean, I take the point the board is not going to come with a substantive proposal to this sort of -- you know, that they don't -- it doesn't have a position, but it's also important to note that this is not -- this is a -- just the fact that it's the council -- meeting with the GNSO Council rather than the -- you know, the working group and so on implies that the council isn't meeting with -- to discuss -- this meeting would not be to discuss points of -- about the policy itself or whatever it is we're working on. This would be a meeting to untangle the

process of how we deal with disagreement rather than the specifics of the disagreement. And we have a whole lot of -- we have the GAC, all the work we've done with the GAC, early engagement with the GNSO and the liaison and so on are all designed to identify disagreements early on and to discuss them and make sure that we've got that point. We -- this is -- I think -- so this would be a meeting to just -- primarily to understand how we deal with the process of disagreement in a sort of relatively streamlined and not unhelpful way.

Sort of by its nature. So this does not -- just want to make that point. This would not be the GNSO coming in wanting the Board to, you know, rule on specific matters of disagreement or anything. That's not the role. The role of the council is to manage the process, not to make the policy. So, hopefully, we will have got -- but, hopefully, we'll have earlier identified points of disagreement and then work on that process is what we'd be doing here is what I just wanted to try to clarify.

JAMES BLADEL: Thank you, David. Donna.

DONNA AUSTIN: Thanks, James. Donna Austin. Just to respond to David, I guess in my mind this would be a conversation around substance, not

so much on process. So it could be -- and this is why we have to flesh out the idea it could actually be that this is a conversation between the GAC and potentially those working on the PDP working group.

But the council is involved. So that's -- we do need to understand how this works in practice and what it is we're trying to achieve. But, essentially, the ultimate goal here is to not get ourselves in that -- into that position of GAC advice that's inconsistent with PDP recommendations.

We already know that, with the subsequent procedures, there are a number of topics that are sensitive for the GAC. And probably their thinking is very much at odds to how -- the discussions that are going on within the PDP working group. So it's a responsibility for the council because we're trying to manage the PDP process and make sure we do get good outcomes and finding a way to have those discussions early before we get into the situation of, you know, two years of really hard work on PDP recommendations and GAC advice that's inconsistent with that. So I guess that's my thinking on why I suggested this

DAVID CAKE:

If I can quickly respond, in that case that would be fine. But the meeting would need to be not with the GNSO Council but with

the PDP working group members. And the role of the board in that would be less clear. Because, like I said, the Board should not weigh in on the opinions either way. This is something we have to think about, I guess, moving forward as to what we can do and what will be useful.

JAMES BLADEL: Okay. Thank you. The queue is clear. I don't know if anyone else wanted to make any other comments on this topic. Steve.

STEVE CROCKER: Nope. I -- we can move on to something that's harder.

MIKE SILBER: Just so that we have action coming out of this because we do have board support tracking actions, can I suggest, you, Donna, you or one or two more people from the GNSO Council engage with our planning team -- and I would suggest George and Ram. And then staff can reach out to the GAC and we can actually start working on this in Copenhagen instead of looking at this as a nice idea but we get stuck in the weeds as to who, et cetera, and it doesn't happen. So I would suggest two small groups. And then we'll engage the GAC and their planning team on doing the same thing.

JAMES BLADEL:

Thanks, Mike. We'll take that as an action. I just want to note that Goran was able to join us during that conversation.

Goran, I don't know if you have any opening statements or remarks or you'd like us to dive in to the next topic. Dive in. Fair enough.

The next topic we identified is something you probably heard quite about a bit about this week. And it is the ongoing discussion regarding the differences, potentially fairly minor differences in substance but significant differences in procedure between the GAC advice relating to protections for IGO names and acronyms and the completed GNSO PDP that was submitted to the Board I believe in early 2014 as well as the ongoing PDP that addresses the question of IGOs and their ability to access curative rights like the UDRP. I want to have a free flowing discussion here. And certainly to I believe, perhaps, Mike, your point earlier about just diving into the substance or Bruce. We want to -- we don't want to start from a position of assuming that everyone is fully briefed on this particular topic. It's a complex issue. It's been going on for a very long time. I think no one on the current council was involved when it first came through the council, so it's outlived all of us at this stage. So we wanted to maybe just open the floor for questions and answers,

where we are, what our status is, and what we believe to be the next steps. But I think, generally speaking, we are attempting to pivot from the past to identifying a path forward. And that's the challenge that we have in front of us for this particular meeting.

