

**Transcription ICANN Singapore
Standing Committee on Improvements Implementation
Saturday 22 March 2014**

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Julie Hedlund: We're all set? Okay. Excellent. Welcome, everybody. This is Julie Hedlund from ICANN staff. And this is the meeting of the Standing Committee on Improvements Implementation, the SCI, of the GNSO here in Singapore. And welcome to all those who are here and also to those on the phone.

While we have few people coming in perhaps we can have people in the room just go around the room and announce themselves so that we have you down for the transcript and then we can do the same for people who are on the phone. I'll go ahead and start since I'm speaking, this is Julie Hedlund again from ICANN staff over to you.

Thomas Rickert: Thomas Rickert and I'm (unintelligible) to the GNSO Council.

Greg Shatan: Greg Shatan, IPC alternate to the SCI.

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

Angie Graves: Angie Graves, alternate member from the Business Constituency.

Berry Cobb: Berry Cobb, staff.

Mary Wong: Mary Wong, ICANN staff.

Lars Hoffman: And Lars Hoffman, ICANN staff.

Dan Reed: Excuse me, Dan Reed, NomComm Appointee.

Amr Elsadr: Amr Elsadr, primary for the Non Commercial Users Constituency.

Ron Andruff: And Ron Andruff, Business Constituency and Chair.

Julie Hedlund: And on the telephone please.

Anne Aikman-Scalese: Anne Aikman-Scalese, I'm primary for IPC.

Jennifer Wolfe: Hi, Anne. It's Jen Wolfe, I'm the GNSO NomComm Appointee.

Julie Hedlund: Thank you. And is there anybody else on the telephone? Then thank you, everyone. And over to you, Ron Andruff.

Ron Andruff: Thank you, much, Julie. Thank you, everyone, for joining. I have to commend the NomComm appointees. We have more NomComm appointees in the room today even though they're not necessarily all members of the SCI then we've ever had and so it's great to have you and thank you for that.

In fact, we're very light in the room, for those who aren't here. Many are missing and I scribe that to probably oversleeping having all traveled a long ways to get here.

But we do have enough people in the room, I think, to get started with some of the conversations that we've been carrying on over the last months. And so with that, now that we have our roll call behind us, the recording has begun, I would like to ask if anyone has any changes to their SOIs since we've last met?

Hearing none from others I would add that I've made a change in my SOI but it's only to add the fact that I'm the Vice Chair of the IAGCCP, which is the Metrics Working Group and so I've made that change in the last week or so.

So moving along, the – on the agenda the first item today is the review of the GNSO Working Group Guidelines consensus levels. This is an item that has not been looked at for some time and consensus levels, as most of us know, there are five levels of consensus within the ICANN charter and we often hold ourselves up to the highest one which is full consensus.

We had a sub team of Amr, Cintra, Greg and Thomas working on the GNSO consensus levels topic and I wonder if I might look to Amr or Thomas or even Greg – but Greg will pick up on the next item so maybe I'll let you off the hook, Greg, so, Amr if you would please address this issue? Thank you.

Amr Elsadr: Thanks, Ron. This is Amr. If I'm not mistaken we left this off with three possible scenarios we were supposed to discuss. One being to accept the recommendations that the sub team made; another leaving the consensus levels as they are and the third, adding a footnote from sort of saying that the current consensus levels could also be used in the event that a working group has a consensus against recommendations being made.

But we haven't actually discussed which path to take but I think those are the three options we were left with on the last SCI meeting so.

Ron Andruff: Thank you, Amr. I think that one of the tricky parts here was the phraseology, how we phrased the recommendation. And that's kind of what brought this issue to the table inasmuch as the way that the consensus on the lack of consensus, if I may put it in those terms, was structured.

So the question really is, for my mind, is this something that we should be taking on and looking at more closely? Or is this one of those anomalies that pops up from time to time within ICANN that is, as I say, an anomaly,

something that will not happen very often? And that's the part where I'm a little bit stuck.

I've been on the SCI since the beginning of it and we always try to take a light-handed approach, meaning that we would look at an issue that arose and try to determine if it in fact it needed us to sort of fine-tune it or knock those rough edges off or if it was something that – better to just kind of watch it and put it on a watch list to see if it might arise again at another time and whether or not we would then have to address it.

So for my part I'm not so sure that we should be trying to come up with a solution to this very tricky question because it was one of those circumstances where we had a number of proposals and could we get consensus across all of those things and so forth. So I don't think we would see that situation arise again very often within the ICANN context.

So that's just a chair's point of view, or beg your pardon, an individual point of view that I would state as the chair. So I'm not sure, Greg, you've had some thoughts on this?

Greg Shatan: It's Greg Shatan for the record. Yes, I think while it was an unusual circumstance I don't think it will be a unique circumstance. I think that it occurred because we were dealing with a complex matrix of possibilities and that at the time we were – speaking for the experience on the IGO/INGO Working Group which is where this originated, that as the recommendations were initially presented they were all presented kind of in the positive and as the consensus call was made and developed it developed that the consensus on certain of the items was in the negative, in other words, a consensus had developed with regard to an item but it developed against it.

I don't see why that will never happen again or happen so rarely that we should not deal with it. I think that the other element to be looked at here is

the fourth dimension, time, which is one of the things for which PDPs are criticized as not being able to deal with as well as they should.

And the reason that we dealt with this – that we've had the question was because we didn't have the time to do a second consensus call because the events around the IGO/INGO Red Cross and Olympic names were overtaking us. And that we wanted to get the report out and done so that at least join the stream of other activities that were taking place on the same topic.

