

**ICANN**  
**Transcription ICANN Hyderabad**  
**GNSO Non Commercial Stakeholder Group Policy Committee**  
**Saturday, 05 November 2016 at 15:15 IST**

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Woman: Okay we're on.

David Cake: Welcome to the Non-Commercial Stakeholders Group Policy Committee meeting. This is an open meeting. Anyone, you know, anyone in NCSG is very welcome. Now Marilia Maciel is the chair of the policy committee, but she is not at this meeting, so Matthew and I as the vice chairs have stepped in.

And we - I've got quite a lot to get through, so we're going to - some things we are going to probably do in not so much detail, but there's quite a few important things. So I understand we are going to start with an update from...

Matthew Shears: Kathy.

David Cake: An update from Kathy on...

Matthew Shears: On DNS and content regulation.

David Cake: Yes, on DNS and content regulation, all right, which is not on the agenda, but Kathy has other commitments so we're going to get her to go first.

Kathy Kleiman: I'll stay for about half the meeting and then go (unintelligible).

David Cake: Actually first very quickly, do you want to get everyone to introduce themselves or just...? Yeah, just go around the table and get everyone to introduce themselves, starting with Ed.

Edward Morris: I'm Ed, Ed Morris, let's see, NCUC, GNSO Council.

Robin Gross: Hi my name is Robin Gross. I'm with IP Justice and also a member of the Non-Commercial Users Constituency.

Stefania Milan: Stefania Milan, member of the NCUC and one of the GNSO counselor representing NCSG.

David Cake: For the new people, anyone who's a GNSO counselor is automatically a part of the policy committees.

Sarah Clayton: Sarah Clayton, also a member of NCUC and stepping in for Marilia at this meeting.

Raoul Plommer: My name is Raoul Plommer. I work for the Electronic Frontier Finland, and I'm a member of the NCUC as well as NPOC.

Tapani Tarvainen: Tapani Tarvainen, NCSG chair.

Matthew Shears: Matthew Shears, Center for Democracy and Technology, NCSG Policy Committee.

David Cake: I'm David Cake. My very last meeting as a GNSO counsellor for NCSG, and I'm a member of NCUC and I am the chair of Electronic Frontiers Australia and also vice chair of the policy committee.

(James Biddell): I'm (James Biddell), a member of (Unintelligible). I'm new here. I've just come to observe because I'm hoping to be part of this (unintelligible).

Sam Lanfranco: Sam Lanfranco, NPOC.

Woman: (Unintelligible) from the Center for Internet and Society.

Rafik Dammak: Okay, Rafik Dammak, chair of NCUC and this I think Tuesday I will be (unintelligible) GNSO Council.

Stephanie Perrin: Hi, I'm Stephanie Perrin. I'm a member of NCUC and I'm an NCSG counselor, and I apologize in advance for leaving because I'll be running out to go hit the WHOIS committee, because I'm active on WHOIS stuff.

Monika Zalnieriute: Hi, I'm Monika Zalnieriute. I'm also on the NCSG Executive Committee and also an academic at University of Melbourne.

Niels ten Oever: I'm Niels ten Oever. I'm with Article 19, NCUC, NCSG, and at-large member.

Kathy Kleiman: I'm Kathy Kleiman and I've been in ICANN for too many years.

(Aidan Thurdland): Hi everyone. (Aidan Thurdland), NCUC member, just observing this meeting. Thanks.

(Judith Helstein): (Judith Helstein). I'm with NPOC and also an at-large.

Joan Kerr: Joan Kerr, NPOC.

David Cake: Welcome everybody. So in addition to the first item, which is not on the agenda, we've also got a couple of AOBs, one of which is to discuss questions that the board has posed to us and who's going to respond and how we're going to respond.

And the other one if we get to it is a question of the potential upcoming intercessional which is something that we thought we should have a brief discussion about. Are there any other AOB, anybody would like to add to this?

Matthew Shears: I think we'd already asked from the AOB was the question of - yes, the procedure for a vice chair election negotiated with the other members of the Non-Contracted Parties House. But we will first - before those, first we will go with Kathy for an update on content.

Kathy Kleiman: Perfect. If it's okay, I'm going to talk about two issues. One is DNS and content regulation. The other is WHOIS compliance and some of the abuses that are taking place there. These are - I believe Tapani these are our first questions before the ICANN board tomorrow.

Okay, so I wanted to just give everyone a quick briefing, see if people had questions, see if for whatever reason we're not all on the same page because the last thing we want to do is blow up in front of the board. That would not make us look good.

So DNS and content regulation, what we're seeing now is a set of private agreements being negotiated outside the multi-stakeholder model by registries and mostly by registries and kind of coming back in.

And when you hear it come back into the ICANN context, it's coming back and it's being called best practices. Sometimes you don't even know it's not part of the multi-stakeholder model.

So one thing that just happened in February, the Motion Picture Association convinced Donuts which has 200 top level domains, new gTLDs, to take down, to (unintelligible) trusted notifier and to take down not just content, not just copyright, not just links, not just videos but the whole darn domain name, guys.

All the Web pages, all the LISTSERVs, all the e-mail gone forever. E-mail that disappears after a domain name is yanked you can never recover because I researched this when I was with Dot Org.

So it's being yanked basically based on the allegation from the Motion Picture Association, which guys is not a trusted notifier. And that context is actually being taken out of context from the digital millennium - DM...

Woman: DMCA.

Kathy Kleiman: DMCA. Somebody tell me what the acronym. I haven't been sleeping, sorry.

Stephanie Perrin: Digital Millennium Copyright Act.

Kathy Kleiman: Thank you. The DMC, so it's being taken a bit out. The DMCA has much more checks and balances, appeals, processes of getting things taken back up and again appeals. So it's being taken out of context because virtually none of that exists in the Motion Picture Association-Donuts deal.

We're seeing other forms of content regulation as well, and tomorrow you'll hear this expressed much more eloquently by Mitch Stoltz, who's been studying this for the Electronic Frontier Foundation.

Oh, Mitch, you're at the top, okay. Do you want to talk about this just a little bit, again just to see if people - what we're basically seeing is if people have any questions or if people are not on the same page that raising some of these concerns to the board is timely.

Mitch Stoltz: Thanks Kathy, sorry. Yeah, this is my first ICANN meeting, not a regular participant here but this is I think a critical time for calling out and really trying to draw a line here at ICANN and in the domain name system against using it for the regulation of content.

And in certain ways, you know, ICANN's mandate and ICANN's responsibilities have been stretched from the safety and security of the domain name system to using terms like safety and more recently healthy domains skew that boundary and begin to evaluate and enforce policies about the content of Web sites.

And regardless of the good functioning of ICANN as a regulator of names themselves – and it is far from perfect – there is a bright line to be drawn I think at the regulation of content. Now Allen Grogan said this very eloquently summer of last year – ICANN is not the Internet content police.

And yet there are signs of where that's actually beginning to happen. There was the MPAA Donuts agreement that Kathy mentioned, public proposal by the Healthy Domains Initiative to create a UDRP for Web site content, probably wielding the power of domain name suspension ultimately. I don't see any clearer...

Kathy Kleiman: (Unintelligible) collectively?

Mitch Stoltz: I'm sorry?

Kathy Kleiman: (Unintelligible) collectively?

Mitch Stoltz: I can't think of a clearer way to undermine ICANN and its credibility as an organization than for it to become the licensing body for operating a Web site. I am concerned that's where we're headed, and I'd like to see - I'm hoping that the board will recommit to that bright line.

David Cake: Stephanie.

Stephanie Perrin: Stephanie Perrin for the record. I just wanted to mention that we were all sort of conflicted out (at noon). But we had our regular small meeting with the two board members, and we did bring up the concern about this shadow regulation and the whole problem that happens when you have voluntary self-regulation.

Now for those who aren't familiar with the MPAA and how they have managed film licensing, you might want to explain that. If I did it, it would be from the perspective of somebody that worked for Canada. And we found that the discriminatory labeling and ratings is a real - it's a market issue.

And the problem with this voluntary self-regulation is governments find it very difficult to regulate in some of these areas, not to mention expensive. If they can find somebody who will do it voluntarily, and they can sort of turn a blind eye to any of the anti-competitive mechanisms that are then installed, they're going to go for it. I don't wish to say bad things about government, but it's tempting.

