Transcription ICANN Durban Meeting

Discussion of Motions

Saturday 13 July 2013 at 13:30 local time

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Coordinator: ...the operator. This conference is being recorded. Thank you. You may

begin.

Jonathan Robinson: Hi everyone. We need to kick off with this afternoon session now as part

of the GNSO working sessions here in Durban. So if I could ask all

Councilors please to join us at the table. That includes you Yoav and Volker

and any other Councilors in the room if you could join us at the table. And if

you're having conversations outside of the meeting if you could keep the

volume down please or have them outside the room.

Right. So this afternoon's session, are we ready to begin the recording?

Thank you very much. This afternoon's session kicks off with a discussion of

the motions that we have before the Council. There are - as you will be well

aware, there are two motions currently tabled.

There is also a prospective motion coming down the tracks, which is part of

the work on the UDRP locking that we might usefully discuss. There's two

issues there. I think it's contained within the issues report is it Marika - the draft? I'm sorry, within the - just remind me where it's within the final report.

Marika Konings: No. This is Marika. No, it's not in the final report but I circulated to the Council list at the same time as I sent the final report.

Jonathan Robinson: So there is a draft motion at the same time as the final report on UDRP locking, which was circulated to the Council and has been with the Council for some time. So there is a prospect of considering this motion at our meeting rather than leaving it for the next meeting. And so we might - I'd like to discuss that and see if that causes any concerns from a procedural or other perspective.

And then finally we've also got a letter on the work of - on the work on (variance) that's been taking place and a proposed joint - I think it's ccNSO GNSO letter. And so that's something we might try and deal with. We have - we will have this item on our agenda.

So just a couple of housekeeping matters. There's - what did I want to talk about? I can come to most of these late this afternoon. Really the only main issue for now is that the agenda foresees a long break at 3:30 whereas in fact at 3:30 we will be - we had originally on our agenda the work of the JIG and we will come onto that and spend 20 minutes on that also prior to the break. So that's 3:30 on the agenda.

Perhaps we should come straight into then the discussion on the motions. The first motion is proposed by Jeff and seconded by Volker. Jeff, I'm going to - this could well take some time but I'm going to try and contain us so that we cover the other items as well. So why don't you introduce the motion and that can kick off the discussion?

Jeff Neuman: Sure. This motion I guess has been something that's been a long time coming. This actually is not - even though the words of the motion may be

new, the ideas for this were actually talked about at the last Council meeting in Beijing.

They were also subject to discussions that the registries have had with the Board; the Council has had with the Board and others. And, you know, the kind of impetus for this really was in reviewing the request - I should say the rejection of the request for reconsideration that the non-commercial stakeholder group had submitted.

The ICANN - sorry, the BGC, the Board Governance Committee had put in a statement in there that there's nothing in the bylaws that requires the ICANN staff or - sorry, that requires the Board to go back to the Council to explain anything basically when they disagree with what the Council does unless it's a PDP.

So if it's not a PDP there's no requirement for the Board or staff to go back to the GNSO community to explain if they want to do something that's inconsistent with something that's come out of the community.

And so they're right - absolutely right. There's nothing in the bylaws that requires the ICANN Board to come back to the GNSO and show they're right. So I'd like to - I introduced this motion. I think I sent it around for the Council list at the end of June, so around June 27 or so in plenty of time. So hopefully everyone's had these discussions with their stakeholder groups and constituencies.

Yeah. So basically what this seeks to do is say that look, whether something comes out of the GNSO out of a formal PDP or whether it just comes out of the GNSO as advice or guidance or whatever you want to call it in the future that if the Board wants to take action that is inconsistent with that advice, implement, whatever you want to call it, that they should at a very minimum come back to us and explain why they're taking that action - why they want to

take that action and try to work with the Council and with the GNSO community in good faith to resolve that inconsistency.

And then if it can't do that - if no solution can be found, then the Board should state in its final decision why it decided to not act consistent with that advice. And really that's basically it. It's nothing - it's not to give the GNSO any more power. It's not to, you know, there's no power play here and I've heard everything from every different group on what to read into it.

It's simply that if the Board wants to take an action, which it has every right to do, that's inconsistent with advice coming from the GNSO that it should come back to the GNSO, explain why it wants to do that, try in good faith to resolve it and then ultimately explain itself if it doesn't - openly doesn't take that action.

That's the basic - what the motion basically says. And I'll start the discussion there and I'll answer any questions.

Jonathan Robinson: Okay. So thanks Jeff. One of the context point for me is I recall us discussing the essence of this - the principle of this in our meeting with the Board in Beijing. My understand was of that discussion that the Board whilst they may not have committed to it in principle they certainly agreed with - I got the sense that there was an agreement with this as an issue and an awareness of this as a point of principle.

What didn't come out of that was any kind of concrete action. It wasn't a commitment by the Board. There wasn't any kind of - so I - my sense of what you're seeking to achieve here is clearly formalizing the outcome of something - a discussion like that.

I'd love to hear what anyone - what reactions to this are. And I think people should feel free - Councilors and people in the room should feel free to speak

on a - if they have a personal opinion as a Councilor or indeed if they know and are clear on this stakeholder group or constituency positions.

So I think it'd be very useful to have in the spirit of what Jeff talked about in this morning's session a little bit of open discussion about what kind of concerns or issues this raises. And if you feel you are not permitted to speak currently on behalf of you group, you may well have a view that you'd like - that can add to the discussion. So let's kick it off with that in mind. Thanks. And I see Steve DelBianco with his hand up first.

Steve DelBianco: Hey Jeff. It's a question. And this is really for the BC perspective. I realize that some of the discussion that gave rise to the motion came out of the Trademark Clearinghouse strawman issues.

But a new set of events has occurred when I watched the new gTLD Program Committee addressing GAC advice by implementing very quickly changes to the guidebook and to the contracts like the public interest commitment specifications. And the BC has supported many of those.

But putting that aside, when you look at your motion through a lens of what the new gTLD Program Committee has done just in the last two weeks, how would - if this were in the bylaws, what would they have to do then and could they do what they did?

Jeff Neuman: So I think we have to make some assumptions. So - any hypotheticals. So let's play that out. Let's say the GNSO community has very specifically in some advice that they have given to the Board that - I'm trying to think of an example here.