I think that if, again, a working group is going to be confronted with kind of a complex matrix of issues and a timeliness issue they may well meet this issue again. And I think that, you know, the alternative is that any group that is dealing with this will have to consider what – how to draft their recommendations so that they're either both in the positive or in the negative which would have doubled the number of recommendations that we were dealing with or to put them out to a vote in a way that expresses them in need of the positive nor the negative.

I think the easiest way to deal with it is to indicate that there is, in one faction or another, either the consensus can also be used for consensus against and strong support but significant opposition can also be used for strong support against an object with significant opposition in a sense to that – to the majority on that so that there is both a – kind of a positive and negative within each one.

As Amr said, we haven't really decided which phraseology, which approach, is the most elegant or the most pragmatic. But I think that for us to be able to kind of move on within a working group that is like that group dealing with a matrix of issues and a timeliness factor it'll come up.

If we only had one or two issues to deal with or two recommendations to peruse, clearly we would have not gotten into this situation. But we had, I

don't know how many, 40 that we had to deal with and to phrase them, you know, both the positive and negative would have been 80 or to take them and kind of massage them again; we would have lost a month or two. We were already kind of in overtime at that point – penalty time.

And anything further, as can be seen from things that have developed in that area since then, including as recently as yesterday or the day before, this is an issue which if you don't join it at the right time you're kind of left at the station. So I think that we have an obligation to be as timely as possible. And we have an obligation to allow the group to express itself – any working group to express itself in a way that is clear.

And the last thing, and then I'll stop going on and on, there were those in the group who advanced the idea that divergence was somehow the correct answer when the vast majority of people in the group were aligned. Divergence, to me, is clearly a lack of alignment where to paraphrase, (Steven Lee) the group jumps on its horse and rides off in all directions.

That can't be used to have a group that's riding off in one direction yet called divergent because it's riding in the direction that's opposite from the recommendation. There has to be something to describe this if it comes up. So I think that the alternative is to try to deal with it, you know, in the behavior of the group.

But clearly it's not divergent; clearly it does express a consensus and clearly if we're going to be timely we can't, you know, redo consensus calls on groups that, you know, only meet from time to time even as often as that group met with was more often than most, once a week. Thank you.

Ron Andruff: Thank you, Greg. Thomas.

Thomas Rickert: Just to echo that I'd been the unfortunate working group chair at the time in the IGO/INGO PDP Working Group who had to deal with that. And certainly if

you phrased the consensus call in a fashion that predicts the outcome you don't need those tweaks to the vocabulary. But that would have meant that – and I know that I've said this already – but just for the record it would have required that I phrased a single recommendation in the negative while I phrase all the others in the positive.

And I think that doesn't provide for a non-discriminatory treatment of all recommendations which is why the working group members should have the opportunity or the wider community to explicitly say no to recommendations either way whether they have been phrased in the positive or in the negative because otherwise that would be a presumption made by the chair during the call with respect to an outcome that he might see at the moment when the consensus call starts but that necessary – that doesn't necessarily reflect the true outcome of the consensus call.

Ron Andruff: Anne, I see your hand is in the queue. Please.

Anne Aikman-Scalase: Yes, thank you, Ron. It's Anne with IPC. I guess I'm starting to understand this problem a little bit better. And I'm wondering – I'm seeing something here on the screen that I want to ask a question about. In the definition of full consensus with the purple language in it – first I was wanting to know where this particular draft came from. Is it from the working group – I mean, excuse me, from the sub group itself or what – the draft that's up on the screen what's the genesis of that draft first?

Ron Andruff: Thank you, Anne. Well let's just get the answer to that, I want to let you continue. Was that coming from the sub – working team? Amr, Greg, does that purple text look like the draft language you put forward? That note's on your screen right in front of you here.

((Crosstalk))

Ron Andruff: And also up there. Neither one are easy to see without my glasses, right?
Perhaps – go ahead.

Julie Hedlund: This is Julie Hedlund. Yes, that is the draft from the sub team that was working on this...

((Crosstalk))

Anne Aikman-Scalese: Okay perfect.

Julie Hedlund: ...most recent one.

Anne Aikman-Scalese: Okay thanks. And what – it seems as though, in the situation that Greg and Thomas are describing, when we look at this language about full consensus at first I didn't understand it because it says "speaks against the position adopted as per the working group report." And then it says, "Position may be to endorse or reject the recommendations in the report."

And what I wasn't really understanding was they're talking about many, many, many possible recommendations and a need to vote on each one of them. And so it's really – it's like speaks against any position adopted in the working group report. Somehow there has to be – we have to convey the plurality of recommendations because otherwise it gets really confusing because it almost treats it as though there's only one position.

And I think that was part of the source of my earlier confusion with this. Now that I see that they're talking about 40 different positions or recommendations or whatever that are contained in the working group report I can understand it a little bit better certainly as Thomas has explained it.

But it – this initial rewrite here talks about the positions adopted as per the working group report where as it seems like we have to be talking about any position – any particular position or whatever that's adopted in the working

group report because they're speaking in particular that this is a difficult situation where you have multiple positions or recommendations in the report. Thank you.

Ron Andruff: Thank you, Anne. Greg.

Greg Shatan: Thanks. Greg Shatan again. I think it's not necessarily – it doesn't necessarily have to do with the fact that there are multiple positions. And maybe "positions" isn't the best word in this case. I think it's the recommendation or the draft recommendation that was put out for the consensus call. You know, the document itself is still a work in progress.

