

**ICANN
Transcription
GNSO Drafting Team to Further Develop Guidelines and Principles for the
GNSO's Roles and Obligations as Decisional Participant in the Empowered
Community.**

Wednesday, 27 February 2019 at 21:00 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

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Coordinator: Recording has started.

Julie Bisland: Thank you. Good morning, good afternoon and good evening all. Welcome to the GNSO Drafting Team call on Wednesday, the 27th of February, 2019. In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the audio bridge would you please let yourself be known now?

All right, I would like to remind all to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. With this I will turn it over to Heather Forrest. Please begin.

Heather Forrest: Thanks very much, Julie, and thanks very much everyone for joining us today. I note we have apologies from Farzi and from Sara Bockey. Based on our membership list, which Julie has very kindly circulated, it looks like we are missing Erika and Stephanie Perrin, who might also be in the same situation as Farzi, and Juan Manual Rojas, but otherwise we've got everybody on today. That's brilliant.

And the document that you see in the screen is the Google Doc that Julie Hedlund very kindly alerted us to via a Google Doc link about a week ago and which we have Julie and Ariel and others on the GNSO staff to thank for putting together. I agree with Steve DeIBianco, I think this is a brilliant first draft and an excellent start to things.

What I suggest that we do is that, given that Ariel's managed to capture the comments that were in the Google Doc but I know my comments only went in about an hour ago because I only managed to type them in this morning from a hand written document since that's how I work best on this kind of thing, I suggest we just go through the document on the screen.

So our agenda for today is to review and discuss the document that you see in the screen which is the guidelines and templates for Sections 4.2 and 4.3. Anything anyone wants to add to our agenda? No? All right, seeing no hands, are there any updates to SOIs that anyone needs to notify? All right, again, seeing none. Excellent.

Let's jump into the document then. How would you like to do this? Would you like to give some initial general impressions? If we all give a general impression that this is a positive thing then it might change the tenor of our discussion and Julie's noting that the document is unsynced. I can start in

terms of a general impression. I thought the document was extremely well drafted as a first draft. I think that Julie, Ariel and team did a great job here.

I noted at the end that there were two different motion templates for the two different situations, one where the GNSO supports an action by others; and two, where the GNSO itself is the initiator. I made a few tidy-up type edits along the way, nothing really stunning. I raised one question that goes to who sends it if it's staff or an individual. But I think that's probably the summary of my introduction to it. David, over to you.

David McAuley: Thank you, Heather. It's David McAuley speaking for the record. And so just responding to your request for general impressions, my general impression is like yours, I think this is an excellent document. It shows a lot of work. Thank you staff, for doing this. I have a couple of things that, like Heather, I noted on paper and I have here in front of me. They're the nature of some technical things, for instance, just nomenclature of sections and articles and annexes, that kind of thing.

I think there's a need for some precision here just because these are very precise parts of the bylaws with respect to reconsideration requests and IRP claims. For instance, in the IRP I note – I think I would request or I would suggest that we use the word “IRP claimant” and – as to distinguish that from a reconsideration requestor. But it's just things like that and I can easily put them in the document. There were – I don't think I had any major substantive comments. And that's about it. But I'm very – I just want to pass along my kudos for a great take on a document. Thank you.

Heather Forrest: Brilliant. Thank you very much, David. And Julie Hedlund, can you confirm, I think what it sounded like to me is it would be helpful to leave that Google document open for a little while longer. Is that okay?

Julie Hedlund: Oh absolutely. This is Julie Hedlund from staff. We can leave it open as long as you would like us to.

Heather Forrest: Super. Super. David, does that work for you to put in your suggestions into the Google Doc after the call?

David McAuley: Yes, it will be definitely after the call but it won't be immediately, it'll be some time tomorrow US East Coast time. I have a very busy morning but early in the afternoon I'll probably put them in, in the comment mode I guess is what we're using, and that would certainly work for me so thanks. Thanks for that, and thanks, Julie, for keeping it open.

Heather Forrest: That's cool, David. Thank you. And I think that timing is perfectly reasonable, 24 hours is a miracle the week before an ICANN meeting, so you get the gold star. Wolf-Ulrich...

