

**Transcription ICANN Los Angeles  
SCI Update to the Council  
Saturday 11 October 2014**

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Jonathan Robinson: Right, good morning everyone. Welcome to the GNSO weekend sessions here in Los Angeles. Nice to see you all here. And I see some familiar faces and I think we'll get things going right away.

So if I could just do a check. I'm not sure where the audio people are, whether we're on sound or not. Is it back there? Are we ready to go with the recording? Great. Thank you very much.

Okay so our first session this morning, as you know we'll kick off with a series of different updates and reports and catch up through the morning. And the Standing Committee on GNSO Improvements and Implementation has already met first thing this morning. They were up bright and early.

And so we've got Ron Andruff, who's the chair of that group, here to report back to us and give us some update from the SCI. So welcome, Ron, and over to you.

Ron Andruff: Thank you, Jonathan. And good morning, everyone. Welcome to LA, ICANN 51. Hope you're all ready for a full week. As Jonathan said, we had our first meeting of the day this morning, the Standing Committee on Implementation Improvements.

And just to bring everyone up to speed in terms of current activities we had a couple of things that we've been checking off the list. The - of course the IGO INGO final report and the question of divergence with regard to consensus levels.

We had a long discussion about that over many months and that went out for public comment. And we have received zero comments on that so the question this morning was, "Did anybody read it or did we just do good work?" Of course we landed on the good work side. And so we view that as work that's been completed but just wanted to remind you that that's where we are.

The proposal is that we would just add a footnote to consensus levels to allow for consensus against because that's one of the things that's missing. But speaking to the issue of consensus we - as we have now come almost to the end of our list on the SCI in terms of the number of activities that - or all of the activities, let me put it that way, that the Council has sent to us we're actually reviewing now various things that - what other things can we take on or what other things should we be taking on?

And one of them is this discussion of consensus levels particularly with regard to the IGO issues. One of our members, Greg Shatan, pointed out as we did a lot of the work on consensus levels it's a lot of inconsistent language in there, things that just need clean up. So we would be looking to do that as well as to review the five levels of consensus.

As everyone in this room knows, ICANN operates on five levels of consensus, full consensus being the one everyone seems to grasp for immediately on every working group. But we do have rough consensus where we don't have full consensus but rather we have a few opposed.

That allows for those that are opposed to bring their voices to the table inasmuch as they can write a dissenting note very much like the Supreme Court does in the United States where anyone who dissents can put forward an argument as to why they were pushing back on that.

But yet we had consensus - rough consensus meaning most of the people agreed. That's a very valuable tool and I think that would serve to benefit us all if you can actually see a written reason as to why someone is not in agreement with it.

So these are the types of things that need to be reviewed and some thought given to. So that's one of the activities that the SCI would undertake given the blessings of the GNSO Council to do that.

Obviously we've got the GNSO review going on right now so that's almost an element that factors in. But we felt that consensus levels just both the language clean up and just kind of looking through how that might be a better used tool within the ICANN community would be things that we could look at. So I just wanted to make note of that.

On the slide of you course you see also the waiver of the 10-day motion rule work that we've done, also received zero comments back so we chalk that up as good work, and voting outside of a meeting. So these are the three elements that we've delivered back to - or we will be delivering back to Council shortly once the comment periods are completed.

Today we - as we got into these discussions about what the future work would be there was another discussion that came up and it was about the PDP issue around invoking Section 16 and the Board request of Council.

I'd like to ask if Avri might say a few words on that and then follow up by Thomas because both of them are much more well versed on this topic than I am. And the question here is whether or not the Council would like the SCI to engage on this in some form so I turn it to Avri please.

Avri Doria:

Thank you. Yes, and this is one that I have been meaning to bring up in Council but haven't quite figured out which hat I would be wearing because - but now I can because as liaison between Council and the SCI it was a personal issue but now it's become an SCI issue.