And so the problem is that this would really spread. And the MPAA doesn't have a good track record in this regard, even though it's still running that system.

Mitch Stoltz: That's right. I direct folks to a documentary from - I forget the year - this is really seven, eight years ago called, "This Film is Not Yet Rated," which was a documentary about the MPAA ratings board. It mentioned for one thing that they - and well documented - that it rates movies by its own six members of

the major studios more generously than independent films. That was just one example.

But you mentioned voluntary initiatives, and that's - you know, that's what these things have been called, right? Voluntary is a misnomer in many instances because it's voluntary the way that getting protection from the mafia is voluntary. Yeah, you can say no but...

Harsh example but these are done with the express cheerleading and pressure both public and quiet, you know, from government, the U.S. government in particular, something called a US Intellectual Property Enforcement Coordinator, also the US trade representative, several other offices.

I'm sure there - I'm in the US - I'm sure there's similar things in Europe. They're not voluntary agreements. They are regulation by other means without the accountability. And we can at least have...

David Cake: Yes I know that Kathy's pressed for time.

Kathy Kleiman: Yes and I know you've got a number of other issues to hit so I wanted to let you know tomorrow at 5 o'clock, Mitch will be leading a panel that he and Rafik have organized on DNS and content regulation. The title is, "DNS and Content Regulation NCUC Group."

I also wanted to let you know this isn't just Donuts and MPAA and the two top level domains that Donuts has - Dot Film and Dot Movie. It's across the other 198 top level domain (unintelligible) as well. Unless we mistake it, this isn't the only problem when you see...

And I just wanted to mention it so you can flag it and watch for it. The Healthy Domains Initiative is not a multi-stakeholder model. It's a worst practices coming out of the Domain Name Association.



Watch for it because they're marketing it. I heard Mason Cole present it to the GAC as if it was a multi-stakeholder model. We've really got to have our sensors up on this.

The other thing is they're putting crap into their pics, including stuff that they lost in multi-stakeholder. They're putting stuff for intellectual property owners into their public interest commitment. And then the intellectual property owners are coming to ICANN and saying, "Enforce that for us."

We're talking about content regulation and over-(unintelligible) trademark. So this is happening on many different fronts. It's going to be a new area for us.

But moving on to WHOIS compliance, just wanted to let you know (Deisrae) and I - is (Deisrae) in the room before I say something else when the actual person leading it should be...?

Okay, so (Desirae) and I are going to be presenting this as well. She's got first-hand experience with this. I've got - I've been reading about it for a while, which is you can file a complaint against a domain name anonymously and ICANN compliance will go.

And if one little piece of information is inaccurate or if you just don't have it, they may take the domain name down. And this is actually being used to harass. It's being used to shut down competitors. A student who doesn't have a phone number can't defend it. Even if he's contactable he's going to lose his domain name through ICANN compliance and never have the ability to say, "Who's coming after me? What's going on?"

It's really - it's gotten out of hand because in proxy/privacy, we actually said if you file a complaint and you want to know who the underlying registrant is, tell us who you are. Under what authorization are you doing this? Under penalty of perjury you're making an accusation of infringement so that you

can get hold of this information, like if you want to file a lawsuit against somebody.

You know, we want to find - we're going to hold you accountable for the complaint that you're registering against someone else. And here there's no accountability of the complainant and non-commercial registrants, small businesses, entrepreneurs are being hurt regularly.

Monika Zalnieriute: Monika for the record. I just - I didn't understand it. This has nothing to do with UDRP as such. This is going through ICANN compliance as you said?

Kathy Kleiman: UDRP is for domain disputes over trademark issues. But this is WHOIS accuracy, the accuracy of the domain name registration data, which we already collect too much of to begin with. And the WHOIS review team said all we need is to contact, be able to contact the registrant.

But, you know, if an e-mail address is valid, that's good. If a phone number is valid that's good. So now (Desirae) will talk about the harassment she got because she flipped two letters I think in the word London when she was typing it up, of a student in Germany doesn't have a cell phone and he lost his domain name over that.

And actually someone was going after him, and he wanted to find out who it was, who was just pursuing him over this and why is ICANN Compliance doing this. So (Desirae) will have much more concrete information. Just wanted to give you the heads up on what we're seeing as abuse from Compliance.

And Compliance just says, "We're doing our job," because we asked them about this this morning. So we wanted to register with the board that we think if somebody notifies you that this is for harassment purposes, you should take a closer look before you take down someone's domain name over the lack of a phone number or the right area code or something.

David Cake: So that's a really interesting issue and a new one for us. But mindful of the number of things that we've got to get through on the agenda. So just to follow up that first issue about content regulation which is - I mean, I think that's a very serious issue, but there's a session that Mitch and Rafik are running that you go to if you want to know more about that one.

And where to pull up on this issue about WHOIS accuracy compliance. Like is there a – what's the (unintelligible)...

Kathy Kleiman: So again...

David Cake: ...for people interested in (that)...

Kathy Kleiman: ...Mitch's session tomorrow is the DN – and Rafik's session – “DNS and Content Regulation NCUC Group” is the title. It's 5 o'clock to 6:30 in all three. And WHOIS compliance, (Desirae) and I will deliver things orally and then we'll share something in writing, a summary afterwards.

David Cake: Thank you very much. Stephanie?

Stephanie Perrin: Can I – Stephanie Perrin for the record – can I jump in here? I just realized I do have to get my derriere over to the WHOIS meeting because it's the (HIP) one.

But I wanted to just raise a question – and maybe we could get some people working on this. I think we have enough people who are concerned about what I would call policy development through other means that is taking place. It used to be I was only worried about the 2013 RAA. Now I'm worried about the (PICs), this shadow regulation that is coming with this Donuts thing, obviously the 2013 RAA, and the cross-community working groups.

So as a GNSO counsellor trying to hold onto the role of the GNSO to draft policy - and remember that when we draft the policy in the PDP working groups, anybody can join. And we discussed it with the board members at noon, and we got -- actually I got -- maybe I was too aggressive. God knows I've never been aggressive.

But a little bit of pushback from (Bruce) who's normally not too pushback-y, but he basically said well it's the chartering that is the issue. And when you do a cross-community working group, then they all contribute to the charter whereas if it's a GNSO PDP, the GNSO sets the charter.

Well that's a (technical) problem if you ask me. But the notion that we are going to strike ad hoc cross-community working groups for all of these things or that we will - because the more we create cross-community working groups, in my view, the more likely it is that some of these other things will also escape GNSO proper PDPs, namely the ones I'm worried about are those contractual things and the best practices.

So I really think this is not an easy problem. And coming up with the fix to the charter drafting process -- because if that's what the board's concerned about, well then that's easy. Do a cross-community working group to draft the charter. And then the PDP and you can have some other mechanism for accountability from the GNSO.

I quite understand that some of the other groups don't want the GNSO drafting all policy. Nor do we want to completely lose policy focus by having it all distributed into these ad hoc groups. Thanks.

Tapani Tarvainen: Just to add to that, Bruce also said that the board obviously likes the CCWG approach because they get a single contribution that's effectively signed off by all the various parts of the community, and it's much easier for them to digest and to address. So there's definitely a sense that the CCWG is a

preferred way forward from - in terms of what was said at lunch today. Yes  
Tapani – sorry.

Stephanie Perrin: We could have followed up on that and said well we had a deadline on the last one and it worked. How would you like a few ten-year processes where nobody signs off? That's not going to look so tidy. But I didn't say that. I was being nice.

David Cake: We have Tapani then Niels.

Tapani Tarvainen: Yes just a bit (pivotal) information before Stephanie and Kathy leave that I heard from - after our meeting with the board, after the meeting, a brief discussion of the WHOIS issue (unintelligible) to at least maybe (and seem) have some easy deflections on all the others. So you have been warned.

Kathy Kleiman: Tapani, the WHOIS issue is difficult to...

Tapani Tarvainen: Yes it's the board.

Kathy Kleiman: Difficult for them to hear?

