Transcription ICANN61 San Juan
GNSO Working Session Part 2
Sunday, 11 March 2018 at 10:30 AST
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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
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Heather Forrest: So welcome back. This is our continued discussion on what good looks like
in a PDP and we have a fantastic number of sheets with writing on them
around the room. And if I could ask a spokesperson -- we have a roving
microphone -- if I could ask a spokesperson from each group to present to us
your summary of suggested solutions, remind us first of what your challenge
was and then present your solutions.

You'll notice that everyone in the room has been handed cards that are red or
green. This is to help us manage the agree or disagree problem. To the
extent that you agree with a solution, you might show the green card. To the
extent that you disagree with a proposed solution, you might show the red
card. This is not a formal means of capturing consensus. It's just a
temperature taking for the room.

With that, could I turn it over to the group over there, which has the
microphone, to present their -- remind us of your problem, your challenge,
and present your findings please.

Michael Flemming: Thank you, everyone. My name is Michael Flemming. I am going to be
presenting our how to set expectations for PDPs discussion points. We
discussed key areas in setting the expectations as well as the accountability
of expectations. Some of the key areas we talked about were -- you keep

holding it that way -- who sets expectations, when are they set, having points to reevaluate and reflect on progress in PDP.

We've also talked about the timeliness of process, how much time and what is our progress -- our plan for progressing through the PDP for achieving said expectations. The deadlines and expectations, making sure they're realistic, SMART, many of you know that know the acronym.

Terms of what and how to measure success, setting those expectations. Much of this will come probably out of the issue report for PDPs and the expectations, we believe, are many times multilayered. So council, in terms of council expectations, leadership expectations, participant expectations. And not only this, but the wider ICANN community as well. And probably a topic that many of us fret to talk about are causes and consequences within PDPs.

This goes back into the time -- to the reflecting -- but if, for example, facilitation is not meeting its expectations, perhaps it's time replace some individuals. Also, participation, how can we better empower our participants to organize discussion to meet expectations. And most importantly, sizable and manageable expectations.

We've also jumped to a second page here but accountability is also very multi-layered. We touched on this when we talked about the causes and consequences but at the time, what is the responsibility of council to facilitate or empower our leadership, education programs. We've had those in the past but much of this can work intertwined with PDP and one-on-one coaching on the side as well.

And then the leadership as well. There's a responsibility to be timely and to provide agenda and there's also one for participants. If you are going to actively submit your SOI and say that you will be participating in this PDP, you need to commit to outlined timelines, to meeting those, to participating

long enough. And we've also jumped into solutions somewhat. Much of these expectations will be outlined within the charter, we believe. There's a very big nexus with the discussion group over on the charter and we'll let them talk about that in a moment. But we need to have the proper data set as an outcome of the charter and the data gathering work. And then there needs to be an active role by council liaisons to manage leadership of the group.

So this is related to the causes and consequences but if they're not doing their job, then the council liaison needs to jump in there and intervene, and perhaps replace some of those individuals.

Greg Shatan: If I could add on the flip side, if the leader is doing what they're doing but there is a drag within the group, the liaison can provide more active peer support and to try to unclog things. And I think the other point is if timelines are set and people are agreeing to stick by them, they have to understand that the facilitator or chair is empowered to move things along and that includes setting an expectation that you can't just keep making the same speech every three weeks for two years for five minutes at a time.

Michael Flemming: So does that mean empowering the chairs to cut off the conversation at some point?

Greg Shatan: Yes. It's a judgment about not cutting it off too soon but I think airing on the side of cutting it off too late has almost become epidemic here. You can talk about how to cut it off?

Heather Forrest: Thank you very much. Could we have the next group, the roving mic. So we have a bit of a challenge with our optics here in the sense of I've been asked could I move groups to the microphone. If you're willing to stand at the microphone, the standing mic, then we'll have the camera on you. But I do realize that means portability of whiteboards, which maybe isn't practicable.

So our next group, please, remind us what your challenge was that you tackled and then proposed solutions.

Kathy Kleiman: This is Kathy Kleiman and Steve DelBianco and we're going to present for what was a wonderful group. So it says direction from council at the outset and the form of charter and data available. And so I'm going to give some of the broad outlines and Steve is going to tell you what we think is really the key to the secret sauce. So solutions -- data. At the outset, put together a group of experts to help scope data requests just after the charter.

So actually, and then -- and this is kind of flowing. So we're going to give you the flowing -- pressure. Obviously, dates and dependencies but to make the dates and dependencies possible without killing everyone involved, the charter really has to have questions that lay out clearly from council what is a must for our evaluation, what is a may for our evaluation, and what shouldn't we look at, at all.