It's where we are attempting to use - and I've been using the metaphor of tools all morning - we are attempting to use a tool, 16, to reopen some issues in a PDP but that that tool is basically meant for the Council when it has a change it wants to recommend.

And we are doing all sorts of semantic somersaults around that trying to say well it's not really us that want the change, it's someone else wants us to look at it. So basically what I'm feeling is that we need to look at the PDP and we need to sort of take into account that when we send something to the Board, yes they can just knock the whole thing down and send it all back and I've called that, you know, using a sledgehammer, just knock it down.

Or do we want to give them a version of are consideration that says, listen, we see your recommendations, we respect your recommendations but, you know, we have these other issues to deal with so we ask you to reconsider the issue in the light of. And, you know, there's a certain fear that that could become a permanent spiral but it doesn't need if the policy is perhaps written correctly.

So that was an issue that I think is one of the PDP shortfalls that we've got is we've got a decision and there's no sort of easy way to ask us to reconsider one part of it. They either got to knock out the whole thing or they got to convince us that we want the change. And we need something - I believe we need to come up with something intermediate.

Ron Andruff: Thank you, Avri. Thomas.

Thomas Rickert: Yeah, I guess Avri has covered part of what I would have said in this forum. But I guess that the question for Council is twofold. Number one is, does the Council wish the SCI to look at how to invoke Article 16? Because you will remember that we were struggling with how to draft the motion even. And we - I think, I'm not the only one feeling that the way the motion need to be phrased might anticipate the outcome of the working group's work.

But we might wish to have a little bit more flexibility with that to hand back over to the working group to look at specific tasks. So one thing for the SCI, again, could be to look at how or maybe further refine Article 16 to make it easier to use.

And the other thing is whether we really want to have additional external trigger points to revisit GNSO resolutions. Article 16 is thought to be a tool for the Council to reopen the discussion on resolution when the Council itself feels that something should be done to refine or alter resolutions.

And something which Avri called, earlier this morning, Article 16 (bis) could be a right or a mechanics for, let's say, the Board to step in and ask the Council to do that formally. And you will remember that we had some concerns and reservations that this might end up being an iterative process whereby the Council is being asked over and over again until the result is such that would please the Board. So the Council should consider whether it

wishes to task the SCI with looking at such external trick or mechanisms as well.

And I will also say that my instant reaction this morning was that regardless of where the information comes from whether it's external communication that is brought before Council or whether the Council itself obtains new information or whether it comes from the GNSO community, it can always invoke Section 16. And the question is whether we want to have a formal process to revisit resolutions which might end up in such iterative process.

Ron Andruff: Thank you, Thomas. So...

Jonathan Robinson: Ron, I've James. James, did you want to (unintelligible)?

James Bladel: Yes I did but I think Alan actually was trying to jump in the queue before me so I'll yield to Alan.

Jonathan Robinson: Thanks for Alan and then yourself, James. Alan, go ahead.

Alan Greenberg: Thank you. A couple of thoughts. The reconsideration process may have been put there for Council to rethink it but it's there. And as Thomas points out, I don't think it's unreasonable to use it for things that originated outside of Council originally. It is a procedure we can use.

In light of all the work that's being done in the Policy and Implementation Group and the likely perhaps significant changes and additions to the various policy processes, I think it's premature and perhaps a waste of time to have the SCI look at it at this point. We have a process that can work in the present case. It may not be worded as we would want it; now that we have a bit of history, but I think it's a waste of time in light of the much larger work that's likely to be - have to be done in the future.

Jonathan Robinson: Okay thanks, Alan. I've got a queue that's formed now which has got James, Avri, I might contribute as well, I've got Marika. So let's go with James and then see where this runs.

James Bladel: So I'm glad we're talking about this because I just had a conversation this morning with Marika and Lars and trying to dust off some old memories of the PDP working group that we were on, I think Avri was on that group as well, and I believe Jeff Neuman, who I don't see here today, was on that group as well.