So I don't know if anyone wants to open the discussion on this or if we have questions from, perhaps, members of the Board about what the heck an IGO protection topic even is. I wouldn't blame anyone -- in fact, I would envy anyone who wasn't following this very closely. So -- we can start with -- Phil, go ahead.

PHILIP CORWIN:

Thank you, James. And welcome, board members. I'm again, Philip Corwin, one of the BC councillors. And I'm speaking in my capacity as co-chair of the currently active working group on curative rights processes for international intergovernmental organizations.

My co-chair, who is not with us in Hyderabad, is Petter Rindforth, former councillor and member of the intellectual property constituents. I want to note throughout the work of our working group we have received exceptional staff support from Mary Wong and Steve Chan. And without their support, we could not have possibly made the progress we have. I want to bring you up to date at a very high level where we are in our

process, which is separate from the -- the preventive measures which have been a matter of inconsistent recommendations from the GNSO and GAC advice for some time.

We are nearing the end of our process. Actually, we held a session this morning at which we unveiled and discussed the draft recommendations section of our preliminary report. We expect to put the preliminary report out for public comment by the end of the year, toward the end of December. And that will kick off the public comment process which will end in early February. We probably -- depending on the volume of comments, we probably won't have a final report out for GNSO Council consideration by the Copenhagen meeting. We are close, and we should have it out shortly thereafter.

I do want to say we've been -- I believe, when people see this preliminary report, they will see the tremendous energy and effort and the quality of the work and the fact that we've striven to base our recommendations on a firm understanding of existing law and ICANN's appropriate role in making policy recommendations. We expect it to be finished sooner. But, because the issue of ICANN -- of the recognized scope of IGO judicial immunity was a key issue for our working group, we felt the need, because of our own lack of expertise in that area, to engage the services of a recognized outside expert in international law.

I want to thank ICANN for providing the extremely, extremely modest four-figure funding that paid for that work. And that legal memo will be part of our final report.

And we did make proactive outreach to both IGOs and the GAC early on in our work to engage with our working group and directly provide their views with us.

With the response Petter and I met with the chair and two vice chairs of the GAC at the in Buenos Aires to let them -- toward the beginning of our work to let them know what our plans were and to urge engagement by GAC members. For whatever reason GAC members chose not to engage directly with our working group. We also engaged with IGOs early on. And the response we got was because of their dissatisfaction with the recommendations of the prior PDPs, they would not engage as members. Notwithstanding that fact, we did receive informal input from those folks throughout our work. We had a session in Helsinki in which the legal counsel of three well-known IGOs engaged with our working group in their personal capacities, not as official representatives of their organizations, so that the IGO small group proposal which the Board conveyed to the GNSO last month, while we weren't familiar with all of what would be in it, we knew that we've known the basics for some time.

I think, when you see our report, you will see that, even though our recommendations are not identical to the IGO small group proposal, they nonetheless reflect the viewpoint we've always had that we wanted to help IGOs and to make sure that they had ready access to robust curative rights processes to address any abuse or their names and acronyms going on in the domain name system and that, in some instances, our recommendations are actually broader than what they've asked for, though not in precisely the way they've asked for them. So I would conclude by asking the Board to keep an open mind until our recommendations and report are final. And, if the GNSO decides to approve it and convey it to the Board, to look at it then. But I just -- there is a difference here between this issue of curative rights process, which is still the subject of an ongoing PDP, and the prior preventative rights. And it -- you know, wouldn't -- it would be premature, I think, for the board to take a position on this until they see the results. We intend to take any and all public comments we receive under advisement and to adjust our recommendations accordingly.

But, again, I want to assure you that we've been very diligent in our work. We have reached out to both GAC members and IGOs and asked them to engage. And the work product is solid, in my opinion, and does provide recommendations which will provide IGOs with great clarity and allow them access to curative rights

processes without trademark registrations based on other legal principles and allows them to bring an action in a way which does not require them to concede any aspect of their jurisdictional immunity.

I'll stop there. But I just wanted you to understand at a high level where we are in our work and what we're going to be recommendation shortly. Thank you.