Anne Aikman-Scalese: But you said it had like 40 different – I'm sorry, this is Anne. And you said the biggest problem was with multiple recommendations and voting on each...

((Crosstalk))

Anne Aikman-Scalese: It's just a little confusing when it says "the position" because when you adopt a position in a working group report and then you say you can have full consensus for or against it one begins to wonder why you have full consensus against...

((Crosstalk))

Greg Shatan: So the word "adopted" might also create a little confusion if you're looking just at the language. So it wasn't so much that it was adopted, it was kind of floated or put out for a consensus call may be a better phraseology...

Anne Aikman-Scalese: Oh well yeah...

((Crosstalk))

Greg Shatan: ...in any working group there's somewhat of a fluid process. And if you have fewer recommendations it's easier to hone the language so in essence you're voting on a consensus that is already developed and the consensus call is more or less a formality or at least it's the final nail in the building of a consensus where as if you have a number you're more likely – as Thomas said, if you're not being completely prospective in the language that you'll have a situation arise where as things are put out it's kind of still being built in the air.

And as the group coalesces around a position it's a position that's opposite to the recommendation language that's been floated for consensus. So the words "position" and "adopted" you know, this is a working draft. The point is that you can end up finding out that you're all facing in a direction that's opposite from the language that's been put out and that's the issue we were dealing with.

Anne Aikman-Scalese: Right, right...

((Crosstalk))

Greg Shatan: ...but most.

Ron Andruff: I have Amr on the – next but I see, go ahead please, Mary. I see Mary's put her hand up. Go ahead.

Mary Wong: Thank you, Ron. And so this is just to follow up on Greg's comments I think. And I'm speaking not just as staff that supported that specific working group but generally as staff that assists working groups in reaching whatever the final positions may be and setting up the draft of the report.

The original Working Group Guidelines on the full consensus part simply talks about a recommendation as do a number of the other guidelines. So it seems to staff that looking at this particular phraseology, and as Greg says, it is a

work in progress, a working group makes recommendations or not. It's not usual for a working group to make recommendations and then take a position. Obviously it's open to it.

So the point here I think is that by using a word that says "position" which may or may not have consensus and a separate word called "recommendation" it might actually get confusing for future working groups. So we would recommend that – well you stick to one word; maybe "recommendation" and I think that's what Greg was getting at.

Ron Andruff: Greg.

Greg Shatan: Thank you. Mary, I think that's absolutely correct. I think this was a drafting issue. I think for conversation hopefully we can look past the drafting issues, which the sub-sub-sub team will deal with, you know, between now and the next time we have an opportunity to discuss all this fun and games.

So – but I think the point, you know, we'll deal with the drafting. But the point is we need some way to deal with this situation when it arises. And as we deal with things that are complex and as we try to be more timely in our responses on PDPs I think it's a situation that will arise again. Thank you.

Ron Andruff: Thank you, Greg. Anne, I see you're there but I've got Amr in front of you and you'll follow. Amr, please.

Amr Elsadr: Thanks, Ron. It's Amr. I was just going to agree with Greg and then again with Mary that this is just a draft – it's a first draft. And we could work on the language and how to express what it is we're trying to say a little better. That is assuming we do agree on the principle of going down this road.

But I do admit it is a relatively heavy-handed approach which I think is not something the SCI is – it's not something we like to do on this committee. But I could also see situations down the road where this might come up again.

And one thing I can think of, just the top of my head, is if there is an overwhelming amount of public comments leading towards a certain recommendation of the working group members themselves might not necessarily agree to they might opt to include a recommendation they themselves do not agree to because of public comments. That's just one reason off the top of my head it might come up for other reasons in the future.

One thing I would like to say, though, is that even including this language or other language to this effect it doesn't affect the original existing consensus levels in any way. And so those are the same, they're not changing. And just adding those is – adding this – these new phrases, these new words, I guess just prepares us for any circumstances that might come up. Thanks.

Ron Andruff: Thank you, Amr. That's what I'm hearing. It's really sharpening the language to make clear that you can have consensus in the affirmative as well as in the negative and that's a really important distinction to clean up this language. I have Anne followed by Jennifer. Please go ahead, Anne.

Anne Aikman-Scalèse: Great. Thanks, Ron. Anne with IPC. I agree with the comments, you know, from Greg and Mary and Amr. And I'd like to ask the subgroup to consider, rather than saying "against the position adopted" to say "against a recommendation set forth as per the working group reports."

And I think it makes it clear then that there could be, you know, many different recommendations and that these are just recommendations that are set forth in that version of the working group report and not necessarily obviously the final final.

But I think Mary's absolutely right that "recommendation" would be a better word. And I think because there can be many recommendations contained in a particular draft that it's – should be "a recommendation set forth" if they could consider that kind of language it would be helpful.

Ron Andruff: Thank you, Anne. Jennifer, please, go ahead.

Jennifer Wolfe: Hi, thanks. It's Jen Wolfe. Hey, I just want to add support to Greg and Thomas and Amr that I 100% agree, as the working group issues become more complex this is going to become more and more important. I think these defined terms are incredibly important.

And to the extent we need to tweak the language, you know, we can keep working on that and word smithing it. You know, I hate to start changing happy to glad but I also understand that we need to make sure it's really clear so that anyone chairing a working group can understand, you know, what these definitions means.

But I think this is really important and I just want to support the work that's being done to create these definitions to provide guidance to working groups because, again, I think the issue are just going to become more complex.