The drafting team, and we understand that often the council has a drafting team. I don't know about it. That was after my time but a drafting team composed of staff, experts, and experienced ICANN participants could really help refine the suggestions from the community to express questions for the working group that are endorsed by the council along the lines of this must, may, not.

For the chart, more defined issues, more bounded, more limited. From the council, a success statement. What would success look like if it came from -- when it comes from the working group. It was pointed out that the initial report that the working group creates should be clarified to show that it's really not a final set of recommendations but a place where all sides can be heard, what we've reviewed, what we've thought about for editing, what we think is effective, what might become recommendations.

But the initial report is not a final report and maybe we should all educate people on that, provided council agrees. But it's a place where all groups can be included, that inclusion, that they've all participated, that they're all heard. Nick Wood pointed out that we should consider pauses, that there may be times we have to wait for things. For the charter, also narrower scopes, and in caps, break it up. We're getting huge, huge mission statements that of course take years. Maybe we can break up these big pieces into smaller pieces. That would make the deadline pressure more understandable and more achievable, and give everyone more of a sense of satisfaction.

So kind of issuing back things that at the outset, the charter and the data, and for the data, kind of similar to the drafting team, a group of experienced people, experts, staff, and experienced practitioners, experienced members of the community can help lay out the initial data. Will we need more? Maybe, but that initial data so that it's ready for the working group when the charter comes down too.

And I'm going to leave it to Steve to talk about the secret sauce.

Steve DelBianco: Thank you, Kathy. Kathy and the other battle-scarred members of the RPM PDP were surprised to hear that subsequent PDPs have had a drafting team create the charter. So I would look for a red and green card. Should we have a drafting team to draft a charter? I think the answer has got to be yes, and in that drafting team, we should have people that are experts, and that might mean a legal expert, but we should also have people that have experience, practical experience. You can't expect everyone to both be an expert and have experience. Those are different aspects. Staff should cooperate but it should not only be council. We should look to others in the GNSO who can be pulled into the orbit of doing a draft.

On that draft, they take the issuer's report from staff and they're supposed to characterize the issues into those you must look at, those you may look at, and those you should not look at. So the drafting team presents to council

three batches, and if they present to council and there's too many things in the must bucket, then it's council's job to say, wait, we should break this up into multiple smaller threads. And it could be two PDPs or it could be an opportunity to say that it's important to apply pressure in the form of some sort of a date or dependency, such as the next round wouldn't open until the RPM PDP delivers a consensus policy.

That's a lot of pressure but if you couple that pressure with too many things on the must list, it just doesn't work. It's too much to get done. I think that the data gathering shouldn't be seen as a delay. Data is not an excuse for delay. When the charter that you approve is launched, the working group begins its work while data gathering is feeding into that process. I understand that there might be a critical point at which lack of data means we can't make a decision and that could imply that you do a pause. That's what Kathy said earlier.

I do think that we suggest that the need for pressure, whenever possible, can be brought but it has to be coupled with a limited scope so that the date pressure or dependency pressure will produce a solution, instead of making it impossible to arrive.

Kathy Kleiman: What do you guys think? Are there any questions?

Greg Shatan: Greg Shatan for the record. I'd just like some clarification on something I think Kathy, you said, about the initial report not being the final report. It sounded almost like you said that it should have all the ideas in it, the winners and the losers, rather than represent the consensus of the group at that point. Before I say I disagree with that, I want to see if I got that right.

Kathy Kleiman: Kristine Dorrain, she will explain it much more eloquently than I will, and also anything you want to add about the data please.

Kristine Dorrain: Thanks, This is Kristine for the transcript. Yes, I think what I was trying to capture there was that the initial report doesn't have to be a consensus. It's the final report that demonstrates any consensus. So the initial report is a list of a where the working group is at today. It's a snapshot in time. And if that means there is no consensus, there can be a minority opinion. There can be other people's positions in that initial report but it is not a consensus yet and it is a good way to get people to allow things to be on the paper and to be into the community for voting, and for contributions, and for public comment without actually having to come to a consensus yet. Anything else?

Greg Shatan: I agree that there should be minority statements if a consensus has formed but there's also kind of a mini-non-consensus that is formed in opposition. And if there are things that are truly open where you haven't driven somewhere, and you need the community to tell you where, you definitely want to ask. We've done a lot of that.

I guess what I'm worried about is the idea that there's alto of non-consensus stuff where there is a consensus brewing but you're going to present all sides. That seems to me to be a little too undercooked for an initial report.

Kristine Dorrain: This is Kristine. I don't think that I would be speaking on behalf of anybody in this room who would say that if there were a consensus, even if we're half-baked, that we would have not written that down and identified that. But I think specifically when we're thinking about RPMs, one of the big issues that we're facing is the fact that there doesn't appear to be a lot of consensus yet. And the fear of people to put anything on paper because there is no consensus shouldn't stop us. We should still get out an initial report so the community can see that there's a lack of consensus and then they can weigh in.