Steve DelBianco: Heather and David...

((Crosstalk))

Heather Forrest: Oh, yes go ahead, David.

Steve DelBianco: Heather, it was Steve. I was going to note for David's benefit that if he wants to make suggested edits he makes the edits in line because we're in comment mode the Google Doc will automatically note your edit suggestions as comments to the right. So go ahead, David, and make the edit in line the way Heather and I did.

Heather Forrest: Okay good recommendation, Steve, thanks. Wolf-Ulrich, over to you.

Wolf-Ulrich Knoben: Yes, thanks Heather. It's Wolf-Ulrich speaking. So I didn't have any specific comments to that. I was crossing the document going quickly through that and I was also more or less satisfied with that. And after that I saw your comments and Steve's comments and I would like the one – and Steve pointed out here also in the chat that his edits are pointing to the question of whether it's related to GNSO Council or GNSO. And then I do have this question then to Steve where that comes from. Is that your opinion on that or is that based on existing procedure?

For example, the first one there – in the introduction where you are relating to it's then this sentence is making reference to the existing processes and procedures. And as I remember the procedures are related to the GNSO at all, not just to the GNSO Council. But I'm open well to learn and not very sure about that. Thank you.

Steve DelBianco: Wolf-Ulrich, it's my impression that if you look at the GNSO policies and procedures that they refer to Council and they don't specifically tell components of the GNSO like the ISPCP or the BC, it doesn't instruct us on what we do, that's in our own charters and bylaws. So it strikes me that the GNSO Bylaws – Operating Procedures are Council-specific.

Wolf-Ulrich Knoben: Okay so that maybe – so if Julie, could that then confirm, then it's okay. So I don't have a problem with that. So if it's that way so I'm not – so you mean the bylaws are specific or are referring to the GNSO at all where the GNSO procedures are referring specifically to Council actions?

Steve DelBianco: That's right. That's right.

Wolf-Ulrich Knoben: Okay. Good. I'm fine with that. Thanks.

Heather Forrest: Wolf-Ulrich, this is Heather. For the record, I had the same concern that you did and not having participated on the Bylaws Revision team. There has been forever a concern about expanding the scope of the role of Council and my understanding is that the Bylaws team discussed that at great length, the Bylaws Revision team, and came to the view that Council was the best vehicle.

I think this is something that the ISPCP, BC and IPC have long questioned is, is this an appropriate action for Council, Council normally deals with matters of policy. And my understanding, Steve and maybe you can clean up anything that I say wrong here, but my understanding is that was discussed at length in the Bylaws Drafting Team.

Steve DelBianco: Heather, it's Steve. The minority report that we put in is the best place to look. We did an extensive discussion. We lost, the IPC, BC and the ISPs wanted GNSO and not Council for precisely the reason you cited. We debated it in good faith and were outvoted on that and filed a minority report. When it went to Council, you can well imagine, Heather, there was no way Council was going to do anything else than to preserve for Council the new powers for the GNSO. And that's the way that went.

So given that that's been decided, all I'm attempting to do is to have this document reflect what is actually the case. I'm not being normative about it, I'm trying to be descriptive. But the minority report – I'm not in the Adobe but Julie, if you could put a link to that minority report from the first Bylaws Drafting Team, the members of this group would benefit from reading it just as background. Thank you.

Heather Forrest: Yes thanks, Steve. That's very helpful. And indeed it is the case that when we debated this in Council and let's say my opinion at the time was irrelevant because I was chair, I'm not sure, Steve, that I would say, you know, it was Council's interest in expanding its own mandate or preserving its power.

I think the case is, you know, the most salient point to me in that Council discussion was we have existing procedures in place for Council as a body, as a decision making body, whereas we didn't have procedures in place for anything else within the GNSO to come together as a decision making body. So that to me made a pretty sound point. Wolf-Ulrich, I'll turn it to you.

Steve DelBianco: If I could just quickly follow up, Heather? That's sort of a bogus reason because it isn't challenging for the chairs of the respective GNSO components to have made a decision whether the decisional participant, there's a handful of yes/no decisions that they could have administered without a new structure, it's simply the chairs of the constituencies and stakeholder groups indicating their preference.