Ron Andruff: Thanks, Jen. Thank you very much. I think we've had a good discussion of this. And I'm – one of the things that I'm particularly amused by personally is that we have such a large number of lawyers on our SCI. And so you are able to parse the very subtle aspects of words in terms of getting the right thing. So I would then close this then by asking the sub team to take the information an the discussion we've had here to heart and come back for our next call and see if we can get this fine-tuned and send it back to the GNSO Council.

The key point here of course is all of these things, working groups and particularly our committee, is that these are recommendations; they're never final determinations. And so as we as the SCI or as working groups go through and fulfill our mandate what ends up happening is we send forward recommendations so that's a very good thing.

John, please go ahead.

John Berard: This is John Berard. At the Council meeting – the GNSO Council meeting on Wednesday we'll be, I hope, considering a motion to activate a cross community working group to develop a methodology for such creatures.

The co chairs of the drafting team in anticipation of the working group were drawn from the ccNSO; that was Becky Burr from Neustar and me from the GNSO.

In thinking about the notion of consensus and putting the charter together that will be considered this week, we had to confront the differences in the way the ccNSO and the GNSO consider consensus.

And in the charter we devolved it – everything's been evolved so far this weekend so it's devolve, thanks – to consensus or not. And we were impressed by Becky's definition or analog for consensus in the ccNSO which was, would you drive your car off the road to prevent it from happening?

And so I don't know how the work of this committee on this particular issue will affect the considerations of the draft – of the charter that will be before the Council this week and others that may follow in which we do not strictly follow the definitions, the segmentation and definitions that you have here.

I suppose we'll figure it out as we go along but I wanted to get that on the table because in two hours we will be discussing something that sounds very different than what you guys are discussing right now.

Ron Andruff: Thank you, John. And fortunately we have a number of members of the – of our committee who are on the Council so I'm sure this will be brought up there. So with that then I'll bring this topic to a close and thank everyone for the helpful discussion.

Moving on to the second point of our agenda is waivers, exceptions to the GNSO Operating Procedures. And we are looking for text of a new waiver rule to apply to motions. That sub team was Greg and Marie-Laure. Marie-Laure is not here today so, Greg, I'll bounce that ball back to you. Thank you.

Greg Shatan: Thank you. Marika Konings and I developed this language that's in front of you now. This was developed based on the last meeting – or two – of the SCI where we came up conceptually with what we felt were the proper elements of a process to deal with the situation where there's a late motion that the group may wish – that the GNSO Council may wish to consider.

So basically it includes three key elements, first, still that there's a 24-hour advance submission of the motion which means that a – kind of a motion from the floor during the GNSO Council would still not be possible. So there is still somewhat of a warning; it's kind of a late/early warning built in.

Second, that when the motion comes in is submitted it's accompanied by a request to consider the motion despite the fact that it's after the submission deadline that was set not all that long ago of 10 days in advance.

And then procedurally that a vote is taken on the request for consideration before obviously the motion is considered and that the vote needs to be truly unanimous in the sense that every seat at the Council has to be present and voting either by its – the Council member or their proxy.

And that the vote is all in favor so that, you know, the idea there is that, you know, the GNSO Council members are representatives of their stakeholder groups and constituencies. And that, you know, typically they need to take advice from their constituency or stakeholder group and that a vote that takes place in rapid – rapidly after a motion is submitted is – it may be difficult or impossible to have that sort of thing take place.

So this is meant only for a situation where literally everybody falls into the same thinking which is that we need – it's appropriate to vote on this now without kind of a long – without the usual 10 days which was set up for good reasons. So you need, you know, true anonymity even one vote – voice that says, hey, I haven't talked to my constituency or I believe our constituency hasn't developed a position that at the Council I'm prepared to, you know, say on this motion that the motion then gets – is essentially not submitted at that point.

And the last point is that it goes over to the next Council meeting in which typically would be well over 10 days out but then just in case the meetings happen in rapid succession, say a special meeting, there still needs to be the 10-day rule and if the 10-day rule isn't there and you – at the next meeting afterwards the same request for consideration has to be met and voted on in order for the motion to be considered.

And then in true lawyerly fashion added for the avoidance of doubt, if you try to submit a motion late and the request for consideration is denied that doesn't count against the motion in terms of the resubmission of a motion rule that we also recently put into place so you're still starting from zero if your motion doesn't get onto the actual agenda for consideration. Thank you.

Ron Andruff: Thank you, Greg. This is really good work. And I've just seen it myself this morning and I think many of us have just – are just seeing it for the first time. But I think the quality of the work is very important because this was a – more of a procedural issue than a substantive issue insomuch as there was a discussion that the Chair of the GNSO Council wanted to have but he didn't have the tool in his toolbox to be able to pull the trigger on this to make it happen, to have that conversation.

Everyone was present, as I understand, wanted to but there was nothing there. And this – what you've done here kind of fills that gap and I think it's excellent work.

Thomas, please go ahead.

Thomas Rickert: Yeah, I was just wondering whether this could be linked to adding an item to the consent agenda because for the consent agenda we already have the possibility to deal with things that are undisputed. And whenever a councilor wants that to be taken up you could – the consent agenda then it would be heard.

So I guess my question to you would be are you considering whatever types of motions there might be or is that – are we actually talking about the uncontentious ones that could go to the consent agenda? Because then maybe we could do this in a less wordy fashion.

Greg Shatan: Oh I think it would apply to – this is Greg Shatan again. I think it would apply to any motion. I think that if there was a controversial motion probably less likely to be voted on to the agenda late although it's possible that if something was submitted only a week before that there would have been time to deal with something that was contentious enough that it should be, you know, put on as a proper motion before the Council even though it failed to meet that deadline.