((Crosstalk))

Jonathan Robinson: What about plurals? Take plurals.

Jeff Neuman: Okay. So let's say - that's right. So let's say the GNSO Council had gotten together whether through a PDP or not but had gotten consensus on the Council to recommend to the Board that plurals and singulars should be considered in the same or must be considered in the same contention set. Right. So let's assume that. That we had done that.

Steve DelBianco: I wish we had.

Jeff Neuman: Okay. But so just to play along with the example. Then at that point in time if the net gTLD Program Committee wanted to take an action inconsistent with that and say no, we think that they should not be the same contention set and should allow - be allowed to co-exist.

Then they should - would have to come to us meaning write something to the GNSO Council Chair and say we disagree with the interpretation or with the advice provided by the GNSO Council. Can we please convene in the very near term a meeting to discuss our disagreement and why we disagree and seek a way to see if we can resolve those differences?

And ultimately we have that meeting and we can put it together as quickly as we can get that meeting together. And it can be over the phone. I'm not setting up a - you know, this is not like the GAC where it needs to meet in person.

And we can have a conference call. We can discuss the issues. We can hear both sides. We can try to come up with a solution. But in the end the Board can still do what it wants. And then in its resolution it would basically say we resolve that there - we're not changing the guidebook or whatever it was. And to the GNSO we heard you; we listened to you but here's why we disagree. That's it.

Steve DelBianco: Thank you.

Jonathan Robinson: Got a hand up from Chuck. Anyone else in the queue? John. Please Mikey.

Chuck Gomes: Chuck Gomes from VeriSign. Since Steve brought up a issue of GAC advice, I'd like to point out that the Board actually violated earlier GAC advice because the GAC had advised that applicants when they were applying are supposed to know everything upfront and no changes after the fact.

The GAC advice - in infamy in the GAC advice what the Board did is make material changes to what applicants signed up for in several respects and actually violated the previous GAC advice in doing so.

So - and Steve, in answer to your question, I'm not sure they couldn't do what they did on GAC advice nor do I think that they should be able to without some sort of interaction with the community.

What's happening as I see it is the Board and staff are increasingly unilaterally doing things. They're impatient with the multi stakeholder model even though they give lip service to it. And so they are speeding things up by functioning in an executive manner to get things done.

And what that will motivate is - or what that will cause are mistakes because they didn't consult with people who can help moderate things to make sure it's done in a proper way.

Jonathan Robinson: John, I think you're next.

John Berard: Thank you Jonathan. John Berard from Business Constituency. In talking about this motion, not just in the context of getting to a vote but also generally, it speaks to a change in the relationship between the Board and the Council wherein the Board is asking the Council for advise outside the framework of a policy development process even as we might seek to offer advice outside the PDP.

For the public purposes of this motion, it would probably be good for us to have a number of examples that serve as motivation and not just the 50 plus or the reconsideration of the Trademark Clearinghouse just for the sake of it being shown to be rooted in something a lot more than just as fit of peak.

I can offer the silence that we got in offering up the advice on consumer trust. And I know Steve, my colleague from the Business Constituency and I were very much involved in that working group. Are there other examples where advice was offered to the Board, it was not followed and we did not get a rationale as to why? I think it would be helpful as we argue the point.

Jonathan Robinson: That's a really interesting point there Steve because in essence the way I've understood Jeff's motion - I'm sorry. I'm sorry - John. I'm looking at the - it's a very good point because in essence the way I understand Jeff's motion is it's really about when the Board acts against that advice.

What you pick out is a nuance variation with Board by not acting is in effect acting against it. So that's where there's perhaps insufficient tracking of that advice. Because we don't know when the Board's accepted that advice, hasn't accepted that advice, will ultimately go along with that advice.

So that's a various which probably needs some - but nevertheless in your other point about putting examples - other examples - work examples so it draws us away from the specifics and perhaps the emotive specifics around that.

Let's move on then to Zahid for your contribute.

Zahid Jamil: Thank you. Obviously this is something we need to go back to our stakeholder groups or our constituencies and discuss. But a couple of points and this is sort of informal in a sense.

It seems that what the resolution does is bring the GNSO up to the same level on certain aspects to the GAC. And I appreciate Jeff having taken language which is identical to the GAC provisions. That's helpful.

So I can see Jeff's looking and saying what's he about to say. No, that's actually pretty good. I think that does address some of the concerns of whether we are in some way going to be surpassed by GAC advice or something else. So that's helpful. I think that's useful but I really have to go back and discuss this in our constituencies.

I had a question and things that we would have to discuss in our constituencies. So just a point of clarification. Right. It says that there will - shall be a policy development body known as the GNSO. That's what we have already in the bylaws.

And it says that developing and recommending substantive policies is our role. That's what we have right now. And so the addition is that there would be advice. So that's the first time you use advice in that sentence or in that paragraph. First time.

So what I take is that when we're doing policy development we're recommending but when we're dealing with policy implementation we're advising. So this may just be a language issue we might have to deal with.

And I link that - we go further to Paragraph 2. And it say include language, et cetera, that an action that is not consistent with GNSO advice - that would mean that that only applies to the GNSO advice regarding implementation and would not therefore apply to recommendations on policy. Is that right?

Jeff Neuman: Yeah.

((Crosstalk))

Zahid Jamil: So what I'm thinking is maybe what we were intended to say there was an action that is not considered GNSO recommendations or do you mean recommendations and advice? So just wanted to get a clarification on that and may have a follow up right after.

Jonathan Robinson: Zahid, just so I'm clear on this, you're understanding of the language is it a recommendation - there's two things the GNSO can do. It can recommend policy and it can advise on implementation in effect. Yeah. Okay. So I'm not sure that that's taken as read. I understand. I'm just clarifying the point.

Zahid Jamil: And the reason why Jonathan that would be important is because in Paragraph 2 of this amendment we're only saying that the action inconsistent with GNSO and that the next word is important - advice. We're sort of restricting it to that being only applicable where there's been advice on implementation and not recommendation on policy.

So I just wanted to make sure that we don't - where are we, what do we want to do or the intention. Do we want to include recommendation as well as advice or do we want it restricted to one?