Tapani Tarvainen: No, no, but it's more meat that they need to think about. I spoke one board member, so the impression that the others seem to be that they have something easy to reply to those. But that's the (one) (unintelligible). Take that for what it's worth (unintelligible).

Kathy Kleiman: Well we're just beginning the process of educating them on it.

Tapani Tarvainen: Yes.

Kathy Kleiman: So thanks. Thanks for the heads up.

Niels ten Oever: A quick thing also before you two leave. There is a thing called New China's Internet Domain Name Measures, which is a new Chinese draft law which is yet unclear how it's going to be implemented, which means that registries, registrars need to be registered inside China and certify the names of people by domains in China.

And Verisign is about to roll over and simply comply. And ICANN hasn't taken any position on this. And I think this is yet another example of potential Internet fragmentation (or not). But I think we should address this and not only focus on things that happen in other parts of the world.

So I'll go over to ccNSO (Tech Day) now where Verisign is going to show how they are going to comply with this and practically surveil Chinese Internet domain owners for the Chinese government. So I'll write it up and come back to you.

Stephanie Perrin: Can I just jump in and say I don't know how we complain about this, but the very idea that we have high interest topics right on top of our constituency meetings in a seven-day meeting, I find terrible.

David Cake: Thank you everyone and especially thank you, those who have to leave. Okay, Ed?

Edward Morris: Okay thanks David. We were talking about (PICs) in the inclusion of IP content regulation and some of the RAA agreements through I guess Spec 11 and others.

Want to point out through a lot of hard work, principally by Milton, we in the new bylaws have a prohibition against ICANN getting involved in content. However, there's a little bit of a loophole that the IPC has discovered.

It's known as (NXG1). And what (NXG1) allows them to do, if there is a policy that's been created such as (PICs) that is implemented in a registry

agreement, it can be brought through (NXG1) up through 1.1 of the ICANN bylaws.

And it's going to have equal status of the prohibition against content involvement by ICANN. So in the end they – unless we do something about it, and we still have time in Work Stream 2 I hope to do something about it – in the end, unless we combat this, it's literally going to be up to an IRP panel to decide which provision of the bylaws applies.

So we have no idea whether a prohibition against content involvement is actually going to hold.

David Cake: Thank you. Just mindful that we have already spent - we've got a lot of other things to get through, so - and we haven't actually hit the items on our official agenda yet. So does anyone else want to speak on these topics? Thank you. Okay, we'll move on but thank you for everybody for bringing these significant items to our attention.

Just like to say, to note that we do have, you know, Adobe Connect room for this meeting, and there is some discussion going on in the chat there that is worth paying attention to, so do log into the Adobe Connect room if you can. And we do have remote participation if anyone logged in by Adobe wishes to speak. I'll try and keep an eye on it.

Okay, so moving on to our actual agenda, can I ask someone to speak on Work Stream 2 areas? I'd like a quick – Robin – a quick update please (unintelligible).

Robin Gross: Certainly. Okay so this is Robin Gross from IP Justice, and I also represent the Non-Commercial Stakeholder Group on the CCWG on Accountability. And just to sort of get everyone up to speed very briefly, we passed the Work Stream 1 recommendations. The IANA transition has happened.

And now we're working on Work Stream 2. And we've got a number of very key issues in Work Stream 2, at least nine different subtopics, some of which are much more important than others, and some of which have moved much further along than others have moved along in the process.

So I'm just going to touch on a couple of the big issues and where they are and where some of the ones are a little bit sticky or controversial at the moment.

So one of the big issues that we care about in Work Stream 1 is on increasing transparency at ICANN. This is obviously one of the most important things that you need in order to have accountability is for people to even understand what's happening and what's going on, so we've got to have transparency about ICANN's processes.

And there's a number of subissues under the transparency rubric. One would be reform of the document information disclosure policy, the DIDP. More transparency with respect to board deliberations and how decisions are made, trying to create a culture of transparency at ICANN, more transparency with respect to ICANN's discussions with governments and the kind of lobbying that goes on and increased transparency and improvements to ICANN's existing whistleblower policy.

So this particular subgroup has gotten a little bit further than some of the others, and they've made some good work, although it's not entirely ready to go yet. They've worked on the DIDP and some of the whistleblower issues, but one of the important issues that we haven't really dived into in this particular issue is with respect to board deliberations and trying to get more transparency about how decisions are made.

So we have a draft that's not quite ready for review yet. And the issue of board deliberations hasn't really been incorporated yet into that, so I don't



think it's quite ready for prime time yet, although I know we're under a lot of pressure to get documents out and get recommendations out.

I don't know if anybody else wants to speak to that particular issue or if I should just plow through. David, plow?

David Cake: Probably yes unless Farzi wants to take over?

Man: I think Farzi wants to speak on (unintelligible).

David Cake: No, plow.

Robin Gross: Okay. Okay so another one of the big issues that we're concerned about in Work Stream 2 has to do with creating a framework of interpretation for ICANN's new commitment to respect human rights. And this is one where we've got a little bit of tension over how that should be - how that actually should be effected in the ICANN system.

Unfortunately Niels has just left and he's the co-chair or the chair of that particular session, and is in a much better position to sort of describe what's happening in there. But I understand there's a proposal that's been put forward to utilize what's called the Ruggie Principles in some way and to try to base some of the human rights framework around that issue.

And I'm not sure everybody's all on the same page on that, and so that's kind of an issue that we might want to talk about a little bit. Yes, Matt.

Matthew Shears: Yes so a number of us in the room are on that particular work stream activity. I think it's fair to say right now there's quite a divergence of views within that particular - within the human rights group in terms of whether one takes a relatively narrow perspective on the (FOI) or whether one takes a slightly broader perspective.

And one of the issues that it comes down to is the degree to which the group incorporates Ruggie. So yes there's been an extensive discussion about Ruggie and there are very differing views as to its applicability and suitability and that's across the spectrum I'm afraid.

So we are struggling a little bit there. I think Niels is guiding us out of that, but it's still - we're still remains to be seen where we come out. Do you want to add anything, Avri? Okay.

Robin Gross: Okay, thanks Matt. I think Milton wanted to add something on the human rights subgroup, and then I see Kathy, was that your hand going up? Okay.

Milton Mueller: Well I just – first of all I wanted to – Niels seems to have disappeared so that's not good.

Robin Gross: (Unintelligible) to another session. He had to do something else. Don't worry about it.

Milton Mueller: He went to the bathroom. So yeah, I think we agreed on a question to ask the board in the formulation of the question sort of encapsulated the difference of opinion in a very simple way, which is I wanted to ask them can we do a human rights impact assessments of policies.

And Niels following the Ruggie Principles wanted to ask about (HRIAs) of ICANN operations. Okay so are we going to discuss this now, this distinction, or is that for another time?

Matthew Shears: I think it's probably better if we do that with Niels as he's got the fullest sense as to where that discussion is within the group. So sorry he's not here to provide us with that clarity. Does anybody else want to quickly speak on that? Yes, Kathy.

Kathy Kleiman: Just I know there are people in the room who know much more, but just pulling up a brief description of the history of the Ruggie Principles, the debate concerning the responsibility of business in relation to human rights became prominent in the 1990s as oil, gas and mining companies expanded into increasingly difficult areas.

And as the practice of off-shore production in clothing and footwear drew attention to poor working conditions in the global supply chains. That's not us guys. We're doing kind of a regulation of issues.

Man: Okay, Avri, but (unintelligible).

Kathy Kleiman: So I just wanted to point out to Monika's paper, along with (Thomas Schneider) about ICANN's procedures and policies in light of human rights, fundamental freedoms and democratic values. So it's not just human rights. It is fundamental freedoms and democratic values.

We know about traditional principles that apply to telecommunications and Internet. I think that's what we should be working on.

Matthew Shears: Okay, Avri please, but then I think I really want to draw a line under it because Niels needs to be here to do this.

Avri Doria: Basically I want to object I think to this - to basically taking the UN guiding principles and looking at them and just looking at one piece of them and saying and therefore they are irrelevant to us.

It's like looking at (ESCR) and saying we don't care about water quality so therefore why worry about economic, social, and cultural rights. It's basically - so I think that this whole notion of people wanting to avoid the guiding principles is wrong.