The main reason that we objected to the idea of burying it in Council is that it preserves this notion of a split house and that kind of a voting is very different than a simple majority that one might achieve or a super majority that one might achieve if every constituency and stakeholder group had equal weighted voting. It really wouldn't have been a tremendous structural issue. But a lot of this is just ancient history, a little bit of background for now, nothing that we can revisit.

Heather Forrest: Cheers, Steve. Wolf-Ulrich.

Wolf-Ulrich Knoben: Yes, thanks, Heather and Steve. Well, I didn't want to reopen, you know, that discussion. For me that discussion is over. Okay but what I wanted to

avoid is any kind of confusion, you know, if you – if somebody goes and is going to read and – the Operating Procedures. So I think it's still called GNSO Operating Procedures and then the question is so not to confuse people, if there are anything or then the question of should that be renamed in the future, for example, in order to make it more clear for these members? Or how should we go ahead with that? So just to avoid confusion for anybody. Thanks.

Heather Forrest: Thanks, Wolf-Ulrich. It is certainly the case in the Operating Procedures that there are provisions there that deal with stuff beyond Council. And so I think it's still fair that those things are referred to as GNSO Operating Procedures, but it is the case that based on the prior work of the Bylaws Drafting Team, that these sorts of matters were brought under the purview of Council so the Council's specific provisions deal with the – deal with the decision making aspects of what we're discussing here which is reconsideration requests.

So I think we're on safe ground in that territory and I also agree with Steve that the important thing is to be consistent in the terminology here and the work of the Bylaws Drafting Team in making those edits to the GNSO Council related provisions of the Bylaws. I also agree with David that would be very helpful to use consistent terminology with the language around IRP. So I think to the extent that we're consistent we save ourselves a fair bit of headache.

Are there any other general comments or questions? If not, what I suggest we might do is go to any specific comments or questions anyone has. I think we can probably safely park the tweaking the language for clarity purposes and leave that to staff to clean up for us. And we'll note that David will go in, in the next couple days and put in his edits as well.

But if we don't have any more general impressions I might suggest we go to any specific comments or questions, things that we want to finalize before staff then takes what we have and policies it up. So anyone for any more general impressions, general comments? No? Seeing none, all right.

Then is there anyone that has a specific question, specific comment, something that concerns them in this document that they would like to discuss before we consider the document ready for finalization by staff? I have one point but I'm very happy for others to go first.

Okay, silence, which means we go to my point.

My point is noted in two places in this document. You will see the first place that arises is as a comment on Page 8. So in the middle of Page 8 -- and the document should be unsynced so you can scroll down -- under the heading Terms and Conditions for Submission of Reconsideration Requests, the fourth paragraph beginning, "For all reconsideration requests that are not summarily dismissed," I've made some tinkering there with the fine language, "except in cases where the ombudsman is required to recues himself or herself or the requested issue is a community consideration request" comma, "the reconsideration request shall be sent to the ombudsman."

Then in the actual motion template, and you'll see my comment in the margin says, "Sent by whom?" effectively. In the actual motion template, and I wonder did that -- yes, it did pick up -- all the way on the last page, which is Page 11, the last resolved clause for the GNSO initiated reconsideration request says, "The GNSO Council requests that ICANN staff submit the reconsideration request form."

My concern here, given that we are calling out an action or inaction of ICANN, is it appropriate that we put the responsibility on staff to send this reconsideration request? I understand it's a basic function of the secretariat, but I wonder if this is something that we ought to – a responsibility that we ought to give to our GNSO EC representative instead?

Steve DelBianco: Or to the chair of GNSO. That's a good catch.

Heather Forrest: Yes, as a matter of principle, I mean, I think it is the case that – or it has been the case our last two EC representatives have been the GNSO Council Chair, in fact our last three, our only three. I just – I think out of principle it's probably inappropriate to put this responsibility on staff.

