

**Transcription ICANN Singapore
NCPH Update
Saturday 07 February 2015**

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On page: <http://gns0.icann.org/en/calendar/#feb>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page

(Jonathan): So we don't have an update from David. I don't know how many of you are aware that the Non-Contracted Parties House had I think for the first time in two years - for the second time had an intercessional meeting in D.C. recently. David's going to give us an update on that and any points or key points coming out of that and any opportunities for discussion or comment. Go ahead, David.

David Cake: First I'd just like to say this is not - I'm just giving you a - essentially a couple of things that I thought personally were important from that meeting to bring to the attention of the Council. But I absolutely encourage anyone else who was there from the - at that meeting to jump in and add other things that they feel were important.

But the - obviously some parts it was a Non-Contracted Parties House meeting. Some parts of that meeting will not be, you know, were internal to the house and were not really relevant to either the contracted parties or the - not aligned NonCom Councilors such as any discussions about how to internally select our Vice Chair candidate or Board (Seat 13).

But two things that probably were of note. One thing is that during discussion we had a fairly substantial discussion of the GNSO review process. And in the course of that discussion it became apparent that there existed fairly much consensus at least amongst all those participants present at that meeting.

Participants included both Councilors from the two houses and leadership of the various constituencies. We had a few extra travel - so probably - travel slots. So probably a few other people there so just names of the, you know, executive committees of some of the constituencies and so on.

The - it was in fact all of the participants at that meeting were all relatively unanimous that we were disappointed in the entire GNSO review process so far in that we felt that their serious - that these structural issues within the GNSO had been at least initially attempted to be moved out of scope and then were sort of brought back into scope with some of the interviews and so on that have taken place but we still felt was not fully, you know, going to be address by that review.

And a - the decision was taken to send a letter - a statement to the Board about this. I want to - the letter was from the participants of the meeting. We did not seek external - we did not seek to have the letter vetted or, sorry, we did not seek to have the letter authorized by relevant constituencies and stakeholder groups.

So it should not be taken as a statement of the stakeholder groups per se but it was a statement from all the participants at that meeting that said that we - about the disappointment that the GNSO review had not addressed issues of structure.

Now that doesn't mean that we had unanimity on what the - what our preferred outcome of that. In fact, I think to some extent the Non-Commercial Stakeholders and the Commercial Stakeholders have almost opposite feelings about which ways they would prefer the structures to change. But we certainly felt that review process was lacking that element.

That letter is now available on the Board correspondence page and you can read it there or I will email that round to the Councilors. So that's - just be

aware that we - essentially the participants of that meeting are making trouble as regards the GNSO review.

The other - we had quite a lot of - a bunch of other discussions at that - the meeting. I have to say it was actually very - I think everyone felt that it was really very productive and one of the - and quite different in structure. And I felt better - NCPH intercessional meeting.

At one - there was very substantial discussion, which was partly came from discussion with Fadi and with Steve Crocker but particularly with Fadi about the issue of how we deal with the public interest within ICANN that focused on some specific issues to do - such as the public interest commitments process and the request to store some (UGOC) applications on the (basic) outcome but particularly became a very broad discussion of how do we deal with that issue of the public interest within ICANN.

Can it - can we define the public interest that the tension we have now between it being extremely undefined as a - and but yet referenced in some policy processes and so on. And it is actually a commitment in the Articles of Incorporation and some of the bylaws.

So we discussed that in some detail. We discussed different sort of ways of approaching the public commitment where, for example, with a human rights framework appropriate to defining the public interest or other main such as, you know, economic measures or so on more appropriate.

We certainly didn't come to a conclusion but I think we got off to a - quite a good start in the - discussing that we both - all participants of the meeting seemed to feel that it was an area that really merits further discussion. And I think we got some sort of interesting movement forward.

Of course if we do move forward on that issue, that won't just be between the two houses in the NCPH. So the two stakeholder groups in the NCPH and

will of course involve much broader discussion. So I thought it was worth bringing that to the notice of the other members of the Council and the GNSO.

Are there any other - anyone else who was present there who feels that there are other items discussed at the meeting that are worth bringing to the attention of the broader Council? Or do we have any questions about those items? Stephanie.

Woman: No...

Stephanie Perrin: Thanks. Stephanie Perrin, for the record. At the risk of sounding like I'm trying to go back on the decision to have four day meetings, I think that that intercessional was a really good example of the benefits of taking some time to actually sit down together and discuss issues at some length.

It does seem to be that if I were listing ICANN's risks, maintaining trust within the multi stakeholder organization is a big one. And you do that very well with face-to-face sessions.

So the unfortunate side affect of not having long enough meetings where we can do this - where we can focus on doing that is we may be having to have more of these intercessional ones, which are not as public.