So I don't think it applies only to consent agenda items. I think it's more likely to deal with consent agenda items just because of the nature of things. But it's also used to deal with rapidly developing situations. I mean, what if the timing of the NTIA announcement – well, you know, it wasn't 10 days – I think it didn't give 10 days. What if the Council wanted to vote on something to have a motion to deal with the NTIA announcement? Maybe it was exactly 10 days.

But sometimes things happen fast. And, again, going back to my earlier point on timeliness, we have to have the capacity to deal with things in a timely manner in the GNSO as well.

So – and the last point that I would make in terms of timing on this I think that the situation under which this originally arose was in Durban and it was a report of a working group which had been put together – I think it was a final report – the draft report had already been voted on and so the final one was up. And the timing of the group was such that they didn't meet the 10-day window. They literally I think wanted to make a motion from the floor.

So this rule has a 24-hour window so technically the motion from the floor that – or not from a floor but from a Council member during the meeting or immediately prior to the meeting would still have been out of order, would not qualify because this has a 24-hour rule. So that's in there because I think of the – that was the sense of the SCI on that point not in there necessarily because I believe that – or don't believe that a 24-hour rule is there.

But I wanted to point out that the 24-hour rule still has, you know, some, you know, whether you want it or not it has the certain effect on timeliness and, you know, it balances certain things. We could take out the 24 hour requirement and allow motions to be made in real time at or before a meeting.

But it's something I just want to point out as something we should discuss before this is baked because if we're trying to solve the exact problem that occurred the last time or, you know, in Durban, this wouldn't have solved it. It'll solve a lot of other problems of untimely motions that are, you know, could be timely by a vote but ones that are made within 24 hours of a meeting. Thank you.

Ron Andruff: Thank you, Greg. So I'm scanning this quickly but I'm also trying to listen to you but maybe I can ask the question directly to you. Does the sub committee believe that this is the chair's discretion of the waiver?

Greg Shatan: No. The way this is phrased it's really – it's not the chair's discretion; it's the Council as a whole so it's, in the sense, the plenum which needs to vote to consider an untimely motion. Thank you.

Ron Andruff: Thank you very much. I have John in the queue followed by Amr.

John Berard: Two things – this is John Berard – two things. First, this is astonishingly rational which is really not a phrase that I have uttered or heard. We'll take that as a compliment. And really astonishingly rational. And with regard to the consent agenda I would suggest that if I – if one were offering a motion under this rule that in the accompanying request to consider you could suggest that because all we did was miss the deadline and there isn't anything contentious suggests that not only do we have – it be approved but it be added to the consent agenda.

Because there are going to be instances, as has been described, where something not universally beloved or might arise, and so you wouldn't want to make it a hard link between this process and the consent agenda. But I think it's terrific.

Ron Andruff: Thank you, John. And I think that the example of the NTIA announcement is a very apt one. You know, if it fell on 9 days and here we are all, you know, we've flown, you know, tens of thousands of miles to come here to have a conversation and we can't talk about it until two or three weeks after the fact it just doesn't make any sense. So I think that's a very good example, thank you for that.

And, Amr, please.

Amr Elsadr: Thanks. This is Amr. I was going to say that I would make a distinction between the consent agenda and the Council voting unanimously to accept a waiver on a 10-day rule because you could have a motion where that is

disputed on the Council but the Council does agree that it's okay to waive the 10-day rule. So I would separate the two issues.

But what I really wanted to say was – this is something I think I said on the last SCI call – we have a motion on one day, the Council meeting on resubmission of a motion – the recommendation the SCI made so the Council is going to vote on that. And in the event that it is ratified I was wondering if you would like to add a fourth bullet here on sort of mixing what – if this is – if you're asking for both resubmission of a motion and a waiver to the 10-day rule sort of – just a bullet to address that situation. Thanks.

Ron Andruff: Go ahead, Greg, please.

Greg Shatan: Greg Shatan again. I'll need to consider that and think about it. It's a very good suggestion. Think about the interplay between this and the resubmission of a motion rule. I think it's entirely possible a motion could be resubmitted. And yet the resubmission would be untimely under the 10-day deadline.

I'm not sure that that should be – that there should be any different treatment for that because – and again my general philosophy with any of these parliamentary procedures is that they're designed to smooth the actions and the work of the group; not designed to create procedural impediments and so somebody can say, ah-ha we can't talk about that because Rule 3.17 says you can't talk about that.

Obviously, you know, all rules are, you know, I wouldn't say they're meant to be broken but, you know, rules can have loopholes and can be used as swords and shields. But the intent here is to be positive to allow things to go into the flow.

But, for example, have an understanding so I'm not sure that that I would deal differently with a resubmitted motion as opposed to a, you know, newly submitted motion under the rule but it's worth considering.

And I would also say that I haven't really thought about the interplay between this rule and the rules relating to what gets on the consent agenda so there may be some tweaks that need to be dealt with there. But the point here is that the – you can have a unanimous vote to consider something by the group, the GNSO Council, and then have the – and at the end of the day the vote be against it, even unanimously against it.

The point here is the only thing you're voting on with the request for consideration is will it be on the agenda? Can we talk about it? And it might be as a courtesy, in a sense, to discuss it if it's submitted 9 days instead of 10 days before it needs to – because we have the 10-day rule we have to have a rule that allows for some leeway on the 10-day rule and this is that rule.

But then, again, it has nothing to do with the position of any councilor on the substance of the motion, only that they are allowing it to the floor. Thanks.