Steve DelBianco: Then I would do Council rather than the rep just because the Council Chair will know all of the right emails, will know – we could have a situation where the rep isn't the chair and we might have a challenge having them do it quickly enough. You think the GNSO Council Chair would be a better choice than the rep.

Heather Forrest: So Steve, I wonder if the – I think we probably want to go back and look – I don't think that there's anything that specifies the power of the EC rep. I agree with you that I think the Council Chair – Council leadership is the right party to do this largely because then it forms part of the Council record.

((Crosstalk))

Heather Forrest: It gets captured on Council correspondence page. But I wonder if in this resolved clause we might say, "The GNSO Council requests that Council leadership on behalf of the GNSO Council rep," sorry, "GNSO EC rep shall

send,” because that captures all bases, let’s say. Does that make sense everyone? Anyone object to that?

Yes, Mary says she thinks it’s GNSO appointed representative to the empowered community administration. Thank you, Mary. Indeed, we’re so good with acronyms around here and shortening that we, you know, don’t take the time to give the proper name on things. And I think that’s the language that we ought to use there so it should be “Council leadership on behalf of the GNSO appointed representative to the empowered community administration.”

And Julie Hedlund is capturing that in the notes pod. Everyone can see that in the specific language that Julie’s typed up there. David is typing. Does anyone object to that language? David says, “Sounds fine.” Great. Steve, do you want – since you’re not on Adobe you want me to read that out to you again so you can hear it in full?

Steve DelBianco: I heard it and I’m good with it. Thank you.

Heather Forrest: Cool. Excellent. All right, Wolf-Ulrich says, “Okay.” Great. Julie Hedlund.

Julie Hedlund: Thanks, Heather. This is Julie Hedlund from staff. So back to – thank you for that change in the motion, that seems great and also consistent. I – just going back to the reconsideration request form, something that staff should have been more clear about is we as staff did not create this form, this is actually an ICANN Org form. So we simply reproduced it here, you know, for ease of use. But it’s a form that ICANN Org created and has posted, you know, with respect to the Bylaws. So I’m not sure we can easily make changes to the form since it’s not really ours to change.

Heather Forrest: Fascinating, Julie.

Steve DelBianco: Yes, I've used that form before to file reconsideration requests, it's just a web form.

Julie Hedlund: It is but we – it is -- this is Julie again -- but we didn't create it, and I don't know to what extent it went through Legal so I don't know if we can just make edits to it. We'd have to go back and consult with our colleagues and see if we could suggest some changes. I see the changes you've suggested, I think they're pretty minor, but like I said, I can't speak for ICANN Org to say whether or not we can make changes easily.

Steve DelBianco: Right, so since our changes were minor if it turns out that that's a ICANN-wide form then it's fine to just ignore our suggested changes on that and we'll just make sure that our policy and procedures guide clarifies anything for purposes of GNSO, clarifies how to interpret or how to respond to elements of the form because we can't change the form itself, like we could put notations in our policy and procedures about that.

Heather Forrest: Yes, Steve, it's Heather. I wonder if we even need to do that. I mean, just looking over the comments, I was – it could clean up ICANN's grammar occasionally, my changes were mainly grammatical for clarity purposes given, you know, we want to have a good readability for folks who – for whom English isn't a native tongue and just out of principle. But I think, Julie, what we could do is pass this on to Legal or to whomever is the owner of the document and say, you know, FYI, we've been through this quite carefully within the GNSO and if these are of any use to you for a future version then we can do that.

But I'm not even sure, Steve, that there's anything we have to capture, like my only question around it, my only concern in reading this that, you know, everything made sense to me but this idea of the reconsideration request shall be sent. Now that's not toxic in and of itself that statement, the statement can stand, but it raised the question in my mind of who and that of course we deal with in our motion template so that why I picked it up in both places. So Maxim, please.

Maxim Alzoba: Maxim Alzoba for the transcript. Just note generally for a case yes, for purposes to be able to understand what happened at what moment of time is preferable to send such notes not via web form but (unintelligible) or something because using web form doesn't give any (places) actually. Thanks.