To say that we want to base ourselves completely on them is also wrong. They are one of the fundamental documents that we should look at for guidance, and we can actually see that people have taken those – (the V1) guiding principles and then they apply them to see – okay, you're right. We don't play football, so again, that's irrelevant to us.

However they do have applications to other places. It's for us to figure out how (ND) applies. And so I really do object to this well we're not doing oil and gas and we're not worrying about port laborers, therefore they're irrelevant to us, and that I have a real problem with.

Matthew Shears: Okay I'm really sorry. I know and I don't want to replay the past two, three months in that particular group either but no - no, no, no, I think it's absolutely right that we notice and note there's a huge divergence of opinion. We really do – if we want to have that discussion we need to take it into that group.

David Cake: Yes I'd like to note that we have a - there is a big divergence of opinion and we have a lot of other things to discuss, so let's - can we leave it at that unless anyone has a really urgent comment.

Robin Gross: I actually think this would be an issue that we should call maybe a special meeting on within NCSG so we can really just sort of work through it, focus only on this one issue and get, you know, everyone in the room. So that would be my proposal (for that). Not here, but when we go back home.

David Cake: Would like - I know Farzi has been waiting on remote participation to comment patiently. Are you able to comment now Farzi?

Farzaneh Badii: Yes. Can you hear me?

Man: Yes.

David Cake: Yes we can hear you.

Farzaneh Badii: So Matt asked me for I can say a couple of words (unintelligible).

Robin Gross: (Unintelligible) hear you there. Speak.

Farzaneh Badii: Yes I am here but I can hear myself, and it's not (unintelligible). Anyway, so Matt asked me to say a couple of things on the SO/AC accountability in Work Stream 2. What we have done so far in the group is that we have sent out a couple of questions to the leaders of SO and AC about their current accountability mechanisms and what they have in place.

And the leaders and the chairs of these SO and AC can decide whether they want to forward these questions to the different constituencies and stakeholder groups within their (sub)-group. So GNSO chair might decide on whether to forward these questions to NCSG and what that's up to the GNSO.

So - and then also we are going to discuss whether independent review panel is applicable to us, to the SO and ACs, which means that if anyone can use the independent panel review to take a complaint about the SO and AC and we are going to discuss that. This is a very important issue because if a member or other stakeholder groups have a complaint about it, (unintelligible) stakeholder might be able to go to the independent review panel, but we have to discuss it, which....

And that's about it, and there are two more things that I just want to mention briefly if I can. Would that be okay?

David Cake: Yes.

Farzaneh Badii: Okay so I submitted a couple of comments to the NCSG for review about the (unintelligible) strategy document. I (offer up) public comment and I hope that the (PC) can approve this after we have resolve issues next week.

And the other issue that I wanted to say – and I just noticed that it is on your agenda already so I'm not going to talk about this now – was about CCWG IG because I'm NCSG representative there. So I wanted to say a couple of words on that but I don't have to say it now I think. Thank you.

Matthew Shears: Thanks Farzi, if you can hold onto that. And Robin if you just want to wrap up on the Work Stream 2 areas, thanks

Robin Gross: Okay, certainly. So I'm not going to go into the deep dive here at all because there are nine subgroup issues and then there's also a couple other groups too that we could spend an awful lot of time on.

And we do have monthly calls that are focusing exclusively on the Work Stream 2 and the CCWG accountability issues so, you know, we do have other forums other than this meeting to hash through these issues and go through these issues.

But another one that we're working on is the influence of ICANN's jurisdiction on operational policies and accountability mechanisms. This is another one where we've got a little bit of a tussle going on with some of the governments who are pretty keen to move ICANN's jurisdiction elsewhere. And what's in scope and what's not in scope and how this all's going to play out is a very controversial, very heated, Work Stream 2 subissue.

We've also got a subgroup on staff accountability that Avri's one of the co-chairs of. And we've recently just added the issue - or we are in the process of adding the issue of the newly created complaints officer into this bucket as well of the staff accountability issues.

Another issue that we've got in Work Stream 2 is reform of the ICANN ombudsman office. Haven't gotten terribly far along in that one. Also trying to encourage diversity at ICANN, whatever the heck that means.

Another issue on reviewing the cooperative engagement process, the CEP, which is the first step to filing an independent review panel matter. And Ed has been tasked to be the chair of that particular subgroup. And then we've got another subgroup on the guidelines for ICANN board standard of conduct when board members are removed.

And this is another one where I think it's going to end up okay but we do have a little bit of a tussle going on. We've got some - a new chair who maybe doesn't quite understand the scope of what this group is, and so it's not supposed to be about limiting the empowered community's right to be able to remove their board member. So that was...

But I think we can work through that one without a problem when folks just get up to speed about what that particular subgroup is precisely tasked with. So those are the nine subgroup issues. And again I'm really sorry that this is so high level but I would like to encourage everyone to please join these monthly NCSG meetings where we focus exclusively on Work Stream 2 issues. Thank you.

Matthew Shears: Robin, just to - oh sorry. Can I just ask Robin a follow-up? Is there any one of those where you think we are underrepresented? I mean, we're always underrepresented but is there any one that's crying out for more engagement? Oh okay, go ahead Ed.

Edward Morris: Thanks Matt. Ombudsman is getting out of control. A typical ombudsman meeting has the chair Sébastien Bachollet who really doesn't have much of an opinion on anything. He just sort of chairs - which what he's actually supposed to do.

The former ombudsman, the current ombudsman - either Farzi or myself, we basically are splitting the calls - and maybe one or two others. So basically the ombudsman group has been captured by the ombudsman. And because

this is such a key portion of our accountability reforms – as Robin knows – Robin basically rewrote the reconsideration portion of accountability by herself.

And she put the ombudsman in there and we put the ombudsman in a few other places. The DIDP people are using the ombudsman. I spoke - I had a meeting today for about a half hour for the ombudsman. He's a real nice guy. And I'm disturbed by what he considers his relationship with the complaints officer to be.

And I'm concerned with his allegiance to ICANN the corporation. He's a nice guy but Lord knows him or whoever takes the place, we need to not only a system of empowerment for the office but also a system of control of the ombudsman in terms of independence, etcetera.

And when the ombudsman who is employed as we speak by the ICANN board answerable to the ICANN board is creating the rules going forward, we're in trouble. So if anybody out there is looking for a group to join -- you don't need specialist knowledge – please join the ombudsman group.

In addition, if anybody here is a lawyer, I could use you in CEP because I'm rewriting these rules and I'm the only lawyer there trying to rewrite them. And it's a very (tactical) legal thing, so I could use some lawyers there.

But for everyone else, please help us in the ombudsman. If we have three people there, we will be controlling the writing process. It's that small of a group. Thanks.

David Cake: Thanks Ed. Okay I'd really like to move on from update from Work Stream 2 areas if that's okay because we have basically just hit the 50%, half-way mark on this meeting and we've made it through agenda item one. So if I could get someone to speak on the GNSO Futures Working Party. Ed.



Edward Morris: There has been discussion to actually continue this in some - more perhaps of an informal forum to try to create terms of reference for the GNSO review which is going to come up on 2019. I guess we'll be talking about that at the intersession and developing it.

One thing I can say though if we go that route, the commitment from the CSG, that after we initially set up some sort of terms of reference we will bring in the Contracted Party House because one of the problems with this group is the CPH view is that you're looking at the GNSO future and you're leaving us out.

So there is a commitment now from the CSG that once we have some initial work done, they will bring in the CPH.

Matthew Shears: Can I just add to that also that what Ed said is absolutely right. There's a slight other dimension to this, which is actually in the very beginning of this GNSO futures process, there were a number - a whole range of issues that were submitted for consideration that we could have been constructively working on from, you know, understaffing and... I mean, it was a huge range of issues.

So unfortunately what came out of it was merely a series of proposals as to how to remove the house structure, which of course was a non-starter. But it's not going away. I mean, this is a push that we're going to see on an ongoing basis, probably with increasing stridency going forward.

David Cake: Anyone else (unintelligible) GNSO futures? I'd be very pleased to move on quickly from that one. Tapani?