(Jonathan): So David, just - sorry, go ahead. I was just going to ask a clarification before you go to (Thomas). So just...

David Cake: Oh no, please.

(Jonathan): Just that second point you made. So you spent time discussing the definition of public interest - applicable definition or what the...

David Cake: Well, I think we may have - the question was raised discussions about the public interest and a - I guess if the - we kind of found there is no definition that we use within ICANN and that this was - it had some problems.

I don't think we got as far as really discussing a definition of the public interest. I think - in fact I think a discussion sort of proceeded to the point where we didn't think there was going to be - the discussing what - there would need to be - there might need to be some process and that quite possibly that process would not result in a definition of the public interest but rather a framework for determining what it might be in this particular context or so on.

(Thomas): So I think that becomes a complementary question to (Jonathan) to talking about public interest. And I think we should better say global public interest in this case. And I was about to ask about the human rights discussion that you had, which you mentioned in the same sentence.

So was there any position by the NCPH how they would like to approach this if at all?

David Cake: Well, (unintelligible), the - I'm reporting discussion, not resolution. The only - so I think apart from some matters - apart from some things purely internal for the house, I think the only real concrete outcome document of the meeting was the one I mentioned about the GNSO review that we sent to the Board.

I'm just reporting there was a substantial discussion of it and I don't think we - I wouldn't want to characterize it as having come to any strict conclusions though I think we sort of - there was some - I guess seemed to be some general agreement that it might, you know, that a definition of the public interest might not be possible but in fact maybe we should have some.

But we should think about a structure for answering questions about the public interest. I guess. The human rights was put forward by one - as one

element of, you know, one really concrete element that might be considered as part of the public interest but there certainly wasn't unanimous consensus agreement that that would be a part of a - you know, (unintelligible) no resolution (affect) I don't think.

I don't think that was a consensus. I think it was discussed how we might approach human rights in that context or might incorporate it into that discussion but no outcome.

(Thomas): Can I ask a follow up question? You know, you said that there's no - there was no consensus but was there willingness by the whole NCPH to have a human rights discussion and work on that? Because it, you know, some of you will remember that we had this discussion the CCWG.

And there didn't seem to be unanimity on touching this. Rather I would characterize it as divergence as to how far ICANN should get involved in these.

David Cake: Yes. Conscious of not wanting to project my own opinions, I might get Steve to answer that one.

Steve Metalitz: Thank you David. I think your report on the intercessional has been entirely accurate. And I appreciate that. And in response to (Thomas)' question, the commercial and non-commercial side saw differently the implications of expanding ICANN's mandate to go beyond global public interest but to include things like human rights to which other member at the meeting said, "Well let's not stop there. We should include due process and fair use of information and naming space."

It was really civil discussion but it didn't - as David indicated, it didn't reach a consensus on that in any way.

David Cake: Avri.

Avri Doria: Yes. I think one of the things that we did get to was trying to sort of break apart the issue to the point of does nobody that was suggesting human rights was suggesting that ICANN become a human rights organization.

What I think that we were trying to find our way to was the fact that we had to be cognizant of and aware of, not that we reached necessarily a consensus on it, but we were really going back and forth between what do you mean we tried to become a human rights organization. No.

You know, we more argued that they are something that we have to adhere to and be cognizant to. And I think people are right. We did not come to consensus on things. But I think we did get to the point that we managed to clarify a little the field of what we were talking about.

And then when those of us that started to say we have to be more aware of human rights did not mean that we were going to start advocating and certainly not creating new human rights but really in the work we do being cognizant of the implications of human rights.

And on public interest, I don't know that we did that much public interest in the joint group. I think we did more of that in our - when we went into the separate groups and our conversation with Fadi.

And one of the things that we did go there is cognizance of human rights are indeed one of the core elements of public interest and that trying to determine the public interest a (priori) for ICANN is difficult because it's deep in the process of figuring out what we're doing that we do understand what we believe the public (has) to be. So it's more of - public interest is more found in the process than it is a (priori).

David Cake: Volker.

Volker Greimann: Yes. Volker Greimann speaking. I realize this will probably (unintelligible) asking for this but I'm moving away from the substance and more to the organizational aspect of this intercessional meeting. What's the standard by ICANN? If so, how many participants received funding for this?

And would it not be a consideration to hold these sessions if funding was indeed granted in the scope of an ICANN meeting and the need for such a meeting outside the ICANN meetings not (unintelligible) against shortening some of the ICANN meetings and thereby reducing the time available at the ICANN meetings for such type of discussions?

David Cake: I find that they don't know exactly how many people were there. I'd have to ask staff if they have an answer to that question. But certainly, oh, Councilors from both houses including the NonCom appointee in the house and a number of people from the constituents; probably an equal number of people from the constituencies and stakeholder groups were funded. (Unintelligible).