And I'm trying to remember the context under which this mechanism was discussed and raised and incorporated into the final recommendations. And, you know, again testing my memory here a little bit I believe that there were some specific ideas or scenarios that were proposed certainly not an exhaustive list but as a, for examples of why we would want to invoke a mechanism like this.

For example, if the technical situation had changed during the course of a PDP or information was missing that was presented in the public comments

at the end of a PDP's final report if one of the commenters said, "But you forgot to include this," and presented some body of data that radically shifted the premise of the recommendations.

I don't know that some of the - at least in the current situation that we've been presented with if what bucket that would fall into as far as did they get something wrong, were they missing information or had the technical or economic situation changed on the ground during the course of the PDP.

So I'm not really sure how to categorize it so I would welcome the SCI taking another look at this and providing some guidance to Council. And I think that guidance should take the form of some very clear specific scenarios or tests that should be examined when reopening a concluded PDP. Thanks.

Jonathan Robinson: Thanks, James. Avri.

Avri Doria: Thanks. And in this time I'm not speaking at all as liaison to SCI but purely my own views. First of all the current use we're trying to make of 16 is a misuse. The current 16 is meant for an amendment we wish to see made. And at this point it is for an amendment that the Board wishes us to wish we see made, or perhaps not even that, perhaps I'm even putting that too strongly.

So I think we're trying to misuse a process for something similar and not. And part of the reason we haven't been able to do it for several months is because we're caught in this, the process doesn't quite fit loop. And so we keep trying to convince ourselves that if the process is good enough it isn't so the twisting it.

Now I don't believe it fits the context of policy and implementation because this is policy all the way; this is there is a policy, there is, you know, considered opinion from other sources that the Board has to deal with in terms of its tussle between policy recommendations and policy advice and they want us to reconsider. And I'm using the word "reconsider" quite-quite considered.

And so to say that the Policy and Implementation Group - solution will deal with it that would be another case of us misusing a tool to serve some other purpose so that I just don't see helping. And I think in this new environment that we're seeing evolve where, you know, a lot of other groups - yes, we want them to participate all the way through and I do not believe that this would affect that at all.

But at the end of the day they still have a bylaws, you know, a bylaws ability to ask the Board to please look at the tussle between two different policy considerations, advice and recommendations. So either the Board has to do it on its own and knock out the whole policy or they have to have a way to come back to us and say listen, you know, we see this but we see that perhaps you haven't actually dealt with this issue, please look at this issue again.

I agree that we have to really consider how we said it, how we constructed it, you know, etcetera. But I really do believe that this is not a one-time problem; this is the beginning of, you know, this sort of problem for a while.

Jonathan Robinson: Got Marika next and then I'm in the queue and Alan.

Marika Konings: Thanks. So this is Marika. So being one of the staff members it's important the review - or the last PDP review where this provision was included, you know, I remember part of the conversation and I committed as well to James to actually look at - to see if I could find further details.

But I think the main reason why this section was included that we initially discussed whether there should be a way to modify PDPs after board approval if, you know, new information became available, if there were issues with implementation or, you know, any kind of considerations that would warrant that.

But people felt very uncomfortable by having a kind of short cut to making those changes so it was ruled only a new PDP could make changes to the PDP. However, I think it was also recognized that in the interim period between Council adoption and Board consideration new elements could have been brought forward that may warrant the Council to make tweaks or changes whether that is indeed on the basis of public input received, someone else asking us whether, you know, have you considered this other aspect.

But I think the provision is really clear, it's for the Council to decide whether or not you want to invoke that procedure. And I think the Board has been very clear as well - the Board has noted that this procedure exists and has suggested that you may want to consider using that if you indeed believe it's worth, you know, considering or proposing an amendment to the recommendations based on the information that you - that has been made available.