Tapani Tarvainen: Yes just a quick one. This is - (unintelligible) this will come up in some form (unintelligible) aware of it. (Unintelligible) approach would be to pick those early things that Matt mentioned yet were omitted in (Tony)'s report and go back to them and try to divert the discussion into something useful.

David Cake: Thank you. Okay, moving on then, let's look at some of the council agenda items. If any counselors want to speak to these, the - I mean, I put these basically in the order that they appear on the council agenda.

I think some of these will be uncontroversial and some of them will not, but the drafting team is probably one of the most controversial ones we need to talk about. And Ed would like to talk about it, and please update us.

Edward Morris: All right, yes (those are) two words. I want to thank Milton and Kathy at my request for coming to the meeting yesterday. They made a big difference.

At midnight after the council dinner we all came home, getting ready for the next day, to find that our friends in the Commercial Stakeholder Group had proposed a friendly motion, I'll call it, because they rewrote the entire motion.

But they called it a friendly amendment that literally would have taken the work of the drafting team, sent it to ICANN Legal for - (so) the council could actually be the place we actually - we actually rammed the empowered community through.

We had a rather contentious discussion yesterday and basically what's going to happen is that the open comment period is now going to be extended from 21 days to 40 days. We'll probably have a little give and take, but basically the proposal that Matt, Farzi, myself and Amr had worked is going to go through.

And then there's a process of adoption in the GNSO procedures, and one change that the ICANN bylaws will have to make. But basically bottom line is the proposal that we have come out with, which was a good proposal – I think Matt would agree with that – is going to be adopted by Council on Monday.  
Thanks.

Man: Thank you. You made a big difference.

David Cake: Thank you, okay. So the...

Man: (Unintelligible)

David Cake: Did we withdraw GNSO from the CCWG IG? Yes, so this was a proposal from the - emanating from the Contracted Parties to essentially say that it would draw the GNSO as a chartering organization from the Cross-Community Working Group on Internet governance, which carries a bit of a surprise.

There has been a fair bit of discussion in various places on how to move forward with this. There was a general admission the contracted parties did have a point in that the charter was no longer sort of strictly appropriate but had to move forward from that rather than basically killing the CCWG. Would someone like to talk on this?

Man: Farzi would.

David Cake: Farzi if you're still on Adobe?

Farzaneh Badii: Hi, yes. Sorry. So I wanted to (unintelligible) represent (unintelligible) (CCWG). I think it is a very, very bad idea to – for GNSO to (unintelligible) this group because the board has (unintelligible) interest group, and so they are going to decide on what (spot) Internet governance (unintelligible) are going to do and probably they're going to decide autonomously on what they're going to be engaged in.

I think (unintelligible) to take (unintelligible) with this group and see what sorts of activities they have and kind of take them into account. So I think that would be one main purpose. And also of course you have the (unintelligible)

charter (unintelligible) so that it (unintelligible) the issues that are really important for the group. Thanks.

Matthew Shears: Rafik.

Rafik Dammak: Thanks. Rafik Dammak speaking. So as the co-chair of the working group, I (end) with Olivier my other co-chair, we tried to reach the different AC and SO leaders as to get a sense of what they are thinking.

At least within the GNSO itself for example, the Contracted Party, the register, they have no idea about this discussion. They didn't discuss about this at all. And even it looks like the IPC so there is some disagreement because like in particular today we have this - the GNSO Council and ccNSO session.

From the ccNSO side, they may have concern, but they're fine with keeping the working group. Even if we want to maybe to restructure, to reform, to work on the charter, whatever, they are (unintelligible) keep it (unintelligible) for now and we can work. Withdrawing it doesn't make sense.

So from our side at least within the GNSO, I guess that option we have is to (defer for now) because we didn't have any real discussion. And personally I don't understand the push from the registrar side and even some folks from the IPC here.

If it's about deliverable or a term limitation or whatever, we can work on it today if we can – charter organization they can - they can agree on that. So to keep the working group as it is, maybe in kind of temporary period and we can work if they want on maybe standing committee or whatever and we can be aligned with the new (unintelligible) for Cross-Community Working Group.

So I think for us in the NCSG what we need to do is to prevent any (unintelligible) for the time being. We can (unintelligible) that okay we

acknowledge maybe there are some concerns in term that the activity is not clear maybe. Also we can discuss what kind of deliverable or reporting and so on may be also more enrich.

However you keep it as it is, but we can work on the different form for later on because this engaging now, it doesn't help. I mean the ALAC is interested (into) to keep the working group. This is (CNSO). They are fine. And they will keep discussing with the board.

And even if for GNSO groups will be involved in their - probably in their own capacity, it's not in enough. So it's not the right message. And even I have some discussion with ICANN staff. They are really kind of concerned that this working – I mean about this (unintelligible). It sends the wrong message, and it's coming kind of from nowhere, so...

Avri Doria: Just a brief comment to add to what Rafik just said is the main thing it achieves since it doesn't kill the group is it just removes Rafik as a chair. That's really the effect of doing it is, you know, he can still participate. We can all still participate because they haven't closed the group, although it is semi-closed so we couldn't have representatives any more.

So the group would go on. We could observe it, but Rafik couldn't be chair. That's the main thing we'll achieve by pulling out.

Man: I had to be away for a while so I missed the episode that produced this recommendation. What was the rationale behind it?

Man: (Unintelligible)

Avri Doria: What they're claiming is now we have a definition of one model of cross-community working group. This does not match that model. Therefore we cannot have it.

Man: If I can, I agree Rafik. I think a deferral is wise if - and I think it's also incumbent upon them to provide a rationale beyond just saying it doesn't comply with the CCWG structure as it now stands. So I think, you know, that there is value there. I think we can reframe it and revise it and make it far more valuable than it is at the moment. That's our challenge.

Rafik Dammak: Just a question in term of operating. For this motion we just need simple majority in each house to succeed. So I mean even in the case of - I mean, I don't think (James) will reject a deferral. I guess we can kill it if we kill it in a vote anyway.

But the thing is that I also understand why they are pushing that we - they want to make decision for now because there isn't a charter that each is SO and AC. They should decide (unintelligible) and they make decision for each annual general – how say – general meeting.

So that's why maybe they can bring out that they cannot miss that timing, so just to be - to right above that.

David Cake: I think that's - I mean, I think it's very unlikely that if we request deferral that it will be refused. There's no sense of urgency on this motion whatsoever. So if you think it will be right for our counselors to request deferral I'm sure someone would be happy to do that.

Avri Doria: Question – what do you achieve with a deferral?

David Cake: Well we buy ourselves time to come up with a more concrete proposal for how to continue that's acceptable to the contracted parties I guess. Or we could simply go ahead and hope that we win the vote.

Man: (Unintelligible)

David Cake: I'm sure there will be further discussion about that before the council meeting anyway, particularly at the - there's still several meetings to have to discuss this motion.

Okay I'd like to move on. The next motion on the council agenda is the motion to adapt the GAC GNSO Consultation Group on GAC Early Engagement. I'd like to think that this one is fairly uncontroversial. It's probably likely to be relatively - I would suggest it's likely to be unanimously supported.

I certainly think people might be having second thoughts about - after yesterday people might be having second thoughts about quite how much the GAC has taken the work of this group to heart. But certainly I think everyone in the GNSO would think this was a - you know, support this effort.

So I think we'll just say this one is likely to go through and have no further discussion unless anyone else wants to - does anyone want to discuss the GAC GNSO consultation group? No?

I was part of that group, as was Avri and a few other people at various times. I don't think anyone has any (unintelligible) - oh no, Milton wants to say something.

Milton Mueller: Yes just want to ask - is early engagement - I think - I can't think that after what's happened not just in the last few days about the international organizations, but just the overall trend I don't think I believe in early engagement.

I still think there's a structural problem with GAC, that it's advising the board. And it wants to be - that makes it into a parallel policy development source. We can do all the early engagement we want.

Unless they are full members of the GNSO policy process and that the policy that comes out of the GNSO is also done with the GAC, then we will essentially still have two parallel policy sources and GAC will be unable to resist the temptation to get in the last word when there's any controversial issue.

What is their incentive to come to consensus with the GNSO when they have this separate channel to the board under the bylaws? So is there any talk of any way of fixing this problem other than early engagement? Because I think that's a myth and it just is never going to work.