Heather Forrest: Thanks, Maxim. Your line was a bit hard to understand on my end but I know – I have a feeling, yes, visible traces, yes, I understand that, Maxim, I understand that and I think that's helpful. I think that's helpful. Hopefully I understood the full extent of what you said. Are there any further specific points on this document? David, please.

David McAuley: Thank you, Heather. Let me just preface my – I have two to bring up but let me preface it by saying the things that I'll suggest in line editing tomorrow are the nomenclature things I mentioned, but I may put in a comment or two which is really just a question. But separate – and they're not major questions, but separate from that the two things I'll mention here or the two issues I have here that may go a little bit beyond that, the first is on Page 6, I think it is, that's what it is in my print out, and let me just scroll up to it on the document, and it has to do with Paragraph 7, the same one – Paragraph 7, Detail of the ICANN Action Inaction – this is peaking in terms of a reconsideration request.

And I'm actually in the third paragraph down which begins, "If your request is in regards to an action or inaction taken or refused to be taken without consideration of material information, please provide a detailed explanation of the material information not considered by the ICANN. If that information was not presented to the ICANN, provide the reasons why you did not submit the material information."

It strikes me that that "why you did not submit it" is incomplete. I mean, ICANN can take actions based on a lack of material information that it should have had that, from a source other than the requestor, it might be ICANN itself, one division didn't give another appropriate information. And so this sounds like there's a presumption that the requestor didn't give the information. And I'm not sure that presumption always applies. And so maybe we could tweak that language. That was one point I wanted to mention.

And the other was on Page 10 in the motion template, so subject to what Julie was telling us about whether these are changeable or not, I was looking at the motion template 4.2 anyway, it's about requesting an IRP. And the very last section is Number 3 where it says -- and Number 3 appears on Page 10 -- "The GNSO Council requests that the GNSO representative on the EC administration to contact the EC administration."

I would simply suggest we add in there the word "timely" because there are some strict time requirements within Annex D for doing all this, and it would be nice I think to make that obvious. But those are the only two things I'll note in this respect. Thanks.

Steve DelBianco: David, I've got to drop. It's Steve. I wanted to give two observations. We can change the motion templates all we want, those are just within Council. The

only thing we have restrictions on changing is the web form for the ICANN-wide reconsideration requests.

David McAuley: Thanks.

Steve DelBianco: And why say “timely” when you really mean immediate? Let’s just go right to it. And then the final thing is you bring up this notion about disclosing why you didn't submit information, and we need to go back to the Bylaws to see whether that is required that you at least indicate why you didn't present the information. But that isn't dispositive of the reconsideration request, it might just be that we need an explanation as to if you had the information why didn't you present it and if we didn't have it, fine, we'd just go on and consider whether someone else may have presented it.

So I think it’s necessary to show that you took some measures to present information and it still might be relevant that no one else presented it, right. I’m not sure that it’s always on the responsibility of the complaining party. But thank you, David, good comment.

David McAuley: Okay, thanks. Thanks, Steve.

Heather Forrest: Thanks very much, Steve and David. Let me make a final call for – are there any other specific points, questions, comments about either the form or the motion templates that we want to discuss here before staff goes about the finalization process?

Okay, seeing none, I’m going to suggest that we've done an excellent job with Sections 4.2 and 4.3 and to use David’s word, in a very timely fashion as well. What I would like to suggest is that we move on to next steps. Julie Hedlund, are you and team able to make let’s say subject to David’s points and all the

notes that we've captured here, which admittedly isn't too many, Julie, are you happy with your team to put this together into a final format for us in time for the next meeting?

Julie Hedlund: Thank you, Heather. This is Julie Hedlund from staff. Absolutely we can and that actually begs an important question, and that is we don't have a next meeting on the schedule. We haven't done the March meetings yet because there's the behemoth of ICANN 64 in the way there. And so as any other business today, well as Item Number 4 on the agenda today is there because we need your guidance as to when you next wish to meet.

As you all may know, we generally do not schedule the calls the week before an ICANN meeting, and this particular call would fall when I know many people are traveling, including staff. And I see though Heather you're suggesting two weeks after ICANN 64 and so that would be then the 27th I believe of March because the week after – yes, so the week after ICANN 64 would be the 20th and generally we try to avoid meeting that week as well and I'm seeing that people are agreeing. Oh you're all so easy to work with. This is wonderful.