Jonathan Robinson: Jeff, I suggested you respond to that before we move on in the queue because it's a direct question on the formation of the motion.

Jeff Neuman: Yeah. So I think the purpose was not to exclude the other. So I think - and I think in a previous version I had advice, recommendations and other things in there. But I can't remember why we shortened it. But yeah, if you want to say advice or recommendations, that's fine. I mean I'm happy to make that change. I think that's a good change.

I just want to go into also the first paragraph where you point out that the first sentence is what it was. I haven't changed that, which talks about developing and recommending to the ICANN Board substantive policies. And second one is on implementation.

Really the goal there is I know we have a policy versus implementation working group. But I want to make it clear that even though we may develop different processes for how we develop implementation or policy - how we do that, that's fine. The working group will work on that.

My whole point is it shouldn't matter. If the GNSO - Lord knows (unintelligible) the name. Everyone knows how difficult it is for the GNSO to actually come up with anything and actually something to come out of the GNSO.

If we actually get through that process with actually an output, then man we should be given some respect - if we could have some explanation if they're going to act inconsistent. I hear what you're saying about kind of elevating up - us up or trying to move us up, which yeah, I mean - you think it's good and that's great.

I almost like to think of it though as we are a supporting organization. We're charged with the development of policies. And we are viewed right now as being inferior to the GAC advice and to that supporting organization and frankly to - sorry, to that advisory committee and also to the SSAC for that matter.

We are often seen s inferior to that. So if the SSAC recommends something or the GAC recommends something, it's like wow, they've done it and we've got to do that or else we got to explain ourselves.

You know, we should get sort of the same respect because we actually get together and come out with something and we should have the respect of having the Board come back to us and explain - at the very minimum explain to us why they're going to take an action that's inconsistent. Okay.

Jonathan Robinson: Just to check on something on a quick point to order. I head Zahid in effect ask you a question which you took as a recommendation, which Jeff I

think you've taking as accepting as a friendly amendment. That's fine. That's - there's some form of - you know, because he questioned you wording. You said great. I can clarify my wording. So you are proposing to modify your motion on the basis of that question that you were asked here. Yeah.

((Crosstalk))

Jeff Neuman: ...informally that if that's what it takes to get this done, absolutely. I'm in favor of it. So when it comes time to actually work on the motion assuming that...

Jonathan Robinson: Fine. Okay. So we've taken - so just to understand where we're at in the process is there's a discussion around possibly changing the wording.

Jeff Neuman: I see that as a good addition.

Jonathan Robinson: Yeah. Fine. Okay. So we will...

Zahid Jamil: Jonathan, hold - that was just to get clarification as to whether - what the intention was to cover both and so to take that back to the constituency.

Jonathan Robinson: Yeah.

Zahid Jamil: But I think that would be - it would be sensible either just to have recommendation or at least to have recommendation and advice but having just advice kind of doesn't make...

((Crosstalk))

Zahid Jamil: Thank you Jeff for that. But here's my question and the comment that I have, which was the problematic one. The second sentence says that we would be - that advice to the Board on implementation of policies and then you like that to the further resolve, which says that even if something has been done

outside the policy space it would need to come back to us. That's the last sentence of your motion.

And I'm thinking we've had lengthy discussion on Council calls earlier whether we would be going outside our mandate and basically saying that should we make a policy recommendation great, that's wonderful. But not the implementation of it we don't just become a policy advisory but even we actually become an implementation or operational arm of ICANN to some extent.

And if they don't accept our advice on very important implementation, they would have to give reasons. And I'm just thinking does that ratchet up the sort of bureaucracy of things moving forward? And so therefore especially the last sentence, the one before the resolve, that says the recommended about - whether or not the policy or process is set forth in Article 10.6 were followed.

I know what you're trying to cover. You're trying to cover that - the reconsideration request. But would - could you imagine that basically blocks the ICANN Board from doing anything outside policy once - when it first comes to the GNSO?

Jeff Neuman: Sure. So that's not the intent.

Zahid Jamil: Okay.

Jeff Neuman: So we can work on the language. But if the GNSO Council gives advice or recommendations for something that's within their scope, right, which is really involving - let me look - involving substantive policies relating to generic (unintelligible) domain.

So we can work on the language. But if the GNSO Council gives advice or recommendations for something that's within their scope, right, which is really involving - let me look - involving substantive policies relating to generic (unintelligible) domain.

If the GNSO comes out with something on that then yes, then the Board should - whether it went through a formal PDP or whether it goes through something else like what we did and write a letter, which had consensus or

has consensus - actually I don't want to go back to a past example because I don't want to invoke anything.

If we write a letter to the Board that relates to substantive policies relating to gTLDs in the future and that had consensus from the Council regardless of whether we followed to whole formal PDP, which is not required by the way, then they should come back to us with an explanation if they're going to act inconsistent with us.

((Crosstalk))

Jeff Neuman: Sorry. It's not meant to cover - it's not meant to say that everything has to go through the GNSO. That's not the point.

Jonathan Robinson: But it does appear it clearly covers the cases of advice or recommendations from the policy development process - either advice or policy development.

Jeff Neuman: Not from the policy development process. You used the term there. It's from the GNSO's role as defined in the bylaws.

Jonathan Robinson: Right.

Jeff Neuman: Whether it's through the formal PDP or not.

Jonathan Robinson: Thanks Jeff. I've got (David) being very patient and Mikey as well. So let's go to (David) and then Mikey and then...

David Maher: Actually I've kind of forgotten what I was going to say now. No, the - I mean I just want to say generally quite supportive of this motion. It - we absolutely don't want to, you know, I never really want to see that argument going well GNSO oh again, the GNSO oh, you know, came together and resolved something but because it wasn't through a formal PDP it doesn't matter.

And certainly in the policy versus implementation context this will be important because of course the GNSO may very well at times come back and go we actually - we really want to clarify what we mean. And this is what we meant and that sort of thing. And when we do that that we absolutely, you know, it shouldn't be (unintelligible).

Even if it's just the - with that, you know, this motion and I'd be - I understand it because it does put quite specific obligations on the Board. There may be, you know, room for some amendment and that there will be - there may be some wording that we toss around.