So to your point, if there is a consensus, great, yes, we should include it. But if there's not, we need to say that too.

Greg Shatan: I would agree that an interim lack of consensus is a result that needs to be brought out. Okay, thanks.

((Crosstalk))

Susan Kawaguchi: Heather's in charge. I will go first and I have no idea what your comments are either, Jeff. Not a mind reader. So I like a lot of what you've discussed here. I do feel that the RDS PDP did this. It was a board initiated PDP. We had the expert working group to do some thinking and provide some thoughts and some constructive references. We gathered a tremendous amount of data. We had a planning group that was board and GNSO council that for six months, we talked about how we would do this. We divided it up into three different PDPs and we had specific questions from council and we still are where we are.

Not that we couldn't do it again.

Steve DelBianco: Right, I think what that demonstrates is the missing ingredient from the RDS PDP was any form of pressure in terms of a deadline or a dependency. And the lack of pressure means that those who are comfortable with the status quo can sit on it. So you did everything right but you lacked the critical ingredient of some form of pressure for dependency or dates. And when a working group discovers that those who sit on the status quo are slowing it down, there has to be a way to transform that.

I think that Nick Wood came up with a solution, which was to publish what is called the solution, and let those who prefer the status quo to argue why the status quo is better than the solution. That is a better conclusion to a PDP then to simply have no report at all.

Susan Kawaguchi: We do have the GDPR that's providing a little pressure.

Kathy Kleiman: And there was some question about pressure and how that works. Do we still have time for questions, Heather? Brian, please.

Brian Beckham: Thank you. Brian Beckham for the record. I think the notion of applying external pressure to drive things along is a useful thing to think about and I realize we're not in the phase of this working group that's looking at the UDRP but it's been working well for 20 years and I would just like to make a note of caution that we avoid artificial time pressure to make unwise policy choices that could upset one consensus policy that is working well. Thank you.

Kathy Kleiman: Again, some of the mixed views on pressure and how that would work. Jeff, did you?

Jeff Neuman: Yes, thanks. And this sort of leads into what our group is talking about or talked about. But one thing on the discussion group before you draft the charter, just to point out as someone who was involved in drafting the latest version of the PDP that there's no reason why the council has to approve both the charter and moving forward with the PDP at the exact same time. That's not in the PDP -- that's not in the bylaws. That's not in the manual. You do have to approve the charter, but it does not have to be at the exact same time.

So what you could do is approve moving forward with the PDP. Then have the first thing the group does draft the charter and then come back and get that approved. So that is allowed for in the rules. It just hasn't been done because that's seen as taking up a lot of time and most of the groups that have informed have taken the view that we really want to start this PDP so let's do everything at once.

So there are options in there that could be done. So our group was talking and it relates to a bunch of the concepts that were just talked about, but it's really empowerment, empowering -- are the participants empowered to

actually compromise. We also talked about the fear of giving an inch and others taking a mile, and essentially, how -- what we can do both from a structural perspective, as well as from the interworkings of the group to try to overcome those.

The very first thing was that the initial -- sorry, not the initial report -- the final issue report should have in there that extremes of the subject area. In other words, we all know when we go into a PDP what the extreme positions are, what's going to be on the extreme. So let's take RDS as an example. It doesn't take a genius to figure out that the extremes are either you completely do away with WHOIS and have nothing in its place and the other extreme is that you have everything freely available to everyone no matter what under any condition. Right, those are pretty much the extremes. We all know that going in. That could certainly and is of course identified in those final issue report anyway.

And when we set up the group to work towards a compromise, we could say at the outset, you know what, we know what the extremes are. If all you're here to do is argue one of those extremes, we don't really want that. We know it. It's documented. It's out there. Thank you, but unless you're willing to work on something that is not in the extremes, thank you but you can be an observer. I know that's a little controversial. I see one green. I don't know how everyone else feels.

On that same concept is we don't want to rehash old arguments. If we've done that, we've already had the automobile arguments let's say in -- so I'll do sub-pro as an example. If we already discussed why there is a sunrise or should be a sunrise period, if that's been asked and answered, and part of a consensus policy, then, you know what, unless you can show already existing data or an already existing change of circumstances, we do not want to go back to those same arguments.

And what that means, and this is controversial, what that means is we should not be using a PDP working group to test out theories. It should not be a data collection exercise to test out new theories. If you have a theory, if you have -- so let's say there's -- you believe that there shouldn't be a sunrise because of whatever it is -- unless you come to that working group already with some data to support that change of circumstances, then we should not be using the working group to do a fishing expedition to see whether there is or is not data to support that theory, that was already asked and answered back several years ago.