JAMES BLADEL:

Thanks, Phil. And just to highlight one point of Phil's statement and update on that ongoing work is that there's two pieces to this puzzle. Probably more than two, but let's just say two big pieces to this puzzle. One of the is the concluded PDP from 2014, and the other is the ongoing work that's being led by Phil and Petter. And I think the concern is -- or at least early indications are that there will also be differences that need to be reconciled from the PDP process, anticipated versus the proposal or the advice coming from the GAC. So the situation that we're in with the old PDP, we're going to see a repeat of that situation again. But I have Bruce. And then, Steve, did you want to -- okay. Bruce, Chris, and then Heather.

BRUCE TONKIN:

Thanks, James. And I think one of the things that would help in framing these issues is really anchor them back to what actually is the mission of ICANN and what's our objective here? Because I think, again, often these conversations we're down in the weeds. And people lose track of what we're actually trying to achieve. So, if I could summarize at least from my perspective, our mission is about the Internet identifiers. And it also is relating to the security and stability of those identifiers and the use of them. And we also have an obligation to comply with national laws and, I guess, international treaties as they are instantiated as national laws.

So, if we look at that principle and look at what we're trying to achieve, I would say in this case, basically what we're saying is we have a group that's concerned about the potential for confusion or misleading the public with a name or an identifier that is somehow being used to deceive or confuse the consumer.

And certainly registries, registrars, have dealt with that problem. Phishing attacks are common. And most registries and registrars will take down sites that are clear phishing attacks that are encouraging people to put in personal data and being deceived.

I'm looking at one example on my screen at the moment. I've looked up who.com.areyou. And who, w-h-o, is also an identifier

that's used by the World Health Organization. And I invite anyone to look at who.com.areyou now? I don't think you'd be confused that who.com is the magazine. And it's pretty obvious, looking at the pages here, it's about someone's wedding, someone's hair transformation. This isn't where you get official health advice.

So our objective here is making sure that identifiers are not used to deceive people. There's absolutely nothing wrong with something like who.com.areyou. But, if we saw this was issuing official health advice and trying to masquerade as the World Health Organization, that would be a different scenario. We're trying to be clear what we're trying to solve. But nobody has access to a specific identifier. With respect to laws, we obviously look at laws. But even trademark law there's no exclusive use to a name. Trademark law, basically, gives you the right to use a name for a brand for a specific sort of specific purpose.

I can use Microsoft, if I want to name my new beach buggy which doesn't have any software in it. So I think we've just got to keep perspective here. And the perspective that's anchored these conversations, when you get into a dispute, up level a bit and say what's the mission here? What are we actually trying to solve? And, particularly, what's within our mandate as ICANN and move on from there. So come back to what's our mission and what problem we're trying to solve. And then I think you

can have a conversation about, you know, how do we go about this?

JAMES BLADEL: Thanks, Bruce. Chris, you're up.

CHRIS DISSPAIN: Thank you very much. Thanks, Bruce. I agree with you. I'm slightly worried now, if Microsoft's lawyers are listening, they probably rushed off to register the trademark of whatever beach buggies are in the list.

I agree with what you said. I just wanted to address three things. First of all, just taking what you said, I agree with that. Just to make sure everybody knows what we're dealing with, we have GAC advice that splits into two -- the first piece of advice is - - and I'm obviously paraphrasing here IGOs are special and they're entitled to some special treatment. That's the first piece of advice. And then we have the advice that said reserve them. And Bruce is talking about that. And that's why the Board went back to the GAC almost immediately and said this is not going to fly.

Secondly, I wanted to acknowledge what Philip said and make it very clear that the Board does have an open mind.

And the third thing I wanted to say was to acknowledge the call that took place I forget how long ago it was now, not that long ago, with people from the GNSO and board and GAC. And just acknowledge that for me and I think also for Steve who was on the call -- that the sort of takeaway from that is that it looks likely that at some point action from the Board is going to be required. I think we said that at the end of the call. From listening to what Philip's just said, certainly we should not do anything at all until the second PDP has completed its -- gone through its process other than to encourage, you know, talking and so on and so forth. I think, for example, if I could suggest that, if your characterization of your recommendations the way you characterize your recommendations, I think -- and if you felt willing to talk to -- in whatever guise is appropriate to talk to the IGOs and explain them to them so they're not just seeing them on a flat piece of paper, that might be a useful thing to do. But that's entirely a matter for you. I hope that's sort of delivered the key point that we have an open mind and we should wait until you finished your work.