I think the Board isn't invoking anything because indeed the procedure doesn't foresee that. And indeed maybe it's a separate question whether that should exist. But I think in this case it's really clear that the Board is asking you just to consider whether you want to invoke your own procedure and it's up to you to decide whether you want to do that or not.

On, you know, specifically taking out this part for review or consideration, you know, I would like to caution against that because it is part of, you know, the overall PDP process and it's all these pieces that fit together into the PDP as we know it. And I think it should be part of an overall review of the whole process to really make sure that we're not taking one piece and changing that but, you know, by doing that interrupt all kinds of other flows that are in there.

And, you know, as you know the GNSO review is underway. And I presume it's likely that some suggestions may come out of that that it may make sense to do it as a kind of wholesale let's look at the PDP as a whole, how do all those pieces fit together, indeed, the specific question on should there be a

kind of reconsideration request that can be invoked that, you know, would require the Board to do - or the GNSO Council to do something contrary to now it's, you know, the Council's choice to reconsider or not.

Jonathan Robinson: Okay. So thinking about this perhaps, I mean, I've put myself in the queue and bumped myself down a couple of times with some thoughts that I want to offer. But first of all thinking about it from a chair's point of view I think it seems to me that this has thrown up something that we feel quite strongly about that's quite a significant tool and/or problem in our processes, something that we might want to use or we might want to modify.

I don't want to kick it into the long grass but I just - I think it's kind of brought it up, there's quite a lot of discussion around it. I almost feel like we need to pick a time when we can really do a bit more detailed discussion on that. I'm sensing that there's actually some quite strongly held views. I'm not sure we're ready to send it to the SCI yet; I'm not sure we're really understand quite fully what each other's views on.

So I think as chair I would suggest we find a slot to spend some time on this; that certainly feels like the right thing to do. My personal opinion right now, from where I stand, and I don't want to preempt the outcome of that discussion but personally it feels like a potentially quite a valuable tool. I don't feel we're bullied by an external party to make use of it. I still think we as the Council have a choice as to whether we invoke this procedure or not.

So I feel quite - I don't feel unempowered to decide whether or not we use it. I do think we've certainly come across some procedural issues and we've been a bit unclear as to whether, you know, or at least uncomfortable about directing the working group to come up with an outcome.

So all of that points to both some more work on this. And that's - so that's where I stand as I say both as chair but my opinion is I'm not as uncomfortable with it as some are at a sort of personal level.

I know, Alan, you want to say something more so go ahead.

Alan Greenberg: Thank you. I made reference to the Policy and Implementation Working Group and Avri responded saying this is clearly policy, not implementation. The reference I made was to the fact that the group which happens to have implementation in its name, is looking at a number of different policy processes and very much policy processes as part of its work outcome. And that was the reference I made; not to the fact that this might be implementation.

Jonathan Robinson: All right so pick up that suggestion then - Steve Chan is here, I think, Steve, you're capturing sort of action items and points for us which is great. So at the very least this should be brought up back in the wrap up session if we don't cover it anywhere else. So it's - we'll put a pin in it, make sure it's known that we need to deal with it.

And as far as our current stream of work on it I'm not quite sure where that leaves us. I mean, I think we are midstream as far as invoking it in this one specific example where we are at the moment. So we may have to continue to work through that as best we can but that's separate to actually picking it and dealing with the issue in more detail.

So let me come back to Ron because this is really all about the SCI at this point.

Ron Andruff: Thank you very much, Jonathan. And I'm very grateful to see this inspired - a lot of discussion because it is an important - obviously a very important issue and we stand at the ready, you know, should that come to the SCI.

There was one other - just a footnote to add to this kind of PDP discussion but it's not so much PDP but it's really about GNSO Council. We constructed, coming out of the last review, we constructed a Council that would no longer be voting heavily but rather be creating working groups and chartering those working groups and so forth.

And one of the other points that came out of our morning meeting was the fact that for myself I'm sitting on a new next round of gTLD discussion group; I'm on the GNSO Review Working Party; I'm on other working groups. And so there's a whole new vocabulary that's kind of seeped into the community in this last period.