Avri Doria: Okay, so I'm one of those that thinks that early engagement is a good idea. What early engagement does is it brings their awareness to what's going on in the working group. It brings them into the working group. It brings the possibility of a working group getting their issues early enough to be able to respond to them.

The fact that the GAC can do advice is not as big an issue if you know what that advice is going to be, you've seen it work through, and you've managed to deal with it in your proposal before the board gets it in their hands.

The problem with GAC advice is it often comes tangentially and you really don't know what it is they're going to come up with. But we've done the early engagement now, and the subsequent procedures group, and now we've brought them into the working process.

Now is that going to solve all the problems of GAC? Probably not and, you know, we're still going to have problems. But it isn't just an – oh okay we told them and we go away. We tell them and we get them involved so we can actually deal with the issues early enough one way or another. So I think it's a good idea.



Milton Mueller: Milton. I didn't say it was a bad idea and we shouldn't try it. I'm just saying I don't have a lot of faith that this is going to solve the GAC problem. So I would be happy to sit back for another two meetings and see how it goes.

David Cake: I think - I don't think anyone involved thinks this necessarily solves the GAC problem, but it mitigates it hopefully. It provides - as Milton said - there may be - maybe still be some motivation for the GAC to try and circumvent the process, but at least this tells them how to constructively engage with the process if they choose to.

And it puts a lot of mechanisms in place to make it easy and, you know, take obstacles out of the way of GAC participation.

Matthew Shears: Can I just jump in and say when you're speaking, could you please announce who you are?

Avri Doria: This is Avri yet again. Sorry for not announcing before. Everybody tries to end run the process. The various GNSO (groups) do. I mean, yeah, everyone tries. The point is it's harder for them to try if you've covered all the bases before they get to their attempt.

David Cake: Okay, does anyone else want to speak on this issue or shall we move on? Let's move on. The next one's a doozy - the IGO-INGO Curative Rights Working Group and the IGO proposal.

Now this is very likely going to be - I'm sorry newcomers to ICANN - this is one with a lot of complicated history behind it but that also - has a lot of fast-moving things changing in the last - well, actually the last hour or two I think even.

So this one is getting pretty complicated. The short summary is that several years ago, a working group on how to handle the names and acronyms of intergovernmental organizations brought down its resolve that working group

– our GNSO policy development proposal – you know, policy was not – it was (sent off) to the board but has not yet been approved by them as policy.

The GAC disagreed with certain elements as a mechanism to try and deal with that conflict. A small group was set up involving some members of the IGO and the GAC and the board that after several years has finally come up with a proposal for what they think would be a nice new policy that they accept - was an acceptable compromise between what the GAC wants and what the GAC board thinks they're likely to get.

However, the GNSO has said well, that's not how GNSO policy works. How are we going to deal with this proposal when it's not really - yet it comes from outside policy. There's quite a lot of process issues as well as policy issues in this one.

And also in the mix is there's a current working group – the Internet Governmental – Intergovernmental Organizations and International Non-Governmental Organization Curative Rights Working Group -- which is about curative rights is to say after a domain has already been registered that the IGOs or INGOs feel infringes on their rights what we do about it.

And that group currently looks likely - looks headed to produce - has not finished its work but looks likely to produce recommendations that do not agree with the IGO's proposal. That's my summary of the issues. Does anyone like to speak about this one, about how we move forward from here?

Everyone's looking kind of, "Oh no, the horror. How do we...?" Yeah, no one wants to stick their fingers in and get them burnt. This is a very difficult one. It pretty much deals with the entire GNSO - not even the GNSO Council but the entire sort of GNSO policy process versus, you know, a sort of board GAC led alternative.

There's a lot of discussion about this with the GAC. There will continue to be a lot more discussion. Is there anything we as the policy - in NCSG would like to say about it other than I think everyone in the NCSG is supportive of GNSO policy not being overruled by the GAC and strange board groups and things? Okay yes Matt.

Matthew Shears: I'm just wondering if there isn't something a little bit more we can do, which is actually perhaps call for the GAC and the GNSO to sit around the table yet again and to try and resolve this rather than having - rather than actually seeing the board get involved and these small groups occur and things like that.

I mean, maybe that's something we can call for. I don't know. Maybe that's going too far.

David Cake: Matt I don't think that's unreasonable to call for it. The (unintelligible) is that the GNSO does not know how within its own bylaws it can sort of do that, given that this is a working group that's sort of stopped existing years ago and can't really be easily reformed and so forth.

But so, okay. If no one wants to discuss we'll move on to the new Cross-Community Working Group on New gTLD Auction Proceeds. So this is we're planning to form a cross-community working group on new gTLD auction proceeds. The amount of money involved in the auction proceeds is now - thanks to the auction of the \$135 million auction of Dot Web - is now a significant pile of money. And what?

Man: (Unintelligible)

David Cake: Two hundred and thirty or something. It's a sizeable chunk. And they're about to form a group of auction proceeds how as - and this as a cross-community working group, this is likely to be one where there will be a set number of representatives from each SO and AC - and possibly (HEs) who are able to

vote and so on in the working group. So likely observers will be hopefully welcome.

A number of people have been participating in the discussion that led to the forming of the cross-community working group, including board members. How do we want to proceed regarding this? Do we have any - both how do we want to proceed when it comes up in council, which I assume we're going to vote in favor of it.

And how do we want to deal with the cross-community working group when it is formed?

Avri Doria: This is Avri. How many people does each group get? I mean, what are the details on it?

Matthew Shears: Can I – it's Matthew Shears – can I just ask we had representatives I believe in the chartering, right? And who were they? I'm not sure; I can't remember. I can't recall.

Man: (Unintelligible) GNSO (unintelligible).

Matthew Shears: Okay it's Matthew again. I do have a proposal here. I would actually like us to spend some serious time thinking about this issue. This is not a small amount of money. There's going to be no doubt a huge swell of interest in what this money is put to.

And I think it would be very good for us to have a pretty - hopefully a pretty clear idea what we think these funds should be - what they should be put to and what would be the mechanism for doing so because I think this is quite a complicated issue to address as a whole.

So perhaps we can think about having a separate call or something to kick off that discussion before this starts up in earnest.

David Cake: Robin.

Robin Gross: Hi, this is Robin for the record. Just to sort of answer Matt's question there, I think what we want to do with the direction we should push for these proceeds to be used is to sort of be reinvested in the community and encouraging community participation and getting things like more translations and, you know, just really trying to build a more robust and accessible participation or environment for participation here at ICANN.

I think that would probably be a good thing. I'm concerned - I share Matt's concerns about, you know, everyone's going to see this big pile of money and they're going to think, "Ooh, goody, I want to get my hands on this. And I've got a pet project, and I want to do this, and I want to do that."

And I fear that it could get way out of control, that it could lead to enormous mission creep within ICANN. And I agree we need to pay very close attention to this issue and make sure that whomever we put on this particular working group understands what the NCSG position is once we come to it and is willing to advocate for that position in the working group. Thanks.

Avri Doria: Hi, this is Avri. I guess I have a slightly different view. First of all, I think we should get people - hopefully we've got - we probably do - people who were experienced at funding and grant making and stuff like that. I think there's going to be enough money here for us to be able to come up with actually an appropriate mechanism that gives various grants to various good ideas at times.

You know, I think the community idea is good. There's a lot of money for the community. I think, you know, there's developmental goals in, you know, many development areas that - so I think that there shouldn't be one use.

I'm really hoping we can get something structured like the foundation that has specific goals, has specific mission, and has a group of people that know how not to be gamed but to give money within mission to appropriate projects over time. And there's probably going to be more money because we're not done with options yet.

Matthew Shears: Anyone else on auctions? Yes.

Sam Lanfranco: Just a very short one. Sam Lanfranco. The total is around 230 million now, and there is a lawsuit pending that hopefully won't go anywhere. Donuts is upset because they want some of that money, having lost.

So just having said that's where we are today, I'd like to sort of second what Avri has said, and that's that there's a lot of money there. It doesn't have to be spent all at once. There are a whole bunch of techniques used by other organizations over time that we can learn from.

Rafik Dammak: Just a question.