But I'd really like to see something come out of it and for it to be - I think it's important that we push through with this and get something that clarifies that the GNSO is not just a vehicle for approving PDPs and that we do other things and we should be, you know, when we do other things, it should still carry some weight.

Jonathan Robinson: Thanks (David). Just to remind you of the queue then. We've got Mikey, Wolf, Brian and Volker. So Mikey.

Mikey O'Connor: Thanks Jonathan. It's Mikey O'Connor for the transcript. I think the wording is fine Jeff. But the conversation today is an element that if it carries forward I will vehemently lobby hard against.

And that is you guys are continuing to confuse the GNSO and the GNSO Council. And you're using that term interchangeably even in today's transcript.

The wording in the resolution is fine. But do not set up the GNSO Council to be a policy advisory body. That is outside the role of the Council. So language is fine now. But you're little example where the Board gives you a

little telephone call and you like figure it out as the Council on the phone really quick, if you even think about doing that, that's totally unacceptable.

Jonathan Robinson: Want to reply briefly please Jeff so we can keep the queue going.

Jeff Neuman: Thanks Mikey. I understand your point. I take it. It's a well made point. And my example was not meant that the Council would work it out with the Board. It was not meant to be a negotiating session, right. But yes, everything is meant to be the GNSO community. It's not meant to be just the GNSO Council.

Jonathan Robinson: Right. Wolf-Ulrich.

Wolf-Ulrich Knoben: Thank you. This first time speaking privately here. So I'm not on behalf of the stakeholder group because I would like to wait for the outcome of our discussion tomorrow in the CSG.

On the other hand, I'm not a lawyer and I'm not familiar with all the detail and the possibilities connected to that. But sometimes when reading the bylaws as well and try to understand it in a practical sense - in a practical way.

From my understanding in the past there was nothing in the bylaws preventing us to provide whatever the (like to say) advice with regards to implementation to the Board.

The only thing was (was) formalized so it means it wasn't forbidden to do so but he didn't. On the other hand so I understand this motion that it would like to formalize that right now that the Board is (just) obliged to act on this, to receive it as advice and to handle it in a certain way.

So I personally am supporting the part of that. And I'm thinking about the further steps then. So if we come to such an agreement we would like that the Board is going to accept it. Not as such reviewing it and rejecting it but to

accept it and be sure to really think about, you know, how we should further go on with that.

And put in line with that what John was saying that we ask them to - in order to make it more (consentable) maybe to the Board they are allowed to enrich it with some examples (well) some examples with regards to what we are - what we would like to see there. So having that said, so it's just what I would like to say and what I would like to think about as we think about the next steps. Thanks.

Jonathan Robinson: All right. Brian next.

Brian Winterfeldt: Brian Winterfeldt, IPC. A couple quick questions I guess directed towards Jeff or maybe staff. The first question is do we really have the right to require the Board consult with us if they don't take our advice? Is that something that is really within our purview?

Jeff Neuman: So at this point, no. What I'm asking is that we recommend to the Board that they add this language. So we - no, we can't. So that's why we're asking for this.

Brian Winterfeldt: Great. My second question is whether or not we think this motion could be wrapped into one of the work items for the Policy Implementation Working Group. And if so, why not?

Jeff Neuman: So my feeling is no. I mean yeah, can it be? Sure. It can be wrapped into any working group. Should it be? And my response to that is no. I think this is something that we should move on now. It's something that I don't need a - I don't think that Council needs a working to tell us something that we all kind of already feel.

I'm not sure what could be studied on it or should be studied on it. And frankly, you know, I look back - someone asked me do we really need a

bylaw that says this. And I would have said six months ago is no, we shouldn't have a bylaw for something that should have been done anyway by naturally.

So I guess no I don't want to wrap this up. It's not my intention to wrap this up in a policy (resident) implementation. I think there are things that once this gets - or if it gets passed that we could take some of those implementation of this into that working group like how do we call something - what constitutes advice or recommendations.

You know, what is the difference if you call it an implementation versus a policy. What should be the burden - different burdens back and forth? That kind of stuff can be worked on at the Policy and Implementation Group. But I don't think something like this- something basic like this should be folded into that group.

Brian Winterfeldt: A quick follow up question. So with advisory committees - so for example, if the GAC does give advice to the Board to do something, are there similar processes that are in place for the advisory committees that the Board needs to consult and provide an explanation? Because my understanding is isn't basically advise supposed to be something that the Board can listen to but they don't necessarily have to follow in other context?

Jeff Neuman: So this language at least some of it was derived from what the GAC has in the bylaws directly. So I mean I had to modify some words because of the way they take actions. But essentially this is the same language that the GAC has for them.

I don't know about the other advisory committees. I don't think they have the same language. And frankly, you know, I think it's getting - no, I'll stop there.

Jonathan Robinson: I'm conscious of the fact we've got more than one motion to discuss in this session. I've got about four people in the line so I think we'll close it with that because - close with Marika. I've got - who's in there (Mason)? Volker...

Mason Cole: Steve, John.

Jonathan Robinson: So we've got Volker, Steve, John, Marika.

Volker Greimann: Okay. I'll try to keep it brief. I just wanted to raise or comment on the three different positions. The first is I second this motion because I believe that the role of the GNSO in general through the GNSO Council needs strengthening within ICANN.

And we have seen some Board or staff unilateralisms in the last year that make me worried that the multi stakeholder model isn't what it used to be or what it should be or what it could be. And therefore this motion of the GNSO asking not to be ignored in the future makes absolute sense to me. That's why is second it.

The second point was in response to something that Mikey was raising. As GNSO Councilor I represent my stakeholder group in the GNSO Council. I go beyond - I'm independent in a way but I still represent my stakeholder group. So the GNSO is represented in the Council through its members.

So when the Council decides something I would assume that each Councilor has requested the input from their community - from their constituency and bring that to the table what needs discussing here.

So I would not differentiate too much between the (unintelligible) of Council and the GNSO in general. There is a difference but we represent as Councilors the GNSO, at least in a way.

And the last point was a question. I'm not too familiar with the exact guidelines of how a PDP is run and I can't (curse). When - and of course through when the Boards reject a recommendation made by a PDP.