And the question is where is that coming from and how is it possible that I'm on a group, discussion group, a working party, and working groups, when we used to just have working groups; that was the whole point, GNSO Council would then establish a charter and off we would go.

So it seems like there's maybe some end running happening there where we've got these new names and anyone can join and just let's go. I'm wondering if that's something else that should be given some consideration.

I'm just putting it out there for Council's consideration because it seems over this last period we have a lot of this new vernacular coming in with no structure other than now it's time to get together and do the business, we work under - on all of those groups it seems we work under working group policies. But there's no instruction to do so that I've seen. So there's - it's getting a little bit into the gray area but I did want to bring that to Council's attention.

So with that then I'll conclude my comments as chair. And with my last comment is simply to say that we also - I've now been chair of the SCI for the last two years. And so we've called for elections which will come up probably in the next month or so. So this will be my last report to the Council as SCI chair and I just want to say that it's been a pleasure working with you and you will hear from the next chair in Marrakesh of the SCI, so thank you very much.



Jonathan Robinson: Thank you, Ron. Thank you for your report and for your professionalism over the last couple of years. I mean, as now, at one point we evaluated whether indeed we wanted to have the SCI remain as a standing committee or not and so we were obviously comfortable and confident with the work that was being done and the effectiveness of the group. So for your part in that thank you very much and I'm sure we'll look forward to working with you in other ways going forward.

Ron Andruff: Indeed, thank you.

Jonathan Robinson: I wouldn't mind a quick question on that. Does anyone know where - because I'm aware, for example, in the GAC GNSO Consultation Group I was actually actively involved in promoting the use of the word "consultation group" there and there was specifically a reason not to have a working group because the working group carried with it all of the principles and procedures.

So I wondered where working party came, maybe Jen can answer that. And if anyone's got any comments because I think some of this is accidental rather than deliberate. In the consultation group case it was certainly deliberate but I just wonder if anyone - I was specifically asking where working party came from but, Avri, I saw your hand shoot up.

Avri Doria: No I can't answer where working party as a name came from though I do think I was part of the group that went around saying, "What do we call ourselves? This isn't a properly chartered working group. It isn't in that line therefore what do we call ourselves? Oh we can't call ourselves a consultation, that's already been used and we can't call ourselves this because this because that's already been used." And so party was what eventually came out if I remember correctly.

But one of the issues about these things is because working group became cast so much almost in stone as a PDP vehicle for doing X then doing anything else it became difficult to call it that because it didn't come with that whole super structure. But what it also means is we've created all these things that sort of work on a very ad hoc basis and sort of get formed on an ad hoc basis.

And that's okay but as we see they start proliferating. Once you've done the first one, oh what a cool idea, we can do something slightly different. Oh, we can do - and so it becomes very much almost - or it could become a habit. And they don't have constraints.

Jonathan Robinson: Thanks, Avri. So I'll ask Steve to just put that on the list as well, something we might want to think about nomenclature of these and whether it is a problem or not. Jen.

Jennifer Wolfe: Thanks, Jonathan. It's Jennifer Wolfe. I can provide just a little clarity on the working party; that is a group that was formed to basically coordinate the 360 assessment and the review. It's not a policy making group so that's why we didn't use working group. We did actually have discussion about should it be

called a committee or a party and that was just the decision that was made; there was nothing more strategic to it than that.

Jonathan Robinson: James.

James Bladel: Thanks, Jen. And just to follow up with what Avri was saying, I think the danger is not just confused terminology but if we kind of let this thing go off into the wild and we get very squishy on our definitions then the groups have to reinvent the wheel each time as far as self-organizing and self-structuring.