I know that's controversial but while data is important, it should not be used as an excuse to reopen issues that were asked and answered several years ago. So that's one of the things that we had discussed. In other words, don't use the PDP working group as an area to approve or disprove a theory.

So the next topic we talked about was that a lot of people supported the notion of the accountability CCWG and how it was able to work towards a common goal within a timeframe, albeit extended a couple times. But ultimately, got the community to come in and get to a point of compromise on issues that were deemed important.

One of those attributes was the fact that they had members, participants, and observers. The members -- I'm sorry -- and of course, well, and Thomas. So obviously, great leadership too. So one of the things that we found successful from that was that anyone could participate in it. So they were full participants but when it came down to the end to determine a consensus, it was the members that actually did -- that were checked -- sorry, timing -- the members were checked for consensus. And so the members -- one thing that needs to be done before a group is constituted is define the membership.

The default of course is the SOs, the ACs, and the Cs, but there could be issues in which we all recognize there may be another member that could be checked for a consensus call. Like let's say it's on the Red Cross, we may

decide or the council may decide that the Red Cross should be a member in checking to see whether there's consensus. So the membership is not just always going to be SOs, ACs, and Cs. It could be changed with agreement by the council. I know I'm going -- I don't have much time.

So maybe I will just -- we talked about the status quo issue. The danger of one thing that Steve said, which overlaps, Steve said maybe someone should come up with a rule saying that unless you can have a consensus policy on RPMs, the next round won't go. I think he used that as an example. I actually think that that's, right now, that would cater to a lot of people that favor the status quo and too much so, since the initial policy was that there should be TLDs.

So the status quo, whatever it is, should be in accordance with already existing GNSO policy and how do we get people to move when they like the status quo? It's basically you need effective leadership to address the attempts to slow down a group. I like the idea of even if people favor the status quo to put a proposal out there for comment so that it gives them some incentive.

Thanks.

Heather Forrest: Thanks, Jeff, very much. Could we get the microphone over to -- so we have some input here. We have a queue. Hand up, so we have Donna, Thomas, Kathy, Michele. Let's just the queue there and we'll get the microphone over to Chuck and his teams, since they'll be next up. Thanks.

Donna Austin: Thanks, Heather. Donna Austin. Jeff, just in relation to -- we had a discussion on council similar to what you've outlined here and one of the things that we talked about was what mechanisms are available to keep the members of the working group accountable, and accountable in the sense that the overarching goal is to work towards consensus. And one of the things that we thought might be helpful is a terms of conditions so when you

sign up to a PDP working group, you're doing it on the understanding that you are working to consensus.

So I don't know what the language is in it, but some kind of agreement that when you sign up to a working group, you understand that basically what you're trying to do is work to consensus on an issue. And that might be something that the working group chairs could use to hold people accountable.

Jeff Neuman: Thanks, and the real quick response. The group actually -- and this is really important so I'm sorry I forgot it -- in order, if you are going to sign up to be a member on behalf of your SO, AC, whatever, you have to be empowered to reach a consensus. In other words, you have to check with your employer. You have to check with your group and with everyone else that you're required to, that you are empowered to move away from what was initially or what was the initial position.

If you are not empowered to compromise, you may not be a "member." You can be a participant. You can fully participate but you cannot be the member of that group for taking a consensus call.

Thomas Rickert: Thanks very much, Heather. A quick point about members, participants, and observers as we had them in the CCWG accountability. It is true that we had these three buckets of participants but in fact, it's a double-edged sword because if you have a core number of members, each of the chartering organizations for this cross-community working group could appoint five members to the group. And according to our charter, when it comes to consensus calls, the voices of those members would be decisive.

But the co-chairs have determined very early in the process that we only want to use that mechanism as a last resort because we did not want to discriminate participants. Because if you start at the outset saying, okay, we invite you to participate but at the end of the day, we don't really care what

your view is, that's extremely discouraging. And therefore, we've said that we will try to take the group to consensus and only if that fails by all means that we can apply procedurally then we would use the member's poll as a way to determine what decisions are being taken.

Luckily, we had to threaten a few times that we would do that, but we were never forced to do it. So what we can truly say very proudly is that we treated participants and members the same. I mean observers, they wanted to step back by their own choice, right. So that's a different thing but we wanted to treat members and participants the same.

What we applied, and I think this is new in ICANN's history, is we invented the die and the ditch test. So when there were folks that had positions that they were fighting for but that did not really get traction, we would ask them, this is something that you would like to die in the ditch over. And then you find out whether people really mean it or whether they would actually be willing to step away from that. And many of them actually when doing the die in the ditch test then we could converge the group more to consensus over time.