But I think there is already language in the PDP process which states how it should be proceeded when the recommendation that had come out of a PDP that has been proposed by the GNSO Council it's rejected by the board what the process for that is. And therefore I do not think that the addition proposed by Zahid is necessary.

Jonathan Robinson: Steve.

Steve DelBianco: Mikey was emphatic about this distinction between GNSO and Council. And Jeff, the motion that you have here only changes the bylaws for GNSO, not for Council. And all of you are pretty well familiar with the bylaws. With respect to GNSO, there's only a tiny few sentences and you've added one here.

But Item 4 under GNSO said that Council is responsible for managing the policy development process for GNSO. And then they go on to describe how we do that.

So if Mikey has surfaced something that's significant and/or struck a nerve with respect to the distinction between the GNSO and Council, it may be that your motion needs a little bit more work to clarify that.

And the second point I will make is that your amendatory sentence includes the word implementation and yet the bylaws as written just a few sentences below what you have it says Council's responsible for managing the policy development process.

So is policy development process going to be inclusive of implementation advice or do you need to change that part of the bylaws to add the word implementation?

Jonathan Robinson: Thanks Steve. John Berard.

John Berard: Thank you Jonathan. I'm responding to something I heard Brian say and I'm going to take a leap and just characterize it as are we asking for something that we shouldn't. Okay. I don't think so.

I think what we're asking for is now that the Board has seen fit to expand its use of the GNSO Council, there needs to be a commensurate expansion of the standard - of the basic relationship that the Council and the Board have.

When it was just PDP it was very clear. If they got a PDP or some bit of it or all of it they didn't like, they had to tell us, hey, you know, thanks for your work but we're not going to move on this and here's why.

Now that they have they're going to ask for our advice - small A advice, not big A advice such as they expect from the GAC or from ALAC or At Large. Anyway I think that it's quite reasonable to say okay, if you're going to ask us for this stuff and then you don't abide by it, hey, just let us know why. So it's merely an expansion following on their expectation and not hey, look at us over here. We, you know, we need to be more important than you think. So I just wanted to drop.

Jonathan Robinson: (Good). For the time in the queue Brian, you want to make a direct response there quickly?

Brian Winterfeldt: Brian Winterfeldt, IPC. Thank you. I think that's helpful. I guess where I feel like maybe we're going a little bit too far I couldn't see asking for an explanation. But the language that we're proposing requires an actual consultation and a negotiation is implied. And I feel like that's actually

potentially going a little bit too far especially considering that we are talking about the small A and not a big A.

Jonathan Robinson: Thanks Brian. I've got Marika next. Jeff, you want to respond directly to the specific point because we really need to move this point - this section to a close?

Jeff Neuman: Okay. Thanks. Just to respond, I don't - I specifically don't say negotiation and I specifically say the GNSO. So it could be an open meeting with the GNSO, Council and others invited. And that you could just get in a room or get in a proverbial conference room, whatever it is, to discuss the issue.

I didn't say negotiate. Just said look, if the Board's got a reason for doing something that's different or inconsistent, let's get together and talk about it. It's not a negotiate. It's not meant to say that we're trying to have extra power. And frankly, it's interesting to me that there's so much pushback or think that we're going beyond our mandate.

I'm happy to work on the words here as long as we have buy in on the concept and I'm happy to work with the Board on the words here as long as we have buy in on the concept. The general concept is if the GNSO Council I - sorry, community - sorry Mikey. The GNSO community gets together and actually comes out with an output whether it went through the formal PDP or not and makes that recommendation to the Board.

If the Board wants to act in a way inconsistent it's free to do so. But that it should come back to the community, explain why it's taking an inconsistent action. Offer an opportunity to find a mutually agreeable solution. And if it can't find a solution, great; it goes on a does what it was planning on doing in the first place.

Jonathan Robinson: Okay Jeff. Let's make sure we get...

Jeff Neuman: All right.

Jonathan Robinson: ...(unintelligible).

Jeff Neuman: And so I'm a little frustrated because this is an important topic and...

Jonathan Robinson: No, I think you've made very good points about...

Jeff Neuman: ...but you're cutting it off. If we people want to speak, this is a subject that I think should last a (little longer).

Jonathan Robinson: ...All right. Can I get a sense of that? I'm very conscious that I've got a kind of duty of care to at least the other motion. I've also (unintelligible) Mikey speaking. I've not got (Marilyn). Can I just get a sense if there is support to continue? This is a pretty important topic.

Clearly people feel - can I get a sense if you'd like - it sounds like there's a feeling around the table. So I'm going to open the queue then to a few more people. I've got first Marilyn. I think I had Joy. I've got Zahid and I've got someone back there who's name I'm not sure of. Greg Shatan, right. And then - and sorry, Marika's ahead of all of these because Marika was last in the last queue. So we've got to give Marika her say as well.

Marika Konings: Thank you very much Jonathan. This is Marika. Just triggered by what Jeff said before in a conversation with mine and think also nothing that there is a meeting with the Board tomorrow maybe is well worth getting a sense from the Board where they think this is going or what they're initial response is.

Because I think one of the - that's my personal observation like whenever we sent something to the Board we're always asked as well to provide input on, you know, what input was requested, who provided input, who was consulted. And here we're in a situation where we'd have to say well, no one, the GNSO Council.

And I'm assuming as well is that if the ALAC or the GAC would come forward with a proposal change their respective bylaws would become, you know, a policy development body presumably, you know, this group may want to have a say about that as well.

And the other question or the other point is - and I've made this point to Jeff already. I think - still think as well that the term advice is not defined here. Are we really all talking about the same thing here? And you're - I think we're saying that's implementation related discussions. But I'm just concerned that if we leave that to implementation we may be in a situation where we no longer agree on what advice (unintelligible) or not.

So I would be hoping that we could actually have some more specificity around that so the Board knows as well what they can expect. You know, one is something capital A advice and one not. And I know there was some other discussion as well at the time over what it means for the GAC and was a really complicated process or discussion where it wasn't clear what that meant.

So I think the more clarity we can put in there the easier it will be as well to have the Board, you know, consider it and be able to do.