Man: Well, I just wanted to say I think to your question probably one of the most useful things that I saw at that meeting was the fact that it was sufficiently small and intimate, that there were extended informal discussions. And that's something that's extraordinarily hard to do here given the mass of people. It does - it obviously does happen.

But the fact that there was a smaller group that was convened meant that they weren't pulled off into competing sessions all the time. And so there was a lot of hallway conversation that was in many ways probably more valuable or as valuable as the formal conversation just in terms of socialization and exchanging of ideas.

And so there's real value in those kind of things. And I think that's the challenge that we always have with these big meetings is that we're triple booked sometimes and we sit in the formal sessions and then we run out.

And often the exchange of view that happens informally in the breaks is as important as what happens in the official discussion.

Man: Yes.

Heather Forrest: Thank you. Heather Forrest for the record. To answer the question about attendees, there were seven attendees from each of the constituencies within the CSG. And just to clarify from a CSG perspective on the point of human rights and public interest, no public interest was not discussed in any substantive way in the plenary sessions.

Excuse me. And there certainly was not consensus as to the human rights discussion principally because of the differing interpretations of which human rights were at stake and how those even interacted. Let's say it was a - it was a very loosely form discussion. And from a CSG perspective, we felt it was very loosely constructed.

(Tony), you were there as well. And I'm happy for any CSG colleague to add comments here to clarify. But there was certainly not consensus on any points around that.

David Cake: No. And I wasn't really wishing to imply that it took up a really large percentage of discussion. But I mean probably seeing it more from my perspective because we did discuss the issue in our stakeholder group session. But in - just in particular because it was one issue that I thought was definite to know that those discussions were happening was of definite interest to the broader Council was really the reason why I selected that issue to highlight.

There were some other issues. I think we discussed the issue of trust in the Board and accountability. Of course those are also being discussed elsewhere. And if any other participants would like to highlight another issues

that was discussed, sort of now is your chance. Otherwise I guess we'll move fairly quickly to close discussion and move on. Avri.

Avri Doria: Thanks. Avri speaking again. One of the things that was interesting in trust is we did try in some of the conversations, and I don't remember exactly which ones, to try and divide between trust in the various people that happen to occupy various seats in various boards, et cetera.

And the notion of institutional trust where the trust more has to do not with do you trust the people on the board. Of course we do. They're all lovely people. But it's institutionally is there a notion of trust and try to get away from the personal aspect and the personal indignity of not being trusted.

David Cake: Thank you. Greg.

Greg Shatan: Greg Shatan, IPC, for the record. I think there were a number of very valuable aspects that I wanted to bring out that haven't quite been mentioned. One, we had I think close to three hours of Fadi in a room, which I think is, you know, highly unusual especially if you're not in leadership position.

And from the point of view of the IPC, we had a mixture of leadership and the highly active members. So I think it was - that was particularly valuable and I think we were able to have a real dialog and get to some issues with Fadi. If not - and he gave us a lot of bandwidth, which I think was very helpful for the group.

I think another, you know, key point is that the, you know, the Commercial Stakeholder Group constituencies and the Non-Commercial Stakeholder Group and its constituencies are thrown together in the Non-Contracted Parties House. Under the current structure we have to make the best of it.

And a meeting like this helps us to figure out where do we converge, where do we diverge, what does it mean to be in the Non-Contracted Parties House, not that we necessarily discussed that explicitly but implicitly. It's part of the cross-pollination effort.

Cross-pollination went on into the evening. We had a multi stakeholder meal at a steakhouse afterwards, which was fine and wonderful and the conversation was even better than the food. It was mostly non-commercial, some commercial but it was - what mattered was that the mix - we were all in the mix together.

And I think that's invaluable to have these, you know, unstructured - this is a place where some of the unstructured discussion was particularly positive. The discussion of human rights I think, you know, was unstructured and wasn't necessarily - that aspect of it was not so positive entirely.

But I think again this was - characterized it more as an area of divergence; at least hear how each side is thinking about things. But I think there were some things cited as human rights, which are not generally identified as human rights or at least generally codified as human rights so that, you know, it's at least interesting to hear where - what people are trying to tag as human rights in these discussions.

So I wouldn't take too much from that discussion other than that it took place. So but nonetheless, I think that, you know, we discussed this among the IPC afterwards and we found it to be a very valuable meeting and we did support continuing it in the cycle of various types of meetings. Thanks.

David Cake: Unless anyone else wants to jump in, I think we'll call an end to discussion there. As Greg said, the - I think generally there was agreement it was quite a productive meeting and more productive than the last intercessional. And quickly we'll continue. All right. Back to you (Jonathan).

(Jonathan): Thanks, David. So we can pause the recording there. We can stop and then tell me when you're ready to go - get on with your next one.

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