Jeff Neuman: I just have to really quickly point out, it worked on an issue that's not in the GNSO or the ICANN world as a consensus policy. It worked because it's not something that's imposed in contracts in registries and registrars. So while I admire the approach of we really wanted people to come to consensus and we really didn't use the member test unless you had to, I would argue that in circumstances when it comes to consensus policies with a capital C and a capital P, because it's imposed in contracts that things will be a lot more contentious and that you would need -- you may need the membership structure more in order to move forward with a capital C, capital P consensus policy.

Thomas Rickert: That's not to say that I was pulling up the red flag for your suggestion but it needs to be applied with caution.

Heather Forrest: Thanks. Let's be very respectful of the queue and I note we have a hard stop at noon and we need to talk about next steps. Kathy, Michele, and then we're on to Chuck's group.

Kathy Kleiman: Kathy Kleiman. One idea that I heard that I loved was this idea of coming in as empowered to reach a consensus. So let me flesh it out a little bit more that there could be education at the outset. We're using education on a lot of things on the rights protection mechanism-working group, including education at every section, where we lay out and we just assume all the members aren't experts in every part of what we're doing, and we do some slides and education. We bring experts in. It's been great.

But in this case, education at the outset probably not by the co-chairs, maybe even by the GNSO council chair, to talk about the -- what we're doing, what we're doing to come together and what rests on this, the integrity of the GNSO process, as you were saying, as in some of the slides. To do that, maybe even have people sign something that said that they have talked to their employers, that they do understand what is about to take place. This could be very valuable at the outset.

I do want to be careful about saying what's -- and I think saying what's in scope, what's not in scope without the council defining that for us, going back to what Steve DelBianco was saying, the must, the may, the not. But before we say that things are out of range that have gone from hypothetical to reality in the course of where the working group is coming from, I think we have to be careful. Thanks.

Heather Forrest: Thanks, Kathy. Michele, please.

Michele Neylon: Thanks. Michele for the record. Some interesting points being raised here by Jeff, but I do find one fundamentally flawed. It's the Internet Corporation for Assigned Names and Numbers. Internet by its very nature is technology.

Technology evolves. Therefore to state that you cannot revisit a policy is absolutely in sane. Yes, you did. You did say that.

Jeff Neuman: I said unless there's a change of circumstances.

Michele Neylon: No, that's not what you said, Jeff. But it might have been what you intended, but the message you gave was if there's a policy, don't change it and the thing is that I totally agree that you should not be willy-nilly reopening policies. But to state categorically that you can't makes no sense to me. The technology evolves. How we interact with things evolves and ultimately, the policies we set here are to do with technology. We're not talking about policy for policy's sake.

And some of the ways that some people are discussing this, it's very kind of lawyerly and completely disjointed from the actual technology. Because we have to operationalize whatever comes out of the policies. And again, this thing about empowerment, that might work in certain circumstances. If you're a lawyer representing a bunch of clients, you might be able to get your clients to agree to that. If I as a registrar, member of the registrar stakeholder group, I can get the right to speak on behalf of myself, my company. For me to be able to get the right to speak on behalf of all registrars, that's going to be almost impossible.

Chuck Gomes: Okay, well, first of all, as with all the teams I'm sure, a lot of great input was given and it needs a lot more development. But I want to start with -- and this is the efficiency of the model, how do you keep working group members informed with what's going on. Let me start by saying that probably all of us would agree that it's reasonable to expect working group members to stay current when they've missed meetings, when they've missed email discussions that have gone on and so forth. But is that realistic and I would venture to say no, not going to happen.

So how do we deal with that problem? So I threw out an idea and I'm not advocating this idea, but is there some way -- the reality of the matter is, is that since the beginning of time, any time that there's a task that's undertaken by a group, you're going to have a small percentage that does all the work, a small percentage that stays active. And the majority is not. So let's accept that reality. Now, how do we deal with that? Are there ways internal to a working group, for example, where, okay, we don't try and fight that because it's not going to change.

So can we take advantage of those who are committed and participate actively on a regular basis to solve that problem. So I threw out an idea and I'm not advocating this idea, but this is where we started on this little discussion over here. Is what if we could allow working group members to form cooperation teams -- and this is not drafting teams -- this is not the leadership team. This is the day-to-day operations of the working group where teams could be formed where you have a minimum number of active committed -- I like the idea of commitment if we can get people to do it -- members who attend the majority -- well above the majority of the working group meetings and if they don't, they listen to recordings or read transcripts. They participate actively on the working group list. You need a minimum of those on a given team that's working together.

You're going to have those that participate some, middle of the road. You're going to have some who very rarely -- they're not much more than observers. And by the way, it's okay to still have observers in the defined sense -- but is there some way we could group those people together so that you always have two, or three, or maybe more people who are active, working with behind the scenes with those who are not so active. It could be a natural way to bring people up to speed, to point them to the right documents and so forth.