Jonathan Robinson: Thanks Marika. I think I have Marilyn next although I should acknowledge that before opening the queue to Marilyn we did cut Mikey off. So Mikey, are you happy with that? Okay. Marilyn, let's go.

Marilyn Cade: Thank you. My name is Marilyn Cade. I am a member of the Business Constituency as many of you know and a former Councilor. But I'm speaking as an individual member of the ICANN community.

I don't actually accept at all that the GNSO Policy Council can speak or pretend to speak for the community. I think that the role and purpose of the

GNSO in relation to gTLD policy is pretty clear through practice and through procedures.

I think that the bylaws do in fact limit the scope. And if you wish to undertake a broader debate about the scope and responsibility of the Council, it has to be taken up very thoroughly at the constituency and SG level.

Each of the constituencies and SGs have executive committees and gTLD policy is only a small part of the implications and role more broadly that the GNSO members provide into ICANN.

And I don't think you're trying to address those broader issues but I think words really matter. And so I would caution not to adopt the word community but to stick with the definitions and words that exist today.

Finally I would also say that it's my understanding that you have a PDP discussion coming up about the difference between policy and implementation.

And adding the language that is proposed here in this final sentence under one that the GNSO is also responsible providing advice to the Board on implementation's a policy, it seems to me that there is work in progress within the GNSO Council that is addressing the continued debate about clarity between what is policy and what is implementation.

One final point I would make is that gTLD policy affects more than just the GNSO. And so the Board does have the right to put out for public comment to others from the community and to seek public comment. And I think in fact the bylaws make it their responsibility to do that. And the affirmation of commitment clarifies that they should continue to do that.

So it's I'm thinking that there is a lot more nuance and discussion that's going to be needed at the constituency and SG level in order to fully understand

what changes that the Council itself may be in agreement on. But also understand the implications of the choice of certain words. Thank you.

Jonathan Robinson: Thank you Marilyn. Jeff, you want to respond briefly to that then?

Jeff Neuman: Basically my response is that oftentimes when I speak I don't necessarily use the exact words but I put the right words into writing. So in that motion it's exactly in conformance with what you just said. I may have said it incorrectly but if you look at the words, we're good because it just says GNSO the exact same way it says I in the bylaws now.

So the - I appreciate it if you could look at those words and if you have issues with those words, let me know as opposed to what I actually say because sometimes I don't say it as good as I write it.

Jonathan Robinson: Thanks. That's a reasonable explanation. But I think that there's many that would worry about what went into the transcript including you if it was someone else talking. So you need to be careful. Joy.

Joy Liddicoat: Thank you Jonathan. I just wanted to indicate support for the motion (Jeff and very much in the spirit of which it's being proposed. Really, really happy to continue to shape it and put his (pen in) discussion to make it as big as it can be. And I really appreciate your openness on this and bringing it forward.

I just want to offer to the discussion and to speak from the point of view of the legal standard if you like of the threshold of quality and decision making that we said I think this motion also (assists us with).

You know, if we want to be seen as a quality policymaking body that's subject to the role of law that follows due process, I think we need to be able to understand the decisions of the Board in relation to advice that we may give and that there's no radical new legal concept there. It's simply good faith and rationality.

And providing reason for decisions is a way to demonstrate to transparently the quality of thinking and rationality in decision making. The Board may have physically valid reasons for not following GNSO advice and that's to be displayed transparently so that we can understand that and take that forward.

I really don't see that this motion places us above the community. I'm here to serve the community. The Council is driven from a bottom up process to represent best as it can for the interest and views put forward by the community. So I really don't take that to (unintelligible). I just want to thank you Volker for your comment and (your sticking with the motion). So thank you.

Zahid Jamil: Thank you. Just two questions to get more clarification Jeff. Thanks. One, how would this advice in implementation work? Does it work in the sense that any time the Board comes out with an implementation of anything that is sort of connected to policy advice we render so that any implementation plan or whatever it might be it would need to as a precondition come to the GNSO, get approved and then move forward? Or, which is probably what you may have intended.

But if we were to issue advice with respect to the implementation then that would sort of in a sense interdict anything we're sort of saying coming out, which you want to sort of comment on and therefore that would be the way it would move forward. That's my first question.

And the second how would we actually vote this advice out? Would it be the way we pass a PDP? I mean how do we vote on the advice because currently there's no voting mechanism for the advice as it were within our bylaws for the GNSO? So how - what will be the voting threshold mechanism for that. So two questions there. Thanks.

Jonathan Robinson: Do you want to respond to that briefly?

Jeff Neuman: Yeah. The first question it's the latter although I forgot what you actually said. I just wrote down my notes.

((Crosstalk))

Jeff Neuman: And the second one about how something is in response to Marika too, how we classify something as advice. I think that's a good topic for the Policy and Implementation Working Group. I think that's a very good topic for them to address.

Jonathan Robinson: Greg, we've got to you and I think we're going to close. We're coming up to a full hour on this and what we're going to do is we'll take ten minutes out of the next session to deal with the second motion on the table. But let's hear from Greg on this particular topic before closing it off.

Greg Shatan: Hi. Greg Shatan. I'm a member of the Intellectual Property Constituency but I'm speaking in an individual capacity. I think this motion is an attempt to fundamentally change the governance of ICANN and to fundamentally change the relationship of the GNSO and really more specifically the GNSO Council to the ICANN Board and staff and to the work of ICANN. I think it's disingenuous to see it as anything less significant than that.

I think further that the way it's drafted it's ripe with ambiguities and with undefined terms and undefined processes and I think it's incredibly premature to put this before the Board as a recommendation to change the bylaw and then afterwards figure out what the bylaw means.

I think that it would be far more sensible for the GNSO Council to leave this with the Policy and Implementation Working Group for it to be fully considered and vetted and pass, you know, proposed along with appropriate implementation rather than ram through as a key attempt to self grab power

to the GNSO Council, which says that it speaks for the GNSO but seems to speak sometimes without input from the rank and file.

And I think that it's unfortunate that the GNSO Council consider taking the struts out from under a working group that it hasn't even authorized and taking an incredible important part of what that working group would consider and attempting to just put it through as a motion. I think the basis of this motion could be, you know, summarized as let the GNSO Council resolve the GNSO Council should be much more important.