PHILIP CORWIN:

Just in terms of the -- Phil, for the record. In terms of the IGOs being aware of our draft recommendations, they are very aware. We've been aware that, even though they haven't been formal members of our working group, everything we've done has been

totally transparent and on the record. They've been monitoring the transcripts and MP3s of our work. Our draft recommendations have been circulated on our list through both members and observers. They were unveiled at a session earlier this morning. So they are very familiar with what we're coming up with. And that's all I'll say. There's no way they couldn't be aware if they have any interest in this.

CHRIS DISSPAIN:

Sorry. I agree, and I accept that. Perhaps I didn't put myself clearly enough. I understand that. What I meant was you made some -- you made some comments about, you know, we think they provide wider, et cetera. And I'm just saying I wonder if a chat that explains why you think that and -- rather than just relying on the word itself, but actually an interaction where you say we think the reason why it provides more is this. That might be helpful. That's all I'm saying. Thanks.

JAMES BLADEL:

Thank you, Chris. Heather, you're up next.

HEATHER FORREST:

Thank you, James. Heather Forrest. Chris, thank you very much for your comments.

My question is a follow-up to what you said. Other than the final or the initial report of the curative rights PDP, is there anything else, by way of information, that the GNSO can provide to the Board in relation to this issue to help the Board in its deliberations? Thank you.

CHRIS DISSPAIN: I can't think of anything at this stage. If you were to have conversations and it would be helpful to get us sort of temperature feel of how those are going. But, other than that, I can't think of anything. Thanks.

JAMES BLADEL: Thanks, Chris. And we would welcome exactly that, if you can provide anything in the interim time while the ongoing PDP is concluding? David.

DAVID CAKE: I just wanted -- and I know this won't really be news to most of the board. But it occurred to me that part of the issue here about the 2014 concluded PDPs, some unawareness I think from some people involved in just how constrained what the GNSO is able to do. This is a completed PDP. The council and the GNSO is not in any way entitled to negotiate about what should be in a completed PDP. We have very strict rules about under what

conditions we're able -- we are able to go back and reopen a PDP.

Someone being really -- any group being really unhappy about it is not sufficient reason that very often someone is very unhappy about a PDP. If we were to go back and revisit those things, just want to make it really clear that the GNSO is very constrained in how it can reopen and revisit those recommendations

putting the approach about what should be changed in a way that makes it easier for the GNSO to reconsider and reopen would be something that really has to be done. It we have to be told why these -- the PDP is flawed, what -- you know, if there's a mistake we have made, what mistake we have made fairly -- it needs to be specific. We need to be asked -- we need to be given a rationale to -- a fairly detailed rationale to reopen a PDP, not simply be told that -- well, the results are not acceptable. So yeah, just make that point. It would be very much -- very helpful if we -- to -- in the reconsideration of those issues from the 2014 PDP if the GNSO is to reopen it, that a full understanding of how constrained and what -- we are in and the conditions for reopening it are understood by everybody, including the GAC. Thank you.

JAMES BLADEL: Thanks, David. And just to sum up, I think in our interaction with the GAC, whatever day that was, we -- we indicated that we do have a mechanism but we -- we are very reluctant to go down that path. We would certainly entertain that if the board, for example, were to reject our PDP recommendations that are currently standing and waiting a decision. We would also consider going back to that if we had a very clear and compelling failure in the rationale or information that was considered by the PDP originally that resulted in I guess faulty recommendations. If we could be, you know, demonstrated that there was a compelling miss on the part of the PDP, then certainly that would be another occasion for the GNSO Council to reconvene that group or as much of it that could be and take up this issue again. But absent one of those triggers, we are constrained in what we can do, as David indicated. So -- but thanks for raising that, David. Cherine, I think you wanted to go next, and then Donna.

CHERINE CHALABY: Thank you. I wanted to go back to Phil. You said something about you wanted to make sure the board keeps an open mind and Chris has responded to that and I fully agree with Chris on that. But I'm just wanted to, excuse me, dig deeper and see, is there a concern that the board was not going to keep an open

mind or we were going to jump conclusion? Just make sure we've addressed your concern fully.