Ron Andruff: No that's good, Greg. And I agree with your – the thinking there because this is all – you've made note in your proposal that you had to have unanimity of the GNSO Council to allow this to go forward so I think that all makes a lot of sense. I have Anne first and then followed by Mary, unless, Mary, you're responding directly to Greg?

Please, so, Anne, if you'd just be patient? Mary, please go ahead.

Mary Wong: Thank you. I actually had a couple of points so maybe I can make the response point and then cede to Anne and come back to that. On the point about the interplay between this issue on the consideration and the resubmission the way that this is written right now I think that you could interpret it to say that this does not preclude the resubmission.

In other words, you could have a resubmission and I think that's what Greg said. The only thing I would say about that is that if you look at the proposed language that's going before the Council this week about the resubmission itself, which again I think, Greg, you were instrumental in drafting, the only limitation or condition is that for a resubmission of a motion that motion must first have been voted on because that's the language that was crafted.

But other than the limitation is in that section and not in this one if that makes any sense.

Ron Andruff: Thank you, Mary. Go ahead, Amr, you have a quick follow on?

Amr Elsadr: Yeah, thanks. This is Amr. Actually one of the clauses in the resubmission of a motion is the 10-day rule, that's why I bring this up. So you would need a waiver on two rules; one for resubmission and one for the 10-day rule. And the 10-day rule applies on both so that's the only reason why I sort of have a question about it.

I'm not saying that we should definitely address it I'm just wondering – I'm just – I'd like to hear people's thoughts but I do see a bit of a problem because a waiver – a 10-day rule for a waiver I just think it applies in both situations so I was just wondering how we can address it. Thanks.

Ron Andruff: I'm going to let Anne jump in and then come back to you, Greg. Anne, please go ahead.

Anne Aikman-Scalese: Yes, it sounds as though – this is Anne with IPC. And it sounds as though the sub team will be considering these issues further in terms of the interplay with resubmission of a motion that's going before Council as well as the interplay with consent agenda.

But I actually did want to ask since everyone's there in Singapore if folks would be willing to put this language – try to get it on the agenda potentially with their various constituencies and stakeholder groups. Greg's there in Singapore and I'm not.

I'm wondering if Greg could, you know, get this on the IPC agenda for the meeting there to get a little, you know, bit more discussion with respect to the issues that have been raised in today's call, Ron, and get some constructive feedback from our constituencies regarding those interplay issues?

Ron Andruff: Thank you, Anne. I'll bounce that ball to your colleague. Greg, please go ahead.

Greg Shatan: Greg Shatan again. I think – first I would say is the general concept that, you know, this language having now been put forth in front of the SCl each of the SCl representatives should bring it back to their respective constituencies for discussion.

Unfortunately it can't be part of any motion before the GNSO council this week because this rule doesn't exist yet. If it did then it could be, which I guess, you know, shows the reason why we need the rule so it's a self-fulfilling prophecy of a sort.

And I also wanted to thank Amr for pointing out in more detail the reason for, you know, his thinking. I think that's – it's apt to add another bullet to point out how the interplay between this rule and the other rule would work. And I think that conceptually a resubmitted motion should also be eligible for the waiver of the 10-day rule but it needs to be clarified because the 10-day rule is in the resubmission rule that this request for late consideration can be made for a resubmitted motion under the – that is subject to the resubmission of a motion rule as well as to any other motion. Thank you.

Ron Andruff: I look forward to reading the transcript on that resubmission of the resubmission of the consideration. Mary, please go ahead.

Mary Wong: Thanks, Ron. And I think is a similar point that basically the limitations and conditions on this particular – actually it's in the resubmission of a motion rule so I think the point that whether the sub team or this whole committee would like to consider really is just whether or not the – this should even apply to those that are resubmitted.

And bearing in mind obviously that any further changes to the GNSO Operating Procedures do have to go out for public comment – I see Julie smiling at me. So you might want to take that factor into account in proposing changes.

Some of the other comments that I wanted to make in relation to this issue is going back to Thomas's question about the consent agenda and that again may be something – it is also an interplay question. The way that the consent agenda rule now exists in the GNSO Operating Procedures is that it is the chair and the vice chairs that have discretion to determine what goes on the consent agenda.

So in that regard perhaps the current draft under consideration would seem to preclude that discussion being exercised because it does call at the moment for a vote of all councilors. So maybe that's something that, again, the group needs to take back to look at. And it could be that the answer is that's okay there can be discretion or the answer should be this is not something for the consent agenda, the vote is mandatory.

The last point I wanted to make is that in relation to the vote itself in terms of the councilors and their proxies voting the question that I would raise is whether this means councilors present and proxies that are present. This is not, I should say – it is not in relation to absentee voting but is simply a matter of clarification because you may have situations where there is a meeting and

not all councilors are present and they haven't got a proxy or something like that. Is a minor point, that's why it's the final point.

Ron Andruff: Thank you, Mary. That's what we do here, we deal with minor points. Thank you. Greg, please go ahead and then we'll bring this to a close.

Greg Shatan: Thanks. The – Mary, thank you for that point. And I think in the third bullet point, you know, I point out that it must be all councilors or their proxies voting so that if a councilor is absent and hasn't appointed a proxy, has had to leave a meeting early, although it wouldn't, you know, necessarily come up in that case since it's supposed to be, you know, relatively to the front of the agenda or if a councilor was late it can't be voted on.