Now I'm sure that there are many GNSO Councilors that feel that way. But I don't.

Jonathan Robinson: Thanks. I think, you know, you clearly feel strongly about that. And I - just to be clear, I think you are on that Implementation and Policy Implementation Working Group.

Greg Shatan: Yes.

Jonathan Robinson: Yeah. For clarity. Okay. So those are some strong words and some heartfelt thoughts. We'll have a response to that and then we'll close the discussion. Jeff, would you like to respond? Is there anyone else who would like to respond specifically to the point that Greg's made before we close? There's Chuck and (David) and that's it. Thank you. So we've got Jeff, Chuck, (David).

Jeff Neuman: Yeah. So thanks Greg and I've seen some of your emails back and forth so I know that you feel very strongly and passionate about this. But for those of you that don't know me very well or haven't been around in the community for as long, I have one year left on the Council.

And before I was on the Council, my biggest issue was to ensure that the GNSO Council did not grab for power. In fact Marilyn and I had many

different discussions together on that to make sure that the GNSO Council was not a legislative body or could not act in a way to grab more power.

I'm sorry you feel that way about the motion. That's certainly not the way it's intended for the Council to grab any more power. Surely when I'm off the Council, you know, I - and I still - being on the Council I still feel the same way that the Council's not a legislative body and I chose the words GNSO in this motion very specifically as opposed to GNSO Council to avoid that.

If it doesn't do that, then, you know, it's certainly not the intent. And just there's no mal-intent. There's no power grab in there. It's basically trying for the GNSO community to get what rightfully shouldn't have to be in the bylaws but should automatically be a part of any multi stakeholder organization.

You know, we just sat through a presentation for a half hour or more on how we're trying to do more outreach and get more people to participate. But what good is it to have more people participate if all you can do is just ignore them anyway? I mean like I feel just as passionate about this issue. It's my most passionate issue.

It's great to have outreach. It's great to encourage more participation. But if you're just going to ignore those in the end then what good is it? This is trying to memorialize something that shouldn't have to be memorialized in a multi stakeholder organization.

This is not something that - for an organization that goes out there every day opening up engagement centers and everything else to talk about the multi stakeholder process to have an issue with this motion, which is merely just asking the common courtesy of coming back to a group that's made some advice and just explaining itself and then trying to find the solution, I mean I - for me I can't fathom why this is such a big issue but, you know, that's why I'm here. I'm here to listen.

Jonathan Robinson: Thanks Jeff. So I've got Chuck and then (David).

Chuck Gomes: Chuck Gomes from VeriSign. I'm totally puzzled about the concern against this motion. It's amazing to me that we have a policy development body called a GNSO that's tasked with developing policy, and we can't separate the implementation of that policy from that task, why there wouldn't be a need to have the dialog if there's a disagreement with what comes out of the GNSO.

I challenge anybody and well I can talk - I'd be glad to talk with you offline on this why there's any big problem with that. Either this is a meaningful body or it's not. And if it's meaningful then the Board needs to listen to what comes out of this body and if they disagree, that's fine. Let's talk about it.

I have the utmost respect for all of our Board members. But I'd just like to point out that none of them are omniscient. And the whole idea of the multi stakeholder model is for us to work together to get the best possible solutions in the end. And all this motion does is just reinforce something that goes right in line with the multi stakeholder model.

If we want the Board to go out and seek public comment, good. I'm all for that and not just from the GNSO. I totally agree with that. But then if the Board's going to just ask in an authoritarian way and decide okay we'll accept these public comments and not these, we don't need the GNSO if the Board's going to do that.

So let's just disband the GNSO. Let the Board ask for public comments and then make their omnipotent decision in the end. That's not a multi stakeholder model.

Jonathan Robinson: Thanks. (David), it looks like you have the last word and then we're going to wrap it up.

David Maher: The first the - a lot of people have had concern about this motion because they think it could be adequately addressed within the policy versus implementation working group. Not everything is policy or implementation. Sometimes it's process. Sometimes it's response to other things. If, you know, not everything is just - is the PDP or is a result of the PDP.

So there's plenty of other purposes to which the GNSO might want to operate by. So I think it's perfectly legitimate to consider this separately from that whole working group process.

Secondly, it is I don't think anyone has the intent here to elevate the Council above the GNSO community. If there's a - if you're concerned about it, we can go over the wording and make it sure but that is no one's intention here.

You know, there may be times at which for expediency we don't want to do a whole PDP but that doesn't mean that, you know, that the Council is going to run off it's own without talking to its constituencies and whatever.

And lastly sort of there is a concern - the whole issue here is - part of the issue here is that the GNSO does go through processes. It does reconsider. It does do multi stakeholder stuff when it offers its input to - and advice to the Board.

And there's plenty - the Board gets plenty of input and advice that has not come through that multi stakeholder process as it come from one small group or the other. If the GNSO actually gets it together to offer consensus advice or, you know, it should be listened to. And I can't think why anyone thinks it shouldn't.

Jonathan Robinson: Thanks (David). Thanks everyone. There was some tremendous - that's a great discussion; some good work on clarifying question, some suggestions on wording, some cautions over other wordings.

I'll just remind everyone of a point that was made earlier today that the work that the Council can initiate is not necessarily always the policy work and not necessarily always confined to and part of the PDP process. There are other pieces - other ways in which policy work can be initiated and undertaken.

So we are not necessarily always talking about being constrained within the policy development process, the formal PDP. That has specific and binding implications when it comes out of the process. But thank you all again for a high quality discussion.

We've got one other motion and one other prospective motion. And so really need your attention and try and focus the discussion on these two quickly before we move on to the delayed next subject.

So the next motion that we need to discuss I'll just highlight for you before we go into discussion. Next motion is the motion to adopt the charter for the Policy and Implementation Working Group. And it may be that there's little or nothing to say about this, which will be great. But I do think since it is a motion, since this is an opportunity to - it's a motion for Wednesday's meeting and this is an opportunity to discussion the motion if that is the case.