I would recommend that we do take a look at this in the context of the SCI and perhaps consider a terminology based on what the expected outcome of an effort would be. We've had drafting team before and I think that's clear. We're looking for a document, a report or something along those lines. And then maybe we can follow that model with some of these other types of organizations or - I'm hesitating to say groups but these other parties that we're forming to do these specific (unintelligible).

Jonathan Robinson: Thanks, James. Marika and then I suggest we bring this to a close.

Marika Konings: Yeah, this is Marika. You know, I agree I think we have different efforts or different names but I think, you know, most of the time for very good reasons and maybe a starting point could be for, you know, for staff to list those different efforts and maybe give a short description of what we believe the differences are.

I'm not necessarily sure if this an SCI issue unless you really want to hard code it into, you know, GNSO Operating Procedures which may not be something you want to do because I think the whole idea of having different names as well the flexibility of indeed what those groups are.

But it may be good to have a, you know, a short description of what at least, you know, the current groups operating under such names are intended to do so when new groups are formed, you know, people can look at that list and say well actually we think we are actually a discussion group so let's call ourselves a discussion group because we're actually doing the same thing as this group has been doing or we're actually more of a working party.

So maybe that's something that staff can take as an action item to, you know, come up with a list of names and a short description and see if that works for everyone.

Jonathan Robinson: I think that's a helpful suggestion. Thanks. Let's take that forward in that way and at least just capture the way things are done. Thanks, Steve.  
Thanks, Marika.

Okay let's draw a line under that first session then; it did run on a little more than it perhaps should have but it was useful to cover those areas. So if I can just get an indication when we're ready to start the recording on the next session.

In the meantime I think it'd be useful if we could just do a quick round table. We didn't take a sort of roll call or introduction at the first instance so if we could just take a roll call perhaps starting down on the - on my left with the staff and just a quick introduction of everyone around the table so we know who's here and what their role is.

Glen de Saint Géry: Glen de Saint Géry, the GNSO Secretariat.

Lars Hoffman: Lars Hoffman from ICANN staff.

Steve Chan: Steve Chan, ICANN staff.

Mary Wong: Mary Wong, ICANN staff.

Marika Konings: Marika Konings, ICANN staff.

Julie Hedlund: Julie Hedlund, ICANN staff.

Patrick Myles: Patrick Myles, ccNSO liaison.

Maria Farrell: Maria Farrell, NCSG.

Klaus Stoll: Klaus Stoll, NCSG.

James Bladel: James Bladel, Registrars.

Thomas Rickert: Thomas Rickert, NomCom appointee allocated to the Contracted Parties' House.

Mason Cole: Mason Cole, GNSO liaison to the GAC.

Brian Winterfeldt: Brian Winterfeldt, IPC.

David Cake: David Cake, NCSG and Non Contracted Parties' House vice chair. And while I've got the mic I'll just note that Magaly Pazello is here - is in LA but is unwell and will be joining us later in the day.

Jonathan Robinson: Jonathan Robinson, Registry Stakeholder Group councilor and Council chair.

Volker Greimann: Volker Greimann, Registrar Stakeholder Group and Contracted Parties vice chair.

Bret Fausett: Bret Fausett from the Registry Group.

Tony Holmes: Tony Holmes, ISPs.

Oswaldo Novoa: Oswaldo Novoa, ISPs.

John Berard: John Berard, GNSO Council from the Business Constituency.

Gabriella Szlak: Gabriella Szlak from the Business Constituency.

Jennifer Wolfe: Jennifer Wolfe, the NomCom appointee.

Yoav Keren: Yoav Keren, Registrars.

Carlos Gutierrez: Carlos Gutierrez Cost Rica incoming NomCom appointee. Thank you.

Alan Greenberg: Alan Greenberg, liaison for the - liaison from the ALAC for the last week.

Cheryl Langdon-Orr: Pardon me, Cheryl Langdon-Orr, incoming ALAC liaison.

Petter Rindforth: Petter Rindforth, IPC also my last week.

Avri Doria: Avri Doria, Council member from NCSG.