So we started there. And that could be representative. Those teams could be formed from stakeholder groups, or constituencies, or a group of

individuals. Many ways it could go and some of the things that came out in the discussion are people obviously have to identify as one of those groups. So you're categorizing working group members in terms of their level of commitment, but you're mixing all levels of a commitment together. So those who really are active can help bring the others along.

The idea of having institutional knowledge, obviously, having people on those cooperative teams with varying levels of institutional knowledge would be helpful. Another idea that was thrown out is the idea of librarian. In the case of the RDS PDP working group, we don't lack for data. We have so much data that you would be overwhelmed. Would it be helpful to have someone like a librarian to help point people to specific areas?

The threshold for knowledge, that's come out by other people. You do need expertise and you need that in the overall working group. Some of these cooperation teams, it would help if they had some of that expertise. The idea came out here too, just like others said, participating in good faith. How do you measure that? As a chair, I go to Alex, and I say, "Alex, I don't think you're participating in good faith." How do I show that? But it's a valid point, if people aren't and I'm sure there are people who aren't. But establishing that is hard to do.

How do we measure productive input? Again, as a leadership team, or a chair, or a vice chair, we probably can make subjective judgments but can we back it up? I don't know, if we could that would be great, and you can empower me to make that judgment and I probably would in some cases. But I would probably be highly criticized. A playbook for leaders. And make new working group members joining later accountability for getting up to speed. Well, we try to do that. I think all of you as chairs try to do that, and as vice-chairs, you try to do that? Does it work? Sometimes. Not too often because it's a huge task and everybody has their own regular responsibilities besides what they're volunteering for.

Should we limit the amount -- should there be a cutoff, we accept no more members was suggested from this point on. I personally think that's a problem. I think we've got to be open. At the same time, we have to somehow create means to help those people get up to speed and maybe something like this cooperative team model, again, not giving each team a separate task, as part of the functioning of the regular working group activities so that you're matching people who are committed, who have committed to say current with those who aren't.

And I'll stop there. Certainly, anybody that was here, we had, as all of you, didn't have enough time to develop the ideas that came out. So with that assumption, let's leave it from there. Certainly, if anybody here, a lot of pros and cons were discussed by the group. Certainly, if any of you would like to jump into the discussion that would be fine.

Heather Forrest: Thanks, Chuck, very much, that's very helpful. We have no hands in the Adobe. We do have Tony Harris's hand up in the room. Tony?

Tony Harris: Tony Harris from the ISPCP constituency about the committed people forming some sort of group within the group, you could call that a sharing group actually and they could issue an executive summary every periodically which would help people catch up who have not been following things closely.

Chuck Gomes: Thanks, Tony. And that's not the idea that was discussed here. I think that's another idea that could be considered. The idea of these teams were not to be a steering group, or a sub-group, or a drafting team that has a specific task. We have the leadership team that kind of serves as, in our case, as a steering group, okay. But this is the idea to take advantage of those who are committed, mixing those who are committed with those who can't commit that much time but still want to stay abreast and maybe they have like interests or whatever. But anyway, the idea is very early, not developed very much. But that doesn't mean your idea isn't good. In fact, we've tried to do that in the

RDS PDP working group with regard to our leadership team being the steering group. But thank you.

Heather Forrest: Thanks, Chuck. I'm mindful of the time. We have no other hands up, but more Thomas, I put the heavy on him and told him we have a noon hard stop. Thomas, over to you.

Thomas Rickert: Thanks, very much, Heather and a little housekeeping announcement for this little presentation. You just need the green cards. You don't need the red cards. So our team was tasked with looking at the use of alternative paths that circumvent the PDP, right. So we were looking at reasons why certain individuals or groups would try to bypass the PDP in the first place and we came up with three potential responses. And the first one would be people or groups are ignored or outnumbered in the PDP or they have a perception that they are ignored or outnumbered. And because of that they try then to take a direct route and try to influence the board, for example.

Then there might be engagement by groups or individuals with the board that could turn into undue lobbying to influence the board, and then there is the notion of a perceived position of influence by the board, which actually, the board doesn't really have because the board is not a policy making body. So how can you limit the risk of the board and we also clarified that this does not only apply to the board but also to senior staff and staff working for ICANN, how do we limit the risk of those groups being unduly influenced.

And one of the solution is to document all views and particularly, minority views in the PDP process. Sometimes, views are being brought forward. They don't get traction in the group and they're abandoned and sometimes, this is not properly documented and that causes frustration with those who have put effort and time into explaining their views. So I think probably the PDP chairs and staff could put more energy in documenting all views that are being brought forward so that they are adequately reflected in the PDP's record.