I feel that the discretion of each councilor should be duly considered in terms of having something leap frog a rule of the Council. So while I do want to smooth the work of the Council I think it's important to respect every councilor's position and if it's a single councilor's position that is expressed or unexpressed as to whether something should be before the Council in spite of not meeting the 10-day rule that should be respected and if they've left the room they should either, you know, appoint a proxy to make the vote or to – or the vote, you know, essentially can't take place.

So I think it's a matter of, you know, not wanting to have – there should be nothing left at any plenum which is, you know, the wholeness of the whole in order for the motion to proceed. Thank you.

Ron Andruff: Thank you, Greg. And Thomas.

Thomas Rickert: Yeah, sorry for asking myself to be added to the queue although you wanted to close the item. But my question would be can you ask for a deferral for that vote? I guess the reason why I ask to be able to speak is that this is also to be seen in combination with the email voting thing.

So I guess if we want to increase the efficiency or flexibility with the Council we should make possible that this vote, whether something can be heard or not, can be done prior to a meeting and that it can be done as – no, not synchronously, yeah, right so that people can say by email or whatever means I'm okay with this to be heard so that they can submit their ballot so that they don't hold up the train in case they're not present on the spot.

Ron Andruff: A lot of mental gymnastics this morning at an early hour, Thomas. Go ahead, Greg.

Greg Shatan: I would agree that it should be. And I think that, you know, the interplay between this and the email rule should allow that to take place. So perhaps the third bullet point which says this should be voted on as a first order of business on the agenda needs to be tweaked so that it would allow for kind of a pre-vote as well an email vote to take place so that all of this manages to work smoothly so that I think that, you know, if it becomes clear that this is going to be on the agenda that, you know, the councilors and their constituencies can consider this appropriately.

And I think in terms of asking for a – for this to be suspended I think, you know, if somebody asks for this to be, you know, tabled they – or, you know, taken off the vote then it's kind of an indication that things aren't ready. But if everything is coming together no matter how the votes are kind of allowed to be cast, you know, they should be – the procedure should allow for a smooth running of the Council.

Ron Andruff: Thank you very much. I think we've covered a lot of ground on this. And I was about to say maybe we can take this back to our constituencies because Thomas has raised an important issue and that's the next issue on our agenda I wonder if we might ask the subcommittee then to take that back and do that tweak and see if we can harmonize that with our voting by email which we're about to discuss?

Greg Shatan: Absolutely.

Ron Andruff: Thank you very much.

Greg Shatan: Great, thank you.

Ron Andruff: So we'll close out that element of the agenda and we'll move on to the third point and final point of our meeting today is voting by email. The sub team on this was Anne, Avri and Thomas. Unfortunately Avri had to go to the clinic this morning. I think there was some small problem she was dealing with. But, Anne, I see your hand up so please go ahead. Thank you.

Anne Aikman-Scalese: Yes, thank you, Ron. This is Anne with IPC. And I don't think our sub group has been too active. I am – I admit I haven't. But the point I wanted to raise as we get – move into this discussion was as Thomas and Greg were talking about a pre-vote by email in connection with that last revision to the Operating Procedures, I wanted to give a reminder that one of the basic underlying principles of email voting is the notion that there has been full discussion of the issue in which the councilor has participated prior to voting by email.

So when folks, you know, are deciding that hey, you know, let's have pre-meeting email voting 24 hours before a meeting I don't quite see how that's going to jibe with the basic underlying principle of the possibility of email voting in which there's been a full discussion of the issues.

Ron Andruff: Thank you, Anne. Thomas, do you have anything to add to the discussion on the voting by email?

Thomas Rickert: There was an early draft that we discussed with the group. I'm not sure whether we have that for the Adobe. But Avri and I had started working on that as you will remember. And we already – already the two of us had different views on how things should be dealt with. So I – if time permits I

guess we could may have a more general discussion on where the group thinks this should go.

I guess that might...

Ron Andruff: That would be good, Thomas, because we have about 5 minutes and let's take advantage of it. Thank you.

Thomas Rickert: So I guess that I have been quite strict and tried to put everything in line with some of the things that we've heard earlier that there needs to be unanimity that votes can be cast by email. I had also made some proposals on, you know, how this should interact with the secretariat, that there should be a specific email address for things to – for ballots to be sent to.

That the result of the individual ballots would not be publicized until such time when the email voting time span expires and that then the Council would publish the results of the voting. And Avri sort of took – and I'm paraphrasing but she took an opposite view and said, well, there is not an issue with changing your opinion as you could during a meeting before an agenda item is closed.

And she also said that we should be considering using new tools of remote participation or even voting when we consider this. So I guess I'm – I was more of the conservative camp that, you know, trying to bridge a gap that we might have at the moment allowing for councilors that can't join meetings to submit their votes by email or even under exceptional circumstances for the whole Council to do votes outside meetings by virtue of email.

And I think Avri wanted to take this to the next level and maybe rethink the whole approach of dealing with motions and maybe that's something to look at. Maybe it's – that makes things easier for other scenarios that are not only the exception.

I think there are – while I'm all for making the work of the Council more efficient and allowing for flexibility both in terms of notice period as well as in terms of helping out those that can't be present I think there – at least that's my personal taste – I think there's a danger in making things – tearing things too much apart for everybody to be able to deal with things in isolation and yet claim that they don't have an issue with that being done remotely I think it has benefits of sort of forcing the group to come together and discuss things even though that might be old-fashioned.

But I sometimes experience changes in my own thinking when I listen to and interact with others that are present and presence doesn't only have to be physical presence but I think that those participating remotely today also have helped our discussions quite a bit.