And absolutely we could make the changes well prior to that. In fact I think once David has the – has had the chance to get back into the Google Doc and make his changes then I would think that we'd be able to finalize everything I imagine by next Monday because I don't think any of these changes are particularly difficult to address.

Heather Forrest: That's brilliant. Thank you, Julie. I'm also very mindful of the fact that staff has, you know, an overloaded workload on the normal time and the week before an ICANN meeting staff are in overdrive. So Julie, I would suggest, you know, don't prioritize this as valuable as our work is, make sure that

you're not doing this at 3:00 am just to get it done. And Julie, (Bea) has said she'll schedule us in for the 27th of March, which is brilliant. And Stephanie has joined us. Hi, Stephanie.

And it's Julie Hedlund, may I put you on the spot, by any chance, are you able to pull up your original summary document that had the yellow and green coding in it, the one that had the full list of our scope of works in it?

Julie Hedlund: And yes, let me do that right now. And let me get into the right folder to do that.

Heather Forrest: Super. Thanks, Julie. I'm sorry. What I would – I hate putting staff on the spot. What I would suggest is let's have that document in the background for all of our calls just in case because what I'm going to suggest now is that we have a look on the list and we see what's next and we make as the first agenda item in our next meeting on the 27th the review of the finalized version that staff will put together for us in relation to 4.2 and 4.3.

And then we go ahead and move on to our next – pardon me – our next item in the list. And Julie's posted the document for us. Julie, are you able to unsync that for us so I can scroll down to see the next one?

Julie Hedlund: Yes, and I just have. And also I can bring up the – there's a document that just has the shorter list of items that are identified. But let me leave this here for now and I can queue up the other one too so it's ready.

Heather Forrest: That's cool, Julie, thank you. And I'm sorry to put you on the spot with that. It looks to me like Section 18.12, Special IFRs, is next which deals with the initiation – the initiation of a special IFR. So I would suggest that we go on to

work on that one next. We can use the same cadence as we did for the – what we've just done on 4.2, 4.3.

If staff are willing to take a first stab at this, and so much the better then that we've got a fair bit of time for this, Julie and team, Julie, Ariel, Berry, it's up to you guys to say if this is too much. But if we're able to do the same sort of a rhythm that we have an initial meeting whereby we talk about something, actually that's true, that's true not staff to do timelines or templates straight up is it? Let's have an initial discussion about it, see where we want to go and then that will be followed by templates, and then we'll follow with the sign off at the next meeting, all things being to plan.

Maxim is typing. We'll see what Maxim says. Safe flights. Well done, Maxim, good stuff. Anybody object to that? So next meeting we'll review, we'll finalize the work on 4.2, 4.3, we'll move onto the next item on our list, which is Section 18.12, Special IFRs, and that will keep us progressing.

In the meantime I will work with staff to take a look at our remaining list and try and make an estimate of the timeline for completing our work so that we can update the GNSO Council as to when we – if we keep up with the pace that we have now when we can anticipate this work to be completed because I know they're keen for this to be done, but to be done in a comprehensive fashion.

So with that, any final comments, questions, concerns? Julie is typing. Excellent. Thanks, Julie. And I'm happy to help you with that. With that, everyone, safe travels if you're traveling to Kobe. If you're not traveling to Kobe, stay away from the ICANN time zone madness in following Kobe, and very best wishes to everyone. And for those in Kobe, see you there. Thanks very much, everyone. Julie B, we can stop the recording. Thanks very much to

staff for all your very hard work on this despite all kinds of other things going on. Thanks, everybody.

Julie Hedlund: Thanks, everyone. Thanks so much for chairing, Heather. Thanks, everyone for joining and safe travels to Kobe for those who are going. And then I guess this meeting is adjourned...

((Crosstalk))

Julie Hedlund: ...Julie B.

David McAuley: Thanks. Thank you.

Julie Bisland: Great. Thank you. Safe travels, everyone.

END