We also have a draft motion on the locking of a domain name subject to a UDRP that could prospectively be considered as a motion at our meeting. And so what I'm going to be looking for there is - that motion was submitted with the final report and I'm going to be looking for a show of hands whether it's acceptable to introduce a motion to the agenda to be voted on on Wednesday that you've all had time to see.

But it's - and in fact we'll be able to defer if there is insufficient time to consider it before the meeting. But what we really need to know is on that third prospective motion whether it's acceptable to introduce that motion to the agenda at this stage and whether that's seen as a simple matter of procedure or whether there are serious concerns about it.

So let's take a step back. Let's look at the motion - the second motion that is formally on the agenda and has been submitted in good time and made by Wolf-Ulrich Knoben to adopt the charter for the Police and Implementation Working Group. Are there any concerns or comments or issues that we should be considering about this or is it simply a matter of routine that we can take as read? Marika.

Marika Konings: Maybe just ask if there's a second so we don't have to do it on Wednesday.

Man: (Unintelligible).

Jonathan Robinson: Is there a second? Zahid, are offering second. Thank you very much. Any other comments or thoughts or input on this? I'd like to encourage none if possible but I understand that we should have some if necessary. Wolf-Ulrich.

Wolf-Ulrich Knoben: Just a - thank you. A question. There are two things - oh, sorry. One is, you know, the Council is going to decide or to (unintelligible) here. The Council (has to review) the proposed charter. So I really would like to ask you to review it, the first thing.

The second thing is a Council liaison has to be nominated. And the question is does it need - if it's necessary if needed that a Council member is going to be the liaison or could it be somebody else with GNSO?

Jonathan Robinson: Marika, can you respond to that?

Marika Konings: Yeah. This is Marika. Although this is not - you know, basically the group is operating on the GNSO working group guidelines. I think there it specifies that it should be the (concierges) or the liaisons from the charter organization. So in this case it's the GNSO Council that's the charter organization so it would need to be GNSO Council.

Wolf-Ulrich Knoben: So that means that a name should be (in subject here). Okay.

Jonathan Robinson: Jeff.

Jeff Neuman: Yeah. I mean I - I'm sure there'll be plenty of volunteers. I mean I'd like to be the liaison. I don't want to be the interim chair but I'd like to be the liaison eventually for this group. So I'm sure there's others too. So I'm going to volunteer for the group. But I'll just throw that out there.

Jonathan Robinson: So are you volunteering as liaison but not as interim chair? That goes with it I'm afraid.

Jeff Neuman: I will move very quickly to find a chair because this - and there's plenty of people on the drafting team that I'm sure would step up that have done a great job. So I - if that has to be both, then I don't know of any other - is there any other Councilor that was on the group that would...

Jonathan Robinson: I don't think we can resolve the chair of the group...

Jeff Neuman: Yeah.

Jonathan Robinson: ...right this minute.

Jeff Neuman: No, no. I don't mean the chair. I meant...

((Crosstalk))

Jeff Neuman: Yeah.

Jonathan Robinson: It would - in effect we might have to if you were saying I'll be the liaison but not the - I think we need an interim chair and you could deal with that as your first issue.

Jeff Neuman: All right. I'll deal with it very quickly. Thanks.

Jonathan Robinson: All right. So we've got a second from Zahid. We've got Jeff volunteering as Council liaison. In the interest of time, which is a phrase I don't really understand but we will close the discussion at this point. Right.

So the next - the third item I'd like to discuss or propose we discuss on the list section of motions is that we have a draft motion that was submitted to the Council as part of the work on the locking of a domain name subject to UDRP proceedings.

It has not been formally made as a motion to the Council but has been in front of the Council. And we could move the process along. And this is really what this is about it trying to do something faster than we might otherwise do by tabling this as a motion, providing or putting this on the - putting this up as a motion providing no one has sufficient procedural concerns.

I'm very mindful of the vigor with which people view the Council's procedures and the requirements to put in a motion in good time and so on. So the question is does anyone have concerns about us considering this draft motion as a motion at our meeting on Wednesday understanding that if your group has had - feel they've had insufficient time to consider it, it can still be deferred?

But so I'd like a show of hands if anyone has immediate or foreseen concerns of this being on the table as a motion or with any element of that as a procedure? (Hetta).

(Hetta):   That's probably what you just said but from my perceived point of view we need to discuss it further. I can't give you yes or no on your question right now.

Jonathan Robinson: (Hetta) I'm - and that's just - are you saying you'd want to discuss the motion further or the concept of putting this draft motion on the Council's agenda as a motion?

(Hetta):   If you want to discuss it, we are prepared to welcome it already now.

Jonathan Robinson: So your remedy then would be - just to make sure I'm clear on this. If you have reservations about this and you wouldn't want to vote on it, you will be able to request a deferral on Wednesday.

So what I'm seeking now is your acceptance that it can be put on the agenda as a motion understanding that you may come back and say we haven't had the opportunity to consider it sufficiently and therefore we seek a deferral.

(Hetta):   Okay.

Jonathan Robinson: Thank you (Hetta). Has anyone else got any concerns with this because it's going to be the third motion on our agenda on Wednesday if you don't. Great. I'm - for me I'm encouraged by this because it's a matter of a pragmatic acceptance of something that's going to come up as a motion at the next meeting. And it shows a flexibility within our procedures to sort of get - keep the work moving. So thank you for that. Jeff.

Jeff Neuman: Yes. I'd be happy to actually make the motion if you want to put my name on it.

Jonathan Robinson: Motion is made by Jeff, seconded by - well, Zahid or Yoav. Yoav will have the second on this one. And thank you. So that without your objections, we have - we are effectively putting a motion on the table without having the proper - the formal notice of the motion. That said, it has been in front of the Council for an equivalent length of time.

Thanks everyone. That's a very useful discussion on the motions. I think we've delayed the input from (Margie). I'm not sure if (Margie)'s here. Yes you are on the - are we - I think we're due to hear from you next. Sorry.

Man: (Unintelligible).

Jonathan Robinson: Okay. I beg your pardon. So Michele we're hearing from you then and the (unintelligible). Thank you for your patience. You can here there were substantive and useful discussion that we continued that's caused a delay.

But without further ado, let's just stop the recording for a moment. Yeah please.

END