And also, we encourage or we suggest that PDP working groups document rationales why the views held by some that don't make it to consensus position have not been taken on board by the PDP group. So those who are bringing forward those ideas get good comfort that their views have been heard, that they've been adequately reflected, and that a rationale for why their views are not being taken forward are documented.

Then with respect to the board and also staff, they should engage, yes. They should listen to concerns that are being addressed to them, but they have to be very clear about their respective role, which might be limited in the case of a PDP. And they should then, if they are confronted with lobbying attempts, they should invite the requester to the PDP, put them to the right direction. Say, okay, if you want to get your views heard, go to the PDP working group, engage, and your views will be heard there. And the same would be true for staff.

Then another idea that we came up with was a structured early forum for engagement. At the moment, we see PDP working groups forming their consensus position, doing a consensus call, then passing things onto the board. And then the board might have a private policy issue with the recommendation or the GAC might direct its advisor at the board, and at that point in time, the community volunteers have put so much energy and time into all this that it causes delays and frustration with everyone involved.

And so we think that once the views inside of PDP have reached a certain level of maturity, it would be a good idea to bring together the board and the GAC or to present to them what the likely outcome of a PDP would be so that the board can raise public policy concerns that they might have, which would authorize them according to the bylaws to not adopt PDP recommendations. And also for the GAC to raise their concerns, because otherwise, they would be directing their advice at the board very late in the process, as described earlier.

The same would be true with implementation. So either in the charter you could require that an outlook is made on what an implementation of PDP recommendations would be or you could have something like an implementation preview or a sanity check to avoid something that we've seen with the IOGPC, for example, where very late in the process it was determined that the recommendations caused collateral damages that hadn't really been foreseen, right.

So the idea for this early engagement is to ensure that concerns, if any, are properly documented and that would enable the PDP working group to come up with rationales why they did or did not follow the advice that they got, not formal advice, but the input that they got. And that will then make it easier for the board to position itself. And also, probably, it will make the GAC refrain from issuing formal advice.

So then the last point is that these concerns -- and I should be very clear about this -- it's not only about the board. It's also about other groups and individuals inside the ICANN community that might be unduly influenced. With that, I think I've summarized everything that I had looking virtually at my drafting team colleagues. Is that an accurate reflection of what we did? Okay, that's it. Any questions?

Farzi, and then -- sorry, Heather is managing the queue.

Heather Forrest: No, you, Thomas, go right ahead but I would note we have one more presentation to do, which is Phil's group. Let's be as concise as possible with the comments please.

Farzaneh Badii: I just wanted to make the comment that GAC not only advises the board on the policy documents that we provide but it also circumvents GNSO sometimes, GNSO processes, and with regards to generic names, and we've

seen these cases. So we have to have a stronger presence through the GNSO liaison in GAC not to face this. Thank you.

Thomas Rickert: Michele?

Michele Neylon: Just on the GAC point again, how do we oblige the GAC or its work, or its subgroups to engage without them going back to their usual, but we're government response? One of the groups that I've been involved with is the proxy privacy accreditation one and we went through our entire process and it's only at the implementation stage that the PSWG turned up and are now effectively trying to make policy.

Thomas Rickert: I guess it's a difficult one and government representatives are reluctant to engage early because, number one, they don't represent the GAC. They're afraid of speaking in their personal capacity. But I think if you actually have a formalized approach where you bring together the board, the GAC, and the PDP and maybe a GNSO Council Caucus, then you have something where they are invited to the table and are more likely to speak up. Because I guess just inviting them to join PDP working group sessions, I think is too time consuming.

But once you have something that has sufficiently matured that's being presented in a concise fashion to them as the likely outcome of the PDP that might do the trick potentially. Donna?

Donna Austin: Thanks, Thomas. Donna Austin. Just in response to Michele's question, I think we need to recognize that the PSWG is a special interest group of the GAC and it operates a little bit differently to the GAC in some regards. They're more nimble, more focused, and so they're a little bit of an anomaly when we think about the GAC. But they actually have the GAC behind them. So that makes them an authority on something like that. But the PSWG in my mind is a unique beast of the GAC.

Thomas Rickert: I think they will like that name, a special beast of the GAC. Keith, you had another question? Then I think we need to move on, right.

Keith Drazek: Thank you, Thomas. Keith Drazek. So on this question of GAC involvement, and board awareness, and GAC awareness of our work, actually in yesterday's GAC session, discussing the sub-pro work track 5 geo names issue, I think there was some very encouraging signs about the recognition in the GAC or at least among some GAC members that it's an important issue. We heard Jorge Cancio, the Swiss GAC rep, basically say this is too important an issue to our countries and our citizens to simply wait and provide advice at the end of the process. And encouraged other GAC members to engage, to participate in a GNSO PDP.