Ron Andruff: Agreed. Anne, I see you in the queue. I'll take you once I respond to Thomas. I think that your point is well taken. A couple of points actually. One is that again coming back to the light touch of the SCI, I don't think this is our remit. We have not been asked by the GNSO Council to take on something bigger; we've been asked to look at something very specific and I think we need to keep in that way or go back to them and say we've, you know, this is something that's coming up and we'd like to know your thoughts on it.

But the first point was about – came up as a result of the discussion earlier when we were on the waivers exception discussion. And I was wondering about uncoupling these things in so much as yes I can see there's a rationale to couple them but, again, the idea of the waivers exception was to address issues such as an NTIA thing that comes up and needs discussion whereas the voting by email was really something that was more of a strategic tool for the GNSO Council to be able to effectively operate. At least that was my understanding.

So I have – Greg wants to respond and then Anne, you're next in the queue. Thank you.

Greg Shatan: Thanks. Greg Shatan once again. I would say that we need to consider the interplay of all of the parliamentary rules that are growing suddenly like wildfire since I joined the SCI, maybe it's my fault. But I think that is, you know, as we see the email rule come to fruition we'll need to consider the interplay because the law is a seamless web and we're stuck in it. And I think that we can find a way for this to – these things to work together or perhaps not to work together if email voting is not – because if the reasons for it are kind of mutually exclusive for the reasons for a waiver on a late motion, you know.

But nonetheless I think the interplay needs to be considered even if it's to say that these two are not going to play together. Thank you.

Ron Andruff: Thank you, Greg. So I have Anne and then I have Mikey. Anne please.

Anne Aikman-Scalese: Thanks, Ron. It's Anne with IPC. I think Greg's correct in saying that the interplay needs to be considered. My own gut feel, if you will, is the same as yours Ron, that those issues should be uncoupled but, you know, maybe that's projecting a result. And certainly, you know, it makes sense for the team to consider that interplay and again to discuss it with their various constituencies and stakeholders.

With respect to this particular sub team I know I volunteered for it. I think we've been inactive from my standpoint. I don't – I don't think any of us particularly, you know, decided to take the lead in getting together a call or anything.

But I think that the next step would really be for Thomas, Avri and I to have a call as a sub team to look at that language again that was originally drafted, you know, by Thomas and Avri and come back after Singapore after having a separate call. Thank you.

Ron Andruff: Thank you, Anne. Mikey, please go ahead.

Mikey O'Connor: Thanks. It's Mikey. I'm an alumnus of the committee. It's nice to see you all again. I loved your summary, Thomas, and the first thing I want to do is get on the transcript that I sure hope Avri's okay. Avri, when you listen to this we're all thinking about you. I saw her finger yesterday and it was not a happy thing so hopefully the clinic will get that all squared away.

I am entranced with the idea of the larger conversation – and I think it should go back to the Council – about the role – this sort of ties back to the role of the Council discussion. If the role of the, you know, when this set of – this corpus of law was written the Council was very much still an active policymaking body. Its roots were in the DNSO and it, you know, that's where a lot of the history of this came from.

As we go in the direction of the Council being a policy process management body one of the things that would be interesting to discuss is how nimble the Council needs to be because a manager needs to be more nimble than a policymaking body which needs checks and balances and so on.

So I think this is a great question to take back to the Council and let the council sort of chew on for a while because it may be that we've got some things that would best be ironed out at the Council level before you try and take them on.

Ron Andruff: Thank you, Mikey. That's actually a – I'm glad you bring that back to the history of the body – of the GNSO Council's mandate and how that shifted. That's really helpful. Thank you. I see Thomas.

Thomas Rickert: I guess that I'm all in favor of decoupling the questions but once we have discussed them individually we should come up with a consistent procedural approach so that, for example, when it comes to resubmitting a motion you

have the option to do that either on site or remotely with the rules that would then apply.

But responding to Mikey's point, which is a good one, reminding us of the history of all this going back to way back when the DNSO was still in place I guess the danger with – or what we should try to avoid is allowing for the Council to work on such slim procedural rules that it is transformed to a rubber-stamping body.

So I think that we need to find a good balance between having real human interaction maybe on site or remotely to talk about substance and not forget about the curatorship of the policy development process.

Ron Andruff: Thank you very much. Amr, you made a comment in the Chat but perhaps you can just put that on the record for those that aren't privy to this. Thank you.

Amr Elsadr: Thanks, it's Amr. I was just asking because I recall the new SCI charter also mandates this committee was performing reviews not just responding to Council requests. So if this committee feels that there is a better way Council can be doing its business of managing the policy process, including voting on motions, for example and how that is done, then, yeah, I think it would be okay; we don't need to wait for the Council to ask us to address this. Thanks.

Ron Andruff: Thanks very much. Well, ladies and gentlemen, thank you all very much. We've come to the end of our time. This room is going to be taken over by the GNSO Council very shortly so we need to vacate.

But I do want to thank those of you who made the meeting physically and remotely. This is an early call for us here in Singapore and not that ICANN ever has a problem giving early calls to all of us around the world. But in any case everyone who came and those who have been in the audience we're very grateful. Want to thank everyone for the input.

And with regard to this last issue to close it out and I would – I second Anne's motion that the sub team go back and look at this a little more closely and see if we can get something for our next meeting that we might bring some closure to.

And I also would like to second Mikey's comment that we do wish Avri Godspeed and a quick recovery. So thanks, everyone. And with that I guess we can bring the meeting to a close. Thank you.

Anne Aikman-Scalese: Thank you, Ron. Thanks, everyone. Bye.

END