PHILIP CORWIN:

Excuse me, speaking just for myself, I didn't have a huge concern, but I just wanted to make the point that this is an open PDP. We're getting toward the conclusion of that process, and my understanding of the process under the bylaws is that the proper way to handle the CRP part of this IGO issue, which is separate from the predecessor preventive protections part, is to let us conclude the process, deliver a final record and recommendations to the full council. Next spring let council accept or reject it, and if it accepts it, convey it to the board and then the GAC, if it's unhappy with it, can provide whatever advice -- consistent or inconsistent advice and that is the -- under bylaws, that's the proper way to handle the curative rights process portion of this IGO issue. So I don't have a huge concern, but I just thought it was good to say, you know, it would be premature for the board to take a position for or against our potential recommendations before we complete the bylaws process.

CHERINE CHALABY:

Okay. Thank you. I understand now. Thank you.

JAMES BLADEL: Thanks, Phil and Cherine. Next up is Donna and then Rubens, and then we're probably getting close to the point where we should move on. Donna.

DONNA AUSTIN: Thanks, James. Donna Austin. Chris, I just wanted to respond to something that you suggested in relation to the curative rights PDP and maybe, Phil, this is something we should consider. The curative rights PDP is close to producing an initial report and there will be a comment period on that. Perhaps it might be a good idea is at the time that initial report is published that we try to provide a briefing to the GAC on that initial report so that they can be well informed and providing comments for the comment period. So I think that is something we should consider and indeed offer to the GAC.

PHILIP CORWIN: Yeah, I would be happy to be at such a briefing. I'm sure that -- I don't want to commit her but I'm pretty sure Heather would be willing, whatever the format. And, in fact, during our working group session this morning, I mentioned to staff that we should make sure when we issue our preliminary report around late next month that we should be sure it's conveyed to the GAC and the IGO small group so they're aware -- they're probably would be aware but to make absolutely sure they're aware it's out

there and that the comment period is just open and that we welcome their input and that we're going to give full credence to whatever -- it doesn't mean we'll accept and change the report based on their comments, but we're going to take them under full advisement. And anything -- if they point out a mistake we've made in interpreting the law or a problem we haven't identified that still needs to be addressed, we'll make further changes before the final report is issued.

DONNA AUSTIN:

Thanks, Phil. And just -- I know we're talking about IGO protections at the moment, but one of the other challenges for the council in terms of the two outstanding recommendations from the PDP is that it's -- this IGO issue is to some extent joined at the hip to the Red Cross issue, and we just wanted to be sure that that's not -- that we don't forget about the Red Cross issue because we're focused so much on the IGO protection so it is on our radar as well.

JAMES BLADEL:

Thanks. Bruce, is that a follow-up to Donna or -- okay. Go ahead.

BRUCE TONKIN: Really quick follow-up. I think one of -- my understanding is one of the things that's unique in the Red Cross is there's unique national laws that relate to protecting Red Cross that we can anchor against. And again, I think if we come back to the principles, you know, where there's a national law, we identify the national laws that are involved and then we move from there. So I think it's actually a different case -- well, actually it's a specific case, but there is actually national law there, and I think it's worth reflecting on that.

JAMES BLADEL: Thanks, Bruce. I have Rubens and then Keith. Keith you want -- okay, so Rubens, you get the last word.

RUBENS KUHL: Rubens Kuhl, Registry Stakeholder Group. From the letter that we got from the board, one of the proposals of the small group was to allow IGO's to file dispute resolution on domains containing their acronym. I'd like to point out that this could leave, for instance, make the United Nations, which is U.N., file UDRP on fun.com and that would be no fun at all. So that -- that's something that we have PDPs for. This is a detail that won't be overlooked in the PDP, what would be the consequences, and that's the problem of doing small group

activities that fail to address this type of overlook. So that's what I'd like to point out.

JAMES BLADEL: Thanks, Rubens. Chris, you had --

CHRIS DISSPAIN: Yeah, just to say that -- that's not my understanding of what it says. And if it did say that, then it shouldn't. It's -- that would -- that's crazy. I mean, that doesn't make any sense at all, and I don't think anybody intended for that to be the case, including, I suspect, the IGO. So if it says that, then I apologize. It shouldn't say that.

JAMES BLADEL: Thanks, Chris. Okay. So just drawing a line under this, if I can editorialize. Like for members of the board and for members of the audience or those participating, if this is your first exposure to the IGO issue, welcome to the party. It gets worse from here.