So I think there's very encouraging signs and opportunities here where we're potentially seeing a break from the past in terms of how the GAC has engaged historically. And so I just wanted to note that I think we have an opportunity to build on progress and what you're describing I think about structured engagement that is concise and informative to both GAC and board I think is something we should pursue as part of that continuation. Thanks.

Phil Corwin: Good morning. Phil Corwin. My group, and we had some participation, not a great deal of people involved, was on the question of capture. So I'll of course working group recommendations are subject to challenge as representing captured by a single constituency or a single interest and that's why capture should be avoided because consensus recommendations of a working group should represent consensus of a fairly board cross-section of the ICANN community, and not simply people from this constituency or that stakeholder group, or this particular economic interest.

I'm going to speaking to this, I can't help but think in the context of a working group I'm co-chairing but I'm not going to refer to that specifically. I think you could have two types of capture. One, you could have a working group,

which is just the only participants for whatever reason are from a single group, however you define it, and you can't get other people to participate. And I'm not sure what can be done at that point other than trying to encourage others to join in or to disband the group because you know that it's quite likely to have a single point of view and be subject to challenge, and why go through the exercise.

The situation I've been dealing with is different. You have a -- it's basically what I call operational capture where you have a small group representing a single interest and single point of view who are the most active members of the working group. You have a larger majority of the working group who has chosen to drop out of the process, has been contacted, has been asked are you still monitoring what's going on, do you want to participate in consensus and they say yes, we are keeping track. We do want to be part of the consensus call but we don't find these calls to be productive anymore and a good use of our time.

So what do you do in that situation? You can report it to council and ask for their assistance. Perhaps that should have been done, although the recognition of capture is something that came fairly late in the process of the working group I'm on. You could tell the other members, no, there is some minimum level of participation that you have to be on some of these calls if you want to take part in the final result.

The danger there -- the risk is that they'll say, okay, I'm dropping off and that might exacerbate the capture by narrowing the number of members. You could -- one reason this can happen, and this would be controversial, is that in the current policy development process you need either unanimous consensus or almost unanimous consensus as a practical matter for anything to get through council, much less onto the board.

And this empowers a small minority to basically, if they just dig in and don't wish to compromise, to know that they can block a recommendation on a

particular issue where they don't wish to see a recommendation move forward. But that would require lowering the threshold for council consideration. I don't know if that -- on a large working group, I wouldn't think that would be practical but when you have a small working group, a minimum number of members, perhaps that should be considered to eliminate that problem. Though it would depart from the consensus model to more of a super majority model for making policy recommendations.

You could use polling to get the sense of the broader group that's not participating but in the case of this specific working group I'm on, the attempt to use a poll as to enable the co-chairs to start the consensus call process was the subject of a 3.7 GNSO guidelines appeal, which brought the working group to a halt for many months. So one way you could address that was to change the guidelines to make clear that the co-chairs have authority to conduct polls and this is not challengeable under that section.

And then the final thing is that it's not fault of the council leadership, but the disposition of the 3.7 appeal took several months. So maybe there's an expedited way to handle that. I'll stop there. It's a difficult issue to deal with. I don't have any good answers. If I did, I wouldn't be in the situation I'm in, but I think it is something council and the community should think about because there's no sense putting several years into a working group and to deal with a situation toward the end of its life where a distinct minority can act in a way to prevent consensus on a critical recommendation. I'll stop there and thank you.

Heather Forrest: Thanks very much, Phil. Unfortunately, we don't have time to take specific questions on that one, nor do we have time to discuss next steps, which you see here. So this was a proposal that Rafik, Donna, and I put together as what could be next steps. It of course was put together before we had this discussion. I think we're in a wonderful problem space. The abundance of enthusiasm is fantastic and what we now need to do is carry this forward that this isn't just talking, that this is doing.

What I would ask that you consider is have a look at these proposed next steps. Please communicate to us your thoughts about them, whether that's through your councilors, through your SGNC leaders, and really, unfortunately, what we'll have to do is we'll have to come back to this when council has its wrap up session on Thursday. It is on the agenda for that session, and we know not all of you will be in the room for that. So people channel back to us your thoughts. Do you think this is a sensible way forward for next steps or not.

With that, I need to transition us to our lunch with the board, the GNSO Council. As much as you may be tempted to do so, the green and red cards should not be your take home souvenir from Puerto Rico. Please leave those behind so that we can pick those up and use them for other purposes. Thank you very, very much for your overwhelming enthusiasm, contributions, and so on. And Donna, Rafik, anything further to say before we turn over?

No, all right, nothing further. Excellent. So we can stop the recording for this session. Thank you all very much. We'll end by saying to be continued.

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