David Cake: Yes.

Rafik Dammak: Just a question. Rafik speaking. So already talking about what kind of a proposal, but just maybe kind of reminder what are the cost trends for this working group in term of what it should deliver as proposal? I think that maybe they strip out some option already or not.

Matthew Shears: This is Matthew Shears. I don't know, Rafik, and I think this is all part of this further discussion that we need to have.

Avri Doria: Avri again. Is there a charter that they're proposing for this new cross...? So that's already there. So somebody must know what it says.

Rafik Dammak: That's what I just like with – Rafik speaking – while going quickly, but I think they put really already some limitation. And maybe it's good really to go through to be sure and what kind of maybe proposals that we want to put on the table. But (Larry) for example (unintelligible) conflict of interest or some area like that, yeah.

Matthew Shears: Okay, we also heard from Farzi. Are you there?

Farzaneh Badii: Yes I just wanted to make a quick point. Whatever we decide to do with this money, I do not think it should go to the tried and tested and ineffective tools that we have been using and has add nothing to diversity but it just kind of is a propaganda for ICANN to say oh we are so diverse while the effectiveness of the tools are just not known or they are not effective at all.

I think we have to – while I think we have (unintelligible) here, I think we have to concentrate on efficiency as well and have measures for what has worked and what has not worked and not give money to the things that have not worked. Thanks.

David Cake: I've managed to find a copy of the charter. I'll try and drop it into chat in a second. Yeah, currently the charter does not have any direction on what form, you know, the outcome should take. So - but I mean it's a fairly thorough charter with a lot of discussion about what it shouldn't take, like it shouldn't create a conflict of interest and it should, you know, obey, you know, appropriate financial laws and other such things.

Yeah, do we have any further questions on this question, the cross-community - on the auction proceeds, CCWG? Yes, Sarah?

Sarah Clayton: Sarah Clayton for the record. I was just wondering what options have been proposed for this money and what discussions have taken place so far.

David Cake: Well there has been a - so there's been a drafting team that - so the idea of the auction proceeds goes way back before - it's in the gTLD applicant guide book. Possible use of auction funds include formation of a foundation with a clear mission in a transparent way to allocate funds and projects (that our greater Internet community - and so on.

So - and a number of other possible uses. But that was way back before - you know, before the - while the applicant guide book was being created. Since then (Susan) it became clear that there was going to be a fairly substantial amount of money in that area. We created a drafting team, which has been going for...

Avri Doria: This is Avri. If I could just make a point. It was clear from the very start that there was going to be a lot of money in it. It was just a board fantasy that oh my God we don't know whether there's going to be money or not.

David Cake: Well we knew (any case) that they will go to private auction in order to - in order to start giving money to ICANN, which of course did happen several times but not in a couple of notable - a few notable cases. So yeah, there has turned out to be quite a lot of money and so far we've had a drafting team that has created this charter.

Now that drafting team involved every SO and AC except the ccNSO. The ccNSO tend to think it's not their money because they don't deal with gTLDs. And every other SO and AC has signed off on this draft charter - well, has been involved in the draft charter. So now we need to say if we're going to sign onto the creation of that cross-community working group.

And then we'll start discussing substantially what we actually, you know, are likely to do, whether it is going to take the form of a foundation, what roles and governance (unintelligible) and so forth.



Matthew Shears: Okay, any other questions on that? This is Matthew Shears again. We are now at AOB. So I think what we're going to do first is we have a suggestion, a request for an AOB from (Rinata) which we'll come to in a second.

But what I'd like to do first is turn to Tapani just to raise the issue of the questions that were put to us by the board and how we're going to respond to them. And then we'll come to (Rinata)'s AOB. Thanks.

Tapani Tarvainen: You wanted the questions the board put to us?

Matthew Shears: Yes.

Tapani Tavainen: Okay we have two questions there from the board. Let's see if I can open this up. Can you get them on the screen possibly? Okay. I will find them then. Okay, the first is what do we -- board and ICANN organization -- have to do to make the transition work for you -- meaning us -- and what do we -- board, ICANN organization, and community -- need to do to advance trust and advance confidence in what we do?

I asked about this on the list earlier and I got some (unintelligible), actually two people commenting on the first question but none at all for the second one. But we should decide who is going to respond to the board. I see that Ed certainly wanted to comment on the first one. And this wasn't up on his (unintelligible) by the way.

Matthew Shears: This is Matthew Shears again. Tapani, can you just tell us what the gist of the two comments were on the first one that came through the list, if you have them at hand? Otherwise we'll go to Ed.

Tapani Tarvainen: Yes, Tapani again. The first comment was that for the question one that we should push the GAC to be more transparent. We want the (CAR) report please for the sake of children. And the second comment was longer that was from Ed who is here and can speak for himself.

Edward Morris: Yes thanks Tapani. I'd like to use one of the questions - this better? Oh sorry, Edward Morris for the record. I hate doing that. Yes I'd like to use one of the questions to get something positive done rather than be out there and gee whiz guys, could you do this - the same thing.

We have something in the bylaws that's very important for the board to take a look at. It is in section 4.3Y. I'll just read it briefly. "ICANN shall seek to establish means by which community nonprofit claimants and other claimants that would otherwise be excluded from utilizing the IRP process may meaningfully participate in and have access to the IRP process."

We don't know what that means. When we threw it in there, we were thinking of things like pro bono representation, educational efforts. During the small board meeting today I brought it up and I asked them what they were doing about it. And quite frankly nobody knew it's in the bylaws.

It's something that perhaps wasn't discussed that much in the CCWG. And we for some reason managed to – it appeared in the final work product, and it's something that I believe is very important to our members and to us as well as a group, because we're not going to be eligible as the NCSG, NPOC or NCUC to do a free IRP because unless we go through our decisional participant.

We need, I believe, to make the board aware that this exists and to get them to commit to doing something establishing programs or something so that we'll be able to access the IRP when this stuff starts happening. I think this should be a good use of our time with the board.

Matthew Shears: This is Matthew Shears. Thanks Ed. Is this a small editorial fix or is it a bigger issue? Because I mean if it's a matter of fixing the text, we can perhaps even propose something tomorrow.

Edward Morris: No the text is fine but it requires ICANN to establish a program, be it pro bono representation or to do something to comply with the bylaws provision. And the board members – at least from what we saw today – don't know it even exists.

So even if we could get a commitment from the board to actually create a board group and perhaps even a board group that could do - recruit some of our members, sort of a joint community board group to try to put this together. I don't know if we've ever done anything like that before.

But we made sure – and I believe Robin was involved with this as well – that the words non-profit/non-commercial were in the bylaws. So it's something that is of special interest to the NCSG.

Avri Doria: Avri speaking. Perhaps it's something that we can just come up with a proposal before asking them to think of it and giving them warning that maybe they want to try and do something that blocks reasonable use of it. It might be better to just come up with a proposal that yes it would then be modified but of a thing we think should happen with it.

Edward Morris: This needs to be done. My experience with our working group, such as our budget group last year, is we had a meeting and nothing came out of it. I would rather inform the board that this exists. Ask Markus. Becky is now on the board, and Becky actually wrote the language, so she knows it exists.

And I would actually rather alert them to the fact it did exist. I'm not as suspicious about the board's mysterious (machinations). I think they will try to get this done. Becky Burr was a tremendous supporter of this. And so if Becky is there and we can remind her it exists, I think we have a better shot of getting this thing done.

I got to remind you we need to get this done fairly soon. The IRP is up. There are other groups I know within the Non-Contracted Party House that are

preparing to use the IRP process. I'd like to give some focus on this now and not have to wait for a proposal for Copenhagen or South Africa.

Matthew Shears: It's Matthew Shears. Thanks Ed. I think it's a great idea. Can we ensure that in the language that you use tomorrow that we point at pretty explicitly at what we're looking for. Even if we can't provide language we can point them in the direction and then we've got something on the record, so to speak.

Edward Morris: Fantastic. I would suggest pro bono representation, perhaps contracting with third party for educational materials. Anything else anyone wants to add?

Matthew Shears: This is Matthew Shears again. If you want to draft something and just run it by us, I mean...

Edward Morris: I'll have it on the list tonight then.