[Laughter]

The -- the key here is that this is really -- little and less necessarily about the IGOs and the IGO acronyms, and there are broader issues here at stake is kind of why you see such a diverse and often contentious group like the GNSO speaking

with essentially one voice which is that this is the community policy development process running up against a very, very specific proposal coming from governments and IGOs. And from my personal perspective when I see -- I think the more specific and the more detailed the advice we get, the more likely we are going to run into these issues that need to be reconciled somehow and we don't necessarily have a very clean way to do that. So it's important that when you -- when you hear this from us, when you hear this from the GAC, when you hear this from IGOs in the hallways, if they -- they manage to kind of have one-on-one conversations with folks, when you read this in communiqués, this is -- this is really the broader issue that we're trying to hammer out, is this reconciliation between very specific advice and very specific PDPs and what do we do when they miss. So that's -- that's what brings us here today. But as I mentioned at the outset, we are trying to be mindful of how we got here, but also try to find a path forward. I mean, continuing to rehash the timeline and the chronology is -- I think that's not really getting us -- that's not really bearing fruit anymore. And we'd be happy to help provide any other information, if there's anything missing or anything that could assist your decision-making.

Does anyone else from the board or the GNSO have any other topics? I think we go until 1:30, is that correct?

(Off mic.)

JAMES BLADEL: Okay. So we've got two minutes? Rinalia.

RINALIA ABDUL RAHIM: Thank you, James. Rinalia speaking. I just wanted to know what the progress is with regard to the implementation plan for the GNSO review recommendations? Is that on track? Can we expect that to -- can we expect to receive it in December?

JAMES BLADEL: So I believe the councillor who is on point for that is not here, but the last status update I heard was it was on track. And I know that when we get closer to the delivery date we will probably have an update. But the latest information is all systems go. Steve, did you have any other thoughts? Bruce, Goran, anyone?

BRUCE TONKIN: My only comment would be, I notice you've identified some of the areas where you're having difficulties but what would be -- what would be sort of -- where are your top three policy projects that you're applying a lot of resources to, just so the board has a

sense of what are the big policy development activities going on in the GNSO at the moment?

JAMES BLADEL: So did you skip my presentation on Saturday, Bruce?

BRUCE TONKIN: Probably. I believe I was sitting next to you.

JAMES BLADEL: That's true. You were sitting right next to me. I remember that. So we could run down, but basically we have ten policy development work streams in various stages of the PDP life cycle. We have four, including the one that Phil provided a fairly comprehensive update. We have three others that are underway now, including a review of all rights protection mechanisms. We have a review of the registration data system RDS which is a fancy way of saying WHOIS, and we have the subsequent rounds, subsequent topics for the subsequent rounds of new gTLDs. Those are consuming a significant amount of community bandwidth, and we are expected, because of the way those PDPs are structured and because of the breadth of their scope, that they will be ongoing for some time, if not a number of years, to address those issues. So I would say those issue. Rinalia mentioned the GNSO review and the implementation plan that

we're developing there. And then we have a number of other issues relative to internal housekeeping, particularly our own bylaws as how we will become permanent participants in the empowered community.

STEVE CROCKER: Just a small detail. I think WHOIS is a sloppy way of saying registration data services.

JAMES BLADEL: Well, you know, old habits die hard. That brings us to our time, and I wanted to note, for those of you who maybe saw the reception last -- last night, that this is the last -- the last time we'll see Bruce, one of our GNSO appointed board members. And we certainly thank you for your service, your nine years of service on the ICANN board. We note that, you know, you've -- all of the important issues over the last near decade, you've been front and center, and we certainly appreciate you donating your time and your sweat and your expertise to the entire community. And so thank you for that.

[Applause]

STEVE CROCKER: I want to add ...

Excuse me, I want to add something. Bruce is used to this. This is already -- there will be a few more, I suspect. As -- as James said, Bruce has been on the board for nine years. And we'd keep him for another nine, if we could. I think we also owe you a big round of applause for sending us one of the best board members that we've ever had. So thank you on behalf of the board for coughing up one of the very best of you and one of the best that I've ever had the pleasure to work with. And so you set a high bar. Becky looks pretty good, too.

[Laughter]

But we'll -- time will tell. Thanks.

JAMES BLADEL:

Thank you. And thanks, everyone, for attending. Hope you enjoyed this session and I guess we can stop the recording.

[END OF TRANSCRIPTION]