Matthew Shears: Okay, thanks. Second question, Tapani, was there any feedback on that? Sorry, it's Matthew Shears again.

Tapani Tarvainen: Tapani speaking. No feedback whatsoever on the second question. Guess we can simply try to do something trivial like say that we want more transparency in general, which has always worked for this, but it's not very constructive or such - be nice to have a bit more meat on it if anybody has ideas.

Matthew Shears: Matthew Shears again. So I'll just remind everyone of the second question is what do we – parentheses board, ICANN organization and community, closed parentheses – need to do to advance trust and confidence in what we do? So this is a call for all of us. So if anyone has any great ideas what we can all do better – all of us – Board, ICANN organization, and community. If anyone has any great thoughts, throw them on the list. Yes Robin.

Robin Gross: Well I don't think it's a particularly great thought but I think we need to do more to encourage the lack of siloes and more of the discussion between the different communities within ICANN. I think that would be something that we could do to sort of help getting dialogue going much sooner before decisions need to be made and people tend to get entrenched in their position.

So if we could encourage that sort of intra-community dialogue I think that would be worthwhile. I also think, you know, the board needs to understand some of the problems that the community has had with the staff over the years and in particular the legal department.

And again I don't think we need to personalize this, but I think that if we could get - really get them to pay attention, that the extent to which there is concern in the community, whether it's justified or not, that the board has largely been captured by the legal department and they need to recognize that the board is in charge, that the board needs to supervise them, that it's the board that has to make these decisions.

And from time to time that's going to mean telling the legal department no. We need to do something because it is what the community says it needs. Thank you.

Matthew Shears: Any other thoughts on that one or we'll move to the next AOB? Okay AOB from (Rinata). I'll read it. It's, "Will NCSG look into the issue of (MAG) nominations process being closed? Is it supporting CSCG and would it also appoint opening and closing speakers for the IGF to be short-listed by the CSCG?"

David Cake: Can I take that one? Yeah so the short answer is yes, the - Robin and I are the representatives on the CSCG and we did - there's a letter the CSG is putting out with no objections from anybody saying that we would like (MAG)'s at least civil society process to be more transparent. I don't really know what else to say other than we are supporting that statement.

Avri Doria: This is Avri just to clarify. So basically - and that team is a (MAG) member. So you're supporting the listing, the open listing of all candidates for (MAG). Is that what you mean? Because that's kind of what we've been pushing for (unintelligible).

David Cake: We'd understand if that was your - that was your position and we were supporting you.

Avri Doria: Okay, I just wanted to – but why are you pushing only for civil society ones being public as opposed to all being public?

David Cake: Well I think the letter says all.

Avri Doria: Okay, thank you.

David Cake: It's only civil society we feel – the CSCG role is to weigh in on it. And I think we're out of time but Robin?

Robin Gross: Yes I just wanted to quickly add on to what David had to say, which is that there will be open nominations and so the deadline to submit a name for a nomination is, let's see, November 10 – excuse me, November 7, November 7. So keep that in mind, that we don't have a lot of time. Thanks.

David Cake: I think so, yes. Do we have any other items of business? Yes, Ed very quickly please.

Edward Morris: Well I'll be very quickly, but this is quite important because it's ICANN based. Public comments, we have eight - some major public comments outstanding, and we're becoming the one participating group and support group in ICANN that doesn't do public comments.

I'm getting a little bit peeved at this. Now having said that, I want to think (Rinata) who's done a great job in the Latin American marketplace comment, which was theoretically due last week. It's been extended, so we'll get that before the PC, I'm sure shortly.

But we have eight public comments outstanding, things like the Dot Triple X deal to put it mildly, with this really new, the URS, now the new gTLDs on top of Dot Triple X in exchange for a cut in what they pay ICANN per registrant.

We have the PTI operating budget public comment outstanding, which is quite important because it's the first PTI operating budget ever. The GNSO (RDDS) implementation public comment. We have a ton of them and we don't seem to care about them any more in this group.

So I'd like to ask my two vice chairs of the policy committee how are we going to get public comments. It's not hostile. I don't mean to, but it really is starting to infuriate me a bit. We just talked about (IGF) stuff. I don't care about (IGF). I'm here for ICANN.

Do (IGF) stuff where you do (IGF) stuff. And I understand part of it comes into - thank David and Robin for doing what they're doing. But right now can we start focusing on ICANN and getting some public comments in? I'll volunteer to do a few. Anybody else?

David Cake: Okay we'll take that on board. We're aware it's a problem. We will try to do more.

Edward Morris: We're just having a policy committee meeting and we're going to go away without even discussing that.

David Cake: Yes we are because we're out of time. We're over time.

Matthew Shears: Do it, Tapani.

Tapani Tarvainen: Yes, Tapani speaking. We have a session in (NCPH) that is a meeting the NCSG tomorrow morning at 8:30. And there are at least two items in the agenda that we should prepare a bit for – the GNSO vice chair election procedures which we have been hashing a bit on the list, but it's still - it's open.

And the (unintelligible) planning at least - well that we are going to have it and where. For the vice chairs election procedures the proposal was sent to (unintelligible). Almost good but not quite and then suggested two changes. The first one is rather trivial. It's the point was that if the approval is not achieved, (unintelligible) okay but I'm not sure if you have read this, but basically the idea was that we get two years each (pending) normal circumstances but I deal with it after that.

The other makes an offer of one, and if the other does not approve, then (unintelligible) make another one up to three times and they said that two times would be enough. And then the controversial proposal that members (unintelligible) approval is not achieved then the NCA would become vice chair and they propose to drop this without offering anything explicitly instead.

I spoke briefly with (Unintelligible) about this yesterday I think and he said that the idea was that it's been implicit that we could agree on how the NCA - oh I guess it might be but still it's open what happens if the agreement on that is not achieved. And I think we want language on that so that it does not happen that they can simply reject us three times and then oh okay now we can do what we want.

I would like to have it written explicitly to the point basically that the final step is that okay this system didn't work. It's all out (unintelligible) ever after, but maybe a little different wording. But it still does not leave this kind of implicit things that they can too easily then go to.



But we agreed at this point we can just do what we want. Not quite sure what kind of proposal to make, but something along the lines that I brought up at this point with three proposals are rejected then the NCA becomes a candidate that's voted on. Maybe – or that NCA gets to make a proposal and at that point things...

Woman: (It would have to).

Woman: Yes, just don't do...

Tapani Tarvainen: Yes and of course...

Avri Doria: Candidate and (unintelligible).

Tapani Tarvainen: I (unintelligible). That's going to be my (statement). I'll try to draft maybe something overnight if I - (unintelligible) or whatever but the idea being anyway that it works out reasonably explicitly the point that okay in that case we don't have vice chair and we fight it out.

Avri Doria: So that would include – this is Avri – that would include this time so that if you guys can't come to an agreement, we do not put forward a vice chair because we have no agreement. So Heather doesn't go through unless that's agreed, unless there's an agreement. Is that correct?

Tapani Tarvainen: Tapani again. Yes, that's exactly what we agreed when I made this proposal earlier when they asked me if we support Avri, and I said we will support either. We (said) Heather as the vice chair if we can agree on this process.

Avri Doria: Okay, good.

Tapani Tarvainen: That's what (unintelligible) said to him as well.

Matthew Shears: Just before we close – it's Matthew again – I'd like to come back to Ed's point. Ed, we are remiss – David and I and Marilia will review this and come back to the PC with a proposal.

Edward Morris: I appreciate that, Matt.

Matthew Shears: Thanks.

Edward Morris: Thank you.

David Cake: So I think we are got to the point where we have made our way through the agenda almost in time. And I'd like to I guess thank everyone for their attendance and close this meeting.

Man: Thanks.

Man: Oh, could I just ask a question? Is there anything in particular we think we should bring up in the public forum or is that just kind of a random as the spirit strikes you, you stand and...?

Man: (Unintelligible)

Man: We had no coordinated agenda or leader of the NCUC?

Mitch Stoltz: If I could – sorry, this is Mitch Stoltz for the record. I think it would be great if folks are interested to at the second public forum amplify some of what comes out of our session on content regulation tomorrow.

David Cake: Thank you.

END